



# ADMINISTRATIVE REGISTER OF KENTUCKY

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

## MEETING NOTICES

The [Administrative Regulation Review Subcommittee](#) is tentatively scheduled to meet on May 11, 2021, at 1:00 p.m. in room 149 Capitol Annex.

[ARRS Tentative Agenda - 2331](#) [Online agenda updated as needed](#)

The [Education Assessment and Accountability Review Subcommittee](#) is tentatively scheduled to meet on June 1, 2021, at 3:00 p.m.

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| Title                                    |     | Chapter                                       | Regulation             |
|--|-----|---|------------------------|
| 806                                      | KAR | 50:   | 155                    |
| Cabinet, Department,<br>Board, or Agency |     | Office, Division, Board,<br>or Major Function | Specific<br>Regulation |

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**VOLUME 47, NUMBER 11– MAY 1, 2021**

**The following agenda may not take into consideration all of the administrative regulations that may be deferred by promulgating agencies. Deferrals may be made any time prior to or during the meeting.**

**Updated: April 28, 2021 at 10 a.m.**



**Administrative Regulation Review Subcommittee  
TENTATIVE Meeting Agenda  
Tuesday, May 11, 2021 at 1 p.m.  
Annex Room 149**



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

**COUNCIL ON POSTSECONDARY EDUCATION**

**Nonpublic Colleges**

013 KAR 001:020. Private college licensing.

**Interstate Reciprocity Agreements**

013 KAR 004:010. State Authorization Reciprocity Agreement.

**PERSONNEL CABINET**

**Personnel Cabinet, Classified**

101 KAR 002:095 & E. Classified service general requirements. ("E" expires 10-26-2021)

**FINANCE AND ADMINISTRATION CABINET**

**Department of Revenue**

**Sales and Use Tax; Service and Professional Occupations**

103 KAR 026:131. Landscaping Services.

**Office of the Secretary**

**Travel Expense and Reimbursement**

200 KAR 002:006 & E. Employees' reimbursement for travel. ("E" expires 10-26-2021)

**BOARDS AND COMMISSIONS**

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**Board of Pharmacy**

201 KAR 002:380. Board authorized protocols. (Amended After Comments)

**Board of Dentistry**

201 KAR 008:505E. Administration of COVID-19 Immunizations. ("E" expires 10-24-2021)

**Board of Nursing**

201 KAR 020:065. Professional standards for prescribing Buprenorphine-Mono Product or Buprenorphine-Combined-with-Naloxone by APRNs for medication assisted treatment for opioid use disorder.

201 KAR 020:370. Applications for licensure.

201 KAR 020:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

201 KAR 020:660. Licensed certified professional midwives duty to report.

**Board of Alcohol and Drug Counselors**

201 KAR 035:010E. Definitions for 201 KAR Chapter 035. ("E" expires 11-30-2021) (Filed with Ordinary)

201 KAR 035:020E. Fees. ("E" expires 11-30-2021) (Filed with Ordinary)

201 KAR 035:025E. Examinations. ("E" expires 11-30-2021) (Filed with Ordinary)

201 KAR 035:040E. Continuing education requirements. ("E" expires 11-30-2021) (Filed with Ordinary)

201 KAR 035:050E. Curriculum of study. ("E" expires 11-30-2021) (Filed with Ordinary)

201 KAR 035:055E. Temporary registration or certification. ("E" expires 11-30-2021)

201 KAR 035:070E. Supervision experience. ("E" expires 11-30-2021) (Filed with Ordinary)

201 KAR 035:075E. Substitution for work experience for an applicant for certification as an alcohol and drug counselor. ("E" expires 11-30-2021) (Filed with Ordinary)

201 KAR 035:080E. Voluntary inactive and retired status. ("E" expires 11-30-2021) (Filed with Ordinary)

**TRANSPORTATION CABINET**

**Administration**

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

**LABOR CABINET**

**Department of Workplace Standards**

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803 KAR 002:180E. Recordkeeping, reporting, and statistics. ("E" expires 12-05-2021) (Filed with Ordinary)

## VOLUME 47, NUMBER 11– MAY 1, 2021

### Department of Workers' Claims

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803 KAR 025:092. Workers' compensation pharmacy fee schedule. (Amended After Comments) (Deferred from April)  
803 KAR 025:170. Filing of claims information with the Office of Workers' Claims. (Deferred from February)  
803 KAR 025:175. Filing of insurance coverage and notice of policy change or termination. (Deferred from February)  
803 KAR 025:185. Procedure for E-mail notification of cancellation or removal of location of specific workers' compensation coverage. (Deferred from February)

### Department of Insurance

#### Insurance Contract

- 806 KAR 014:121. Minimum standards for the readability and intelligibility of insurance contracts. (Not Amended After Comments)

#### Life Insurance and Annuity Contracts

- 806 KAR 015:050. Reporting and general requirements for settlement providers and brokers. (Amended After Comments)

### PUBLIC PROTECTION CABINET

#### Horse Racing Commission

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- 810 KAR 002:001E. Definitions for 810 KAR Chapter 002. ("E" expires 11-22-2021) (Filed with Ordinary)

##### Licensing

- 810 KAR 003:001E. Definitions for 810 KAR Chapter 003. ("E" expires 11-22-2021) (Filed with Ordinary)

##### Flat and Steeplechase Racing

- 810 KAR 004:001E. Definitions for 810 KAR Chapter 004. ("E" expires 11-22-2021) (Filed with Ordinary)

##### Standardbred Racing

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##### Pari-Mutuel Wagering

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810 KAR 006:010E. Exotic wagering. ("E" expires 11-22-2021) (Filed with Ordinary)  
810 KAR 006:030E. Pari-Mutuel wagering. ("E" expires 11-22-2021) (Filed with Ordinary)

##### Harness Racing

- 811 KAR 001:251E. Repeal of 811 KAR 001:250. ("E" expires 11-22-2021) (Filed with Ordinary)

### CABINET FOR HEALTH AND FAMILY SERVICES

#### Office of the Inspector General

##### Certificate of Need

- 900 KAR 006:030. Certificate of need expenditure minimums. (Deferred from April)  
900 KAR 006:055. Certificate of need forms. (Amended After Comments)  
900 KAR 006:060. Timetable for submission of certificate of need applications. (Deferred from April)  
900 KAR 006:065. Certificate of need application process. (Deferred from April)  
900 KAR 006:080. Certificate of need emergency circumstances. (Deferred from April)  
900 KAR 006:090. Certificate of need filing, hearing, and show cause hearing. (Deferred from April)  
900 KAR 006:095. Certificate of need administrative escalations. (Deferred from April)  
900 KAR 006:100. Certificate of need standards for implementation and biennial review. (Deferred from April)  
900 KAR 006:105. Certificate of need advisory opinions. (Deferred from April)  
900 KAR 006:110. Certificate of need notification requirements. (Amended After Comments)  
900 KAR 006:115. Certificate of need requirements for critical access hospitals, swing beds, and continuing care retirement communities. (Deferred from April)

#### Department for Public Health

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#### Department for Public Health

##### Maternal and Child Health

- 902 KAR 004:150E. Enhanced HANDS services in response to declared national or state public health emergency. ("E" expires 11-30-2021) (Filed with Ordinary)

#### Department for Public Health

##### Kentucky Early Intervention System

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##### Radon

- 902 KAR 095:040. Radon Contractor Registration Program. (Not Amended After Comments)

#### Department for Medicaid Services

##### Payment and Services

- 907 KAR 003:005. Coverage of physicians' services.  
907 KAR 003:010. Reimbursement for physicians' services.

##### Certified Provider Requirements

- 907 KAR 007:020. 1915(c) Home and community based services waiting list placement appeal process.

## **VOLUME 47, NUMBER 11– MAY 1, 2021**

### **Department for Community Based Services**

#### **Child Welfare**

922 KAR 1:490E. Background checks for foster and adoptive parents and relative and fictive kin. (Filed with ordinary) (Emergency Amended After Comments)

922 KAR 001:490. Background checks for foster and adoptive parents and relative and fictive kin caregivers. ("E" expires 11-05-2021)

922 KAR 001:540. Registration of a foreign adoption.

922 KAR 001:580. Standards for children's advocacy centers.

#### **Daycare**

922 KAR 002:415E. Enhanced requirements for certified and licensed child care and limited duration child care programs as a result of a declare state of emergency. ("E" expires 12-10-2021)

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

#### **KENTUCKY INFRASTRUCTURE AUTHORITY**

200 KAR 017:100. Guidelines for Broadband Deployment Account. (Comments Received, SOC ext., due 5-14-2021)

#### **BOARDS AND COMMISSIONS**

##### **Board of Licensure of Marriage and Family Therapists**

201 KAR 032:030. Fees. (Comments Received; SOC ext., due 05-14-2021)

201 KAR 032:035. Supervision of marriage and family therapy associates. (Comments Received; SOC ext., due 05-14-2021)

201 KAR 032:060. Continuing education requirements. (Comments Received; SOC ext., due 05-14-2021)

#### **PUBLIC PROTECTION CABINET**

##### **Department of Insurance**

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

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

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

806 KAR 012:120. Suitability in annuity transactions. (Amended After Comments) (Deferred from February)

**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.

**STANDARD ADMINISTRATIVE REGULATION REVIEW PROCEDURE**  
**Overview for Regulations Filed under Senate Bill 2, 2021 Regular Session**  
**(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. Emergency administrative regulations become effective upon filing.

**Public Hearing and Public Comment Period**

The administrative body shall schedule a public hearing on a proposed administrative regulation. The public hearing is held between the 21st and the last workday of the month in which the public comment period ends. 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 for ordinary regulations end on the last day of the month following publication; whereas, public comment periods for emergency regulations run through the last day of the month in which the regulation was published. For other ordinary regulations with open comment periods, please also see last month's *Administrative Register of Kentucky*.

The administrative body shall notify the Compiler 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**

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EMERGENCY ADMINISTRATIVE REGULATIONS

Pursuant to KRS 13A.190, emergency regulations expire after 270 days (or 270 days plus the number of days an accompanying ordinary is extended) or upon replacement by an ordinary regulation, whichever occurs first. Expiration dates may be impacted by 2021 Regular Session legislation, including: [House Joint Resolution 77](#); KRS Chapter 39A, as amended by [Senate Bill 1](#); and by KRS Chapters 13A and 214, as amended by [Senate Bill 2](#).

**STATEMENT OF EMERGENCY**  
**601 KAR 2:233E**

This emergency administrative regulation is being promulgated in order to establish the guidelines and requirements for the implementation and use of ignition interlock devices pursuant to the requirements of Senate Bill 85 from the 2019 Regular Session of the General Assembly, which went into effect on July 1, 2020. Due to multiple comments by stakeholders, the agency decided to create a new emergency regulation in order to clarify specifics with regards to Senate Bill 85. It is filed to address the risk to the public health, safety, or welfare associated with driving under the influence and to protect human health. Because the requirements of Senate Bill 85 from the 2019 Regular Session of the General Assembly went into effect on July 1, 2020, an ordinary administrative regulation was not sufficient to meet the pending deadline for promulgation of an administrative regulation. This new emergency administrative regulation incorporates the requirements of Senate Bill 85 from the 2019 Regular Session of the General Assembly, including updated payment of fee requirements, forms, procedures for appeal, requirements of manufacturers seeking certification to participate in the Kentucky Ignition Interlock Program (KIIP), and shifts the KIIP from administration through the courts and to the cabinet. This emergency administrative regulation will be replaced by an ordinary administrative regulation, and the companion ordinary administrative regulation is identical to this emergency regulation.

ANDY BESHEAR, Governor  
JIM GRAY, Secretary

**TRANSPORTATION CABINET**  
**Department of Vehicle Regulation**  
**Division of Driver Licensing**  
**(New Emergency Administrative Regulation)**

**601 KAR 2:233E. Kentucky Ignition Interlock Program; participants and device providers.**

EFFECTIVE: April 12, 2021

RELATES TO: KRS Chapter 45A, 186.010, 186.050, 186.180, 186.480, 186.531, 186.560, 186.570, 189A.005, 189A.010, 189A.040, 189A.045, 189A.070, 189A.085, 189A.090, 189A.103, 189A.105, 189A.107, 189A.200, 189A.220, 189A.240, 189A.250, 189A.340, 189A.345, 189A.350, 189A.370, 189A.380, 189A.400, 205.712, 18 U.S.C. 2721

STATUTORY AUTHORITY: KRS 189A.350

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189A.350 requires the Transportation Cabinet to promulgate administrative regulations to carry out provisions regarding the implementation of the Commonwealth's ignition interlock program for motor vehicle drivers who violate KRS 189A.010 or 189A.090. This administrative regulation establishes the duties and responsibilities of ignition interlock device providers wishing to enter into an agreement with the Commonwealth of Kentucky and the Transportation Cabinet for the administration and implementation of the ignition interlock device program and further establishes requirements for certifying ignition interlock devices under this program. This administrative regulation also establishes the requirements for an applicant with a violation of KRS 189A.010 or 189A.090 to obtain an ignition interlock device and license and has the potential benefit of shortening a suspension period if a participant does not have a device violation.

Section 1. Definitions. (1) "Applicant" means a person applying for an ignition interlock license.

(2) "Cabinet" is defined by KRS 189A.005(2).

(3) "Calibration" means the process that ensures an accurate alcohol concentration reading is being obtained on the ignition interlock device.

(4) "Certification" means the approval process required by the Commonwealth of Kentucky for ignition interlock devices and device providers prior to operating within the state.

(5) "Compliance-based review" means the review by the Transportation Cabinet of:

(a) The length of time that a person's license to operate a motor vehicle or motorcycle is suspended as established in KRS 189A.070; and

(b) That participant's compliance with the requirements established in KRS 189A.340.

(6) "Compliance period" means the length of time that a person's license to operate a motor vehicle or motorcycle is suspended as established in KRS 189A.070, 189A.340, and this administrative regulation.

(7) "Department" means the Department of Vehicle Regulation in the Kentucky Transportation Cabinet.

(8) "Ignition interlock certificate of installation" or "certificate of installation" is defined by KRS 189A.005(4).

(9) "Ignition interlock device" or "device" is defined by KRS 189A.005(3).

(10) "Ignition interlock device provider" or "device provider" is defined by KRS 189A.005(5).

(11) "Ignition interlock incentive period" or "incentive period" means the period of time as established by KRS 189A.340(4)(b)2 during which an ignition interlock provider certifies that no violations have occurred and is prior to the date by which the cabinet removes the ignition interlock restriction from a person's license.

(12) "Ignition interlock license" is defined by KRS 189A.005(6).

(13) "KIIP" means Kentucky Ignition Interlock Program.

(14) "License" is defined by KRS 189A.005(7).

(15) "Lockout" means a condition in which the device will not accept a breath test causing the ignition interlock device to prevent a motor vehicle's engine from starting.

(16) "Manufacturer" means an entity responsible for the design, development, production, and repair of the ignition interlock device.

(17) "Medical accommodation" means that a device has been adjusted to detect the breath alcohol level of participants who have a medically documented condition of diminished lung capacity requiring a reduced air sample.

(18) "Month" means calendar month.

(19) "Motor vehicle" is defined by KRS 186.010(4) and includes "motorcycle," which is defined by KRS 186.010(15).

(20) "NHTSA" means the National Highway Traffic Safety Administration.

(21) "Participant" means a person who has applied and been approved to participate in KIIP.

(22) "Provider representative" means a device provider employee who provides oversight of the provider's ignition interlock operations within the Commonwealth of Kentucky.

(23) "Retesting" means an additional opportunity to provide a breath sample.

(24) "RFQ" means a request for qualifications pursuant to KRS Chapter 45A.

(25) "Service call" means an on-site remote service of an ignition interlock device, outside of a fixed facility, including for example:

(a) Diagnostic trouble shooting;

(b) Repair or replacement of a malfunctioning device; or

(c) Removal of a device from an inoperable vehicle.

(26) "Service facility" means the physical location contracted by the ignition interlock device provider where the service provider's technicians install, calibrate, or remove ignition interlock

devices.

(27) "Service facility inspection" means the process for determining that a service facility and the service facility's technicians are qualified and approved to provide ignition interlock services within the Commonwealth of Kentucky.

(28) "Service provider" means an entity that has contracted with an ignition interlock device provider to provide mechanical services related to an ignition interlock device at a service facility.

(28) "Tampering" means acting with the intent to render the ignition interlock device defective as established by KRS 189A.340 and 189A.345.

(30) "Technician" means a service provider employee or contractor who installs, calibrates, and removes ignition interlock devices within the Commonwealth of Kentucky.

Section 2. Ignition Interlock License. (1) The requirements established in this administrative regulation shall not be applied retroactively.

(2)(a) Anyone seeking an ignition interlock license pursuant to KRS Chapter 189A shall apply to the cabinet using the Kentucky Ignition Interlock Program Application, TC 94-175.

(b) At the time of application, the applicant shall present proof of insurance and valid vehicle registration.

(c) Upon approving an applicant for participation in the Kentucky Ignition Interlock Program, the cabinet shall notify the applicant in writing that the applicant has been approved to participate in KIIP.

(3)(a)1. The cabinet shall determine if an applicant is eligible for reduced payments pursuant to this administrative regulation, KRS 189A.340, and KRS 189A.350. An applicant found eligible for reduced payments shall pay a proportionate amount of the fees based upon the federal poverty guidelines, as established in KRS 189A.340.

2. A device and service provider shall accept the fees determined by the cabinet, as established in paragraph (a) of this subsection, and paid by an applicant or participant as payment in full pursuant to KRS 189A.340(7).

3. The applicant or participant shall remit the fees directly to the device provider as established in KRS 189A.340(7) and the RFQ.

4. A device provider shall not prohibit the pre-payment of fees for the device and services.

5. The device provider may pursue collection of amounts in arrears, not in excess of any indigency calculations, and recovery of the devices, if applicable. Collection and recovery shall be through separate legal action.

(b)1. An applicant requesting reduced payment shall file concurrently with the Kentucky Ignition Interlock Program Application, TC 94-175, a completed Kentucky Ignition Interlock Program Affordability Application, TC 94-188. An applicant filing a Kentucky Ignition Interlock Program Affordability Application, TC 94-188, shall submit federal tax returns, paychecks, W-2's, or 1099's as part of his or her application.

2. The reduced payment rate shall not extend past the maximum suspension pursuant to KRS 189A.070.

3. The applicant or participant's reduced payment eligibility shall be determined annually.

4. The applicant may re-submit the Kentucky Ignition Interlock Program Affordability Application, TC 94-188, for recalculation by the cabinet.

(4) A pre-existing out-of-state or in-state suspension for the offenses listed in KRS 186.560, 186.570, or 205.712 shall result in the applicant's ineligibility to obtain an ignition interlock license.

(5) An applicant seeking a medical accommodation due to diminished lung capacity shall submit with the Kentucky Ignition Interlock Program Application, TC 94-175, a completed Breath Alcohol Ignition Interlock Physician Statement, TC 94-176.

(6) The cabinet shall issue to the applicant, notice of his or her eligibility or ineligibility for an ignition interlock license based on if:

(a) His or her current driving history record conforms to the eligibility requirements established in KRS Chapter 189A; and

(b) He or she is not ineligible pursuant to KRS 186.560, 186.570, or 205.712.

(7) The cabinet shall issue an ignition interlock license after device installation for the period established pursuant to KRS Chapter 189A.

(8) An applicant eligible for device installation shall select and contact a certified device provider of his or her choice from the list maintained on the cabinet's Web site at <https://drive.ky.gov/driver-licensing/Pages/Ignition-Interlock-Program.aspx#certified-ignition-interlock-providers>.

(9) A technician designated by the device provider shall install a certified ignition interlock device on the applicant's vehicle upon receipt of the letter of eligibility issued by the cabinet.

(10) An applicant approved by the cabinet to participate in KIIP based on the criteria established in this section and determined by the cabinet to be eligible for an ignition interlock device based on the criteria established in this section shall be required to install an ignition interlock device on at least one (1) primary motor vehicle registered and titled in his or her name or another's motor vehicle with express notarized, written consent of the owner authorizing installation of the device.

(11) An applicant or participant may have devices installed on multiple motor vehicles.

(12)(a) An applicant approved by the cabinet to participate in KIIP pursuant to subsection (10) and this administrative regulation shall pay the applicable fee for installation of the ignition interlock device.

(b) Upon an applicant's payment of the applicable fee for installation and subject to any requirements established in KRS 189A.090, 189A.107, 189A.200, 189A.340(8), and 189A.345, the service provider's technician shall install the device and issue to the applicant an Ignition Interlock Certificate of Installation, TC 94-194.

(13) Before an ignition interlock license is issued, an approved applicant to participate in KIIP, as established in this section of this administrative regulation, and eligible for an ignition interlock license pursuant to this section of this administrative regulation and KRS Chapter 189A shall:

(a) Present the Ignition Interlock Certificate of Installation, TC 94-194, to a department regional field office electronically, via USPS, or in person; and

(b) Pay the reinstatement fee pursuant to KRS 186.531(9). The license shall display an ignition interlock device restriction.

(14) Upon issuance of an ignition interlock license, a participant shall begin to receive day-for-day credit toward the license suspension period pursuant to KRS 189A.070 and the ignition interlock license incentive period pursuant to KRS 189A.340.

(15) After ten (10) days' written notice to the participant, the device provider shall notify the cabinet of nonpayment of fees on an account that is in arrears for thirty (30) days or more.

(16) Subject to recalculation of day-for-day credit, as established in Section 9 of this administrative regulation, a participant may voluntarily have the device removed and reinstalled onto a different motor vehicle pursuant to subsection (12) of this section and upon payment of the appropriate fees to the device provider.

(17) A participant shall have the device removed by an approved service provider and technician designated by the device provider upon completion of the ignition interlock incentive period established by KRS 189A.070.

(18)(a) Upon removal of the device, the service provider shall retain for their records and provide to the cabinet and the participant a Certificate of Removal for Ignition Interlock Device, TC 94-178. The Certificate of Removal for Ignition Interlock Device, TC 94-178, shall be submitted to the cabinet within twenty-four (24) hours electronically or no later than seventy-two (72) hours by mail or fax.

(b) Upon notice that the device has been removed pursuant to subsection (17) of this section or upon expiration of the maximum duration of the participant's suspension under KRS 189A.070, the cabinet shall update the participant's driver history record authorizing the regional field offices to issue the participant a new license without the ignition interlock restriction.

(19) A participant not participating in the KIIP and with a

license suspension period exceeding twelve (12) months shall be subject to retesting requirements prior to the issuance of a new license pursuant to KRS 186.480.

(20)(a) Unless the person is under eighteen (18) years of age, the Transportation Cabinet shall, pursuant to KRS 189A.070, suspend the driving privileges of a person convicted of an offense established in KRS 189A.010.

(b) As established by KRS 189A.070(1)(b), a person who is under eighteen (18) years of age whose license is suspended pursuant to KRS 189A.070(1)(b) shall be eligible for an ignition interlock license pursuant to KRS Chapter 189A, but that person shall not be eligible for any incentive period.

Section 3. General Requirements for Ignition Interlock Device Providers. (1) The cabinet shall certify ignition interlock device providers for two (2) years utilizing the provisions of KRS Chapter 45A and the terms of the RFQ. Application for new applicants and continuing certification renewals shall open on October 1 in the year prior to expiration.

(2) Ignition interlock device providers certified pursuant to this administrative regulation shall obtain re-certification in compliance with this administrative regulation prior to providing devices or services.

(3) An ignition interlock device provider seeking certification to provide devices or services within the Commonwealth shall comply with the requirements of solicitation issued by the cabinet as established in subsection (1) of this section. Non-compliance shall result in a denial of certification.

(4) An ignition interlock device provider may subcontract with a person, firm, LLC, or corporation to provide a device or services if that device is specifically included in the original certification request and is specifically certified by the cabinet pursuant to KRS 189A.350.

(5) An ignition interlock device provider shall provide a representative who shall be assigned to work specifically with the KIIP pursuant to the terms of the RFQ.

(6) An ignition interlock device provider or service provider shall provide information and training for the operation and maintenance of the device to the participant and other individuals operating a vehicle equipped with a device.

(7)(a) A device shall only be removed by the device provider or a service provider contracted with the device provider except if:

1. An agreement is in place between device providers; or

2. The purpose of replacing a participant's device due to the initial device provider's insolvency or business interruption.

(b) In the case of a device provider's insolvency or business interruption, the original device provider shall bear the costs associated with the removal of the existing device and installation of the new device.

(8)(a) A device provider shall notify the cabinet within fifteen (15) days of a suspension, revocation, or disciplinary action taken against the device provider by a jurisdiction within or outside the Commonwealth. This notification shall include the reason for the disciplinary action and other information as the Kentucky Transportation Cabinet may, pursuant to this administrative regulation, reasonably request. This requirement applies regardless of the existence of an appeal.

(b) Notice shall include a copy of the official correspondence or pleading establishing the reason for the pending action and shall be provided to the cabinet regardless of the existence of an appeal. Pursuant to this administrative regulation and KRS Chapter 189A, the cabinet may request other information at any time and the provider shall provide the information if it is reasonably available.

(9) The records required by Section 4(3)(g) of this administrative regulation shall be retained by an ignition interlock device provider for at least five (5) years from the date the device is removed from the participant's vehicle. The records shall be disposed of in a manner compliant with relevant privacy laws and Section 4(3)(g) of this administrative regulation.

Section 4. Certification of Ignition Interlock Devices, Device Providers, and Service Providers. (1) The Transportation Cabinet shall issue an RFQ to device providers in order to certify providers

eligible to provide ignition interlock services and commodities required for the implementation and maintenance of the state's ignition interlock program.

(2) An ignition interlock device provider requesting certification of an ignition interlock device shall submit:

(a) An affidavit that the ignition interlock device complies with specifications and certification requirements established in the RFQ;

(b) Documentation for each model from either an ISO 17025 accredited, independent testing laboratory or the NHTSA testing laboratory that the ignition interlock device meets or exceeds NHTSA model specifications; and

(c) Documentation that each ignition interlock device installed shall be equipped with a functional camera that documents the date, time, and photograph of all persons providing breath samples to the ignition interlock device.

(3) An ignition interlock device provider requesting certification pursuant to subsection (1) of this section shall:

(a) Submit:

1. Evidence that demonstrates successful experience in the development and maintenance of an ignition interlock service program, such as, for example, a resume, evaluation, or letter of recommendation; and

2. A list of jurisdictions served by the device provider;

(b) Provide a description of the training required, including its frequency, for persons employed by, contracted with, or permitted by the device provider to install, calibrate, remove, and provide continuing support for participants and the devices;

(c) Provide a plan that includes a location map describing the areas and locations of the device provider's proposed fixed installation and service facilities. The plan shall include at least one (1) fixed facility in each of the twelve (12) highway districts;

(d) Agree to the random or designated selection process to require coverage in underserved areas as established in the RFQ;

(e) Agree to initial service facility inspections, continuing random inspections, and annual inspections of each service facility by the cabinet or its designee. The device provider shall also agree to provide notice to the cabinet or its designee of the opening of new service facilities to permit the inspection of the facility within thirty (30) days of opening;

(f) Comply with all local business license and zoning regulations, and with all federal, state, and local health, fire, and building code requirements. The official valid business license and tax document shall be posted in a conspicuous place at the service facility immediately upon receipt, if applicable;

(g) Provide a plan for the receipt, maintenance, and destruction or return of participant's records consistent with court rules and the confidential maintenance of participant's records as required by the Driver's Privacy Protection Act, 18 U.S.C. 2721 and other applicable statutes;

(h) Provide proof of insurance covering the liability related to the manufacture, operation, installation, service, calibration, and removal of the devices with policy limits as established in the RFQ. The device provider's liability insurance shall be expressly considered primary in the policy;

(i) Designate a device provider representative authorized to speak on behalf of and bind the device provider and designated to work with the cabinet, the courts, and other agencies in the administration of the ignition interlock program;

(j) Maintain a toll-free twenty-four (24) hour emergency phone service that shall be used by participants to request assistance in the event of operational problems related to the device and that shall include technical assistance and aid in obtaining a roadside service call if needed;

(k) Demonstrate the ability to maintain sufficient, secure computer hardware and software compatible with the cabinet and court requirements to record, compile, and transmit data and information requested by the cabinet and the Administrative Office of the Courts;

(l) Agree to provide expert or other required testimony in any administrative, civil, or criminal proceedings pursuant to this administrative regulation and KRS Chapters 186 and 189A;

(m) Provide a complete list of any contractual fees that the

participant may be required or requested to pay; and

(n) Adhere to the device settings as stated in the RFQ.

(4) A device provider shall, pursuant to KRS 189A.350(4)(f), notify the cabinet within seven (7) days of servicing an ignition interlock device of discovery of a participant's failure, if applicable, to comply with KRS 189A.340(4)(b)2. or 189A.345.

(5) Each device provider shall give the cabinet access to independently review the interlock user's activity including images.

(6) Pursuant to KRS 189A.070 or 189A.340, a device provider shall send the cabinet notification that the participant has been violation-free for the required compliance period as established in KRS 189A.340.

(a) For a participant who has incurred a first DUI offense within a ten (10) year period, the device provider shall send the cabinet notification that the participant has been violation-free within the first ninety (90) consecutive days of the required compliance period.

(b) For a participant who has incurred any subsequent DUI offenses within a ten (10) year period, the provider shall send the cabinet notification that the participant has been violation-free within the first one hundred twenty (120) consecutive days of the required compliance period.

(c) The compliance period shall begin either ninety (90) days prior to the conclusion of the identified incentive period if a participant has incurred a first DUI offense within a ten (10) year period or one hundred twenty (120) days prior to conclusion of the identified incentive period if a participant has incurred any subsequent DUI offenses within a ten (10) year period.

(d)(i) Violations of the ninety (90) or one hundred twenty (120) consecutive day requirement shall be as established in KRS 189A.340(4)(b)2.b.

(ii) Violations that constitute a misdemeanor offense shall be established in KRS 189A.345.

(7) Consistent with and pursuant to the process established in the RFQ, a device provider shall provide either an interlock code or bypass capability to automobile mechanics, thereby causing the interlock device to be disabled during vehicle repair and maintenance.

(8) A device provider shall indemnify and hold harmless any unit of the Commonwealth or local government or Commonwealth or local government employees, public officers, or agents from all claims, demands, or actions as a result of damages or injury to persons or property, including death, that arise directly or indirectly out of the installation, omission, failure of installation, servicing, calibrating, or removal of an ignition interlock device. If the device provider's report of ignition interlock activities contains a verified error, the cabinet, department, or cabinet or department employees or agents shall be indemnified relevant to the error.

Section 5. Installation, Operation, Calibration, and Removal of Devices. (1) An ignition interlock device shall be installed by or under the direction and supervision of a device provider in conformance with procedures of the device provider.

(2) Prior to installing the device, the provider shall obtain and retain copies from the participant of:

(a) Photo identification;

(b) The vehicle registration or title containing the VIN of the motor vehicle designated as primary by the participant and the name or names of the operators of the motor vehicle; and

(c) Consent of the participant or registered owner to install the device.

(3)(a) The device shall be inspected or calibrated by a technician designated by the device provider within thirty (30) days of installation and every sixty (60) days thereafter.

(b) A participant shall have the option to service the device at thirty (30) day intervals following the initial calibration.

(4) A service provider and technician shall use the calibration units approved by NHTSA, incorporated by reference, that is available on the list of Conforming Products List of Calibrating Units for Breath Alcohol Testers at <http://www.transportation.gov/odapc/conforming-product-list-calibrating-units-breath-alcohol-testers>.

(5) An ignition interlock device provider shall ensure that

technicians installing the device:

(a) Inspect, calibrate, or replace devices with a newly calibrated device at each inspection as required;

(b) Retrieve data from ignition interlock device data logs for the previous period and send the information to the appropriate authority, as established in KRS 189A.350(4)(f), within seven (7) days of discovery;

(c) Record the odometer reading at installation and at service appointments;

(d) Inspect devices and wiring for signs of tampering, record suspected violations, and transmit violation reports pursuant to this administrative regulation; and

(e) Conform to other calibration requirements established by the device provider.

(6) If a participant fails to have the device inspected or recalibrated as required by subsection (3)(a) of this section, the ignition interlock device shall be programmed to enter into a lockout condition, at which time the vehicle shall be required to be returned to the service provider.

(7) The participant shall be responsible for costs related to a service call unless the ignition interlock device failed through no fault of the participant, in which case the device provider shall be responsible for the applicable costs.

(8) Within ninety-six (96) hours of receipt of written notice issued by the cabinet directing removal of the device, a device provider shall, pursuant to this administrative regulation, notify the participant that he or she shall return the vehicle with the installed device for removal.

(9) If an ignition interlock device is removed for any reason, components of the motor vehicle altered by the installation of the device shall be restored to pre-installed conditions.

(10) The cabinet shall:

(a) Maintain a rotating list of certified ignition interlock device providers and approved facilities available at <https://drive.ky.gov/driver-licensing/Pages/Ignition-Interlock-Program.aspx#certified-ignition-interlock-providers>;

(b) Maintain a Kentucky Ignition Interlock Application, TC 94-175;

(c) Make available a uniform Ignition Interlock Certificate of Installation, TC 94-194, to be printed and distributed by device providers to their approved service providers and technicians documenting successful ignition interlock device installation;

(d) Issue an ignition interlock license to participants upon receipt of a completed Ignition Interlock Certificate of Installation, TC 94-194, and in compliance with the requirements of this administrative regulation. The license shall have an in-force status and indicate that it is an ignition interlock license by displaying a restriction code for an ignition interlock device;

(e) Make available a uniform Certificate of Removal for Ignition Interlock Device, TC 94-178, to be printed and distributed by device providers to their approved service providers and technicians documenting successful ignition interlock device removal; and

(f) As established in Section 2(18)(b) of this administrative regulation, remove the restriction code on the participant's driving record following receipt and review of the Certificate of Removal for Ignition Interlock Device, TC 94-178.

Section 6. Device Provider Suspension, Revocation, Voluntary Service Provider Closure, or Financial Insolvency.

(1) The cabinet shall indefinitely suspend or revoke certification of an ignition interlock device provider or individual service provider contracted by the device provider if:

(a) A device in use by that device provider and previously certified by the cabinet is discontinued by the manufacturer or device provider;

(b) The device provider's liability insurance is terminated or cancelled;

(c) The device provider makes materially false or inaccurate information relating to a device's performance standards;

(d) There are defects in design, materials, or workmanship causing repeated failures of a device;

(e) A device provider fails to fully correct an identified service

facility deficiency within thirty (30) days after having been notified by the cabinet or its designee to do so;

(f) A service provider impedes, interrupts, disrupts, or negatively impacts an investigation or inspection conducted by the cabinet or its designee involving customer service issues, motor vehicle damage, or a complaint brought by a third party;

(g) A public safety or client confidentiality issue with an ignition interlock device provider, service facility, or technician is identified;

(h) A device provider becomes insolvent or files for bankruptcy;

(i) The device provider requests a voluntary withdrawal; or

(j) The provider fails to comply with the requirements established in the RFQ used to apply for certification.

(2)(a) The device provider shall be given at least thirty (30) days written notice of the existence of one (1) or more of the conditions established in subsection (1) of this section by letter from the Office of Highway Safety, served by certified mail, and an opportunity to respond to the allegations or correct the deficiencies within that period.

(b) The Office of Highway Safety shall consider the device provider's response or lack of response if deciding to suspend for a period of time or completely revoke the certification of the device provider.

(c) The device provider may appeal the decision of the Office of Highway Safety. An appeal shall be made and conducted pursuant to the provisions of KRS Chapter 13B.

(3) A device provider subject to suspension or revocation shall be responsible for and bear the costs associated with:

(a) Providing notice to participants; and

(b) The removal of currently installed devices and the installation of a new device by a device provider in good standing.

(4) A device provider subject to suspension or revocation shall continue to provide services for currently installed devices for a time calculated by the cabinet and based on the remaining ignition interlock period, but no longer than ninety (90) days.

(5) A device provider subject to suspension or revocation shall continue to provide services for currently installed devices. There shall not be a new ignition interlock device installation during the period of suspension.

(6)(a) A device provider that terminates certification or goes out of business shall comply with the requirements established in subsection (3) of this section and shall continue to provide services in accordance with this administrative regulation for currently installed devices for ninety (90) days from the date of the device provider's notification to the cabinet that the device provider will be terminating ignition interlock services.

(b) A provider who terminates certification or goes out of business shall submit plans for transferring existing participants to other device providers to ensure continuity of service.

(c) A transfer plan shall be submitted to the cabinet for review by the Office of Highway Safety within thirty (30) days of the initial notification of intent to cease operations in the Commonwealth.

(d) The device provider shall be solely responsible for notifying participants with currently installed devices serviced by the device provider, and shall be solely responsible for charges related to removal and installation of a device by a new device provider.

**Section 7. Surrender of Motor Vehicle License Plates.** (1) A defendant who does not have an ignition interlock license pursuant to KRS 189A.340, a hardship license under KRS 189A.410, or an exception under KRS 189A.085 shall surrender his or her license plate or plates pursuant to KRS 189A.085.

(2) Upon receipt of a request for a vehicle registration inventory from a court, the cabinet shall:

(a) Conduct a search of the automated vehicle information system;

(b) Identify motor vehicles owned or jointly owned by the person named on the request; and

(c) Return the results of the search to the court by noon Eastern time, the next working day after the request is received, if the request is received by noon Eastern time. A request received after noon Eastern time shall be returned to the court by the close of business the second working day after the request is received.

(3) Upon receipt of a court order impounding a license plate

pursuant to KRS 189A.085, the cabinet shall suspend the motor vehicle registration. The cabinet shall not suspend the registration of any motor vehicle pursuant to KRS 189A.085 unless a court order has been received.

(4) The court shall return each confiscated license plate to the cabinet. The cabinet shall bear the responsibility for reasonable postage or shipping costs for the return of confiscated license plate.

(5) After the motor vehicle license plate suspension period has expired, the county clerk shall reissue a motor vehicle license plate and registration receipt upon the request of the vehicle owner.

(a) If the registration period of the suspended license plate has not expired, the new registration shall be issued pursuant to KRS 186.180(2).

(b) If the suspended license plate has expired, the registration shall be issued as a renewal registration pursuant to KRS 186.050. **Section 8. Suspensions and Compliance Periods.** As established in KRS 189A.070 and this administrative regulation, the incentive and compliance-based review periods that correspond with the license suspension period shall be established in the table in this section.

| DUI Offense               | DUI Suspension | Ignition Interlock Incentive Period                                 | Compliance-Based Review             |
|---------------------------|----------------|---|-------------------------------------|
| 1st Offense               | 6 month        | 4 month or until the participant meets the compliance-based review  | 90 consecutive days violation free  |
| 2nd Offense               | 18 month       | 12 month or until the participant meets the compliance-based review | 120 consecutive days violation free |
| 3rd Offense               | 36 month       | 18 month or until the participant meets the compliance-based review | 120 consecutive days violation free |
| 4th Offense or Subsequent | 60 month       | 30 month or until the participant meets the compliance-based review | 120 consecutive days violation free |

**Section 9. Monitoring.** (1) The Division of Driver Licensing shall monitor the reports provided by the device provider for violations as established in KRS 189A.340(4)(b)2.b, KRS 189A.345, and in Section 4(6)(d) of this administrative regulation.

(2) Based on the date provided on the KIIP participation approval letter indicating the beginning of the compliance period, device providers shall, pursuant to Section 4(4) of this administrative regulation and KRS 189A.350(4)(f), notify the cabinet of any violations under KRS 189A.340(4)(b)2.b. within seven (7) days of discovery of the occurrence of that violation.

(3) If the Division of Driver Licensing observes a violation, the division shall note the violation on the driving record and the time credited to the compliance period shall be voided.

(4) Any appeal stemming from these determinations shall be administered pursuant to Section 10 of this administrative regulation.

(5) If an ignition interlock device provider is notified or discovers evidence or information that a participant or others have committed an offense in violation of KRS 189A.345, the ignition interlock device provider shall provide notice of the alleged violation and any corresponding information related to the alleged offense to the cabinet and law enforcement within seven (7) days of discovery of the occurrence pursuant to KRS 189A.350(4)(f). The device provider shall:

(a) Notify the cabinet of the name of the participant or other offender and the location where the alleged offense occurred;

(b) Notify law enforcement in the county where the offense is alleged to have occurred; and

(c) Provide all evidence to the law enforcement in the county where the offense is alleged to have occurred, including, for example, documents, photographs, alcohol test results, witness names, and any other information related to the alleged offense.

(6) If the cabinet discovers evidence or information that a

participant or others have committed an offense in violation of KRS 189A.345, the cabinet shall:

(a) Notify law enforcement in the county where the offense is alleged to have occurred; and

(b) Provide all evidence to the law enforcement in the county where the offense is alleged to have occurred, including, for example, documents, photographs, alcohol test results, witness names, and any other information related to the alleged offense.

(7) Once the participant has complied with the Ignition Interlock Incentive Period, the device provider shall, pursuant to KRS 189A.340(4)(b)2.a., issue a final report to the cabinet that verifies that the participant has satisfied the compliance requirements of the Ignition Interlock Incentive Period. Once the cabinet has made a determination regarding the final report pursuant to Section 2(18) and Section 5(10) of this administrative regulation, the cabinet shall issue a removal letter to the participant stating that the ignition interlock device may be removed.

(8) A participant shall receive day-for-day credit for days that the person held a valid ignition interlock license or while receiving alcohol or substance abuse treatment in a licensed, inpatient residential facility pursuant to KRS 189A.340(5) and 908 KAR 1:310.

(9) A participant shall not receive day-for-day credit for days that the person utilizes the employer exemption pursuant to KRS 189A.340(6).

(a) A participant seeking to utilize the employer exemption pursuant to KRS 189A.340(6) shall submit a notarized Kentucky Ignition Interlock Program Employer Work Exemption Application, TC 94-190.

(b) A participant that has applied for the employer exemption pursuant to KRS 189A.340(6) shall be granted the exemption by the cabinet if the applicant tenders a completed and notarized Kentucky Ignition Interlock Program Employer Work Exemption Application, TC 94-190, in satisfaction of KRS 189A.340(6)(a) and (b).

Section 10. Appeals. (1) An appeal of any action taken by the Transportation Cabinet pursuant to KRS 189A.340 shall be conducted pursuant to KRS 189A.370.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Ignition Interlock Program Application," TC 94-175, September 2020;

(b) "Breath Alcohol Ignition Interlock Physician Statement," TC 94-176, July 2020;

(c) "Certificate of Removal for Ignition Interlock Device," TC 94-178, September 2020;

(d) "Kentucky Ignition Interlock Program Affordability Application," TC 94-188, September 2020;

(e) "Kentucky Ignition Interlock Program Employer Work Exemption Application," TC 94-190, September 2020;

(f) "Ignition Interlock Certificate of Installation," TC 94-194, April 2021;

(g) "Certified Ignition Interlock Providers" by the Kentucky Transportation Cabinet, Division of Driver Licensing, is available electronically at <https://drive.ky.gov/driver-licensing/Pages/Ignition-Interlock-Program.aspx#certified-ignition-interlock-providers>;

(h) "Conforming Products List of Calibrating Units for Breath Alcohol Testers" by the National Highway Traffic Safety Administration, revised October 22, 2012, available at <http://www.transportation.gov/odapc/conforming-product-list-calibrating-units-breath-alcohol-testers>; and

(i) "Model Guideline for State Ignition Interlock Programs" by the National Highway Traffic Safety Administration, revised November 2013, available at [nhtsa.gov/staticfiles/nti/pdf/811859.pdf](https://www.nhtsa.gov/staticfiles/nti/pdf/811859.pdf).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. through 4:30 p.m. This material is also available at Transportation Cabinet Regional Field Offices, on the cabinet's web site at

<http://drive.ky.gov>, and on the cabinet's Administrative Regulations Filings web site at <https://transportation.ky.gov/LegalServices/Pages/Filings.aspx>.

JIM GRAY, Secretary

MATT COLE, Acting Commissioner

APPROVED BY AGENCY: April 6, 2021

FILED WITH LRC: April 12, 2021 at 12:14 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 AM on May 25, 2021, at the Transportation Cabinet, Transportation Cabinet Building, 200 Mero Street, Frankfort, Kentucky 40622. In the event the declaration of a State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by May 25, 2021, this hearing will be done by video teleconference. Members of the public wishing to attend may utilize the following link:

Join from PC, Mac, Linux, iOS or Android:

<https://bluejeans.com/956226725/5068?src=calendarLink&flow=joinmeeting>

Or Telephone:

+1.408.419.1715 (United States (San Jose))

+1.408.915.6290 (United States (San Jose))

Meeting ID: 956 226 725

Participant Passcode: 5068

Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on May 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jon Johnson, Staff Attorney Manager/Assistant General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238, email [jon.johnson@ky.gov](mailto:jon.johnson@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jon Johnson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the administration and implementation of the ignition interlock program.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 189A.350.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes forms, creates a uniform certificate of installation for ignition interlock devices, certifies the devices approved for use in the Commonwealth, and creates an ignition interlock license to be issued upon application approval.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish the regulatory requirements of KRS 189A.350.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation addresses the shift of the administration of this program from the judicial branch to the Transportation Cabinet.

(b) The necessity of the amendment to this administrative regulation: KRS 189A.350 requires that the Transportation Cabinet

to promulgate administration regulations in order to administer this program.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 189A.350 that requires the cabinet to implement the ignition interlock program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify provisions in the current administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect: companies desiring to provide ignition interlock devices and services within Kentucky; motor vehicle drivers who violate KRS 189A.010 (defendants); the cabinet's Division of Drivers Licensing within the Department of Vehicle Regulation; the cabinet's Office of Highway Safety within the Department of Highways; circuit clerks, and the Administrative Office of the Courts.

(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: Companies desiring to provide ignition interlock devices and services will apply to the cabinet for device certification and authorization; defendants will apply for both the ignition interlock device and authorization to operate with an ignition interlock license pursuant to court order or conviction pursuant to KRS Chapter 189A; divisions within the department will approve and process the application forms; and ignition interlock licenses will be issued by the appropriate authority.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Defendants will pay a DUI service fee assessed by the court in the amount of \$50.

(c) As a result of compliance, what benefits will accrue to the entities: If eligible pursuant to KRS Chapter 186, participants will be approved to drive with an ignition interlock license, pursue the benefits of reduced license suspension time, and obtain immediate driving privileges; businesses desiring to provide ignition interlock devices and services will be granted certification for devices and authority to provide services.

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

(a) Initially: Inspections, mailing of documents and staff time necessary to begin processing applications is estimated at \$525,000.

(b) On a continuing basis: In an amount not to exceed the actual cost to the cabinet for issuing the ignition interlock license to the participant.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Initially, FHWA-Hazard Elimination Fund; funds collected pursuant to KRS 189A.350.

(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: While the intent is not for the state to incur costs, an increase in funding will likely be needed to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative fees created herein are pursuant to statute to off-set any costs to KYTC.

(9) TIERING: Is tiering applied? No tiering is required for device providers. All device providers meeting or exceeding the qualifications will be treated the same. Tiering for applicants in this program is pursuant to statute.

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? KYTC Department of Vehicle Regulation, Division of Driver Licensing, Office of Highway Safety; circuit clerks, Administrative Office of the Courts, county attorneys, law enforcement.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 189A.350.

(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. For local government, costs should be minimal as the process is administratively driven and the regulatory actions will be performed within the context of DUI prosecutions.

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

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

(c) How much will it cost to administer this program for the first year? Up to approximately \$525,000.

(d) How much will it cost to administer this program for subsequent years? In an amount not to exceed the actual cost to the cabinet for issuing the ignition interlock license to the participant.

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

Revenues (+/-): No revenues will be generated by this program.

Expenditures (+/-): Additional programming to the driver licensing system will need to be implemented. The cost is unknown.

Other Explanation: The cabinet is unsure precisely how many defendants will move for eligibility under this program and whether efficiencies can be achieved if they do.



AMENDED IN-PROCESS EMERGENCY ADMINISTRATIVE REGULATIONS

During the 2021 Regular Session, [Senate Bill 2](#) amended portions of KRS Chapter 13A. An emergency regulation may now be amended after its original filing, either after receiving comments during the public comment period or, with agreement of both the committee and the agency, during a legislative committee meeting. Emergency Amended After Comments regulations go into effect upon filing and regulations amended during a legislative committee meeting go into effect upon adjournment of the meeting.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Family Support**  
**(Emergency As Amended at ARRS, April 13, 2021)**

**921 KAR 3:025E. Technical requirements.**

**As Amended version effective:** April 13, 2021

**For prior version see:** 47 Ky.R. page 1535

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.

**(11) Child support arrears.**

**(a) In accordance with 7 C.F.R. 273.11(q) to disqualify a noncustodial parent for refusing to cooperate, a noncustodial parent of a child under the age of eighteen (18) shall not be eligible to participate in SNAP if the individual is delinquent in**

**payment of court-ordered support as determined by the Department for Income Support, Child Support Enforcement, unless the individual:**

- 1. Is enrolled in a drug treatment program;**
- 2. Is participating in a state or federally funded employment training program;**
- 3. Meets good cause for nonpayment. Good cause shall include temporary situations resulting from illness, job change, or pendency of unemployment benefits;**
- 4. Is a member of a household containing a child under the age of eighteen (18);**
- 5. Is a member of a household containing an individual who is pregnant or three (3) months post-partum; or**

**6. Is:**  
**a. Within twelve (12) months of incarceration for a period of at least thirty (30) days; and**

**b. Cooperating with the Department for Income Support, Child Support Enforcement.**

**(b) The disqualification of an individual in accordance with paragraph (a) of this subsection shall be in place as long as the individual remains delinquent as determined by Department for Income Support, Child Support Enforcement.**

**(c) The income, expenses, and resources of an individual disqualified in accordance with paragraph (a) of this subsection shall be processed in accordance with 921 KAR 3:035, Section 5(4).**

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.

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 Protection and Permanency**  
**(Emergency Amended After Comments)**

**922 KAR 1:490E. Background checks for foster and adoptive parents and relative and fictive kin, ~~caretaker relatives, kinship~~ caregivers, ~~fictive kin, and reporting requirements~~].**

**Emergency Amended After Comments version effective:**  
April 12, 2021

**For prior version see:** 47 Ky.R. page 1737

RELATES TO: KRS 17.500-17.580, 194A.005(1), 199.011(6), (9), (14), 199.462(1), 211.684, 600.020(7), (28), (40), (61), (62), 605.090(1)(b), (6), 605.120, 605.130, 620.050(5), Chapter 625, 45 C.F.R. 1356.30, 42 U.S.C. 247d, 671(a)(20), 5106a, 5141

STATUTORY AUTHORITY: KRS 194A.050(1), 199.462(5) [199.462(4)], 199.640(5), 605.120(5), (6), 605.130(4), 605.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, qualify for the receipt of federal funds, and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.462(5) [199.462(4)] requires the cabinet to promulgate an administrative regulation for the purpose of requiring a criminal background investigation on behalf of a foster or adoptive parent applicant, an adult member of the applicant's household, or a ~~[caretaker]~~ relative or, ~~and~~ fictive kin caregiver. KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement the provisions of [KRS Chapter 605, including: (1) KRS 605.120(5) and (6) by which the cabinet is authorized to establish a program for kinship care; and (2)] KRS 605.130(4), by which the cabinet shall perform such other services as may be deemed necessary for the protection of children. KRS 199.640(5) authorizes the cabinet to promulgate administrative regulations establishing basic standards of care and service for child-placing agencies relating to the health and safety of all children in the care of the agency. This administrative regulation establishes background check requirements for relative and [caretaker relatives], [kinship caregivers,] fictive kin caregivers, or applicants seeking to provide foster or adoptive services. Additionally, this administrative regulation imposes a stricter requirement than the federal mandate because the cabinet requires the denial of an applicant if: (1) a criminal record check conducted on behalf of an adult household member reveals physical abuse, battery, or a drug or alcohol-related felony within the previous five (5) year period or a felony involving a spouse, a child, sexual violence, or death; or (2) a child abuse or neglect check conducted by the cabinet reveals that a household member, twelve (12) years of age or older, committed

sexual abuse or sexual exploitation of a child, has been responsible for a child fatality related to abuse or neglect, or has had parental rights terminated involuntarily. Pursuant to 42 U.S.C. 5141, a federal agency charged with the administration of a federal assistance program may modify or waive an administrative condition because of a major disaster. The Secretary of Health and Human Services declared a public health emergency on January 31, 2020, pursuant to 42 U.S.C. 247d, and a national emergency was declared by the President of the United States on March 13, 2020, due to the Novel Coronavirus Disease (COVID-19) outbreak. The Children's Bureau identified the requirement of fingerprint-based checks of national crime information databases as an administrative condition that may be modified pursuant to federal authority given that a state conduct all available name-based criminal background checks for applicants during the emergency and conduct fingerprint-based checks as soon as it is safe to do so.

Section 1. Definitions. (1) "Address check" means a search of the Sex Offender Registry to determine if an address is a known address of a registered sex offender.

(2) "Administrative review" means that the status of the individual subject to the child abuse and neglect check is pending the outcome of an:

(a) Investigation or assessment in accordance with 922 KAR 1:330; or

(b) Appeal concerning a cabinet substantiated finding of child abuse or neglect.

(3) "Adolescent member of the household" means a youth who:

(a) Resides in the home of:

1. An individual who applies for approval or has been approved to provide foster or adoptive services; or

2. A **[caretaker]** relative or **[.]** fictive kin~~[-or-kinship]~~ caregiver;

(b) Is age twelve (12) through age seventeen (17); and

(c) Is not placed in the home by a state agency.

(4) "Adult member of the household" means an adult who:

(a) Resides in the home of:

1. An individual who applies for approval or has been approved to provide foster or adoptive services; or

2. A **[caretaker]** relative or **[.]** fictive kin~~[-or-kinship]~~ caregiver; and

(b) Is eighteen (18) years of age or older.

(5) "Applicant" means an individual who applies for approval as a foster or adoptive parent of a child in the custody of the state under:

(a) 922 KAR 1:350, Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers [Family Preparation]; or

(b) 922 KAR 1:310, Standards for child-placing agencies [Child-Placing Agencies].

(6) "Cabinet" is defined by KRS 194A.005(1) and 600.020(7).

**(7) ["Caretaker relative" means a relative with whom the child is, or shall be, placed by the cabinet.]**

**(8) [(7)]** "Child fatality" is defined by KRS 211.684.

**(8) [(9)] [(8)]** "Child-placing agency" is defined by KRS 199.011(6).

**(9) [(10)] [(9)]** "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).

**(10) [(11)]** "KARES system" means the cabinet's secure, web-based application used to access abuse and neglect registries and facilitate fingerprint-supported state and national criminal background checks for authorized users of the system.

**(11) [(12)]** "Kentucky National Background Check Program" or "NBKP" means a background screening program administered by the cabinet in accordance with 906 KAR 1:190.

**(12) [(13)] [(10)]** "Kinship caregiver" means the qualified caretaker relative of a child with whom the child is placed by the cabinet as an alternative to foster care in accordance with 922 KAR 1:130.

**(14) [(11)]** "Near fatality" is defined by KRS 600.020(40) and 42 U.S.C. 5106a(b)(4)(A).

**(13) [(14)]** "Rap back system" is defined by KRS 199.011(14).

**(14) "Relative caregiver" means a relative with whom the child is, or shall be, placed by the cabinet.**

**(15) [(12)]** "Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.

**(16) [(13)]** "Sexual abuse" is defined by KRS 600.020(61) [600.020(60)].

**(17) [(14)]** "Sexual exploitation" is defined by KRS 600.020(62) [600.020(61)].

Section 2. Background Checks Required for Foster or Adoptive Parent Applicants. (1) An applicant, and each adult member of the household, shall:

**(a) Complete a DPP-157, Background Check Request for Foster or Adoptive Applicants and Adolescent or Adult Household Members, in order to submit to a name-based background check during the fingerprint-based check waiver period ending on July 1, 2021; and**

**(b) Beginning July 1, 2021,** ~~[complete a DPP-157, Background Checks for Applicants or Foster/Adoptive Parents, and]~~ submit to a background check in accordance with Section 4 of this administrative regulation, which shall include:

**1. [(a)]** An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:

**a. [(1.)]** Kentucky Justice and Public Safety Cabinet; or

**b. [(2.)]** Administrative Office of the Courts;

**2. [(b)]** A child abuse or neglect check conducted by the cabinet for each state of residence during the past five (5) years;

**3. [(c)]** A criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation; and

**4. [(d)]** An address check of the Sex Offender Registry.

(2) Prior to approval of an applicant, each adolescent member of the household shall complete a DPP-157~~[-Background Check Request for Foster or Adoptive Applicants and Household Members.]~~ and submit to a child abuse or neglect check conducted by the cabinet.

Section 3. Background Checks for Foster or Adoptive Applicants Who Will Accept Placement of a Child Not in the Custody of the Cabinet. (1) An individual applying to accept placement of a child not in the custody of or otherwise made the legal responsibility of the cabinet or the Department of Juvenile Justice, pursuant to 922 KAR 1:310, shall be exempt from enrollment in KARES and subject to the requirements established in Section 8(4) of this administrative regulation.

(2) An applicant pursuant to 922 KAR 1:310 and each adult and adolescent member of the household shall complete a separate DPP-157 and submit to:

(a) An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:

1. Kentucky Justice and Public Safety Cabinet; or

2. Administrative Office of the Courts;

(b) A child abuse or neglect check conducted by the cabinet pursuant to 922 KAR 1:470;

(c) A criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation; and

(d) An address check of the Sex Offender Registry.

(3) A Kentucky child abuse or neglect check conducted by the cabinet shall identify the name of each applicant, adolescent member of the household, or adult member of the household who has:

(a) Been found by the cabinet to have:

1. Committed sexual abuse or sexual exploitation of a child;

2. Been responsible for a child fatality or near fatality related to abuse or neglect;

3. Abused or neglected a child within the seven (7) year period immediately prior to the application; or

4. Had parental rights terminated; or

(b) A matter pending administrative review.

(4) An applicant shall not be approved if:

(a) A criminal records check reveals that the applicant, or adult member of the household, has a:

1. Felony conviction involving:
    - a. A spouse, a child, sexual violence, or death as described by 42 U.S.C. 671(a)(20); or
    - b. Physical abuse, battery, a drug, or alcohol within the five (5) year period prior to application;
  2. Criminal conviction relating to child abuse or neglect; or
  3. Civil judicial determination related to child abuse or neglect;
- (b) A child abuse or neglect check reveals that the applicant, adolescent member of the household, or adult member of the household, has been found to have:

1. Committed sexual abuse or sexual exploitation of a child;
  2. Been responsible for a child fatality or near fatality related to abuse or neglect; or
  3. Had parental rights terminated involuntarily in accordance with KRS 625.050 through 625.120 or another state's laws; or
- (c) An address check of the Sex Offender Registry and supporting documentation confirm that a sex offender resides at the applicant's home address.
- (5) An individual identified in accordance with subsection (3) of this section may submit an open records request in accordance with 922 KAR 1:510.

Section 4. Fingerprint-Based Background Checks. (1) Beginning July 1, 2021, fingerprint-based background checks shall be conducted for the following individuals through the Kentucky National Background Check Program pursuant to 906 KAR 1:190, using the KARES system:

- (a) An applicant and each adult member of the household;
- (b) A ~~[caretaker]~~ relative or fictive kin caregiver who has lived outside of the state of Kentucky within the last five (5) years; and

(c) An applicant who was approved under the waiver for fingerprint-based background checks during the declared national emergency caused by the COVID-19 pandemic, with only a name-based criminal background check.

(2) An individual meeting the criteria of subsection (1) of this section shall provide to the cabinet or child-placing agency:

(a) A copy of his or her driver's license or other government-issued photo identification for verification that the photograph and name clearly match the individual submitting to the check; and

(b) A completed and signed:

1. DPP-162, Applicant Waiver Agreement and Statement; and
2. DPP-163, Disclosures to be Provided to and Signed by the Applicant and Adult Household Members.

(3) Cabinet or child-placing agency staff shall log on to the NBCP portal and enter the individual's information for a check of the:

(a) Child abuse and neglect central registry pursuant to 922 KAR 1:470;

(b) National Crime Information Center's National Sex Offender Registry in accordance with 34 U.S.C. 20921; and

(c) Sex Offender Registry in accordance with KRS 17.500 through 17.580.

(4)(a) In accordance with KRS 199.462(2) and 42 U.S.C. 671(a)(20), the cabinet or child-placing agency shall submit payment via credit or debit card for a state and national fingerprint-supported criminal history background check performed by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI), including the rap back system. If an applicant's rap back has not expired, a new fingerprint check shall not be required.

(b) A child-placing agency enrolled in the NBCP shall pay a fee not to exceed twenty-five (25) dollars in addition to any fees charged in accordance with paragraph (a) of this subsection for the actual cost of processing a fingerprint-supported state and national criminal background check and for providing rap back services for each applicant.

(5)(a) Upon submission of payment in accordance with subsection (4) of this section, cabinet or child-placing agency staff shall print a copy of the DPP-164, Applicant Live Scan Fingerprinting Form, from the NBCP portal and provide the form to the applicant, adult member of the household, or relative or

fictive kin caregiver.

(b) Cabinet or child-placing agency staff shall:

1. Have no more than ninety (90) calendar days from the date of payment pursuant to subsection (4) of this section to submit the applicant's fingerprints at an authorized collection site for NBCP; and

2. Instruct the applicant or other individual to present [Present] the completed DPP-164 and copy of driver's license or other government-issued photo identification to the designated agent at an authorized collection site prior to fingerprint submission.

(6) Upon completion of the background check required by this section or Section 6 of this administrative regulation, the cabinet shall provide notice to the requesting agency that the applicant or individual is:

(a) Approved; or

(b) Not approved due to a disqualifying background check result pursuant to subsection (7) of this section.

(7) An applicant or individual shall not be approved if the results of the background check indicate a:

(a) Felony conviction involving:

1. A spouse, a child, sexual violence, or death as established in 42 U.S.C. 671(a)(20); or

2. Physical abuse, battery, drugs, or alcohol within the five (5) year period prior to application;

(b) Criminal conviction relating to child abuse or neglect;

(c) Civil judicial determination related to child abuse or neglect;

(d) Result of a child abuse or neglect check in which the applicant, relative or fictive kin caregiver, adolescent member of the household, or adult member of the household, has been found to have:

1. Committed sexual abuse or sexual exploitation of a child;

2. Been responsible for a child fatality or near fatality related to abuse or neglect; or

3. Had parental rights terminated involuntarily pursuant to KRS 625.050 through 625.120 or another state's laws; or

(e) Result of an address check in the Sex Offender Registry and supporting documentation that a sex offender resides at the applicant's or individual's home address.

(8) An applicant or individual meeting the requirement of subsection (1) of this section may submit an open records request in accordance with 922 KAR 1:510[3]. ~~Procedure for Requesting a Cabinet Child Abuse or Neglect Check, a Criminal Record Check, and an Address Check of the Sex Offender Registry Prior to approval of an applicant, a child-placing agency shall request a child abuse or neglect check, a criminal records check, and an address check of the Sex Offender Registry by submitting to the cabinet: (1) A completed form, DPP-157, including the fee for a criminal background check; and~~

~~(2) Documentation required to request a child abuse or neglect check from the child welfare agency in each previous state of residence, if the applicant or adult household member has resided outside of the state of Kentucky in the previous five (5) years.~~

~~(3) To the extent resources are available, the department shall post information about other states' child abuse and neglect checks on the department's Web site].~~

Section 5[4]. Request for a Child Abuse or Neglect Check from Another State. (1) The cabinet shall conduct a child abuse or neglect check as required by 42 U.S.C. 671(a)(20) if a:

(a) Completed DPP-157 or DPP-159, Background Check Request for Relative and [Caretaker-Relatives,] Fictive Kin Caregivers, or Adolescent and Adult Household Members [Checks for Caretaker-Relatives, Fictive Kin, or Kinship Caregivers], is submitted to the cabinet; or

(b) Request is received on agency letterhead and includes two (2) numeric identifiers.

(2) The cabinet shall:

(a) Protect the confidentiality of the information transmitted by the cabinet to a child welfare agency; and

(b) Waive the fee specified in 922 KAR 1:470.

Section 6[5]. Background Checks Required for a [Caretaker]

Relative or [and] Fictive Kin Caregiver. (1) A **[caretaker]** relative or[.] fictive kin caregiver, and each adult member of the household, shall complete a DPP-159 and submit to:

(a) An in-state criminal records check, conducted pursuant to KRS 199.462(1) by the:

1. Kentucky Justice and Public Safety Cabinet; or
2. Administrative Office of the Courts;
- (b) A child abuse or neglect check conducted by the cabinet;
- (c) An address check of the Sex Offender Registry; and

(d) A fingerprint-based background check conducted through the NBCP, beginning July 1, 2021, [criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation] if the [caretaker] relative or[.] fictive kin caregiver, or adult household member, has lived outside the state of Kentucky during the past five (5) years.

(2) An adolescent member of a relative [caretaker relative's] or fictive kin caregiver's [kin's] household shall complete a DPP-159 and submit to a child abuse or neglect check conducted by the cabinet.

(3) A child abuse or [and] neglect check conducted by the cabinet shall identify the name of each applicant and adolescent and adult member of the household and [in accordance with subsection (1)(b) or (2) of this section shall] include any finding consistent with Section 4(7) [2(3)] of this administrative regulation.

(4) A **[caretaker]** relative or fictive kin caregiver shall not be approved if a criminal records check, a child abuse and neglect check, or an address check of the Sex Offender Registry reveals a finding consistent with Section 4(7) [2(4)] of this administrative regulation.

(5) An individual meeting the requirement of subsection (1) of this section may submit an open records request in accordance with 922 KAR 1:510.

Section 7[6]. Approval. (1) Except for the provisions of Section 4(7) or 6(4) [2(4) or 5(4)] of this administrative regulation, approval of an applicant, fictive kin, or **[caretaker]** relative caregiver who has been convicted of a nonviolent felony or misdemeanor, has been found by the cabinet or another child welfare agency to have abused or neglected a child, or whose parental rights have been terminated voluntarily, shall be handled on a case-by-case basis with consideration given to the:

- (a) Nature of the offense;
- (b) Length of time that has elapsed since the event; and
- (c) Applicant's life experiences during the ensuing period of time.

(2) Except for the provisions of Section 4(7) or 6(4) [2(4) or 5(4)] of this administrative regulation, an applicant, fictive kin, or **[caretaker]** relative caregiver may be approved on a case-by-case basis in accordance with the criteria described by subsection (1)(a) through (c) of this section if:

- (a) An adolescent member of the household has:
  1. Been found by the cabinet to have abused or neglected a child; or
  2. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws; or
- (b) An adult member of the household has:
  1. Been convicted of a nonviolent felony or misdemeanor;
  2. Been found to have abused or neglected a child; or
  3. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws.

Section 8[7]. Reevaluation. (1) Beginning July 1, 2021, an [An] approved foster or adoptive parent and each adult member of the household shall maintain enrollment in KARES, except for individuals specified in Section 3 of this administrative regulation.

(2) An applicant enrolled in KARES shall submit a criminal records check as required by Section 2(1)(a) of this administrative regulation during the month of their initial approval every three (3) years.

(3) Beginning July 1, 2021, an approved foster or adoptive parent and each adult member of the household not already enrolled in KARES, with the exception of individuals specified in

Section 3 of this administrative regulation, shall submit to a fingerprint-based background check required by Section 4 of this administrative regulation prior to or during the anniversary month of initial approval.

(4) An applicant specified in Section 3 of this administrative regulation and not enrolled in KARES shall submit annually, prior to or during the anniversary month of initial approval, to:

(a) A criminal records check as described in Section 2(1)(a) of this administrative regulation;

(b) A child abuse or neglect check conducted by the cabinet; and

(c) An address check of the Sex Offender Registry.

(5)[(2)](a) If an adult becomes a new member of an approved foster or adoptive parent's household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 2(1)(a) of this administrative regulation until July 1, 2021, or Section 4 [2(1)(a) through (d)] of this administrative regulation beginning on July 1, 2021.

(b) If an adult becomes a new member of a **[caretaker]** relative or fictive kin caregiver's [kin's] [kinship caregiver's] household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 6 [5(4)] of this administrative regulation.

(6)[(3)] If an adolescent becomes a new member of an approved foster or adoptive parent or a [caretaker] relative or fictive kin caregiver's [kin's] [kinship caregiver's] household, the new adolescent member of the household shall submit to a child abuse and neglect check conducted by the cabinet within thirty (30) calendar days of residence within the household in accordance with Section 2(2) or 6[5](2) of this administrative regulation, respectively.]

(4) If the cabinet has custody of a child placed with a caretaker relative or fictive kin:

(a) A new adult household member of a caretaker relative or fictive kin shall submit to background checks within thirty (30) calendar days of residence in the household in accordance with Section 5(1) of this administrative regulation; and

(b) A new adolescent household member of a caretaker relative or fictive kin shall submit to a child abuse and neglect check conducted by the cabinet within thirty (30) calendar days of residence within the household in accordance with Section 5(2) of this administrative regulation.

(5) An annual address check of the Sex Offender Registry shall be completed for a kinship caregiver's eligibility redetermination in accordance with 922 KAR 1:130, Section 13(2).

(6) If an annual address check indicates a match with the Sex Offender Registry, a report of abuse, neglect, or dependency shall be made in accordance with 922 KAR 1:330-]

Section 9[8]. Maintenance of Records. (1) A child-placing agency shall maintain the approval [eligibility] status of each foster and adoptive applicant who has submitted to a fingerprint-based criminal background check by reporting the status in the NBCP web-based system [completed copy of each criminal records check conducted pursuant to Section 2 or 7 of this administrative regulation and the DPP-157 shall be maintained on behalf of each:

- (a) Applicant;
- (b) Foster or adoptive parent; and
- (c) Adult member of an applicant or foster or adoptive parent's household].

(2) A completed copy of each DPP-157 submitted pursuant to Section 2(2), 3(2), or 5 [7(3)] of this administrative regulation shall be maintained by the child-placing agency on behalf of each adolescent member of:

- (a) An applicant's household; or
- (b) A foster or adoptive parent's household].

(3) A completed copy of each [the] DPP-159 submitted and criminal records check conducted pursuant to Section 5 or 6[7] of this administrative regulation shall be maintained[for each:

- (a) Caretaker relative;

- (b) Kinship caregiver;
- (c) Fictive kin; and
- (d) Adult member of a caretaker relative, fictive kin, or kinship caregiver's household.

(4) A completed copy of the DPP-159 submitted pursuant to Section 5(2) or 7(3) of this administrative regulation shall be maintained on behalf of each adolescent household member of a:

- (a) Caretaker relative;
- (b) Kinship caregiver; or
- (c) Fictive kin].

Section 10[9]. Communications. This administrative regulation shall not limit the cabinet's ability to discuss the qualifications or fitness of an applicant or an existing foster or adoptive parent with a child-placing agency in accordance with:

- (1) KRS 620.050(5); or
- (2) The terms and conditions of:
  - (a) A release of information signed by the applicant or foster or adoptive parent; or
  - (b) The agreement between the cabinet and the child-placing agency.

Section 11[40]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DPP-157, Background Check Request for Foster or Adoptive Applicants and Adolescent or Adult Household Members [Checks for Applicants or Foster/Adoptive Parents]", 04/21 [02/21] [4/18]; and

(b) "DPP-159, Background Check Request for Relative and [Caretaker Relatives,] Fictive Kin Caregivers, or Adolescent and Adult Household Members [Checks for Caretaker Relatives, Fictive Kin, or Kinship Caregivers]", 04/21 [02/21];

(c) "DPP-162, Applicant Waiver Agreement and Statement", 04/21 [02/21];

(d) "DPP-163, Disclosures to be [Be] Provided to and Signed by the Applicant and Adult Household Members", 04/21 [02/21]; and

(e) "DPP-164, Applicant Live Scan Fingerprinting Form", 04/21 [02/21] [4/18].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dcbp/Pages/default.aspx>.

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: April 9, 2021

FILED WITH LRC: April 12, 2021 at 9:53 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 persons: Laura Begin and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes background check requirements for caretaker relatives, fictive kin, or applicants seeking to provide foster or adoptive services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements for background checks of out-of-home or foster care providers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of background check requirements for caretaker relatives, fictive kin, prospective foster or adoptive parents, and other household members.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes through its establishment of background check requirements for out-of-home caregivers.

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

(a) How the amendment will change this existing administrative regulation: The emergency amendment to this administrative regulation reflects federal guidance that pursuant to 42 U.S.C. 5141, the Stafford Act, federal agencies administering federal assistance programs may modify or waive, for a major disaster, such administrative conditions for assistance as would otherwise prevent the giving of assistance under such programs if the inability to meet such conditions is a result of the major disaster. The Secretary of Health and Human Services declared a public health emergency on January 31, 2020, pursuant to 42 U.S.C. 247d, and a national emergency was declared by the President of the United States on March 13, 2020, due to the Novel Coronavirus Disease (COVID-19) outbreak. The Children's Bureau identified the requirement of fingerprint-based checks of national crime information databases as an administrative condition that may be modified under the Stafford Act authority given that the state conducts all available name-based criminal background checks for applicants during the outbreak and conducts fingerprint-based checks as soon as it is safe to do so. An emergency amendment to this administrative regulation was filed on May 12, 2020, first implementing the waiver for the background checks required by this administrative regulation, but that emergency expired pursuant to KRS 13A.190(3)(a). Because the national emergency declaration is still in place, an emergency administrative regulation is being filed again to continue the waiver in this administrative regulation and continue conducting name-based criminal background checks for these applicants so that they can be approved and the state can receive federal reimbursement although a fingerprint-based check has not been conducted. This emergency administrative regulation also contains requirements and material incorporated by reference for completing checks using the Kentucky National Background Check Program, which is expected to be implemented later this year. Language referring to kinship caregivers pursuant to 922 KAR 1:130 is also being deleted as there are no new applicants for this program due to the moratorium placed on the program in 2013.

This administrative regulation and material incorporated by reference was further amended to make clarifications and corrections in response to comments received from the Children's Alliance.

(b) The necessity of the amendment to this administrative regulation: The emergency amendment to this administrative regulation is necessary for consistency with federal Administration for Children, Youth and Families guidance allowing a temporary waiver for required fingerprint-based background checks under the national emergency declaration due to the COVID-19 pandemic. Name-based checks will continue to be conducted during this time.

(c) How the amendment conforms to the content of the authorizing statutes: The emergency amendment conforms to the content of the authorizing statutes through its alignment of regulatory provisions with statutory authorities, FBI requirements, requests of impacted private agencies, and additional considerations to improve child safety in out-of-home or foster care. The amendment provides for a waiver of the requirement of fingerprint-based background checks during the COVID-19 pandemic.

(d) How the amendment will assist in the effective administration of the statutes: The emergency amendment will assist in the effective administration of the statutes through its necessary waiver conditions during the national emergency to ensure the state is in compliance with federal requirements and does not jeopardize federal financial reimbursement of out-of-home-care services.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects

prospective and existing foster and adoptive parents and relative and fictive kin caregivers seeking background check results in order to become approved and accept placement of a child in their care. Child-placing agencies are impacted in their recruitment and approval of foster or adoptive parents. All of these entities are affected by the temporary waiver of fingerprint-based background checks due to the national emergency caused by the COVID-19 pandemic and will be affected by the use of the Kentucky National Background Check Program to conduct checks in the future. As of November 2020, approximately 1,500 caregivers had been approved during the waiver of the fingerprint-based background checks after completing name-based background checks.

As of January 3, 2021, there were 9,193 children in the custody of the state who were in placements outside of their home of origin. This includes children in foster or adoptive placements and children being cared for by relative and fictive kin caregivers. This amendment requires many of these caregivers to undergo a background check through the Kentucky National Background Check Program prior to being approved to accept placement of these children once this program is implemented later this year. The cabinet and private child-placing agencies are also affected by this amendment as they are the entities who will process these checks for applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment allows a temporary waiver of fingerprint-based background checks for foster or adoptive parent applicants and relative or fictive kin caregivers. Effective July 1, 2021, applicants specified in this administrative regulation will obtain fingerprint-based background check results using the Kentucky National Background Check Program. This amendment outlines the steps and requirements and incorporates the forms required in order to use this program. There is very little action required on the part of an applicant, but the protection of children in the custody of the state will be ensured through conducting these comprehensive national checks.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Individuals subject to these background check requirements have their background check costs borne by the cabinet or through a child-placing agency in the course of the agency's business practices. There is a fee for obtaining background checks (a fee for the check and rap-back feature and administrative fee that does not exceed actual costs), but it is not paid directly by the individual.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment temporarily waives fingerprint-based background checks because of the national state of emergency and allows name-based background checks to be conducted during this time. If not for this waiver, initially implemented in May 2020, no new foster or adoptive parents would have been approved due to fingerprint-based background check sites being closed. The waiver allowed these applicants to be approved with name-based background checks temporarily, with fingerprint-based background checks being performed once safe to do so. The cabinet and private agencies benefitted from being able to continue the approval processes and maintain compliance with federal funding mandates. Fingerprint-based background checks obtained through the Kentucky National Background Check Program will be required later this year and will ensure that children removed from their homes of origin will have enhanced safety afforded through this thorough check of a national system.

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

(a) Initially: There is no new or additional cost associated with the temporary waiver of the fingerprint-based background checks. The waiver for fingerprint-based background checks during the pandemic allows Kentucky to continue approving foster and

adoptive parents and maintain compliance with federal funding mandates, necessary for the reimbursement of out-of-home-care costs. There is a cost to move foster and adoptive parent applicants to the Kentucky National Background Check Program, but that cost will be borne by the cabinet and child-placing agencies to ensure the protection of children in the custody of the state.

(b) On a continuing basis: There is a cost to move foster and adoptive parent applicants to the Kentucky National Background Check Program, but that cost will be borne by the cabinet and child-placing agencies to ensure the protection of children in the custody of the state. The cost will be greater at the time of initial application and check, but will be less than current checks over a period of time due to the decreased cost of the rap back feature compared to needing new checks.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Title IV-E (of the Social Security Act), Temporary Assistance for Needy Families Block Grant funds, and State General Funds are the sources of funding 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: There is an increase in costs to the cabinet and child-placing agencies initially, but that cost evens out and decreases over time due to the lower cost of the rap back feature compared to repeat checks.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does initially increase the fee for background checks paid for by the cabinet and child-placing agencies, but overtime the fee is decreased due to the lower cost of the rap back feature compared to requiring new checks.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 1356.30, 42 U.S.C. 671(a)(20), 5106a

2. State compliance standards. KRS 194A.050(1), 199.462(4), 199.640(5), 605.120(5), (6), 605.130(4), 605.150

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 1356.30, 42 U.S.C. 671(a)(20), 5106a

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment to the administrative regulation is consistent with federal requirements, as the Children's Bureau identified the requirement of fingerprint-based checks of national crime information databases as an administrative condition that may be modified during the state of emergency caused by the Novel Coronavirus Disease (COVID-19) pandemic. Pursuant to 42 U.S.C. 5141, a federal agency charged with the administration of a federal assistance program may modify or waive an administrative condition because of a major disaster. Name-based checks will continue to be conducted and fingerprint-based checks will resume when safe.

Existing standards do impose stricter requirements than the federal mandate because the cabinet requires the denial of an applicant if: (1) a criminal record check conducted on behalf of an adult household member reveals physical abuse, battery, or a drug or alcohol-related felony within the previous five (5) year period or a felony involving a spouse, a child, sexual violence, or death; or (2) a child abuse or neglect check conducted by the cabinet reveals that a household member, twelve (12) years of age or older, committed sexual abuse or sexual exploitation of a child, has been responsible for a child fatality related to abuse or neglect, or has had parental rights terminated involuntarily. These standards remain in place.

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

The additional restrictions noted in this analysis were added as additional safeguards for children in out-of-home care. The federal law does not prohibit the addition of these restrictions.

# FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, the Kentucky State Police, and the Administrative Office of the Courts will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.462(4), 199.640(5), 605.120(5), (6), 605.130(4), 605.150, 45 C.F.R. 1356.30, 42 U.S.C. 671(a)(20), 5141

(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 emergency amendment will not generate revenue for state or local government. Fees charged by law enforcement or judicial agencies for criminal background checks cannot exceed the actual costs of conducting the checks.

(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 emergency amendment will not generate any revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There are news costs to the cabinet associated with the Kentucky National Background Check Program, but these costs are expected to level out over time due to the lesser cost of the rap back feature rather than requiring new checks.

(d) How much will it cost to administer this program for subsequent years? There will be a greater initial cost to conduct checks through the Kentucky National Background Check Program, but that cost will lessen over time due to the decreased need to require new checks.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Protection and Permanency

(Emergency Amended After Comments)

**922 KAR 1:490E. Background checks for foster and adoptive parents and relative and fictive kin, caretaker relatives, kinship caregivers[, fictive kin, and reporting requirements].**

**Emergency Amended After Comments version effective:**  
April 12, 2021

**For prior version see: 47 Ky.R. page 1737**

RELATES TO: KRS 17.500-17.580, 194A.005(1), 199.011(6), (9), (14), 199.462(1), 211.684, 600.020(7), (28), (40), (61), (62), 605.090(1)(b), (6), 605.120, 605.130, 620.050(5), Chapter 625, 45 C.F.R. 1356.30, 42 U.S.C. 247d, 671(a)(20), 5106a, 5141

STATUTORY AUTHORITY: KRS 194A.050(1), 199.462(5) [199.462(4)], 199.640(5), 605.120(5), (6), 605.130(4), 605.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal

law, qualify for the receipt of federal funds, and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.462(5) [199.462(4)] requires the cabinet to promulgate an administrative regulation for the purpose of requiring a criminal background investigation on behalf of a foster or adoptive parent applicant, an adult member of the applicant's household, or a [caretaker] relative or, and] fictive kin caregiver. KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement the provisions of [KRS Chapter 605, including: (1) KRS 605.120(5) and (6) by which the cabinet is authorized to establish a program for kinship care; and (2)] KRS 605.130(4), by which the cabinet shall perform such other services as may be deemed necessary for the protection of children. KRS 199.640(5) authorizes the cabinet to promulgate administrative regulations establishing basic standards of care and service for child-placing agencies relating to the health and safety of all children in the care of the agency. This administrative regulation establishes background check requirements for relative and [caretaker relatives], [kinship caregivers,] fictive kin caregivers, or applicants seeking to provide foster or adoptive services. Additionally, this administrative regulation imposes a stricter requirement than the federal mandate because the cabinet requires the denial of an applicant if: (1) a criminal record check conducted on behalf of an adult household member reveals physical abuse, battery, or a drug or alcohol-related felony within the previous five (5) year period or a felony involving a spouse, a child, sexual violence, or death; or (2) a child abuse or neglect check conducted by the cabinet reveals that a household member, twelve (12) years of age or older, committed sexual abuse or sexual exploitation of a child, has been responsible for a child fatality related to abuse or neglect, or has had parental rights terminated involuntarily. Pursuant to 42 U.S.C. 5141, a federal agency charged with the administration of a federal assistance program may modify or waive an administrative condition because of a major disaster. The Secretary of Health and Human Services declared a public health emergency on January 31, 2020, pursuant to 42 U.S.C. 247d, and a national emergency was declared by the President of the United States on March 13, 2020, due to the Novel Coronavirus Disease (COVID-19) outbreak. The Children's Bureau identified the requirement of fingerprint-based checks of national crime information databases as an administrative condition that may be modified pursuant to federal authority given that a state conduct all available name-based criminal background checks for applicants during the emergency and conduct fingerprint-based checks as soon as it is safe to do so.

Section 1. Definitions. (1) "Address check" means a search of the Sex Offender Registry to determine if an address is a known address of a registered sex offender.

(2) "Administrative review" means that the status of the individual subject to the child abuse and neglect check is pending the outcome of an:

(a) Investigation or assessment in accordance with 922 KAR 1:330; or

(b) Appeal concerning a cabinet substantiated finding of child abuse or neglect.

(3) "Adolescent member of the household" means a youth who:

(a) Resides in the home of:

1. An individual who applies for approval or has been approved to provide foster or adoptive services; or

2. A [caretaker] relative or [,] fictive kin[, or kinship] caregiver;

(b) Is age twelve (12) through age seventeen (17); and

(c) Is not placed in the home by a state agency.

(4) "Adult member of the household" means an adult who:

(a) Resides in the home of:

1. An individual who applies for approval or has been approved to provide foster or adoptive services; or

2. A [caretaker] relative or [,] fictive kin[, or kinship] caregiver; and

(b) Is eighteen (18) years of age or older.

(5) "Applicant" means an individual who applies for approval as



a foster or adoptive parent of a child in the custody of the state under:

(a) 922 KAR 1:350, Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers [Family Preparation]; or

(b) 922 KAR 1:310, Standards for child-placing agencies [Child-Placing Agencies].

(6) "Cabinet" is defined by KRS 194A.005(1) and 600.020(7).

(7) **"Caretaker relative" means a relative with whom the child is, or shall be, placed by the cabinet.**

(8) [(7)] "Child fatality" is defined by KRS 211.684.

(8) [(9)] [(8)] "Child-placing agency" is defined by KRS 199.011(6).

(9) [(10)] [(9)] "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).

(10) [(11)] **"KARES system" means the cabinet's secure, web-based application used to access abuse and neglect registries and facilitate fingerprint-supported state and national criminal background checks for authorized users of the system.**

(11) [(12)] **"Kentucky National Background Check Program" or "NBCP" means a background screening program administered by the cabinet in accordance with 906 KAR 1:190.**

(12) [(13)] [(10)] "Kinship caregiver" means the qualified caretaker relative of a child with whom the child is placed by the cabinet as an alternative to foster care in accordance with 922 KAR 1:130.

(11) "Near fatality" is defined by KRS 600.020(40) and 42 U.S.C. 5106a(b)(4)(A).

(13) [(14)] **"Rap back system" is defined by KRS 199.011(14).**

(14) **"Relative caregiver" means a relative with whom the child is, or shall be, placed by the cabinet.**

(15) [(12)] "Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.

(16) [(13)] "Sexual abuse" is defined by KRS 600.020(61) [600.020(60)].

(17) [(14)] "Sexual exploitation" is defined by KRS 600.020(62) [600.020(61)].

Section 2. Background Checks Required for Foster or Adoptive Parent Applicants. (1) An applicant, and each adult member of the household, shall:

**(a) Complete a DPP-157, Background Check Request for Foster or Adoptive Applicants and Adolescent or Adult Household Members, in order to submit to a name-based background check during the fingerprint-based check waiver period ending on July 1, 2021; and**

**(b) Beginning July 1, 2021,** [complete a DPP-157, Background Checks for Applicants or Foster/Adoptive Parents, and] submit to a background check in accordance with Section 4 of this administrative regulation, which shall include:

**1. [(a)]** An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:

**a. [1.]** Kentucky Justice and Public Safety Cabinet; or

**b. [2.]** Administrative Office of the Courts;

**2. [(b)]** A child abuse or neglect check conducted by the cabinet for each state of residence during the past five (5) years;

**3. [(c)]** A criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation; and

**4. [(d)]** An address check of the Sex Offender Registry.

(2) Prior to approval of an applicant, each adolescent member of the household shall complete a DPP-157, **Background Check Request for Foster or Adoptive Applicants and Household Members,** and submit to a child abuse or neglect check conducted by the cabinet.

Section 3. Background Checks for Foster or Adoptive Applicants Who Will Accept Placement of a Child Not in the Custody of the Cabinet. (1) An individual applying to accept placement of a child not in the custody of or otherwise made the legal responsibility of the cabinet or the Department of Juvenile

Justice, pursuant to 922 KAR 1:310, shall be exempt from enrollment in KARES and subject to the requirements established in Section 8(4) of this administrative regulation.

(2) An applicant pursuant to 922 KAR 1:310 and each adult and adolescent member of the household shall complete a separate DPP-157 and submit to:

(a) An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:

1. Kentucky Justice and Public Safety Cabinet; or

2. Administrative Office of the Courts;

(b) A child abuse or neglect check conducted by the cabinet pursuant to 922 KAR 1:470;

(c) A criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation; and

(d) An address check of the Sex Offender Registry.

(3) A Kentucky child abuse or neglect check conducted by the cabinet shall identify the name of each applicant, adolescent member of the household, or adult member of the household who has:

(a) Been found by the cabinet to have:

1. Committed sexual abuse or sexual exploitation of a child;

2. Been responsible for a child fatality or near fatality related to abuse or neglect;

3. Abused or neglected a child within the seven (7) year period immediately prior to the application; or

4. Had parental rights terminated; or

(b) A matter pending administrative review.

(4) An applicant shall not be approved if:

(a) A criminal records check reveals that the applicant, or adult member of the household, has a:

1. Felony conviction involving:

a. A spouse, a child, sexual violence, or death as described by 42 U.S.C. 671(a)(20); or

b. Physical abuse, battery, a drug, or alcohol within the five (5) year period prior to application;

2. Criminal conviction relating to child abuse or neglect; or

3. Civil judicial determination related to child abuse or neglect;

(b) A child abuse or neglect check reveals that the applicant, adolescent member of the household, or adult member of the household, has been found to have:

1. Committed sexual abuse or sexual exploitation of a child;

2. Been responsible for a child fatality or near fatality related to abuse or neglect; or

3. Had parental rights terminated involuntarily in accordance with KRS 625.050 through 625.120 or another state's laws; or

(c) An address check of the Sex Offender Registry and supporting documentation confirm that a sex offender resides at the applicant's home address.

(5) An individual identified in accordance with subsection (3) of this section may submit an open records request in accordance with 922 KAR 1:510.

Section 4. Fingerprint-Based Background Checks. (1) Beginning July 1, 2021, fingerprint-based background checks shall be conducted for the following individuals through the Kentucky National Background Check Program pursuant to 906 KAR 1:190, using the KARES system:

**(a) An applicant and each adult member of the household;**

**(b) A [caretaker] relative or fictive kin caregiver who has lived outside of the state of Kentucky within the last five (5) years; and**

**(c) An applicant who was approved under the waiver for fingerprint-based background checks during the declared national emergency caused by the COVID-19 pandemic, with only a name-based criminal background check.**

(2) An individual meeting the criteria of subsection (1) of this section shall provide to the cabinet or child-placing agency:

**(a) A copy of his or her driver's license or other government-issued photo identification for verification that the photograph and name clearly match the individual submitting to the check; and**

**(b) A completed and signed:**

1. DPP-162, Applicant Waiver Agreement and Statement; and

2. DPP-163, Disclosures to be Provided to and Signed by the

Applicant and Adult Household Members.

(3) Cabinet or child-placing agency staff shall log on to the NBCP portal and enter the individual's information for a check of the:

(a) Child abuse and neglect central registry pursuant to 922 KAR 1:470;

(b) National Crime Information Center's National Sex Offender Registry in accordance with 34 U.S.C. 20921; and

(c) Sex Offender Registry in accordance with KRS 17.500 through 17.580.

(4)(a) In accordance with KRS 199.462(2) and 42 U.S.C. 671(a)(20), the cabinet or child-placing agency shall submit payment via credit or debit card for a state and national fingerprint-supported criminal history background check performed by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI), including the rap back system. If an applicant's rap back has not expired, a new fingerprint check shall not be required.

(b) A child-placing agency enrolled in the NBCP shall pay a fee not to exceed twenty-five (25) dollars in addition to any fees charged in accordance with paragraph (a) of this subsection for the actual cost of processing a fingerprint-supported state and national criminal background check and for providing rap back services for each applicant.

(5)(a) Upon submission of payment in accordance with subsection (4) of this section, cabinet or child-placing agency staff shall print a copy of the DPP-164, Applicant Live Scan Fingerprinting Form, from the NBCP portal and provide the form to the applicant, adult member of the household, or relative or fictive kin caregiver.

(b) Cabinet or child-placing agency staff shall:

1. Have no more than ninety (90) calendar days from the date of payment pursuant to subsection (4) of this section to submit the applicant's fingerprints at an authorized collection site for NBCP; and

2. Instruct the applicant or other individual to present [Present] the completed DPP-164 and copy of driver's license or other government-issued photo identification to the designated agent at an authorized collection site prior to fingerprint submission.

(6) Upon completion of the background check required by this section or Section 6 of this administrative regulation, the cabinet shall provide notice to the requesting agency that the applicant or individual is:

(a) Approved; or

(b) Not approved due to a disqualifying background check result pursuant to subsection (7) of this section.

(7) An applicant or individual shall not be approved if the results of the background check indicate a:

(a) Felony conviction involving:

1. A spouse, a child, sexual violence, or death as established in 42 U.S.C. 671(a)(20); or

2. Physical abuse, battery, drugs, or alcohol within the five (5) year period prior to application;

(b) Criminal conviction relating to child abuse or neglect;

(c) Civil judicial determination related to child abuse or neglect;

(d) Result of a child abuse or neglect check in which the applicant, relative or fictive kin caregiver, adolescent member of the household, or adult member of the household, has been found to have:

1. Committed sexual abuse or sexual exploitation of a child;

2. Been responsible for a child fatality or near fatality related to abuse or neglect; or

3. Had parental rights terminated involuntarily pursuant to KRS 625.050 through 625.120 or another state's laws; or

(e) Result of an address check in the Sex Offender Registry and supporting documentation that a sex offender resides at the applicant's or individual's home address.

(8) An applicant or individual meeting the requirement of subsection (1) of this section may submit an open records request in accordance with 922 KAR 1:510[3]. Procedure for Requesting a Cabinet Child Abuse or Neglect Check, a Criminal Record Check, and an Address Check of the Sex Offender Registry Prior to

approval of an applicant, a child-placing agency shall request a child abuse or neglect check, a criminal records check, and an address check of the Sex Offender Registry by submitting to the cabinet: (1) A completed form, DPP-157, including the fee for a criminal background check; and

(2) Documentation required to request a child abuse or neglect check from the child welfare agency in each previous state of residence, if the applicant or adult household member has resided outside of the state of Kentucky in the previous five (5) years.

(3) To the extent resources are available, the department shall post information about other states' child abuse and neglect checks on the department's Web site].

Section 5[4]. Request for a Child Abuse or Neglect Check from Another State. (1) The cabinet shall conduct a child abuse or neglect check as required by 42 U.S.C. 671(a)(20) if a:

(a) Completed DPP-157 or DPP-159, Background Check Request for Relative and [Caretaker Relatives,] Fictive Kin Caregivers, or Adolescent and Adult Household Members [Checks for Caretaker Relatives, Fictive Kin, or Kinship Caregivers], is submitted to the cabinet; or

(b) Request is received on agency letterhead and includes two (2) numeric identifiers.

(2) The cabinet shall:

(a) Protect the confidentiality of the information transmitted by the cabinet to a child welfare agency; and

(b) Waive the fee specified in 922 KAR 1:470.

Section 6[5]. Background Checks Required for a [Caretaker] Relative or [and] Fictive Kin Caregiver. (1) A [caretaker] relative or[,] fictive kin caregiver, and each adult member of the household, shall complete a DPP-159 and submit to:

(a) An in-state criminal records check, conducted pursuant to KRS 199.462(1) by the:

1. Kentucky Justice and Public Safety Cabinet; or

2. Administrative Office of the Courts;

(b) A child abuse or neglect check conducted by the cabinet;

(c) An address check of the Sex Offender Registry; and

(d) A fingerprint-based background check conducted through the NBCP, beginning July 1, 2021, [criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation] if the [caretaker] relative or[,] fictive kin caregiver, or adult household member, has lived outside the state of Kentucky during the past five (5) years.

(2) An adolescent member of a relative [caretaker relative's] or fictive kin caregiver's [kin's] household shall complete a DPP-159 and submit to a child abuse or neglect check conducted by the cabinet.

(3) A child abuse or [and] neglect check conducted by the cabinet shall identify the name of each applicant and adolescent and adult member of the household and [in accordance with subsection (1)(b) or (2) of this section shall] include any finding consistent with Section 4(7) [2(3)] of this administrative regulation.

(4) A [caretaker] relative or fictive kin caregiver shall not be approved if a criminal records check, a child abuse and neglect check, or an address check of the Sex Offender Registry reveals a finding consistent with Section 4(7) [2(4)] of this administrative regulation.

(5) An individual meeting the requirement of subsection (1) of this section may submit an open records request in accordance with 922 KAR 1:510.

Section 7[6]. Approval. (1) Except for the provisions of Section 4(7) or 6(4) [2(4) or 5(4)] of this administrative regulation, approval of an applicant, fictive kin, or [caretaker] relative caregiver who has been convicted of a nonviolent felony or misdemeanor, has been found by the cabinet or another child welfare agency to have abused or neglected a child, or whose parental rights have been terminated voluntarily, shall be handled on a case-by-case basis with consideration given to the:

(a) Nature of the offense;

(b) Length of time that has elapsed since the event; and

(c) Applicant's life experiences during the ensuing period of time.

(2) Except for the provisions of Section 4(7) or 6(4) [2(4) or 5(4)] of this administrative regulation, an applicant, fictive kin, or **[caretaker]** relative **caregiver** may be approved on a case-by-case basis in accordance with the criteria described by subsection (1)(a) through (c) of this section if:

(a) An adolescent member of the household has:

1. Been found by the cabinet to have abused or neglected a child; or

2. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws; or

(b) An adult member of the household has:

1. Been convicted of a nonviolent felony or misdemeanor;

2. Been found to have abused or neglected a child; or

3. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws.

Section 8[7]. Reevaluation. (1) Beginning July 1, 2021, an [An] approved foster or adoptive parent and each adult member of the household shall maintain enrollment in KARES, except for individuals specified in Section 3 of this administrative regulation.

(2) An applicant enrolled in KARES shall submit a criminal records check as required by Section 2(1)(a) of this administrative regulation during the month of their initial approval every three (3) years.

(3) Beginning July 1, 2021, an approved foster or adoptive parent and each adult member of the household not already enrolled in KARES, with the exception of individuals specified in Section 3 of this administrative regulation, shall submit to a fingerprint-based background check required by Section 4 of this administrative regulation prior to or during the anniversary month of initial approval.

(4) An applicant specified in Section 3 of this administrative regulation and not enrolled in KARES shall submit annually, prior to or during the anniversary month of initial approval, to:

(a) A criminal records check as described in Section 2(1)(a) of this administrative regulation;

(b) A child abuse or neglect check conducted by the cabinet; and

(c) An address check of the Sex Offender Registry.

(5)[(2)](a) If an adult becomes a new member of an approved foster or adoptive parent's household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 2(1)(a) of this administrative regulation until July 1, 2021, or Section 4 [2(1)(a) through (d)] of this administrative regulation beginning on July 1, 2021.

(b) If an adult becomes a new member of a **[caretaker]** relative or fictive **kin caregiver's [kin's]** [kinship caregiver's] household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 6 [5(1)] of this administrative regulation.

(6)[(3)] If an adolescent becomes a new member of an approved foster or adoptive parent or a **[caretaker]** relative or fictive **kin caregiver's [kin's]** [kinship caregiver's] household, the new adolescent member of the household shall submit to a child abuse and neglect check conducted by the cabinet within thirty (30) calendar days of residence within the household in accordance with Section 2(2) or 6[5](2) of this administrative regulation, respectively.

(4) If the cabinet has custody of a child placed with a caretaker relative or fictive kin:

(a) A new adult household member of a caretaker relative or fictive kin shall submit to background checks within thirty (30) calendar days of residence in the household in accordance with Section 5(1) of this administrative regulation; and

(b) A new adolescent household member of a caretaker relative or fictive kin shall submit to a child abuse and neglect check conducted by the cabinet within thirty (30) calendar days of residence within the household in accordance with Section 5(2) of this administrative regulation.

(5) An annual address check of the Sex Offender Registry shall be completed for a kinship caregiver's eligibility redetermination in accordance with 922 KAR 1:130, Section 13(2).

(6) If an annual address check indicates a match with the Sex Offender Registry, a report of abuse, neglect, or dependency shall be made in accordance with 922 KAR 1:330.]

Section 9[8]. Maintenance of Records. (1) A child-placing agency shall maintain the approval [eligibility] status of each foster and adoptive applicant who has submitted to a fingerprint-based criminal background check by reporting the status in the NBCP web-based system [completed copy of each criminal records check conducted pursuant to Section 2 or 7 of this administrative regulation and the DPP-157 shall be maintained on behalf of each:

(a) Applicant;

(b) Foster or adoptive parent; and

(c) Adult member of an applicant or foster or adoptive parent's household].

(2) A completed copy of each DPP-157 submitted pursuant to Section 2(2), 3(2), or 5 [7(3)] of this administrative regulation shall be maintained by the child-placing agency on behalf of each adolescent member of:

(a) An applicant's household; or

(b) A foster or adoptive parent's household].

(3) A completed copy of each [the] DPP-159 submitted and criminal records check conducted pursuant to Section 5 or 6[7] of this administrative regulation shall be maintained[ for each:

(a) Caretaker relative;

(b) Kinship caregiver;

(c) Fictive kin; and

(d) Adult member of a caretaker relative, fictive kin, or kinship caregiver's household.

(4) A completed copy of the DPP-159 submitted pursuant to Section 5(2) or 7(3) of this administrative regulation shall be maintained on behalf of each adolescent household member of a:

(a) Caretaker relative;

(b) Kinship caregiver; or

(c) Fictive kin].

Section 10[9]. Communications. This administrative regulation shall not limit the cabinet's ability to discuss the qualifications or fitness of an applicant or an existing foster or adoptive parent with a child-placing agency in accordance with:

(1) KRS 620.050(5); or

(2) The terms and conditions of:

(a) A release of information signed by the applicant or foster or adoptive parent; or

(b) The agreement between the cabinet and the child-placing agency.

Section 11[10]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DPP-157, Background Check Request for Foster or Adoptive Applicants and Adolescent or Adult Household Members [Checks for Applicants or Foster/Adoptive Parents]", 04/21 [02/21] [1/18]; and]

(b) "DPP-159, Background Check Request for Relative and [Caretaker Relatives,] Fictive Kin Caregivers, or Adolescent and Adult Household Members [Checks for Caretaker Relatives, Fictive Kin, or Kinship Caregivers]", 04/21 [02/21];

(c) "DPP-162, Applicant Waiver Agreement and Statement", 04/21 [02/21];

(d) "DPP-163, Disclosures to be [Be] Provided to and Signed by the Applicant and Adult Household Members", 04/21 [02/21]; and

(e) "DPP-164, Applicant Live Scan Fingerprinting Form", 04/21 [02/21] [1/18].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at

<https://chfs.ky.gov/agencies/dcbps/Pages/default.aspx>.

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: April 9, 2021

FILED WITH LRC: April 12, 2021 at 9:53 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 persons: Laura Begin and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes background check requirements for caretaker relatives, fictive kin, or applicants seeking to provide foster or adoptive services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements for background checks of out-of-home or foster care providers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of background check requirements for caretaker relatives, fictive kin, prospective foster or adoptive parents, and other household members.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes through its establishment of background check requirements for out-of-home caregivers.

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

(a) How the amendment will change this existing administrative regulation: The emergency amendment to this administrative regulation reflects federal guidance that pursuant to 42 U.S.C. 5141, the Stafford Act, federal agencies administering federal assistance programs may modify or waive, for a major disaster, such administrative conditions for assistance as would otherwise prevent the giving of assistance under such programs if the inability to meet such conditions is a result of the major disaster. The Secretary of Health and Human Services declared a public health emergency on January 31, 2020, pursuant to 42 U.S.C. 247d, and a national emergency was declared by the President of the United States on March 13, 2020, due to the Novel Coronavirus Disease (COVID-19) outbreak. The Children's Bureau identified the requirement of fingerprint-based checks of national crime information databases as an administrative condition that may be modified under the Stafford Act authority given that the state conducts all available name-based criminal background checks for applicants during the outbreak and conducts fingerprint-based checks as soon as it is safe to do so. An emergency amendment to this administrative regulation was filed on May 12, 2020, first implementing the waiver for the background checks required by this administrative regulation, but that emergency expired pursuant to KRS 13A.190(3)(a). Because the national emergency declaration is still in place, an emergency administrative regulation is being filed again to continue the waiver in this administrative regulation and continue conducting name-based criminal background checks for these applicants so that they can be approved and the state can receive federal reimbursement although a fingerprint-based check has not been conducted. This emergency administrative regulation also contains requirements and material incorporated by reference for completing checks using the Kentucky National Background Check Program, which is expected to be implemented later this year. Language referring to kinship caregivers pursuant to 922 KAR 1:130 is also being deleted as there are no new applicants for this program due to the moratorium placed on the program in 2013.

This administrative regulation and material incorporated by reference was further amended to make clarifications and corrections in response to comments received from the Children's Alliance.

(b) The necessity of the amendment to this administrative regulation: The emergency amendment to this administrative regulation is necessary for consistency with federal Administration for Children, Youth and Families guidance allowing a temporary waiver for required fingerprint-based background checks under the national emergency declaration due to the COVID-19 pandemic. Name-based checks will continue to be conducted during this time.

(c) How the amendment conforms to the content of the authorizing statutes: The emergency amendment conforms to the content of the authorizing statutes through its alignment of regulatory provisions with statutory authorities, FBI requirements, requests of impacted private agencies, and additional considerations to improve child safety in out-of-home or foster care. The amendment provides for a waiver of the requirement of fingerprint-based background checks during the COVID-19 pandemic.

(d) How the amendment will assist in the effective administration of the statutes: The emergency amendment will assist in the effective administration of the statutes through its necessary waiver conditions during the national emergency to ensure the state is in compliance with federal requirements and does not jeopardize federal financial reimbursement of out-of-home-care services.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects prospective and existing foster and adoptive parents and relative and fictive kin caregivers seeking background check results in order to become approved and accept placement of a child in their care. Child-placing agencies are impacted in their recruitment and approval of foster or adoptive parents. All of these entities are affected by the temporary waiver of fingerprint-based background checks due to the national emergency caused by the COVID-19 pandemic and will be affected by the use of the Kentucky National Background Check Program to conduct checks in the future. As of November 2020, approximately 1,500 caregivers had been approved during the waiver of the fingerprint-based background checks after completing name-based background checks.

As of January 3, 2021, there were 9,193 children in the custody of the state who were in placements outside of their home of origin. This includes children in foster or adoptive placements and children being cared for by relative and fictive kin caregivers. This amendment requires many of these caregivers to undergo a background check through the Kentucky National Background Check Program prior to being approved to accept placement of these children once this program is implemented later this year. The cabinet and private child-placing agencies are also affected by this amendment as they are the entities who will process these checks for applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment allows a temporary waiver of fingerprint-based background checks for foster or adoptive parent applicants and relative or fictive kin caregivers. Effective July 1, 2021, applicants specified in this administrative regulation will obtain fingerprint-based background check results using the Kentucky National Background Check Program. This amendment outlines the steps and requirements and incorporates the forms required in order to use this program. There is very little action required on the part of an applicant, but the protection of children in the custody of the state will be ensured through conducting these comprehensive national checks.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Individuals subject to these background check requirements have their background check costs borne by the cabinet or through a child-placing agency in the course of the agency's business practices. There is a fee for obtaining background checks (a fee for the check and rap-back feature and administrative fee that does not exceed actual costs), but it is not paid directly by the individual.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment temporarily waives fingerprint-based background checks because of the national state of emergency and allows name-based background checks to be conducted during this time. If not for this waiver, initially implemented in May 2020, no new foster or adoptive parents would have been approved due to fingerprint-based background check sites being closed. The waiver allowed these applicants to be approved with name-based background checks temporarily, with fingerprint-based background checks being performed once safe to do so. The cabinet and private agencies benefitted from being able to continue the approval processes and maintain compliance with federal funding mandates. Fingerprint-based background checks obtained through the Kentucky National Background Check Program will be required later this year and will ensure that children removed from their homes of origin will have enhanced safety afforded through this thorough check of a national system.

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

(a) Initially: There is no new or additional cost associated with the temporary waiver of the fingerprint-based background checks. The waiver for fingerprint-based background checks during the pandemic allows Kentucky to continue approving foster and adoptive parents and maintain compliance with federal funding mandates, necessary for the reimbursement of out-of-home-care costs. There is a cost to move foster and adoptive parent applicants to the Kentucky National Background Check Program, but that cost will be borne by the cabinet and child-placing agencies to ensure the protection of children in the custody of the state.

(b) On a continuing basis: There is a cost to move foster and adoptive parent applicants to the Kentucky National Background Check Program, but that cost will be borne by the cabinet and child-placing agencies to ensure the protection of children in the custody of the state. The cost will be greater at the time of initial application and check, but will be less than current checks over a period of time due to the decreased cost of the rap back feature compared to needing new checks.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Title IV-E (of the Social Security Act), Temporary Assistance for Needy Families Block Grant funds, and State General Funds are the sources of funding 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: There is an increase in costs to the cabinet and child-placing agencies initially, but that cost evens out and decreases over time due to the lower cost of the rap back feature compared to repeat checks.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does initially increase the fee for background checks paid for by the cabinet and child-placing agencies, but overtime the fee is decreased due to the lower cost of the rap back feature compared to requiring new checks.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 1356.30, 42 U.S.C. 671(a)(20), 5106a

2. State compliance standards. KRS 194A.050(1), 199.462(4), 199.640(5), 605.120(5), (6), 605.130(4), 605.150

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 1356.30, 42 U.S.C. 671(a)(20), 5106a

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment to the administrative regulation is consistent with federal requirements, as the Children's Bureau identified the requirement of fingerprint-based checks of national crime information databases as

an administrative condition that may be modified during the state of emergency caused by the Novel Coronavirus Disease (COVID-19) pandemic. Pursuant to 42 U.S.C. 5141, a federal agency charged with the administration of a federal assistance program may modify or waive an administrative condition because of a major disaster. Name-based checks will continue to be conducted and fingerprint-based checks will resume when safe.

Existing standards do impose stricter requirements than the federal mandate because the cabinet requires the denial of an applicant if: (1) a criminal record check conducted on behalf of an adult household member reveals physical abuse, battery, or a drug or alcohol-related felony within the previous five (5) year period or a felony involving a spouse, a child, sexual violence, or death; or (2) a child abuse or neglect check conducted by the cabinet reveals that a household member, twelve (12) years of age or older, committed sexual abuse or sexual exploitation of a child, has been responsible for a child fatality related to abuse or neglect, or has had parental rights terminated involuntarily. These standards remain in place.

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

The additional restrictions noted in this analysis were added as additional safeguards for children in out-of-home care. The federal law does not prohibit the addition of these restrictions.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, the Kentucky State Police, and the Administrative Office of the Courts will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.462(4), 199.640(5), 605.120(5), (6), 605.130(4), 605.150, 45 C.F.R. 1356.30, 42 U.S.C. 671(a)(20), 5141

(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 emergency amendment will not generate revenue for state or local government. Fees charged by law enforcement or judicial agencies for criminal background checks cannot exceed the actual costs of conducting the checks.

(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 emergency amendment will not generate any revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There are news costs to the cabinet associated with the Kentucky National Background Check Program, but these costs are expected to level out over time due to the lesser cost of the rap back feature rather than requiring new checks.

(d) How much will it cost to administer this program for subsequent years? There will be a greater initial cost to conduct checks through the Kentucky National Background Check Program, but that cost will lessen over time due to the decreased need to require new checks.

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

FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
(As Amended at ARRS, April 13, 2021)

**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(1) 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(1) 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. KRS 131.155(3) requires the department to promulgate administrative regulations establishing electronic fund transfer requirements for the payment of fees and taxes administered by the department. 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" is defined by/has the same meaning as provided in KRS 65.7621(4).

(2) "Corporation" is defined by/has the same meaning as provided in KRS 141.010(4).

(3) "Department" is defined by/has the same meaning as provided in KRS 131.010(2).

(4) "Electronic fund transfer" is defined by/has the same meaning as provided in KRS 131.010(14).

(5) "Employer" is defined by/has the same meaning as provided in KRS 141.010(9).

(6) "Limited liability pass-through entity" is defined by/has the same meaning as provided in KRS 141.010(16).

(7) "Pass-through entity" is defined by/has the same meaning as provided in KRS 141.010(22).

(8) "Person" is defined by/has the same meaning as provided in KRS 446.010(33).

(9) "Reasonable cause" is defined by/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" is defined by/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; and

(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; and

(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; and

(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; and

(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 as authorized by KRS 131.250(2). A written request for waiver of the electronic filing requirement shall be submitted to the department via the method required for the particular tax involved. 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 October/January 1, 2021.

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](mailto:Lisa.Swiger@ky.gov).

**FINANCE AND ADMINISTRATION CABINET**  
**Department of Revenue**  
**(As Amended at ARRS, April 13, 2021)**

**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. (1) Industrial laundry services are subject to sales tax pursuant to KRS 139.200(2)(k). [shall include, but are not limited to:]

(2) The list in this subsection shall serve as general examples of industrial laundry services:

(a) Industrial uniform supply services;

(b)[(2)] Protective apparel supply services;

(c)[(3)] Industrial mat and rug supply services; and

(d)[(4)] Any other substantially similar industrial services.

Section 2. (1) Linen supply services are subject to the sales tax pursuant to KRS 139.200(2)(m). [shall include, but are not limited to:]

(2) The list in this subsection shall serve as general examples of linen supply services:

(a) Table and bed linen supply services;

(b)[(2)] Nonindustrial uniform supply services; and

(c)[(3)] Any other substantially similar nonindustrial linen supply services.

Section 3. (1) Industrial laundry and linen supply service providers[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 periodic cleaning or laundering[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 these[such] items are purchased.

(2) Industrial laundry and linen supply service providers shall not claim a sale for resale exemption by issuing[issuing] the "Resale Certificate" (Revenue Form 51A105), "Streamlined Sales and Use Tax Agreement – Certificate of Exemption", (Form 51A206), or "Multistate Tax Commission's Uniform Sales and Use Tax Exemption/Resale Certificate – Multijurisdictional" for the purchase of the aprons, caps, coats, diapers, dresses, linens, mats, protective apparel, rugs, towels, uniforms, or other articles of a similar nature if[when] retaining title to property they provide under an agreement for continuous cleaning service. [(1) 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>.

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](mailto:Lisa.Swiger@ky.gov).

**BOARDS AND COMMISSIONS**  
**Board of Social Work**  
**(As Amended at ARRS, April 13, 2021)**

**201 KAR 23:150. Complaint procedure, disciplinary action, and reconsideration.**

RELATES TO: KRS 335.030, 335.070(1)(a), (2) ~~[(3), (4), (5), (6), (7), (8)]~~, 335.150, 335.155

STATUTORY AUTHORITY: KRS 335.070 (1)(a), (2), (3), 335.150, 335.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.070(1)(a) requires[authorizes] the board to administer[regulate the practice of social work] and enforce the provisions of KRS 335.010 to 335.160 and 335.990. KRS 335.070(3) authorizes the board to promulgate [and enforce reasonable] administrative regulations to carry out the provisions of KRS 335.010 to 335.160 and 335.990. KRS 335.070(2) authorizes the board to issue subpoenas, examine witnesses, pay appropriate witness fees, administer oaths, and investigate allegations of practices violating KRS 335.010 to 335.160 and 335.190.[and] KRS 335.150 authorizes[requires] the board to regulate the conduct of individuals[licensees],

including to investigate alleged violations ~~to promote the efficient and fair conduct of disciplinary proceedings~~ and take appropriate disciplinary action. KRS 335.160 authorizes the board to enjoin violations. This administrative regulation establishes the procedures to be followed in handling formal and informal disciplinary proceedings before the board in the imposition of sanctions and disciplinary action of a licensee or individual applicant in violation of KRS 335.030 or KRS 335.150.

Section 1. Definitions. (1) "Board" is defined by KRS 335.020(1).

(2) "Charge" means a specific allegation contained in a document issued by the board or hearing panel alleging a violation of a specified provision of KRS 335.010 to 335.160 or 201 KAR Chapter 23.

(3) "Complaint committee" means a committee of the board that:

(a) Reviews an initiating complaint; and  
(b) 1. Recommends dismissal or further investigation of the complaint; or

2. Determines the existence of sufficient evidence to bring a formal complaint.

(4) "Formal complaint" means a formal administrative pleading or notice of administrative hearing authorized by the board that sets forth charges against a license holder, an applicant, or an unlicensed person engaging in the practice of social work or holding himself or herself out to the public by any title regulated by the board, and commences a formal disciplinary proceeding in accordance with KRS Chapter 13B.

(5) "Initiating complaint" means an allegation alleging misconduct by a licensee or applicant or alleging that an unlicensed person is engaging in the practice of social work, or is using the title "Certified Social Worker", "Licensed Social Worker", or "Licensed Clinical Social Worker".

(6) "Order" means the whole or part of a final disposition of a hearing.

(7) "Respondent" means the person against whom an initiating or formal complaint has been made.

Section 2. Composition of Complaint Committee. (1) The complaint committee shall consist of at least two (2) board members appointed by the board chair, one (1) of whom may be the board chair; and

(2) The complaint committee may be assisted by the board staff and counsel to the board.

Section 3. Initiating Complaint. (1) An initiating[A] complaint may be made/initiated by:

(a) An individual;  
(b) An individual who is authorized to act on the behalf of an employer of a licensee or applicant;  
(c) A government agency; or  
(d) The board.

(2) An initiating[A] complaint shall be:

(a) Made by a complainant in writing to the board on a KY[Kentucky] Board of Social Work Complaint Form along with an Authorization for Release of Medical and Hospital Records form, if applicable and describe with sufficient detail the alleged violations or violations[violation(s)] of KRS Chapter 335 or 201 KAR Chapter 23; and

(b) Received in the board office by mail, hand delivery, fax, electronic mail[email], or by an online complaint submitted through the board's Web site at https://bsw.ky.gov[website].

(3) The board may conduct an investigation and initiate any necessary complaint on its own initiative without receipt of a written complaint if the board has reasonable cause to believe that there may be a violation of KRS 335.010 to 335.160 or 201 KAR Chapter 23[the administrative regulations of the board].

(4) A certified copy of a court record for conviction of a misdemeanor or felony shall be considered a valid initiating complaint against a licensee or temporary permit holder.

(5) Redaction.

(a) Upon recommendation of the complaint committee and

consent by majority vote of the board, the board may direct that an initiating[a] complaint be redacted of personal names, identification numbers, and contact information.

(b) The board shall keep the original initiating complaint free of redactions and store the document in the complaint case file.

~~(c) The board shall send a redacted copy of a complaint to the respondent to meet the requirements of Section (3)(1) of this administrative regulation. The original complaint that is free of redactions may be viewed by the respondent upon written request submitted to the board but shall not be released to the respondent or the public until final disposition of the matter.]~~

Section ~~4.2.]~~ Notice to Respondent. (1)(a) The board shall notify a respondent in writing of the receipt of an initiating[a] complaint and send a copy of the initiating complaint to the respondent at his or her mailing address or electronic mail address provided ~~to the board.[-];[-]~~

~~(b) The board shall send a redacted copy of an initiating[a] complaint to the respondent. A respondent may/Respondents shall be entitled to~~ inspect records related to him or her,them] or in which he or she is mentioned by name pursuant to KRS 61.884.

~~(c)[(a)]~~ The board may keep the complainant's name and contact information confidential until completion of the investigation if any.

~~(2)[(b)]~~ A respondent shall file a written response to an initiating[a] complaint with the board by mail, hand delivery, fax, or electronic mail[email] within twenty (20) days after receipt of notice of the initiating complaint, unless an extension is requested and granted in accordance with subsection (4)[(3)] of this section.

~~(3)[3.](e)]~~ Failure of a respondent to file a timely response to the initiating complaint shall constitute a violation of a board order and this[or] administrative regulation and shall be grounds for disciplinary action under KRS 335.150(1)(f).

~~(4)[4.](2)]~~ Request for extension of time.

(a) A respondent, or his or her legal representative may request an extension of time or additional time to file a response by submitting a written request to the board on or before the expiration of the twenty (20) day due date established in subsection ~~(2) of this section[(3)(b)].~~

~~(b) The complaint committee or the board administrator may grant an extension of time if requested to obtain legal counsel, provide ample time for preparation of a detailed response, or for other good cause shown[as appropriate].~~

Section ~~5.3.]~~ Recommendations of Complaint Committee. (1) Based on consideration and review of the initiating complaint, [and] the response, and any other relevant information or material available, the complaint committee may recommend that the board:

(a) Dismiss the initiating[Recommend that] [a] complaint [be dismissed] and find the matter closed if[where]:

1. a. The board lacks jurisdiction over the person named in the initiating complaint;

b.[2.] There is insufficient evidence to support the initiating complaint;

c.[3.] There are no violations of laws, rules, or administrative [and] regulations governing the practice of social work; or[or]

d.[4.] The conduct complained of does not warrant disciplinary or other remedial action.[-];[-]

2.[5.] Upon reaching a decision to dismiss the initiating[a] complaint, the board shall notify the respondent and complainant of the disposition of the matter in writing, by personal service, regular mail, or electronic mail address provided to the board.[-; or[-];-

3.[6.] Dismissal of an initiating[a] complaint shall be a final board action and shall not be subject to further investigation by the board or appeal under KRS 335.155.[-];[-]

(b) Further[Recommend further] investigation of the initiating complaint. If the board approves an investigation, the board may be assisted by board staff, an agent of the board, the Office of the Attorney General, or other appropriate local, state, or



federal agency; [-]

(c) Refer the initiating complaint to another committee of the board; [-]

(d) Request an Authorization for Release of Medical and Hospital Records form from a party; [-]

(e) Resolve the initiating complaint through informal proceedings pursuant to KRS 335.150(4); [-]

1. At any time during the complaint process, the board may authorize the board attorney or executive director of the board to enter into discussions or negotiations with a respondent and his or her attorney, if any, for the purpose of settling and informally dispensing with the initiating complaint.

2. An agreed order or assurance of voluntary compliance shall be approved by a majority vote of the board and be signed by the chairperson of the board, the respondent, and the respondent's attorney, if any. Copies shall be placed in the licensee's file, and be provided to the complainant.

3. The board may employ mediation as a method of resolving the matter informally.

4. A mediated agreement shall be handled in the same manner as an agreed order in subsection (1) of this section.

(f) Issue a formal complaint and provide notice of hearing to the respondent in accordance with KRS Chapter 13B and KRS 335.155; [-]

(g) Refer the matter to another government agency; or [-]

(h) Initiate a proceeding in its own name in Franklin Circuit Court to restrain and enjoin a violation in accordance with KRS 335.160.

(2) If at any time a [A] complaint committee member becomes aware of having a possible conflict of interest, the member shall disclose the existence of the conflict to the complaint committee and the member may be excused by the board.

Section 6.[4.] Board Action upon Recommendation of Complaint Committee. (1) The board shall review the committee's recommendations and shall approve or reject by majority vote the recommendations in whole or in part.

(2) A board member having a known conflict of interest or if at any time becomes aware of a possible conflict of interest shall disclose the existence of the conflict in writing to the board and may be excused, if warranted.

(3) The board shall notify a respondent and complainant of the resolution of the complaint in writing, by personal service, by the regular mail, or electronic mail address provided to the board.

Section 7.[5.] Motion to Reconsider. (1) A respondent may file a motion to reconsider, modify, or reverse the final disposition of a disciplinary hearing to the board within thirty (30) days of notification of final disposition, in writing, and received in the board office by mail, hand delivery, fax, or electronic mail/email.

(2) The motion to reconsider shall provide evidence of the following:

(a) Grounds and reasons for reconsideration, modification, or reversal;

(b) Rehabilitation or restitution, if applicable; and

(c) Status of probation, parole, or supervision by any state or federal government agency or board.

(3) The complaint committee shall consider any such motion to reconsider at the next regularly scheduled committee meeting and any change in disposition shall be approved by a majority vote of the board.

(4) The board shall notify a respondent and complainant of the disposition of the reconsideration in writing, by personal service, by the regular mail, or electronic mail address provided to the board.

(5) The board shall consider no more than one (1) motion to reconsider from a respondent in a final matter.

Section 8. Formal Response. (1) Within twenty (20) days of service of the notice of administrative hearing, the respondent shall file with the board a written response to the specific

allegations set forth in the notice of administrative hearing.

(2) Allegations not properly responded to shall be deemed admitted.

(3) The board shall, if there is good cause, permit the late filing of a response.

Section 9. Composition of the Hearing Panel. Disciplinary actions shall be heard by a hearing officer and:

(1) The full board or a quorum of the board;

(2) A hearing panel consisting of at least one (1) board member appointed by the board; or

(3) The hearing officer alone in accordance with KRS 13B.030(1).

Section 10. Administrative Disciplinary Fine. If the board finds against the respondent on a charge, an administrative disciplinary fine in accordance with KRS 335.150 shall be assessed against the respondent.

Section 11.[6.] Unlicensed Practice. (1) If the complaint committee concludes that an initiating[a] complaint is substantiated to show that a person is practicing social work without a license, or is holding himself or herself out to the public by any title regulated by the board, then the committee shall prepare a letter signed by the board chair or an authorized representative, and [to] notify the person of the committee's belief that the person is engaging in this behavior[practicing without a license] and request that the person [voluntarily] cease practicing[the practice] without a license, or from holding himself or herself out by utilizing a regulated title.

(2) Penalty. Any person who shall be found by the board, after hearing or by agreed order, to have unlawfully engaged in the practice of social work shall be subject to a fine to be imposed by the board not to exceed \$250 per day of unlicensed practice, and not to exceed the total sum of \$2,500.

(2)[(3)] The board may forward the complaint to the appropriate county attorney or Commonwealth's attorney with a request that appropriate action be taken in accordance with KRS 335.990.

(3)[(4)] The board may initiate an action for injunctive relief in Franklin Circuit Court to restrain and enjoin violations in accordance with KRS 335.160.

Section 12.[7.] Incapacity of Respondent. (1) If the board receives an initiating[a] complaint alleging that a licensee or an applicant has been legally declared mentally incompetent or may be mentally incapable of providing social work services in a competent, safe, ethical, or professional manner, the board shall follow the procedures established in this administrative regulation;

(2)[(b)] The board may order the licensee or applicant to submit to an examination by a psychologist, physician, or certified alcohol and drug counselor designated by the board to determine whether the licensee or applicant is capable of providing social work services in a competent, safe, ethical, or professional manner in accordance with KRS 335.010 to 335.160[335.16] and [the administrative regulations as established by] 201 KAR Chapter 23.

(3)[(c)] The board shall pay the cost for an examination initiated and recommended by the board. The respondent shall pay the cost of the examination if he or she seeks an independent examination.

Section 13.[8.] Emergency Action. (1) Nothing in this administrative regulation shall be construed to prevent the board from taking emergency action if authorized by KRS 13B.125.

Section 14.[9.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KY Board of Social Work Complaint Form", 4/2021[12/2020]; and

(b) "Authorization for Release of Medical and Hospital Records", 4/2021[12/2020].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., ~~subject to COVID-10 restrictions~~.

CONTACT PERSON: Margaret Hazlette, Interim Board Executive Director, Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort, Kentucky 40601, phone (502) 564-2350, email Margaret.hazlette@ky.gov.

**DEPARTMENT OF AGRICULTURE  
Office of the Consumer and Environmental Protection  
(As Amended at ARRS, April 13, 2021)**

**302 KAR 79:011. Motor fuel quality testing and inspection program.**

RELATES TO: KRS 363.900 - 363.908, 42 U.S.C. 7545(o)(1)(D), 16 C.F.R. 306.12, 40 C.F.R. 80.27

STATUTORY AUTHORITY: KRS 363.902, 363.908, 16 C.F.R. 306, 16 C.F.R. 309, 40 C.F.R. 80.27

NECESSITY, FUNCTION, AND CONFORMITY: KRS 363.902 requires the commissioner of the department to implement and administer an inspection and testing program for motor fuels. This administrative regulation establishes procedures to implement and administer a motor fuels inspection and testing program.

Section 1. Definitions.

**(1) "Administrative Stop-Sale Order" means a motor fuel product is ordered removed from sale to the consumer due to a violation not related to motor fuel quality standards and specifications.**

**(2) [(1)]** "Alternative fuel" means methanol, denatured ethanol, and other alcohols; mixtures containing eighty-five (85) percent or more by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal derived liquid fuels; fuels, other than alcohol, derived from biological materials.

**(3) [(2)]** "Anti-Knock Index" or "AKI" means the arithmetic average of the Research Octane Number (RON) and Motor Octane Number (MON):  $AKI = (RON + MON) / 2$ ; this value is called by a variety of names, in addition to anti-knock index, including: Octane rating, Posted octane, (R+M)/2 octane.

**(3) "ASTM International" means the international voluntary consensus standards organization formed for the development of standards on characteristics and performance of materials, products, systems, and services and the promotion of related knowledge.**

**(4)** "Automotive Fuel Rating" means the automotive fuel rating required under the amended Automotive Fuel Ratings, Certification and Posting Rule, 16 C.F.R. Part 306. The automotive fuel rating for alternative non-liquid automotive fuels is expressed in 16 C.F.R. Part 309.

**(5)** "Aviation gasoline" means a type of gasoline suitable for use as a fuel in an aviation spark-ignition internal combustion engine.

**(6)** "Aviation turbine fuel" means a refined middle distillate suitable for use as a fuel in an aviation gas turbine internal combustion engine.

**(7)** "Biodiesel" means a fuel comprised of, at least ninety-nine (99) percent by volume, mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B-100 or B-99.

**(8)** "Biodiesel blend" means hydrocarbon-based diesel fuel blended with between six (6) and twenty (20) percent by volume biodiesel and can [may] contain fuel additives.

**(9)** "Biomass-based diesel" means a diesel fuel substitute produced or co-produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under 42 U.S.C. 7545§ (o) (1) (D), and includes fuel derived from

animal wastes, including poultry fats and poultry wastes, and other waste materials, or from municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater. [

**(10) "Compressed Natural Gas (CNG)" means natural gas which has been compressed and dispensed into fuel storage containers and is suitable for use as an engine fuel.**

**(11) "Department" means the Kentucky Department of Agriculture.**

**(12) "Diesel" means a refined hydrocarbon suitable for use as a fuel in a compression-ignition internal combustion engine that may contain fuel additives and up to five (5) percent by volume of biodiesel or biomass-based diesel.**

**(10) [(13)]** "Distributor" means any carrier or supplier that [who] transports or stores, or causes the transportation or storage, of motor fuel without taking title to or otherwise having ownership of the motor fuel and without altering either the quality or quantity.

**(11) [(14)]** "Ethanol flex fuel blends", commonly known as "Flex Fuel", means gasoline-ethanol mixtures of more than fifty-one (51) percent but not greater than eighty-three (83) percent ethanol by volume, restricted for use as fuel in vehicles equipped with flexible-fuel spark ignition engines.

**(12) [(15)]** "EPA" means the United States Environmental Protection Agency. [

**(16) "Gasoline" means a volatile mixture of liquid hydrocarbons containing small amounts of additives for use as a fuel in a spark-ignition internal combustion engine and has not been blended with oxygenates, including neat, conventional, and recreational gasoline.**

**(13) [(17)]** "Gasoline-oxygenate blend" means a fuel consisting primarily of gasoline blended with more than one (1) percent by volume oxygenate, with more than three tenths (0.3) of a percent by volume methanol; [or with not more than sixteen (16) percent isobutanol;] this includes gasoline-ethanol blends containing between one (1) and fifteen (15) percent ethanol by volume.

**(14) [(18)]** "Internal combustion engine" means a device used to generate power by converting chemical energy bound in a fuel via spark-ignition or compression-ignition engine combustion into mechanical work to power a vehicle or other device.

**(15) [(19)]** "License" means retail motor fuel license.

**(16) [(20)]** "License holder" means the person, owner, or retailer or their delegated representative, that is financially responsible for the cost of fees, fines, corrective actions, and remediation of motor fuel quality, to ensure compliance with the Motor Fuel Inspection and Testing Program pursuant to KRS 363.900-908. [

**(21) "Liquefied natural gas" or "LNG" means natural gas that has been liquefied at negative two hundred sixty degrees Fahrenheit (-260 °F) and stored in insulated cryogenic tanks for use as a motor fuel.**

**(22) "Liquefied petroleum gas" or "LPG" means a mixture of normally gaseous hydrocarbons, predominantly propane that has been liquefied by compression or cooling, or both, to facilitate storage, transport, and handling for use as a motor fuel.**

**(17) [(23)]** "Manifolded" means a piping connection between two (2) or more tanks that allows fuel to freely flow from one tank to another thus drawing product from multiple tanks.

**(18) [(24)]** "Mid-level ethanol flex fuel blends" means gasoline-ethanol mixtures containing between sixteen (16) and fifty (50) percent ethanol by volume, restricted for use in flexible-fuel vehicles with automotive spark-ignition engines.

**(19) "Motor Fuel Quality Stop-Sale Order" means a motor fuel product is ordered removed from sale to the consumer for failure to conform to minimum specifications for the particular type, class, and grade.**

**(20) [(25)]** "Oxygenate" means an oxygen-containing organic compound, such as an alcohol, like ethanol, that can be used as a fuel or fuel supplement.

**(21) [(26)]** "Person" means an individual, partnership, corporation, company, firm, association, or other business entity.

**(22) [(27)]** "Premium diesel" means diesel fuel identified on retail dispensers with an additional term incorporated directly in a product or grade name that differentiates the fuel and implies the

fuel provides properties that meet or exceed the minimum requirements of the NIST Handbook 130 Uniform Engine Fuels and Automotive Lubricants Regulation, §2.2.1 for Premium Diesel Fuel, [minimum specification limits or performance.]

(23) [(28)] "Product transfer documentation" means a bill of lading, invoice, loading, delivery, or meter ticket, bill of sale, or any combination of product delivery documentation meeting the requirements established [specified] in this administrative regulation, that shall accompany a shipment of motor fuel.

(24) [(29)] "Racing gasoline" means a specialty fuel typically used in non-road racing vehicles that is generally of lower volatility and [,] has a narrower boiling range and a higher octane rating than gasoline or gasoline-oxygenate blends made for use in conventional passenger vehicles.

(25) [(29)] "Reid Vapor Pressure" or "RVP" means a measure of the volatility of gasoline and gasoline-oxygenate blends.[:] It is the property of a liquid fuel that distinguishes [outlines] its evaporation characteristics.[]

(30) ~~"Retail Facility" (a) Means a licensed service station, garage, truck stop or other outlet selling from a motor fuel retail dispensing device that is compliant with 302 KAR 81:010, for the purpose of engaging in the business of selling or distributing motor fuel to the consumer; and~~

~~(b) A Retail Facility does not include an outlet using such dispensers exclusively for company and fleet use and price contract sales.~~

~~(31) "Stop-Sale Order", means when a motor fuel product(s) is removed from sale to the consumer.~~

~~(31) "Stop-Sale Order, Administrative" means, when a motor fuel product(s) is ordered removed from sale to the consumer due to a violation(s) not related to motor fuel quality standards and specifications.~~

~~(32) "Stop-Sale Order, Motor Fuel Quality" means, when a motor fuel product(s) is ordered removed from sale to the consumer for failure to conform to minimum specifications for the particular type, class and grade.]~~

(26) [(33)] "Storage tank" means a tank located either above or below ground used to hold motor fuel intended for retail sale.

(27) [(34)] "V/L" means vapor to liquid ratio.

## Section 2. Licensing and Renewal.

(1) A [No] person shall not offer for sale retail motor fuel to consumers without first obtaining a license from the department.

(a) Operating a retail facility without a retail motor fuel license shall [may] result in the placement of an Administrative Stop-Sale Order pursuant to a Level 6 Civil Penalty on all motor fuel offered for sale.

(2) Each retail facility motor fuel license shall be effective from the date of issuance until January 31 of the following calendar year, [and shall be renewed annually.]

(3) After January 31, 2023, the department shall [will] provide the ability to apply for or renew retail motor fuel licenses online.

(a) Paper applications and payments shall [will] no longer be accepted after January 31, 2023.

(b) Paper applications and payments submitted after January 31, 2023 shall [will] not be processed.

(4) A valid retail motor fuel license shall be conspicuously displayed at the retail facility.

(5) A retail motor fuel license shall be [licenses are] non-transferable.

(6) A retail motor fuel license shall [will] not be issued without an application having been first submitted.

(a) An application shall [Applications] be complete upon submission to the department, [when submitted.] An incomplete application shall not be processed.

(b) Payment shall [must] be by [in the form of a] money order or cashier's check, made payable to Kentucky State Treasurer and mailed to the Kentucky Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601; or debit or credit through the department's online portal.

(c) An application [Applications] without payment shall [will] not be processed.

(d) Payments received without a completed application shall [will] not be processed.

(e) The license holder shall affirm or modify the availability of each motor fuel offered for sale with each license application or renewal, including [this includes] any motor fuel subject to a Declaration of Non-Sale, as established [provided for] in Section 9(10) of this administrative regulation, [302 KAR 79:011(9)(10)].

(f) The license holder shall confirm that all retail dispensing devices used for retail sales shall comply [are compliant] with 302 KAR 81:010.

(7) Unpaid fines assessed under the Motor Fuel Quality Testing and Inspection Program shall be grounds for [may result in] the denial of license issuance.

(8) A [No] license holder shall not offer for sale a new motor fuel, or a motor fuel not established [identified] in this administrative regulation or 302 KAR 79:012, without first notifying the department in writing.

(9) A license holder shall notify the department in writing within ten (10) consecutive days of [when] any of the following events [occurs or is likely to occur]:

(a) The [When the] Retail Facility closes;

(b) [When] The License Holder information changes;

(c) [When] A license holder intends to permanently modify motor fuel products offered for sale [,] or storage tank allocation; or

(d) [When] A retail facility has a storage tank that has been entered into temporary closure, in accordance with any law or regulation.

## Section 3. Labeling.

(1) The label showing the minimum automotive fuel rating shall meet the same specifications required in 16 C.F.R. Part 306 or 16 C.F.R. Part 309.

(2)(a) Retail dispensing devices shall display the octane rating certified on the product transfer documentation to the license holder of gasoline and gasoline-oxygenate blends being offered for sale to consumers.

(b) At least one (1) label on the face of the dispenser shall identify the octane rating.

(c) If two (2) or more gasolines or gasoline-oxygenate blends with different octane ratings are sold from a single dispenser, then a separate label for each octane rating shall be placed on the face of the dispenser.

(3) Labels shall be placed conspicuously on the dispenser and be in full view of consumers. Labels shall be placed as near as reasonably practical to the price.

(4) During remediation the posted automotive fuel rating may differ from that certified on the product transfer documentation; otherwise, the posted automotive fuel rating shall [must] meet or exceed the certification [that which is certified] on the product transfer documentation.

(5)(a) In addition to this regulation, for gasoline containing less than one (1) percent by volume oxygenate a label shall be posted that contains words such as "neat," "conventional," "recreational," "alcohol free," "contains no ethanol," or other language approved by the department.

(b) The label shall not contain the following: "100 %" or "pure gasoline."

(6) Gasoline and gasoline-oxygenate blends shall [must] be labeled in accordance with 302 KAR 79:012, Section 1(5)(a) through (c), [(1)-(5)-(a-c)].

(7) Gasoline-ethanol blends containing [with ethanol content] greater than ten (10) percent, up to and including fifteen (15) percent, shall be labeled in accordance with the EPA dispenser labeling requirements in 40 C.F.R. 1090.1510.

(8) No later than January 31, 2023, the selector identifying Ethanol Flex Fuels containing at least fifty-one (51) percent and no greater than eighty-three (83) percent ethanol by volume ["E-85" products] shall [must] be labeled as either:

(a) "Ethanol Flex Fuel";

(b) "E-85";

(c) The numerical value representing the percentage by volume ethanol in the fuel, rounded to the nearest multiple of ten (10), followed by the percentage sign followed by the term

**"Ethanol":**

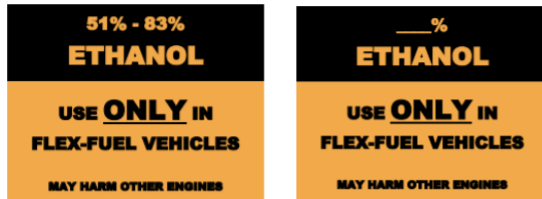
(d) The phrase, "Contains 51% - 83% Ethanol"; or

(e) Containing the requirements of 16 C.F.R. 306.12 (4).

1. In addition to the requirements of paragraphs (a) through (d)/(a-d) of this subsection, an additional label, meeting the requirements of 16 C.F.R. 306.12 (4), shall be in a prominent place, as close to the selector as practical.

2. The label shall be positioned to clearly identify which control the consumer will use to select the Ethanol Flex Fuel.

3. Illustrations of Ethanol Flex Fuel labels. Labels shall meet the specifications in this section and ~~shall/should~~ look like these examples, except the black print ~~shall/should~~ be on the appropriately colored orange background and the knock-out print within the black band ~~shall/must~~ be orange. [retail facilities in Kentucky not later than January 31, 2023.]



(9) Aviation gasoline shall be identified by the grade terms contained in the latest version of ASTM D6227, ["Standard Specification for Unleaded Aviation Gasoline Containing a Non-hydrocarbon Component," ASTM D7547, ["Standard Specification for Hydrocarbon Unleaded Aviation Gasoline,"] and ASTM D910, ["Standard Specification for Leaded Aviation Gasolines for the particular type and grade.

(10) Aviation turbine fuels shall be identified as grades Jet A, Jet A-1, or Jet B.

(11) A racing gasoline ~~label~~ [labels] shall display an AKI that meets ~~or exceeds the certification~~[that which is certified] on the product transfer documentation.

(12) Diesel fuel other than No. 2-D shall be identified on the dispenser by grade.

**Section 4. Retail Product Storage Identification.**

(1) To facilitate retail motor fuel product storage identification, each product storage tank or vessel shall consist of a lid or access point, rim or fixed component, and collar or permanent label.

(a) Each lid or access point and rim or fixed component for any motor fuel product storage tank or vessel at the retail level shall be permanently, plainly, and vividly marked to identify the product contained inside by means of a description and color as designated in the published ["API Recommended Practice 1637; Equipment Color-Symbols System, Figures 1-3 and with a collar or permanent label.

(b) In addition to a collar or permanent label, the lid or access point, and rim or fixed component shall be identified by one of the following methods:

1. Paint the lid or access point and rim or fixed component, then place a collar or permanent label near or around the access point that states the name or description of the product such as "Regular E10"; or

2. Paint the lid or access point and rim or fixed component, then fit a collar permanent label inside the lid or access point.

(2) If a retail motor fuel product is not covered in the publication ["API Recommended Practice 1637; Figures 1-3 Equipment Color Symbols System["], ~~the product~~ [it] shall be permanently, plainly, and vividly marked to identify the product contained inside.

(3) To identify motor fuel products stored at the retail facility, a license holder shall place, in a conspicuous location, a legible chart identifying any of the following, ~~if~~ [when] applicable:

(a) The location of each storage tank in use;

(b) The type and grade of motor fuel in each storage tank;

(c) Which, if any, storage tanks are manifolded;

(d) Any dispenser displaying a single product or grade on multiple buttons;

(e) The dispenser supplied by each storage tank; and

(f) Any ~~product~~ [product(s)] subject to a Declaration of Non-Sale.

**Section 5. Product Transfer Documentation.**

(1) The requirements of this section ~~shall~~ [are to] be in addition to, and not in substitution of, other requirements established in any federal statute or regulation.

(2) Products regulated by this administrative regulation shall be accompanied by transfer documentation that detail components of the motor fuel.

(3) A legible paper copy, or digital representation, of the product transfer documentation shall be made available to the department prior to the conclusion of the inspection or upon request.

(4) With the exception of **Section [302-KAR-79:014]** 7(2)(b) ~~of this administrative regulation~~, each license holder selling motor fuel shall retain product transfer documentation for each grade at the location where the motor fuel is transferred for ~~at least~~ the last five (5) deliveries.

(5) ~~The license holder shall make available~~ [In addition to other product transfer documentation requirements set forth in this administrative regulation, when any person transfers motor fuel, except for transfers] to the ~~department upon request~~ [consumer, the transferor shall provide to the transferee] product transfer documentation that shall state ~~the following information~~ [the following information] for each type and grade of motor fuel, ~~the~~:

(a) ~~The~~ Type of motor fuel being transferred;

(b) ~~The~~ Automotive fuel rating of the motor fuel being transferred;

(c) ~~The~~ Name and address of the transferor;

(d) ~~The~~ Name and address of the transferee;

(e) ~~The~~ Volume of motor fuel being transferred; and

(f) ~~The~~ Date of the transfer.

(6) ~~[In addition to other]~~ Product transfer documentation ~~shall include~~ [requirements set forth in this section the following information, or similar, shall also be included:]

~~(a) For gasoline, the statement~~ "The RVP does not exceed {fill in appropriate value} psi";

~~(b) For gasoline~~ ~~containing no oxygenate~~, the [following] statement, "Contains no oxygenate";

~~(c) For gasoline blended with ethanol in concentration of at least one (1) percent by volume in the motor fuel;~~ [shall also include the following information:]

1. For gasoline blended with less than nine (9) percent by volume ethanol, the following statement: "Contains up to X % ethanol. The RVP does not exceed {fill in appropriate value} psi." The term X refers to the maximum volume percent of ethanol present in the gasoline;

2. For gasoline blended with between nine (9) and ten (10) percent, by volume ethanol, the following statement: "Contains between 9% and 10% ethanol"; ~~and~~;

3. For gasoline blended with greater than ten (10) percent, by volume, and not more than fifteen (15) percent, by volume ethanol the following statement: "Contains between 10% and 15% ethanol"; ~~and~~

(d) For gasoline blended with an oxygenate other than ethanol, a statement declaring the name and percentage ~~by volume~~ of any oxygenate or combination of oxygenates present.

(7) ~~[In addition to other]~~ Product transfer documentation ~~pertaining to~~ [requirements set forth in this section, all] mid-level ethanol flex fuel and ethanol flex fuel blends, ~~shall~~ [must] be represented by the numerical value representing the [volume] percentage ~~by volume~~ [of] ethanol in the fuel, followed by the percentage sign followed by the term "Ethanol. Use Only in Flex Fuel Vehicles/May Harm Other Engines".

(a) For Mid-Level Ethanol Flex fuel blends containing more than sixteen (16) percent and no greater than fifty (50) percent ethanol by volume, the numerical value representing the [volume] percentage ~~by volume~~ [of] ethanol in the fuel, ~~shall~~ [must] be rounded to the nearest multiple of ten (10), followed by the percentage sign followed by the term "Ethanol";

(b) For ethanol flex fuel blends containing more than, at least, fifty-one (51) percent and no greater than eighty-three (83) percent ~~[ethanol]~~ by volume of ~~ethanol~~, the numerical value representing the [volume] percentage ~~by volume~~ [of] ethanol in the fuel, ~~shall~~

~~[must]~~ be rounded to the nearest multiple of ten (10), followed by the percentage sign followed by the term "Ethanol", or the phrase, "Contains 51% - 83% Ethanol".

(8) ~~Diesel fuel blended [In addition to other product transfer documentation requirements set forth in this section, for biomass-based diesel, biodiesel, biomass-based diesel blends]~~ with more than five (5) percent ~~by volume~~ biomass-based diesel ~~or[and] biodiesel shall include[blends with more than five (5) percent biodiesel]~~, a disclosure of the ~~biomass[Biomass]-based diesel or biodiesel component,~~ expressed as the percentage by volume~~[shall be included]~~ in the product transfer documentation. Diesel fuel ~~shall[must]~~ also include a statement declaring the grade as either "No.1-D" or "No. 2-D".

(9) ~~[In addition to other]~~Product transfer documentation ~~pertaining to[requirements set forth in this section,]~~ premium diesel ~~shall be so[must be] identified[as such].~~

(10) ~~[In addition to other product transfer documentation requirements set forth in this section,]~~Biodiesel blend stock shall be identified by the letter "B" followed by the numerical value representing the ~~[volume] percentage by volume~~ of biodiesel either "B-99" or "B-100", followed by the term "Biodiesel Blend Stock".

(11) ~~100% [In addition to other product transfer documentation requirements set forth in this section one hundred (100) percent,]~~ Biomass-Based diesel shall be identified by the phrase, "~~Contains [contains]~~ 100% Biomass-Based diesel".

(12) ~~[In addition to other product transfer documentation requirements set forth in this section,]~~Alternative fuel, with one (1) principal component, shall be identified by indicating the commonly-used name of the fuel along with a disclosure of the amount, expressed as a minimum percentage by volume; such as "M-85, Minimum 85% Methanol".

(13) ~~[In addition to other product transfer documentation requirements set forth in this section,]~~Alternative fuel, with two (2) principle components, shall be identified by indicating the commonly-used name of the fuel along with a disclosure of the two (2) principle components, expressed as a minimum percentage by volume; such as "LPG, Minimum 90% Propane, 2% Butane".

Section 6. Unattended Stations. The license holder of a retail motor fuel dispensing site that is unstaffed shall comply with all motor fuel quality requirements established [set forth] in this administrative regulation.

#### Section 7. Inspection of Premises.

(1) The department's inspector shall present agency [proper] identification to the license holder prior to obtaining samples.

(2) (a) The department shall have access to all distributor and retail facility records relating to the distribution or sale of retail motor fuel.

(b) If a license holder sells retail motor fuel at more than one (1) location, the product transfer documentation may be retained at a central location ~~if [, provided that]~~ the product transfer documentation is made available to the inspector prior to the conclusion of the inspection ~~[or upon request]~~.

(3) At each retail facility, having more than one (1) dispenser per product, the license holder shall [must] identify and affix all dispensers with an alphabetical or numerical designation.

(4) Each retail location shall have on file a chart or other means of determining each products volume in gallons. This information shall be supplied prior to conclusion of the inspection or upon request.

(5) The department shall have access to all motor fuel intended for retail sale for the purpose of examination, inspection, taking of samples, and investigations. A license holder shall not hinder or obstruct the department in the reasonable performance of its duties.

(a) If access is denied by the license holder, an Administrative Stop-Sale Order may be issued on the product identified by the department to be inspected until access is granted, even if the product[ product(s)] has been removed from sale.

(b) A license holder shall [may] be exempt from ~~[the~~

~~requirement of]~~ this section by providing proof that no motor fuel is in the tank at the time of the inspection.

(6) A receipt, either printed by a device or written in clear hand script shall be provided to the department's inspector. Failure to meet the requirements of paragraphs (a) through (f)(g) of this subsection[(a-g)] shall result in the issuance of a Level 1 Civil Penalty. Receipts shall include:

(a) ~~[The]~~Retail facility address;

(b) ~~[The]~~Date of the transaction;[

(c) ~~The time of the transaction;]~~

(c) ~~[(d) The]~~Price per gallon of the motor fuel dispensed;

(d) ~~[(e) The]~~Total volume of motor fuel dispensed;

(e) ~~[(f) The]~~Identity of the product ~~[,]~~ by name, symbol, or abbreviation; and

(f) ~~[(g) The]~~Dispenser designation by either an alphabetical or numerical description.

(7) If the design, construction, or location of any storage tank is such as to require special equipment, accessories, or access for use or motor fuel return, the equipment, accessories, or access shall be supplied by the license holder.

#### Section 8. Sampling of Motor Fuel.

(1) Samples of motor fuel collected for testing shall be pumped, pulled, drawn, or otherwise procured in accordance with the most recent standard practice for the particular type, class, and grade of the motor fuel, using a standard or method detailed in one (1) of the following:

(a) ASTM D4057-19, ~~["Standard Practice for Manual Sampling of Petroleum and Petroleum Products;"]~~

(b) ASTM D5842-19, ~~["Standard Practice for Sampling and Handling of Fuels for Volatility Measurement; "]~~or

(c) ASTM D4306-20, ~~["Standard Practice for Aviation Fuel Sample Containers for Test Affected by Trace Contamination."]~~

(2) Only gasoline, gasoline-oxygenate blends, and diesel fuel shall [will] be subject to random sampling.

(3) Samples of not more than one (1) gallon per grade, per source, per inspection shall [may] be collected from any distributor or retail facility without cost to the state. ~~If [When]~~ the same type and grade of motor fuel from multiple storage tanks, which are not manifolded, is offered for sale at a retail facility a sample of each type and grade shall [may] be obtained.

(4) ~~If [Where]~~ a motor fuel quality Notice of Violation has been issued ~~because of a [, for] complaint or [,]~~ random ~~or [and]~~ department-initiated inspection, the department shall [will] pay the cost of the laboratory analysis associated with an initial inspection and the first and second follow-up inspections, if required.

(a) The license holder shall be responsible for payment of a percentage of the cost of each subsequent laboratory analysis needed to verify compliance with KRS 363.900 - 363.908 and this administrative regulation. This includes a specification test that was not applicable at the time of the initial inspection but is applicable at the time of the subsequent inspection.

1. The license holder shall [will] be required to pay ~~[a fee equal to]~~ fifty (50%) percent of the cost of the laboratory analysis for the third follow-up inspection.

2. The license holder shall [will] be required to pay ~~[a fee equal to]~~ one-hundred (100) percent of the cost of the laboratory analysis for the fourth and any subsequent follow-up inspections.

3. Laboratory analysis costs shall [fees must] be paid by the license holder to the department prior to the follow-up inspection.

4. ~~[a.]~~Payment of costs shall [fees must] be in the form of a money order or cashier's check, made payable to Kentucky State Treasurer and mailed to the Kentucky Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601; or debit or credit through the department's online portal.

(b) If the department determines that a test, not performed in a previous laboratory analysis, is necessary the department shall [will] pay the cost of the additional testing.

#### Section 9. Enforcement.

(1) Any license holder found by the department to be in violation of KRS 363.900 - 363.908, this administrative regulation,

or 302 KAR 79:012, shall receive a Notice of Violation by personal service or certified mail detailing the facts constituting the citation of the violation and the assessment of a fine, if applicable.

(a) Each Notice of Violation shall state the amount of the fine. Fine amounts shall [will] be determined in accordance with ~~[""]~~Motor Fuel Quality Testing and Inspection Program Civil Penalty Guidelines, ~~[""]~~ Form KDA-OCEP-MF-01. ~~[""]~~

1. If a finding of the department results in the issuance of a Level 2, 3, 4, or 5 Civil Penalty, the assessed fine or order shall be afforded a case review upon written request.

2. If a finding of the department results in the issuance of any Level 1 Civil Penalty, it shall be prima facie evidence of the fact or facts found therein, and ~~[""]~~ the fine amount shall constitute a Final Agency Action and shall not be [is therefore not] subject to a case review.

(b) A follow-up inspection shall be conducted for every motor fuel quality violation resulting in a Level 2 Penalty and above.

(2) Operating without a retail motor fuel license shall be [is] a violation of KRS 363.904(1), which shall result in the placement of an Administrative Stop-Sale Order pursuant to a Level 6 Civil Penalty on all motor fuel offered for sale. The issuance of a citation for a violation of the statute shall be prima facie evidence of the fact or facts found therein. The Administrative Stop-Sale Order on all motor fuel offered for sale at the retail facility shall constitute a Final Agency Action and shall not be [is therefore not] subject to a case review.

(a) A Level 6 Civil Penalty may be remediated by filing an application to obtain or renew a license.

(3) Remediation options may include [may be achieved, by] removing and replacing or upgrading the motor fuel in storage to conform to minimum specifications for the particular type, class, and grade; or otherwise addressing the cause of the violation.

(4) If [When] a Notice of Violation or a Follow-up Failure has been issued, the license holder, within ten (10) consecutive day's receipt of the Notice:

(a) 1. Shall provide remediation documentation to the department describing the corrective action taken to resolve the violation; [violation(s)] or

2. ~~[""]~~If the license holder has not provided the department with documentation in writing by the expiration of the ten (10) consecutive days, the product [product(s)] that was [were] the subject of the violation [violation(s)] shall be subject to [may be placed under] an Administrative Stop-Sale Order and subject to a Level 5 Civil Penalty by the department; or [.]

(b) May request a case review, as provided in Section [302 KAR 79:014]9(1)(a)1. of this administrative regulation.[section]

(5) The department shall obtain a follow-up sample from the retail facility for analysis within a period not to exceed three (3) business days, from receipt of remediation documentation as required in Section [302 KAR 79:014]9(4)(a) of this administrative regulation. If [When] the remediation action taken results in the downgrading of the posted automotive fuel rating, which is evidenced by photo documentation that complies with Section [302 KAR 79:014]3(1) of this administrative regulation, a follow-up sample shall[is] not be required.

(6) An Administrative Stop-Sale Order or a Motor Fuel Quality Stop-Sale Order may be included with a Notice of Violation or Follow-up Failure Notification.

(a) If a Motor Fuel Quality Stop-Sale Order is issued, the product identified in the Notice of Violation shall be removed from sale to the consumer.

(b) A product [Product(s)] shall remain under a Motor Fuel Quality Stop-Sale Order until subsequent sampling and analysis by the department verifies its compliance.

(c) The department shall[will] notify the license holder of its decision to remove Motor Fuel Quality Stop-Sale Order within a period not to exceed three (3) business days upon receipt of analysis indicating conformance with the minimum specification for the particular type, class, and grade of the motor fuel.

(7) Motor fuel not in compliance with this administrative regulation shall[may] be subject to [The department may issue] a Motor Fuel Quality Stop-Sale Order. [For any motor fuel not in compliance with this administrative regulation.] The

license holder shall be notified of the Motor Fuel Quality Stop-Sale Order.

(a) The Motor Fuel Quality Stop-Sale Order shall be in writing and contain an explanation of the violation [violation(s)].

(b) The department shall notify the licensee of analytical test results not later than the first business date following the department's receipt of results from the testing laboratory.

(c) If [When] the department has made a determination that a violation has been resolved, the Motor Fuel Quality Stop-Sale Order shall be removed.

(d)~~[""]~~(c) A Motor Fuel Quality Stop-Sale Order shall apply to the product for which sample analysis indicates a violation.

(e)~~[""]~~(d) The Motor Fuel Quality Stop-Sale Order shall extend to motor fuels blended from any product placed under a Motor Fuel Quality Stop-Sale Order.

(8) Irrespective of ownership, any Motor Fuel Quality Stop-Sale Order shall remain in effect until remediation documentation, detailing the corrective action taken, has been received, in writing, from the license holder. A product [Such product(s)] shall continue to remain under a Motor Fuel Quality Stop-Sale Order until subsequent sampling and analysis by the department verifies[verify] compliance with KRS 363.900 - 363.908 and this administrative regulation. If needed, the department may obtain a follow-up sample from the retail facility for analysis. This requirement shall remain in effect [rule will survive] if there is a change in licensure or ownership.

(9) The fine shall be paid within thirty (30) consecutive day's receipt of the Notice of Violation unless a case review is requested pursuant to Section [302 KAR 79:014]9(1)(a)1. of this administrative regulation. Failure to pay a fine within thirty (30) consecutive day's receipt of the violation shall be subject to [may result in] an Administrative Stop-Sale Order being issued by the department.

(10) Declaration of Non-Sale. If the license holder is unable to achieve, or elects not to achieve, motor fuel quality compliance, the license holder may remove a non-compliant motor fuel from sale to the consumer by obtaining a Declaration of Non-Sale. A Declaration of Non-Sale shall have the effect of a Motor Fuel Quality Stop-Sale Order on any retail motor fuel product to which it applies.

(a) A retail facility shall have a maximum of two (2) motor fuels subject to a declaration of non-sale at a time.

(b) If the fine associated with a motor fuel quality violation [violation(s)] has been paid ~~[""]~~ and the license holder is unable to achieve, or elects not to achieve, motor fuel quality compliance, the license holder may provide a notarized ["] Declaration of Non-Sale~~[""]~~ to the department, on Form KDA-OCEP-MF-04, stating that the retail facility shall [will] no longer offer for sale a specific type and grade of motor fuel.

1. A separate Declaration of Non-Sale shall be submitted for each type and grade of motor fuel.

2. Each Declaration of Non-Sale shall [must] be complete upon submission[when submitted].

3. An incomplete Declaration of Non-Sale shall[will] not be accepted or certified.

4. The certified Declaration of Non-Sale shall be conspicuously displayed at the retail facility.

(c) If the fine associated with a motor fuel quality violation [violation(s)] has not been paid~~[""]~~ and the license holder made a timely request for a case review and is unable to achieve, or elects not to achieve, motor fuel quality compliance, the license holder may be granted a ~~[""]~~Temporary Declaration of Non-Sale~~[""]~~ contingent upon payment of the fine that [which] is the subject of the case review.

1. A Temporary Declaration of Non-Sale is subject to the requirements established[specified] in Section [302 KAR 79:014]9(10)(b)1. through 4. [(1-4)] of this administrative regulation.

2. The case review shall be conducted in accordance with Section [302 KAR 79:014]10 of this administrative regulation.

3. After the license holder pays the fine stated in a Notice of Final Agency Action, the license holder may provide a notarized ["] Declaration of Non-Sale~~[""]~~ to the department, on Form KDA-



OCEP-MF-04, stating that the retail facility shall [will] no longer offer for sale a specific type and grade of motor fuel.

4. If the license holder fails to pay a fine stated in a Notice of Final Agency Action within fifteen (15) consecutive days after the receipt of the Notice, the Temporary Declaration of Non-Sale shall [will] be revoked and the product shall [product(s) subject to] be placed under an Administrative Stop-Sale Order.

(d) Remediation. A Declaration of Non-Sale may be remediated by removing and replacing the affected motor fuel in storage and providing detailed documentation to the department of the corrective action taken.

1. The license holder under which the Declaration of Non-Sale was certified shall [will be responsible for payment of a percentage of the cost of each laboratory analysis needed to verify compliance with KRS 363.900 – 363.908 and this administrative regulation.

a. The license holder will be required to pay a fee equal to fifty (50) percent of the cost of the laboratory analysis for the first inspection of remediation.

b. The license holder will be required to pay a fee equal to 100%one-hundred (100) percent of the cost of the laboratory analysis for the second and any subsequent inspections of remediation.

c. Remediation documentation and Laboratory analysis fees must be received by the department prior to the follow-up inspection.

d. Payment of fees must be in the form of a money order or cashier's check, made payable to Kentucky State Treasurer and mailed to the Kentucky Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601.

e. If the department determines that a test, not performed in a previous laboratory analysis, is necessary the department will pay the cost of the additional testing.

2. If there has been a change in ownership and the license holder elects to achieve motor fuel quality compliance, the license holder will be responsible for payment of a percentage of the cost of each laboratory analysis needed to verify compliance with KRS 363.900 through-/ 363.908 and this administrative regulation.

a. The license holder shall pay fifty (50) percent of the cost of the laboratory analysis for the first inspection of remediation.

b. The license holder shall pay 100 percent of the cost of the laboratory analysis for the second and any subsequent inspections of remediation.

c. Remediation documentation and laboratory analysis costs shall be received by the department prior to the follow-up inspection.

d. Payment of costs shall be in the form of a money order or cashier's check, made payable to Kentucky State Treasurer and mailed to the Kentucky Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601; or debit or credit through the department's online portal.

e. If the department determines that a test, not performed in a previous laboratory analysis, is necessary the department shall pay the cost of the additional testing.

2. If there has been a change in ownership and the license holder elects to achieve motor fuel quality compliance, the license holder shall be responsible for payment of a percentage of the cost of each laboratory analysis needed to verify compliance with KRS 363.900 through-/ 363.908 and this administrative regulation.

a. The department shall[will] pay the cost of the laboratory analysis associated with an initial inspection of remediation.

b. The license holder shall[will be required to] pay [a fee equal to] fifty (50) percent of the cost of the laboratory analysis for the first inspection of remediation.

c. The license holder shall[will be required to] pay [a fee equal to] one-hundred (100) percent of the cost of the laboratory analysis for the second and any subsequent inspections of remediation.

d. Corrective action documentation shall [must] be received by the department prior to inspection of remediation. Except for the initial inspection of remediation, laboratory analysis fees shall [must] be received by the department prior to the follow-up inspection.

e. [i] Payment of costs shall [fees must] be in the form of a money order or cashier's check, made payable to Kentucky State Treasurer and mailed to the Kentucky Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601; or debit or credit through the department's online portal.

f. [e] If the department determines that a test, not performed in a previous laboratory analysis, is necessary the department shall [will] pay the cost of the additional testing.

(11) If a license holder fails to pay a fine stated in a Notice of Final Agency Action, within fifteen (15) consecutive day's receipt of the Notice [notice], the product [product(s)] that was [were] the subject of the violation shall [violation(s) may] be placed under an Administrative Stop-Sale Order and subject to a Level 5 Civil Penalty.

(12) Offering for sale a motor fuel product that [which] has been placed under a Motor Fuel Quality Stop-Sale Order or that [which] is subject to a Declaration of Non-Sale, shall be subject to a Level 5 Civil Penalty and fine.

(13) If a license holder offers motor fuel for sale in violation of an Administrative Stop-Sale Order pursuant to a Level 5 Civil Penalty, a fine shall [will] be assessed for each type, class, and grade of fuel offered for sale.

(14) Each violation of this administrative [the] regulation shall be deemed a separate occurrence for the purpose of the Civil Penalty and Fine Assessment.

#### Section 10. Case Review and Appeal.

(1) A Level 1 Civil Penalty shall not be[is not] subject to a case review. A Level 1 Civil Penalty may be appealed to the Office of the Attorney General, in accordance with Section [302-KAR 79:014]11 of this administrative regulation.

(2) A Level 6 Civil Penalty shall [is] not be subject to a case review. A Level 6 Civil Penalty may be appealed to the Office of the Attorney General, in accordance with Section [302-KAR 79:014]11 of this administrative regulation.

(3) A request for a case review shall be made in writing, within ten (10) consecutive days receipt of the department's Notice of Violation.

(4) A license holder may respond to a Notice of Violation, within ten (10) consecutive days of receipt of the department's Notice [notice], by requesting a case review or paying the assessed civil penalty. If no request for a case review is made within the ten (10) day period, then the Notice of Violation shall be deemed to be a [“]Final Order[“] for the purposes of KRS Chapter 13B.

(5) Upon receipt of a request, the department shall [will] notify the license holder of a case review date. If the license holder is experiencing financial hardship and requests a reduction in a fine amount, prior to the date of the case review, the license holder shall submit three (3) most recent bank statements or other relevant documentation. The license holder may also submit, prior to the case review date, documentation detailing corrective action and cost incurred.

(6) Case reviews shall be heard by an administrative panel consisting of five (5) members who[which] shall be designated by the department.

(a) Five (5) members present shall constitute a quorum.

(b) The panel shall include at least one (1) person who is not affiliated with the motor fuel program.

(7) The members of the administrative panel shall not be required to accept or consider information or documents that were not received at least three (3) business days prior to the case review date.

(8) A license holder may appear before the administrative panel either in person or via telephonic conference. A case review shall [must] be requested and scheduled in advance.

(9) Using the notarized Notice for [“]Designation of Proxy for

Case Review.<sup>[4]</sup> [(j) Form KDA-OCEP-MF-03.<sup>[4]</sup> a license holder may designate a proxy to appear as its representative before the administrative panel. Although it is not required, a license holder may designate legal counsel.~~[to represent them]~~ The form for proxy representation shall [must] be notarized and submitted at least three (3) business days prior to a case review. Nothing in this subsection shall [should] be construed as authorizing the unlicensed practice of law.

(10) A license holder may request to reschedule a case review for good cause.

(a) The request to reschedule shall [must] be submitted to the department in writing.

(b) The request to reschedule shall [must] be received at least seven (7) consecutive days prior to the case review date.

(11) The administrative panel may consider the degree and extent of harm caused by the violation [violation(s)] the cost of rectifying the noncompliance, the amount of financial benefit derived from the violation [violation(s)], whether the violation [violation(s)] was committed willfully, and the compliance record of the license holder for [when] determining the fine's recalculation. [(a)] The administrative panel shall document its review using the <sup>[4]</sup>Motor Fuel Administrative Case Review Guidelines.<sup>[4]</sup> [(j) Form KDA-OCEP-MF-02<sup>[j]</sup>].

(12) Failure of a license holder to attend a scheduled case review shall [will] result in a determination by default and the department shall issue a **Notice of Final Agency Action** stating that the violation [violation(s)] and fine assessed remain as originally issued.

(13) If a license holder fails to pay a fine stated in a **Notice of Final Agency Action**, within fifteen (15) consecutive days after the receipt of the Notice [Final Agency Action], the product [product(s)] that was [were] the subject of the violation [violation(s)] shall [may] be placed under an Administrative Stop-Sale Order by the department.

(14) Within ten (10) consecutive day's receipt of **Notice of Final Agency Action** a Formal Administrative Hearing may be requested to appeal the decision of [in] a Final Agency Action.

#### Section 11~~[10]~~. Formal Administrative Hearing.

(1) A Final Agency Action shall be subject to a Formal Administrative Hearing to be conducted in accordance with KRS Chapter 13B.

(2) Upon receipt of a **Notice of Final Agency Action**, an aggrieved party may, within ten (10) days, request in writing to the department, a hearing to contest the validity of the department's action.

(3) A request for a Formal Administrative Hearing shall be in writing.

(4) A request for a Formal Administrative Hearing shall state the reason [reason(s)] the aggrieved party believes the departments' action was erroneous.

(5) A request for a Formal Administrative Hearing shall be submitted to the Department of Agriculture, Office of Legal Services, 107 Corporate Drive, Second Floor, Frankfort, Kentucky 40601, within ten (10) days after the **Notice of Final Agency Action** is received.

#### Section 12. Civil Penalties.

Failure to comply with this administrative regulation may result in a [the] combination of [any of the following]:

- (1) [The] Issuance of a Notice of Violation [violation(s)];
- (2) [The] Assessment of a fine;
- (3) [The] Issuance of an Administrative Stop-Sale Order;
- (4) [The] Issuance of a Motor Fuel Quality Stop-Sale Order; or
- (5) [The] Placement of an Administrative Stop-Sale Order on all motor fuel offered for sale at the retail facility.

#### Section 13. Consumer Motor Fuel Quality Complaints.

(1) Any person wishing to make a complaint about a deficiency in the quality of a motor fuel that was purchased within the Commonwealth shall file, not later than fourteen (14) consecutive days after the date of the complainant purchase of that motor fuel from the retail facility, a written complaint to the department

including [identifying the following information]:

- (a) The name and contact information for the complainant;
- (b) The name and street address of the retail facility where the motor fuel was purchased and the dispenser number, if known;
- (c) The type of motor fuel that was purchased;
- (d) The grade of the motor fuel that was purchased; and
- (e) A description of the deficiency.
- (2) The department shall not be required to investigate complaints meeting one (1) or more of the following:
  - (a) The complaint was submitted to the department more than fourteen (14) consecutive days after the date of the complainant purchase from the retail facility;
  - (b) The complainant is unable to specifically identify the retail facility that [which] is the source of the motor fuel that is the subject of the complaint;
  - (c) The department has reason to believe that repeated complaints regarding the same retail facility are intended to unduly penalize the retail facility or to disrupt the essential functions of the department; ~~[.]~~
  - (d) The complainant is not the owner of the vehicle or equipment damaged, the person who purchased the motor fuel, or a member of that person's immediate family;
  - (e) The complaint is determined by the department to relate to a topic other than the quality of a motor fuel; or
  - (f) The motor fuel referenced in the complaint is no longer present ~~[in the storage tank(s)]~~ when the department arrives to conduct an investigation.

#### Section 14. Incorporated by Reference

(1) The following material is incorporated by reference: [

- (a) ~~"16 C.F.R. 306 – Automotive Fuel Ratings, Certification and Posting", (2012);~~
- (b) ~~"16 C.F.R. 309 – Labeling Requirements for Alternative Fuels", (2003);~~
- (c) ~~"40 C.F.R. 80.41– Reformulated Gasoline Standards and Requirements for Compliance", (2007);~~
- (d) ~~"40 C.F.R. 80.1501– Labeling Requirements that Apply to Retailers and Wholesale Purchaser-Consumers of Gasoline-Ethanol Blends that Contain Greater than 10 Volume Percent Ethanol and Not More than 15 Volume Percent Ethanol", (2014);]~~
- (a) [(e)] "API Recommended Practice" 1637; 4th Edition, (April 2020), Using the API Color-Symbol System to Identify Equipment, Vehicles, and Transfer Points for Petroleum Fuels and Related Products at Dispensing Facilities and Distribution Terminals; ~~[.]~~
- (b) [(f)] "ASTM Standard D4057-19, Standard Practice for Manual Sampling of Petroleum and Petroleum Products", (2019);
- (c) [(g)] "ASTM Standard D4306-20, Standard Practice for Aviation Fuel Sample Containers for Test Affected by Trace Contamination", (2020);
- (d) [(h)] "ASTM Standard D5842-19, Standard Practice for Sampling and Handling of Fuels for Volatility Measurement", (2019);
- (e) [(i)] "Form KDA-OCEP-MF-01, Motor Fuel Inspection and Testing Civil Penalty Guidelines", (April 2021 [November 2020] Edition);
- (f) [(j)] "Form KDA-OCEP-MF-02, Motor Fuel Administrative Case Review Guidelines", (April 2021 [November 2020] Edition);
- (g) [(k)] "Form KDA-OCEP-MF-03, **Notice of Designation of Proxy for Case Review**", (April 2021 [November 2020] Edition); and]
- (h) [(l)] "Form KDA-OCEP-MF-04, Declaration of Non-Sale", (April 2021 [November 2020] Edition); and
- (i) "Form KDA-OCEP-MF-05, Application for Motor Fuel License", April 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky



Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email clint.quarles@ky.gov.

**DEPARTMENT OF AGRICULTURE  
Office of the Consumer and Environmental Protection  
(As Amended at ARRS, April 13, 2021)**

**302 KAR 79:012. Motor fuel quality standards and specifications.**

RELATES TO: KRS 363.900-363.908, 16 C.F.R. 306.12, 40 C.F.R. 80.27

STATUTORY AUTHORITY: KRS 363.902, 16 C.F.R. 306, 16 C.F.R. 309, 40 C.F.R. 80.27

NECESSITY, FUNCTION, AND CONFORMITY: KRS 363.902 requires the commissioner of the department to implement and administer an inspection and testing program for motor fuels. This administrative regulation establishes motor fuel quality standards and specifications.

**Section 1. Motor Fuel Quality Standards and Specifications.**

(1) ~~If a motor fuel quality~~~~[When no]~~ standard ~~does not exist~~~~[exists]~~ the department shall designate a test or specification based upon the most widely accepted scientific principles.

(2) If it is demonstrated that some impurity or imperfection exists in a motor fuel product offered for sale that renders it unfit for its intended purposes, the product ~~shall~~~~[may]~~ be subject to a Level 4 Civil Penalty.

(3) These requirements ~~shall~~~~[will]~~ not apply to any bulk fuel storage tanks where the product contained therein is being reconditioned and withheld from sale.

(4) Motor fuel containing less than one (1) percent by volume oxygenate, not dispensed from a dedicated hose, shall be subject to a Level 2 Civil Penalty.

(5) Gasoline and gasoline-oxygenate blends containing between zero (0) and up to fifteen (15) ~~[volume]~~percent ~~by volume~~ ethanol shall ~~comply with paragraphs (a) through (f) of this subsection~~~~[meet the following requirements:]~~

(a) Gasoline and gasoline-oxygenate blends shall not be offered for retail sale under the name "premium" or "super" gasoline blends unless its AKI is greater than or equal to ninety-one (91).

(b) Gasoline and gasoline-oxygenate blends shall not be offered for retail sale under the name "plus" or "mid-grade" gasoline unless its AKI is greater than or equal to eighty-nine (89).

(c) Gasoline and gasoline-oxygenate blends shall not be offered for retail sale under the name "regular" gasoline unless its AKI is greater than or equal to eighty-~~seven (87)~~~~[six (86)]~~.

(d) Pursuant to KRS 363.902(2), gasoline and gasoline-oxygenate blends offered for sale at a retail facility shall conform to the most recent version of ASTM D4814, ~~[“]Standard Specification for Automotive Spark Ignition Engine Fuel, [“]~~ with the following exceptions, as required by KRS 363.904(2):

1. For gasoline-ethanol blends containing between one (1) percent by volume and fifteen (15) percent ~~[ethanol]~~ by volume ~~ethanol~~, the ASTM International V/L ratio specification shall be waived; and~~[.]~~

2. For gasoline-ethanol blends containing ~~up to~~~~[between nine (9) percent and]~~ fifteen (15) percent by volume ethanol, the RVP shall be increased by one (1) pound per square inch.

(e) The maximum concentration of oxygenates permitted in gasoline-oxygenate blends shall be those permitted by the EPA ~~[section 211 of the]~~under Clean Air Act, ~~42 U.S.C. 7545~~, and applicable waivers ~~or with not more than sixteen (16%) percent Isobutanol~~~~[as set forth in the published version of the NIST Handbook 130 for Gasoline and Gasoline-Oxygenate Blends and for Gasoline-Ethanol blends]~~.

(f) For gasoline and gasoline-oxygenate blends the Motor Octane Number (MON) shall not be less than eighty-two (82).

(6) Mid-level ethanol flex fuel blends containing between sixteen (16) and fifty (50) percent ethanol by volume ~~ethanol~~, shall

meet the latest version of ASTM D7794, ~~[“]Standard Practice for Blending Mid-Level Ethanol Fuel blends for Flexible-Fuel Vehicles with Automotive Spark-Ignition Engines, [“]~~~~and]~~

(7) Ethanol flex fuel blends containing between fifty-one (51) and eighty-three (83) percent ~~[ethanol]~~ by volume ~~ethanol~~ shall be blended, stored, and conveyed for consumption in accordance with the latest version of ASTM D5798, ~~[“]Standard Specification for Ethanol Fuel Blends for Flexible-Fuel Automotive Spark-Ignition Engines, [“]~~

(8) M-85 Fuel Methanol shall meet the requirements ~~established~~~~[set forth]~~ in the most recent version of ASTM D5797, ~~[“]Standard Specification for Fuel Methanol M51-M85 for Automotive Spark-Ignition Engines, [“]~~

(9) Diesel fuel that contains not more than five (5) percent by volume biodiesel or biomass-Based diesel shall meet the requirements ~~established~~~~[set forth]~~ in the latest version of ASTM D975, ~~[“]Standard Specification for Diesel Fuel, [“]~~

(10) All diesel fuels identified on retail dispensers and product transfer documentation with terms such as "premium," "super," "supreme," "plus," or "premier" shall meet the requirements ~~established~~~~[set forth]~~ in the published version of the NIST Handbook 130 ~~§2.2.1~~ for Premium Diesel Fuel.

(11) Diesel fuel that contains biodiesel between six (6) percent and twenty (20) percent, by volume, shall meet the requirements ~~established~~~~[set forth]~~ in the latest version of ASTM D7467, ~~[“]Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20), [“]~~

(12) Biodiesel fuel blend stock intended for blending with diesel fuel shall meet the requirements ~~established~~~~[set forth]~~ in the most recent version of ASTM D6751, ~~[“]Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels, [“]~~

(a) Biodiesel fuel blend stock shall be at least ninety-nine (99) percent biodiesel but no more than one (1) percent ~~by volume~~ diesel fuel~~[by volume]~~.

(b) Biodiesel fuel blend stock with less than ninety-nine (99) percent biodiesel shall not be used as a commercial blend stock for biodiesel blends without written ~~notification~~~~[approval]~~ from the department.

(13) Aviation turbine fuels shall meet the requirements ~~established~~~~[set forth]~~ in the most recent version of the following standards, as applicable:

(a) ASTM D1655, ~~[“]Standard Specification for Aviation Turbine Fuels, [“]~~

(b) ASTM D7223, ~~[“]Standard Specification for Aviation Certification Turbine Fuel, [“]~~

(c) ASTM D7566, ~~[“]Standard Specification for Aviation Turbine Fuel Containing Synthesized Hydrocarbons, [“]~~and

(d) ASTM D6615, ~~[“]Standard Specification for Jet B Wide-Cut Aviation Turbine Fuel, [“]~~

(14) Aviation gasoline shall meet the most recent version of the following standards, as applicable:

(a) ASTM D910, ~~[“]Standard Specification for Leaded Aviation Gasoline, [“]~~

(b) ASTM D6227, ~~[“]Standard Specification for Unleaded Aviation Gasoline Containing a Non-hydrocarbon Component, [“]~~ and

(c) ASTM D7547, ~~[“]Standard Specification for Unleaded Only Aviation Gasoline, [“]~~

(15) Liquefied petroleum gases intended for use as motor fuel shall meet the requirements ~~established~~~~[set forth]~~ in the most recent version of ASTM D1835, ~~[“]Standard Specification for Liquefied Petroleum (LP) Gases, [“]~~

(16) Racing Gasoline shall meet the requirements ~~established~~~~[set forth]~~ in the gasoline manufacturer's product specifications. Upon the request of the department, each conveyor of racing gasoline shall provide the department with a copy of the manufacturer's product specifications.

(17) Hydrogen fuel for fuel cell vehicles shall meet the requirements ~~established~~~~[set forth]~~ in the most recent edition of SAE J2719 Hydrogen Fuel Quality for Fuel Cell Vehicles. If ASTM International develops applicable standards for Hydrogen Fuel Quality, those standards shall prevail as rule.

(18) Compressed natural gas shall meet the requirements

~~established[set forth]~~ in the most recent edition of SAE J1616, ~~["Recommended Practice for Compressed Natural Gas Vehicle Fuel, [at such time that]~~ If ASTM International develops applicable standards for compressed natural gas, those standards shall prevail as rule.

(19) LNG vehicle fuel shall meet the requirements ~~established[set forth]~~ in the most recent edition of SAE J2699 ~~["Liquefied Natural Gas Vehicle Fuel, [at such time that]~~ If ASTM International develops applicable standards for LNG vehicle fuels, those standards shall prevail as rule.

Section 2. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "ASTM Standard D910-20a, (ASTM D910), Standard Specification for Leaded Aviation Gasolines", (2020);

(b) "ASTM Standard D975-20c, (ASTM D975), Standard Specification for Diesel Fuel", (2020);

(c) "ASTM Standard D1655-20~~d[e]~~, (ASTM D1655), Standard Specification for Aviation Turbine Fuels", (2020);

(d) "ASTM Standard D1835-20, (ASTM D1835), Standard Specification for Liquefied Petroleum (LP) Gases", (2020);

(e) "ASTM Standard D4806-20, (ASTM D4806), Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark Ignition Engine Fuel", (2020);

(f) "ASTM Standard D4814-~~21~~**[20a]** (ASTM D4814), Standard Specification for Automotive Spark Ignition Engine Fuel", (2021);

(g) "ASTM Standard D5797-18, (ASTM D5797), Standard Specification for Methanol Fuel Blends (M51–M85) for Methanol-Capable Automotive Spark-Ignition Engines", (2018);

(h) "ASTM Standard D5798-20, (ASTM D5798), Standard Specification for Ethanol Fuel Blends for Flexible-Fuel Automotive Spark-Ignition Engines", (2020);

(i) "ASTM Standard D6227-18, (ASTM D6227), Standard Specification for Unleaded Aviation Gasoline Containing a Non-hydrocarbon Component", (2018);

(j) "ASTM Standard D6615-15a, (ASTM D6615), Standard Specification for Jet B Wide-Cut Aviation Turbine Fuel", (2019);

(k) "ASTM Standard D6751-20a, (ASTM D6751), Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels", (2020);

(l) "ASTM Standard D7223-17, (ASTM D7223), Standard Specification for Aviation Certification Turbine Fuel", (2017);

(m) "ASTM Standard D7467-20a, (ASTM D7467), Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20)", (2020);

(n) "ASTM Standard D7547-18a, (ASTM D7547), Standard Specification for Hydrocarbon Unleaded Aviation Gasoline", (2018);

(o) "ASTM Standard D7566-20~~c[b]~~, (ASTM D7566), Standard Specification for Aviation Turbine Fuel Containing Synthesized Hydrocarbons", (2020);

(p) "ASTM Standard D7794-20, (ASTM D7794), Standard Practice for Blending Mid-Level Ethanol Fuel Blends for Flexible-Fuel Vehicles with Automotive Spark-Ignition Engines", (2020);

(q) "ASTM Standard D7901-20, (ASTM D7901), Standard Specification for Dimethyl Ether for Fuel Purposes", (2020);

(r) "National Institute of Standards and Technology Handbook 130, 2020 Edition Natl. Inst. Stand. Technol. Handb. 130, 2020 Ed., Uniform Fuels and Automotive Lubricants Regulation, IV, G, §2; (Nov. 2019)"

(s) "SAE J1616-201703, Standard for Compressed Natural Gas Vehicle Fuel, Society of Automotive Engineers International", (2017);

(t) "SAE J2699-201802, Liquefied Natural Gas (LNG) Vehicle Fuel, Society of Automotive Engineers International", (2018); and

(u) "SAE J2719-202003, Hydrogen Fuel Quality for Fuel Cell Vehicles, Society of Automotive Engineers International," (2020).

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**JUSTICE AND PUBLIC SAFETY CABINET**  
**Department of Corrections**  
**(As Amended at ARRS, April 13, 2021)**

**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", ~~April/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 <del>1/13/21</del> <b>[2/14/13]</b> )   |
| KCIW 01-08-01 | News Media Access (Amended 2/14/13)   |
| KCIW 02-04-01 | Accounting Procedures (Amended <del>1/13/21</del> <b>[2/14/13]</b> )  |
| KCIW 02-05-01 | Inmate Canteen and Staff Canteen (Amended 5/15/18)  |
| KCIW 05-01-01 | Outside Consultation, Research and Student Interns (Amended <del>1/13/21</del> <b>[2/14/13]</b> )   |
| KCIW 06-01-01 | Offender Information (Amended <del>1/13/21</del> <b>[5/14/13]</b> )   |
| KCIW 08-02-01 | Fire Safety Practices (Amended <del>1/13/21</del> <b>[2/14/13]</b> )  |
| KCIW 08-02-02 | Fire Evacuation Routes (Amended <del>1/13/21</del> <b>[5/15/18]</b> )   |
| KCIW 09-01-02 | Inmate Move Sheet (Amended <del>1/13/21</del> <b>[2/14/13]</b> )  |
| KCIW 09-06-04 | Regulation of Inmate Movement (Amended 5/15/18)   |
| KCIW 09-06-05 | State Vehicles and Private Vehicles (Amended <del>1/13/21</del> <b>[7/10/18]</b> )  |
| KCIW 09-10-01 | Pedestrian and Vehicular Traffic (Amended <del>11/25/20</del> <b>[13]</b> )   |
| KCIW 09-10-02 | Inmate Entry and Exit Procedure (Amended <del>1/13/21</del> <b>[5/14/13]</b> )  |
| KCIW 09-11-01 | Prohibiting Inmate Authority Over Other Inmates (Amended 2/14/13)   |
| KCIW 09-12-01 | Search Plan (Amended <del>12/29/20</del> <b>[14]</b> )  |
| KCIW 09-13-01 | Tobacco Free Environment (Amended <del>1/13/21</del> <b>[11/25/13]</b> )  |
| KCIW 09-13-02 | Alcohol Detection (Amended 5/14/13)   |
| KCIW 10-01-01 | Restrictive Housing Unit <del>and Lonnie Watson C-wing</del> General Operations and Rules <del>[Regulations]</del> (Amended <del>1/13/21</del> <b>[7/10/18]</b> ) |
| KCIW 10-01-02 | Restrictive Housing Unit Status, Placement and Review (Amended 7/10/18)   |
| KCIW 10-01-04 | Death Row (Amended <del>1/13/21</del> <b>[7/10/18]</b> )  |

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|                 |  |
|-----------------|--|
| 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 4/13/21[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)   |
| 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 4/13/21[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 4/13/21[1/13/21][11/25/13])         |
| KCIW 22-01-02 | Arts and Crafts Program (Amended 4/13/21[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 4/13/21[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])                        |

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## LABOR CABINET Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training (As Amended at ARRS, April 13, 2021)

### 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 ~~by~~in KRS 338.015(2).

(3) "Employer" is defined ~~by~~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~~ that/which otherwise could/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]~~ and shall. 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 in which/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 established in paragraphs (a) through (c) of this subsection/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 if the/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) A person/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 administrative 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 2:310.]~~

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.

## LABOR CABINET

### Department of Workplace Standards

#### Division of Occupational Safety and Health Compliance

#### Division of Occupational Safety and Health Education and Training

(As Amended at ARRS, April 13, 2021)

### 803 KAR 2:050. Scope.

RELATES TO: KRS Chapter 338.021

STATUTORY AUTHORITY: KRS 338.051 [338.015], 338.061 [338.016] [KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes standards that are enforced by the Department of Workplace Standards [in general industry]. [Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051, this administrative regulation is adopted. The function of this administrative regulation is to identify the scope of the administrative regulations pertaining to Kentucky Occupational Safety and Health under KRS Chapter 338. Necessary for effective enforcement of the

purposes and policies of the Occupational Safety and Health Act which is to insure so far as is possible, safe and healthful working conditions of Kentucky workers (KRS 338.014).]

Section 1. Definitions. (1) "Employee" is defined by KRS 338.015(2).

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

Section 2. The [These] administrative regulations promulgated under 803 KAR Chapter 2 shall apply to all employers, employees, and places of employment throughout the Commonwealth pursuant to KRS 338.021[except the following:

(1) Employees of the United States Government.

(2) Employers, employees, and places of employment over which federal agencies other than the United States Department of Labor exercise statutory authority to prescribe or enforce standards or administrative regulations affecting occupational safety and health.

(3) Nothing in these administrative regulations shall be construed to supersede or in any manner affect any workmen's compensation law or to enlarge or diminish or affect in any manner the common law or statutory rights, duties, or liabilities of employees, under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of employment].

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#### LABOR CABINET

##### Department of Workplace Standards

##### Division of Occupational Safety and Health Compliance

##### Division of Occupational Safety and Health Education and Training

(As Amended at ARRS, April 13, 2021)

#### 803 KAR 2:080. Advance notice of inspections.

RELATES TO: KRS 338.991(9)

STATUTORY AUTHORITY: KRS 338.051, 338.061 [KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes standards enforced by the Department of Workplace Standards in construction and general industry. [Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051, the following rules and administrative regulations are adopted, governing advance notice of inspections.]

Section 1. Definitions. (1) "Commissioner" is defined by [803] KRS 338.015(7).

(2) "Compliance Safety and Health Officer" means a person authorized by the commissioner to conduct occupational safety and health inspections.

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

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

Section 2. Advance Notice of Inspection. (1) Advance notice of inspections shall [may] not be given, except [in the following situations]:

(a) In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible;

(b) In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary [for an inspection];

(c) When [Where] necessary to assure the presence of

representatives of the employer or [and] employees or the appropriate personnel needed to aid in the inspection; or [and]

(d) When [In other circumstances where] the commissioner, or designee, [of the Department of Workplace Standards] determines that [the giving of] advance notice would enhance the probability of an effective and thorough inspection.

(2)(a) Advance [In the situations described in subsection (1) of this section, advance notice of inspections may be given only if authorized by the Commissioner of the Department of Workplace Standards, except that in cases of apparent imminent danger, advance] notice may be given by the compliance safety and health officer without commissioner, or designee, [such] authorization if the commissioner, or designee, is not immediately available.

(b) When advance notice is given, it shall be employer's responsibility [promptly] to promptly notify the authorized representative of the employees of the inspection, if the identity of the [such] representative is known to the employer [(See 803-KAR 2:110(2) as to situation where there is no authorized representative of employees.)].

(c) Upon the request of the employer, the compliance safety and health officer may [will] inform the authorized representative of employees of the inspection, provided [that] the employer furnishes the compliance safety and health officer the identity of the [such] representative and with [such other] information [as is] necessary to enable him or her promptly to inform the [such] representative [of the inspection].

Section 3. An employer who fails to comply with the requirements of this administrative regulation [this requirement] [his obligation under this paragraph promptly to inform the authorized representative of employees of the inspection or to furnish such information as in necessary to enable the compliance safety and health officer promptly to inform such representative of the inspection] may be subject to citation and penalty pursuant to[under] KRS 338.991.

Section 4. [(b)] Except in apparent imminent danger situations or other unusual circumstances, advance notice [in any of the situations described in subsection (1) of this section] shall not be given more than twenty-four (24) hours before the inspection is scheduled to be conducted[, except in apparent imminent danger situations or]and in[other unusual circumstances].

(3) KRS Chapter 338.991(9) provides that any person who gives advance notice of any inspection to be conducted under this chapter, without authority from the commissioner, shall, upon conviction, be punished by fine of not more than \$1,000 or by imprisonment for not more than six (6) months, or by both.]

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#### LABOR CABINET

##### Department of Workplace Standards

##### Division of Occupational Safety and Health Compliance

##### Division of Occupational Safety and Health Education and Training

(As Amended at ARRS, April 13, 2021)

#### 803 KAR 2:090. Complaint inspections[Unwarranted inspections; complaint].

RELATES TO: KRS 338.121

STATUTORY AUTHORITY: KRS 338.051, 338.061 [KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to

meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. [Pursuant to the authority granted the Commissioner of the Department of Workplace Standards by KRS 338.121, the following procedure has been formulated, which an employee is to follow in filing a complaint alleging a violation of KRS Chapter 338.] This [The function of this] administrative regulation establishes occupational safety and health complaint procedures[is to outline this procedure to be followed by the employee in filing his complaint; the administrative regulation also outlines the procedure to be followed by the Commissioner of the Department of Workplace Standards if he reviews the complaint and finds an inspection is not warranted].

Section 1. Definitions. (1) "Commissioner" is defined by KRS 338.015(7).

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

(3) **"Employer" is defined by KRS 338.015(1).**

Section 2. (1) Inspections conducted pursuant to KRS 338.121 shall not be limited to matters referred to in the complaint. [Complaints by Employees. (1) Any employee or representative of employees who believes that a violation of KRS Chapter 338 exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Commissioner of the Department of Workplace Standards. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy shall be provided the employer or his agent by the commissioner no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Commissioner of the Department of Workplace Standards.

(2) If upon receipt of such notification the commissioner determines that the complaint meets the requirements set forth in subsection (1) of this section, and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable, to determine if such alleged violation exists. Inspections under this section shall not be limited to matters referred to in the complaint.

(3) Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Commissioner of the Department of Workplace Standards in writing of any violation of KRS Chapter 338 which he has reason to believe exists in such workplace. Any such notice shall comply with the requirements of subsection (1) of this section.]

(2) If [(4) If, after an inspection based on a complaint,] a citation is issued for [covering] a violation or danger alleged [set forth] in the complaint, a copy of the citation shall [should] be sent to the complainant on or about [at] the same time it is sent to the employer.

Section 3. Informal Review When No Citation Warranted. (1) If [(5) If, after an inspection based on a complaint,] the commissioner determines that a citation is not warranted with respect to a danger or violation alleged in the complaint, the complainant shall [must] be informed in writing of **the [such]** determination and [At the same time, the complainant should be notified] of **her or his right** [his rights] of review of **the [such]** determination.

(2) The complaining party may obtain review by submitting a written statement of position to the commissioner [Commissioner of the Department of Workplace Standards].

(6) KRS 338.121(3)(a) provides: "No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of

any right afforded by this chapter."

(3) Upon request of the complaining party, the commissioner, at her or his discretion, may hold an informal conference in which the complaining party may present her or his views.

(4) After considering all views presented, the commissioner shall affirm, modify, or reverse her or his determination and furnish the complaining party a written notification of her or his decision and the reasons therefore.

(5) The decision of the commissioner shall be final and not subject to further review.

Section 4. Informal Review When Inspection Not warranted [Section 2. Inspection not Warranted; Informal Review]. (1) If the commissioner [Commissioner of the Department of Workplace Standards] determines that an inspection is not warranted[because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under Section 1 of this administrative regulation], **she or** he shall notify the complaining party in writing of **the [such]** determination.

(2) The complaining party may obtain review of **the [such]** determination by submitting a written statement of position to the commissioner.

(3) Upon request of the complaining party, the commissioner, at her or his discretion, may hold an informal conference in which the complaining party may [orally] present **her or** his views.

(4) After considering all [written and oral] views presented, the commissioner shall affirm, modify, or reverse **her or** his determination and furnish the complaining party a written notification of **her or** his decision and the reasons therefore.

(5) The decision of the commissioner shall be final and not subject to further review.

(6) [(2) If the commissioner determines that an inspection is not warranted because the requirements of Section 1 of this administrative regulation have not been met, he shall notify the complaining party in writing of such determination.] **The [such]** determination shall be without prejudice to the filing of a new complaint pursuant to KRS 338.121[meeting the requirements of Section 1 of this administrative regulation].

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**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and Health Education and Training**  
**(As Amended at ARRS, April 13, 2021)**

**803 KAR 2:100. Imminent danger.**

RELATES TO: KRS 338.131

STATUTORY AUTHORITY: KRS 338.051, 338.061 [KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes occupational safety and health imminent danger procedures in construction and general industry. [Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051, the following administrative regulation is adopted, outlining the procedure to be followed by a compliance safety and health officer as soon as he detects an imminent danger condition.]

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

338.015(7).

(2) "Compliance Safety and Health Officer" means a person authorized by the commissioner to conduct occupational safety and health inspections.

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

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

Section 2. Imminent Danger. (1) When [Whenever and as soon as] a compliance safety and health officer concludes on the basis of an inspection that conditions or practices exist [in any place of employment] that [which] could reasonably be expected to cause death or serious physical harm immediately or before the imminence of the [such] danger can be eliminated through the enforcement procedures otherwise provided by KRS Chapter 338, the compliance safety and health officer [he] shall inform the affected employee and employer [employees and employers] of the danger.

(2) The compliance safety and health officer shall notify the affected employee and employer that if the imminent danger is not immediately abated, the compliance safety and health officer is recommending a civil action to restrain the [such] conditions or practices and for other appropriate relief pursuant to KRS 338.133 [and that if the imminent danger is not immediately abated he is recommending a civil action to restrain such conditions or practices and for other appropriate relief in accordance with the provisions of KRS 338.133].

(3) A citation [Appropriate citations and notices of proposed penalties] may be issued [with respect to an imminent danger] even though, after being informed of the [such] danger by the compliance safety and health officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate the [such] danger.

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#### LABOR CABINET

##### Department of Workplace Standards

##### Division of Occupational Safety and Health Compliance

##### Division of Occupational Safety and Health Education and Training

(As Amended at ARRS, April 13, 2021)

#### 803 KAR 2:115. Penalties.

RELATES TO: KRS 338.141, 338.991

STATUTORY AUTHORITY: KRS 338.051, 338.061 [KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires [Pursuant to the authority granted] the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards [by KRS 338.051, the following rules and administrative regulations are adopted pertaining to the issuance of citations and the levying of penalties concurrent with the issuance of citations]. This administrative regulation establishes occupational safety and health penalty procedures followed by the Department of Workplace Standards.

Section 1. Definitions. (1) "Commissioner" is defined by KRS 338.015(7).

(2) "Compliance safety and health officer" means a person authorized by the commissioner to conduct occupational safety and health inspections.

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

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

(5) "Review commission" is defined by KRS 338.015(8).

(6) "Working days" means Monday through Friday but does not include Saturday, Sunday, federal ~~h~~ or state holidays, and the day of receipt of notice.

Section 2. Proposed Penalties. (1) After, or concurrent with, the issuance of a citation, and within a reasonable time [after the termination of the inspection], the commissioner [Commissioner of the Department of Workplace Standards] shall notify, with delivery or receipt confirmation, the employer [by certified mail or by personal service by the compliance safety and health officer] of the proposed penalty [under KRS 338.991] or that no penalty is [being] proposed.

(2) A [Each] notice of proposed penalty shall state that the proposed penalty shall be deemed a final order of the review commission and not be subject to review by any court or agency if an employer, employee, or representative of the employer or employee [employees] fails to notify the commissioner in writing within fifteen (15) working days from the receipt of the proposed penalty that he or she intends to contest the proposed penalty [Any notice of proposed penalty shall state that the proposed penalty shall be deemed to be the final order of the review commission and not subject to review by any court or agency unless, within fifteen (15) working days from the date of receipt of such notice, the employer notifies the Commissioner of the Department of Workplace Standards in writing that he intends to contest the citation or the notification of proposed penalty before the review commission].

(3) [(2)] The commissioner shall determine the amount of any proposed penalty pursuant to KRS 338.991, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

(4) [(3)] Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of an [such] alleged violation by the compliance safety and health officer, the employer immediately abates, or initiates steps to abate, an [such] alleged violation[Penalties shall not be proposed for de minimis violations which have no direct or immediate relationship to safety or health].

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#### LABOR CABINET

##### Department of Workplace Standards

##### Division of Occupational Safety and Health Compliance

##### Division of Occupational Safety and Health Education and Training

(As Amended at ARRS, April 13, 2021)

#### 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]

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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 by/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(3)/(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 holidays, or 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 has reason to believe that/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, the commissioner/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 if/though after being informed of an alleged violation by the compliance safety and health officer, the employer immediately abates, or initiates steps to abate, the/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 or provisions/provision(s) of KRS Chapter 338, standard, rule, administrative regulation, or order allegedly/alleged [to have been] violated.

(2) Each [Any] citation shall establish [also fix] a reasonable date by which the alleged violation shall be remedied/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 the/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].

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**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and Health Education and Training**  
**(As Amended at ARRS, April 13, 2021)**

**803 KAR 2:240. Time for filing discrimination complaint.**

RELATES TO: KRS 338.121(3)(b)

STATUTORY AUTHORITY: KRS 338.051, 338.061[Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This [The function of this] administrative regulation establishes [is to identify what should be considered] a reasonable time for filing employee complaints pursuant to [alleging discriminatory practice in violation of] KRS 338.121.

Section 1. Definition. "Commissioner" is defined by KRS 338.015(7).

Section 2. Reasonable Time[Defined]. A reasonable time, as used in KRS 338.121(3)(b), shall be [defined to be] no more than 120 calendar days for the purpose of filing a complaint with the commissioner[Commissioner of the Department of Workplace Standards].

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**Labor Cabinet**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and Health Education and Training**  
**(As Amended at ARRS, April 13, 2021)**

**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 by [in] KRS 338.015(2).

(3) [(5)] "Employer" is defined by [in] KRS 338.015(1).[(4)]

(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" means "occupational safety and health standard" as defined by [is defined in] KRS 338.015(3).[(10)] "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.]

Section 2. Except as established by [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 215].

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 paragraphs [subsection] (b) and (c) of this subsection [section] shall apply in lieu of 29 C.F.R. 1910.147(c)(3)(i).

(b) If [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 shall [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.

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## LABOR CABINET

### Department of Workplace Standards

#### Division of Occupational Safety and Health Compliance

#### Division of Occupational Safety and Health Education and Training

(As Amended at ARRS, April 13, 2021)

### 803 KAR 2:314. Machinery and machine guarding.

RELATES TO: KRS Chapter 338, 29 C.F.R. Part 1910, 211-219

STATUTORY AUTHORITY: KRS 338.051(3), 338.061 [, 29 C.F.R.-Part 1910]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061[(2)] authorizes the board to establish, modify, or repeal standards and reference federal standards [incorporate by reference established federal standards and national consensus standards]. This administrative regulation establishes [machinery and machine guarding] standards that are [to be] enforced by the Department of Workplace Standards [Division of Occupational Safety and Health Compliance] in general industry.

Section 1. Definitions. (1) "Assistant Secretary of Labor" means Secretary, Labor Cabinet, Commissioner, Department of Workplace Standards, Labor Cabinet [the Secretary of Labor, Commonwealth of Kentucky].

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined in KRS 338.015(2).

(4) [(3)] "Employer" of defined by [in] KRS 338.015(1).

(5) [(4)] "National consensus standard" is defined in KRS 338.015(9).

(6) "Occupational safety and health standard" or[(5)] "Standard" is defined by [in] KRS 338.015(3).

(7) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, Mayo-Underwood Building, 3<sup>rd</sup> Floor, 500 Mero Street, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions in Section 1 and requirements in Section 3 [of Sections 3 and 4] of this administrative regulation, general industry shall comply with 29 C.F.R. 1910 Subpart O, Machinery and Machine Guarding [the following federal regulations] published by the Office of the Federal Register, National Archives and Records Administration [:

(1) 29 C.F.R. 1910.211 through 1910.219, revised as of July 1, 2013; and

(2) The revisions to 29 C.F.R. 1910.217 as published in the November 20, 2013 Federal Register, Volume 78, Number 224 and confirmed in the April 18, 2014 Federal Register, Volume 79, Number 75].

Section 3. Reporting Requirement. An employer required by this administrative regulation to report information to the United States Department of Labor, or any subsidiary thereof, shall instead report the information to the Kentucky Labor Cabinet [, U.S. Highway 127 South, Suite 4, Frankfort, Kentucky 40601.

Section 4. Clutch/Brake Control. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.217(b)(7)(xii).

(2) The clutch/brake control shall incorporate an automatic means to prevent initiation or continued activation of the single stroke or continuous functions unless the press drive motor is energized and in the forward direction. This provision shall not

prevent the employer from utilizing a reversing means of the drive motor with the clutch-brake control in the "inch" position].

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**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and Health Education and Training**  
**(As Amended at ARRS, April 13, 2021)**

**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 ~~through~~**[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 **zero and** 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 **could**~~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.

(16)(17) ~~"Open vessel"~~**[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.

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

(18)(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, **or**~~and~~ stored. Those areas shall be controlled in accordance with the requirements **established in paragraphs (a) through (g) of this subsection** 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 and[,] 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 and[,] 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 and[,] 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 could[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 **established[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 **could[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 **established[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 **or not** 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 or not 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 at least 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, the 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 through 1910.1016.

(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 chemicals covered by 29 C.F.R. 1910.1003 through 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 through 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 through 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 through 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 ensure 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 established in subsection (2) of this section, ensure that either:

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

(b) The necessary mechanical copying facilities for example, photocopying) shall be made available without cost to the employee or representative for copying the record; or

(c) The record shall be 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 might 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 established by Sections 1 through 5 of this administrative regulation, general industry shall comply with 29 C.F.R. Subpart Z, Toxic and Hazardous

VOLUME 47, NUMBER 11– MAY 1, 2021

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].

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**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and Health Education and Training**  
**(As Amended at ARRS, April 13, 2021)**

**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" means "occupational safety and health standard" as defined by [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 established[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 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].

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.

**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and Health Education and Training**  
**(As Amended at ARRS, April 13, 2021)**

**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 established[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].

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**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and Health Education and Training**  
**(As Amended at ARRS, April 13, 2021)**

**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 by[*in*] KRS 338.015(2).

(3) [(2)] "Employer" is defined by[*in*] KRS 338.015(1).

(4) [(3)] "Standard" means "occupational safety and health standard" as defined by[is defined in] KRS 338.015(3).

Section 2. Except as established[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.]

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.

**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and Health Education and Training**  
**(As Amended at ARRS, April 13, 2021)**

**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" means "occupational safety and health standard" as defined by[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 established in[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].

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**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and Health Education and Training**  
**(As Amended at ARRS, April 13, 2021)**

**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 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].

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" means "occupational safety and health standard" as defined by/is defined in KRS 338.015(3).

Section 2. Except as established in [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. (1) 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).

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.

#### LABOR CABINET

Department of Workplace Standards  
Division of Occupational Safety and Health Compliance  
Division of Occupational Safety and Health Education and Training

(As Amended at ARRS, April 13, 2021)

803 KAR 2:413. [Subpart N—] Helicopters, hoists, elevators, and conveyors.

RELATES TO: KRS Chapter 338, 29 C.F.R. 1926.550-556

STATUTORY AUTHORITY: KRS 338.051, 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires [and 338.061 require] the Kentucky Occupational Safety and Health Standards Board to [adopt and] promulgate occupational safety and health [rules.] administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This [The following] administrative regulation establishes [contains those] standards that are [to be] enforced by the Department of Workplace Standards in [Division of

Occupational Safety and Health Compliance in the area of] construction.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) ["Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.]

(3) "C.F.R." means Code of Federal Regulations.

(3)[(4)] "Employee" is defined by KRS 338.015(2).

(4)[(5)] "Employer" is defined by KRS 338.015(1).]

(6) "Established federal standard" is defined in KRS 338.015(10).

(7) "National consensus standard" is defined in KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.]/

(5) [(9)] ["Standard" is defined in KRS 338.015(3).]

(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.]

Section 2. Except as modified [established] by the definitions in Section 1 of this administrative regulation, the construction industry shall comply with 29 C.F.R. 1926 Subpart N, Helicopters, Hoists, Elevators, and Conveyors, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration [The Construction Industry shall Comply with the Following Federal Regulations published by the Office of the Federal Register, National Archives, and Records Administration:

(1) 29 C.F.R. 1926.550 - 1926.556, revised July 1, 2010; and

(2) The revision of 29 C.F.R. 1926.550 and 553 as published in the August 9, 2010 Federal Register, Volume 75, Number 152.

Section 3. (1) The language in paragraph (2) of this subsection shall apply in lieu of 29 C.F.R. 1926.552(b)(8).

(2) All material hoists shall conform to the requirements of ANSI A10.5-1969, Safety Requirements for Material Hoists, with the exception that material hoists manufactured prior to January 1, 1970 may be used with a drum pitch diameter at least eighteen (18) times the normal rope diameter provided the hoisting wire rope is at least equal in flexibility to 6 x 37 classification wire rope].

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#### LABOR CABINET

Department of Workplace Standards  
Division of Occupational Safety and Health Compliance  
Division of Occupational Safety and Health Education and Training

(As Amended at ARRS, April 13, 2021)

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



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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" **means "occupational safety and health standard" as/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].

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LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training

(As Amended at ARRS, April 13, 2021)

**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.parg

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 by/in KRS 338.015(2).

(3) "Employer" is defined by/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 established[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].

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LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training

(As Amended at ARRS, April 13, 2021)

**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

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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 **established in [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].

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.

**LABOR CABINET**

**Department of Workplace Standards**

**Division of Occupational Safety and Health Compliance**

**Division of Occupational Safety and Health Education and Training**

**(As Amended at ARRS, April 13, 2021)**

**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 **established [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 or working [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 subsection [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); and].

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.

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**LABOR CABINET**

**Department of Workplace Standards**

**Division of Occupational Safety and Health Compliance**

**Division of Occupational Safety and Health Education and Training**

**(As Amended at ARRS, April 13, 2021)**

**803 KAR 2:420. Blasting and use of explosives.**

RELATES TO: KRS 338.051(3), 338.061, 29 C.F.R. 1926.900-914

STATUTORY AUTHORITY: KRS 338.051(3), 338.061[, 29 C.F.R. 1926]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires [and 338.061 authorize] the Kentucky Occupational Safety and Health Standards Board to [adopt and] promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. [KRS 338.061(2) provides that the board may incorporate by reference established federal standards and national consensus standards.] This [The following] administrative regulation establishes [contains these] standards [to be] enforced by the Department of Workplace Standards in the construction industry [Division of Occupational Safety and Health Compliance in the area of construction].

Section 1. Definitions. (1) "C.F.R." means Code of Federal

Regulations.

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

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

(4) "Secretary" is defined by KRS 338.015(12).

(5) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet. ]

**(6) "Standard" is defined in KRS 338.015(3).** [Precautions to be taken to prevent accidental discharge of electric blasting caps from current induced by radar, radio transmitters, lightning, adjacent powerlines dust storms, or other sources of extraneous electricity.]

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, the construction industry shall comply with 29 C.F.R. 1926, Subpart U, Blasting and the Use of Explosives, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. [(1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1926.900(k)(3)(i).

(a) 1926.900(k)(3)(i). The prominent display of adequate signs warning against the use of mobile radio transmitters, on all roads within 1,000 feet of blasting operations. Whenever adherence to this 1,000 foot distance would create an operational handicap, a competent person shall be consulted to evaluate the particular situation, and alternative provisions may be made which are adequately designed to prevent premature firing of electric blasting caps. The competent person may be a blaster certified by the Kentucky Department of Mines and Minerals with a working knowledge of mobile radio transmission and receiving hazards as related to use of electric blasting cap firing systems and designated by the employer. A description of any alternative shall be in writing describing the unusual conditions at the site and the alternative measure used. The description shall be maintained at the construction site during the duration of the work and shall be available for inspection by representatives of the Secretary, Kentucky Labor Cabinet.

(b) 1926.900(k)(4). Ensuring that mobile radio transmitters which are less than 100 feet away from electric blasting caps, in other than original containers, shall be deenergized, and have the radio transmission circuit or vehicle effectively locked against transmitter usage.

(2) 29 C.F.R. 1926.900(k)(3)(i) is amended to read: The prominent display of adequate signs warning against the use of mobile radio transmitters, on all roads within 1,000 feet of blasting operations. Whenever adherence to this 1,000 foot distance would create an operational handicap, a competent person shall be consulted to evaluate the particular situation, and alternative provisions may be made which are adequately designed to prevent premature firing of electric blasting caps. The competent person may be a blaster certified by the Kentucky Department of Mines and Minerals with a working knowledge of mobile radio transmission and receiving hazards as related to use of electric blasting cap firing systems and designated by the employer. A description of any alternative shall be in writing describing the unusual conditions at the site and the alternative measure used. The description shall be maintained at the construction site during the duration of the work and shall be available for inspection by representatives of the Secretary, Kentucky Labor Cabinet.

(3) The language in subsection (4) of this section shall apply in lieu of 29 C.F.R. 1926.900(k)(4).

(4) 29 C.F.R. 1926.900(k)(4) is amended to read: Ensuring that mobile radio transmitters which are less than 100 feet away from electric blasting caps, in other than original containers, shall be deenergized, and have the radio transmission circuit or vehicle effectively locked against transmitter usage.

Section 2. Use of Black Powder. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1926.900(p).

(2) 29 C.F.R. 1926.900(p) is amended to read: The use of black powder shall be prohibited except when a desired result cannot be obtained with another type of explosive, such as in

quarrying certain types of dimension stone.

Section 3. Electric Blast Initiation. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1926.900(r).

(2) 29 C.F.R. 1926.900(r) is amended to read: All electric blasts shall be fired with an electric blasting machine or properly designed electric power source, and in accordance with the provisions of subsection 906(a) and (r).

Section 4. Transporting of Explosives or Blasting Agents. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1926.902(d).

(2) 29 C.F.R. 1926.902(d) is amended to read: Explosives or blasting agents shall be transported in separate vehicles unless the detonators are packaged in specified containers and transported all in compliance with DOT Regulation 49 C.F.R. 177.835(g).

Section 5. Underground Transportation of Explosives. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1926.903(o).

(2) 29 C.F.R. 1926.903(o) is deleted.

Section 6. Loading of Explosives or Blasting Agents. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1926.905(h).

(2) 29 C.F.R. 1926.905(h) is amended to read: Machines and all tools not used for loading explosives into the boreholes shall be removed from the immediate location of holes before explosives are delivered. Equipment shall not be operated within fifty (50) feet of a loaded hole except that which is required when the containment of the blast is necessary to prevent flyrock. When equipment or machinery is used to place mats, overburden, or protective material on the shot area, a competent person (who may be a blaster certified by the Kentucky Department of Mines and Minerals) shall implement adequate precautions to protect the lead wires or initiating systems such as protecting the components from direct contact with materials which sever, damage, impact, or conduct stray currents to the explosives system. This would include preventing the dragging of blasting mats or running over the holes and systems with the equipment used.

(3) The language in subsection (4) of this section shall apply in lieu of 29 C.F.R. 1926.905(i).

(4) 1926.905(i) is amended to read: No activity of any nature other than that which is required for loading holes with explosives and preparation required for initiating the blast and containment of flyrock from the blast shall be permitted in a blast area.

(5) The language in subsection (6) of this section shall apply in lieu of 29 C.F.R. 1926.905(k).

(6) 29 C.F.R. 1926.905(k). Holes shall be inspected prior to loading to determine depth and conditions. When necessary to drill a hole in proximity to a charged or misfired hole, the distance between these two (2) holes must be greater than the depth being drilled and precautions taken to ensure the integrity of any adjacent charged hole or misfired hole. This distance must be determined by a competent person (who may be a blaster certified by the Kentucky Department of Mines and Minerals) in order to insure that there is no danger of intersecting the charged or misfired hole.

(7) The language in subsection (8) of this section shall apply in lieu of 29 C.F.R. 1926.905(n).

(8) 29 C.F.R. 1926.905(n) is amended to read: In blasting, explosives in Fume Class I, as set forth by the Institute of the Makers of Explosives, shall be used; however, Fume Class I explosives are not required when adequate ventilation is provided and the workings are abandoned for a period of time sufficient to allow dissipation of all fumes.

Section 7. Initiation of Explosive Charges – Electric Blasting. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1926.906(p).

(2) 29 C.F.R. 1926.906(p) is amended to read: The blaster shall be in charge of the blasting machines, and no other person shall connect the leading wires to the machine except under the

immediate physical and visual supervision of the blaster.

(3) The language in subsection (4) of this section shall apply in lieu of 29 C.F.R. 1926.906(q).

(4) 29 C.F.R. 1926.906(q) is amended to read: Blasters, when testing circuits to charged holes, shall use only blasting galvanometers equipped with a silver chloride cell especially designed for this purpose or an instrument designed solely for use in blasting, which incorporates a current-limiting device into its circuitry. No instrument capable of producing over fifty (50) milliamps on direct short circuit shall be used.

(5) The language in subsection (6) of this section shall apply in lieu of 29 C.F.R. 1926.906(s).

(6) 29 C.F.R. 1926.906(s) is amended to read: Leading wires shall remain shorted and not be connected to the blasting machine or other source of current until the charge is to be fired.

**Section 8. Use of Safety Fuse.** (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1926.907(a).

(2) 29 C.F.R. 1926.907(a) is amended to read: The use of a fuse that has been hammered or injured in any way shall be forbidden.

**Section 9. Inspection After Blasting.** (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1926.910(o).

(2) 29 C.F.R. 1926.910(b) is amended to read: Sufficient time shall be allowed, not less than fifteen (15) minutes in tunnels, for the smoke and fumes to leave the blasted area before returning to the shot. An inspection of the area and the surrounding rubble shall be made by the blaster to determine if all charges have been exploded before employees are allowed to return to the operation.

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

(a) The material in subparagraphs 1 through 14 of this paragraph, the Code of Federal Regulations, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1997, is incorporated by reference:

1. 29 C.F.R. 1926.900 through 1926.900(k)(2);
2. 29 C.F.R. 1926.900(k)(3)(ii);
3. 29 C.F.R. 1926.900(k)(5) through 1926.900(o);
4. 29 C.F.R. 1926.900(q);
5. 29 C.F.R. 1926.900(s) through 1926.902(c);
6. 29 C.F.R. 1926.902(e) through 1926.903(d);
7. 29 C.F.R. 1926.903(f) through 1926.905(g);
8. 29 C.F.R. 1926.905(j);
9. 29 C.F.R. 1926.905(l) through 1926.905(m);
10. 29 C.F.R. 1926.905(o) through 1926.906(o);
11. 29 C.F.R. 1926.906(r);
12. 29 C.F.R. 1926.906(t);
13. 29 C.F.R. 1926.907(b) through 1926.910(a);
14. 29 C.F.R. 1926.910(c) through 1926.914.

(b) The revision to 29 C.F.R. 1926.906, "Initiation of Explosive Charges – Electric Blasting", as published in the Federal Register, Volume 63, Number 117, June 18, 1998, is incorporated by reference.

(2) This material may be inspected and copied at: Kentucky Labor Cabinet, Division of Occupational Safety and Health Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. – 4:30 p.m. (ET), Monday through Friday.]

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.

**LABOR CABINET**

**Department of Workplace Standards**

**Division of Occupational Safety and Health Compliance**

**Division of Occupational Safety and Health Education and Training**

(As Amended at ARRS, April 13, 2021)

**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 [adept 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" means "occupational safety and health standard" as defined by [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].

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.

**LABOR CABINET**

**Department of Workplace Standards**

**Division of Occupational Safety and Health Compliance**

**Division of Occupational Safety and Health Education and Training**

(As Amended at ARRS, April 13, 2021)

**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 by[*in*] KRS 338.015(2).

(4) "Employer" is defined by[*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].

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.

**PUBLIC PROTECTION CABINET  
Department of Insurance  
Division of Consumer Protection  
(As Amended at ARRS, April 13, 2021)**

**806 KAR 2:060. Complaints.**

RELATES TO: KRS 304.2-160

STATUTORY AUTHORITY: KRS 304.2-110, 304.2-165

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 establishes[is to set forth] the classification of complaints made to the Department of Insurance.

Section 1. (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.

(2) Upon final disposition of each complaint, the commissioner shall make a finding as to if the complaint is justifiable, unjustifiable, indeterminate, or a request for information, and record the finding in its record. In making this finding, the commissioner 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.

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.]~~

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.

**PUBLIC PROTECTION CABINET  
Department of Insurance  
Division of Health and Life Insurance and Managed Care  
(As Amended at ARRS, April 13, 2021)**

**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]. These forms or documents[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](http://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>.

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](mailto:abigail.gall@ky.gov).

**PUBLIC PROTECTION CABINET**  
**Department of Insurance**  
**Divisions of Health and Life Insurance and Managed Care**  
**(As Amended at ARRS, April 13, 2021)**

**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 by[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, including[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, 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, 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], Form HL[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 14:440-[]

(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, 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, 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 with a brief description of each form and listing all of the forms that will be[] [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) [(14)] 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(21)]; and

(3) The[A] form or letter of explanation 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(21)], 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](http://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 HL[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", 07/2020[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 Form", 07/2020[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 [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 at: <http://insurance.ky.gov>.

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**PUBLIC PROTECTION CABINET  
Department of Insurance  
Division of Property and Casualty  
(As Amended at ARRS, April 13, 2021)**

**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: 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 prohibits/is to prohibit [prohibits] the grouping of persons or risks/risk [risks] for [the] preferential treatment in insurance rates or forms.

Section 1. A [Nø] form, plan, or policy of insurance covering

any group or combination of ~~persons~~person~~[persons]~~ or ~~risks~~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~~ person~~[persons]~~ or ~~risk~~ risks~~[risks]~~ 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~~to and approved by the ~~Commissioner~~ Executive Director of Insurance.

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**PUBLIC PROTECTION CABINET**  
Department of Insurance  
Division of Property and Casualty  
(As Amended at ARRS, April 13, 2021)

**806 KAR 14:110. Dividend plans; filing, participation.**

RELATES TO: KRS 304.3-050, ~~304.12-010, 304.12-080-304.12-110, 304.13-031, 304.13-051, 304.13-053, 304.13-057, 304.13-058, 304.13-061, 304.13-071, 304.13-075, 304.13-169, 304.14-120, 304.15-380, 304.24-250, 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 permits theis to permit [permits ~~the~~] participation by insuredsof the insured [by insureds] in writing dividend premium plans [premiums] under a "participating" policiespolicy [policies] and requiresshall require [requires] a filing of the such dividend plansplan [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 policyholdersa 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) [(4)] 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 (1) 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. AnNo such insurer or its agents shall not guarantee or promise to a policyholder or prospective policyholder the amount of [of] percentage of dividends to be paid. ANo [- and no] dividend, otherwise earned, shall not 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.

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**PUBLIC PROTECTION CABINET**  
Department of Insurance  
Division of Health and Life Insurance and Managed Care  
(As Amended at ARRS, April 13, 2021)

**806 KAR 15:060. Universal life insurance.**

RELATES TO: KRS 304.6-120, ~~304.6-130, 304.6-140, 304.6-143, 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, ~~304.6-143(5), 304.6-171(2)~~

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.] This [The function of this] [This] administrative regulation establishes [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" ~~is [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~~{}],~~ 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 \$1,000 [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; and
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;and[-]

(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:and[-]

(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, that any limitation on the amount or timing of the change in basic coverage shall be stated in the policy;and[-]

(b) If the policyowner has the right to increase the basic coverage, whether ~~[the policy shall state 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:and[-]

(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, that 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, that 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 [ef] KRS 304.14-120.

(c) ~~[The following information shall be submitted in connection with]~~ Any filing of an interest indexed universal life insurance policy shall include [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; and
- 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 as established [similar to the example contained] in subsection (3) of this section; ~~[f:]~~

(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; ~~and [f:]~~

(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.]~~

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**PUBLIC PROTECTION CABINET**  
**Department of Insurance**  
**Division of Health and Life Insurance and Managed Care**  
**(As Amended at ARRS, April 13, 2021)**

**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 establishes [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" is "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 will [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 shall [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 100 ~~[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 100 ~~[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.~~

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**PUBLIC PROTECTION CABINET**  
**Department of Insurance**  
**Division of Health and Life Insurance and Managed Care**  
**(As Amended at ARRS, April 13, 2021)**

**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 304.2-110 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.] This[The function of this] [This] administrative regulation prohibits[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 [ef] 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].

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**PUBLIC PROTECTION CABINET**  
**Department of Insurance**  
**Division of Health and Life Insurance and Managed Care**  
**(As Amended at ARRS, April 13, 2021)**

**806 KAR 19:060. Joint lives.**

RELATES TO: KRS 288.560, 291.480, 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.] This[The function of this] [This] administrative regulation prohibits[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. An[No] agent or insurer shall not 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] insures[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).

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PUBLIC PROTECTION CABINET  
Department of Insurance  
Division of Property and Casualty  
(As Amended at ARRS, April 13, 2021)

**806 KAR 39:050. Self-insurance.**

RELATES TO: KRS 304.8-030, 304.8-095, 304.39-020(12), 304.39-080, 304.39-140, 304.39-170, 304.39-290, [304.39-170]

STATUTORY AUTHORITY: KRS 304.2-110, 304.39-080, 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 establishes [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 who [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, and 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-insured [self-insurance] shall provide security and advise the commissioner [executive director] of any changes in the number of insured vehicles thereof unless the self-insurer has [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 \$25 million [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. The commissioner may require assets to be

deposited pursuant to KRS 304.8-095. 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 the 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 those persons [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 the [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," 4/2021 [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.

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## VOLUME 47, NUMBER 11– MAY 1, 2021

### PUBLIC PROTECTION CABINET Department of Insurance Division of Health and Life Insurance and Managed Care (As Amended at ARRS, April 13, 2021)

#### 806 KAR 40:020. Charitable health care provider registration.

RELATES TO: KRS ~~216.941~~, 304.40-075

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.40-075(3)(b), ~~(6)~~

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]~~ [304.010] ~~[through 304.99-154]~~ [304.99-152]. KRS 304.40-075(3)(b) ~~requires~~ authorizes [requires] the department to promulgate administrative regulations to establish reasonable guidelines for the registration of charitable health care providers. KRS 304.40-075(6) requires the department to determine if the profits made for medical professional liability insurance risks covered by that section are consistent with reasonable loss ratio guidelines. This [As established in KRS 304.40-075, the] [This] ~~[function of this]~~ administrative regulation establishes ~~[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, and also establishes reporting requirements for medical professional liability insurers for the purpose of determining reasonable loss ratios. [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. To request reimbursement of paid premium for medical professional liability insurance, a charitable health care provider shall supply to the Department of Insurance 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 ~~who [that]~~ may [te] 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 under [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 who [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 who [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 [07-2000], "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 [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 office's Web site at [www.insurance.ky.gov](http://www.insurance.ky.gov) [<http://doi.ppr.ky.gov/kentucky/>].

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](mailto:abigail.gall@ky.gov).

### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (As Amended at ARRS, April 13, 2021)

#### 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.

**(11) Child support arrears.**

**(a) In accordance with 7 C.F.R. 273.11(g) to disqualify a noncustodial parent for refusing to cooperate, a noncustodial parent of a child under the age of eighteen (18) shall not be eligible to participate in SNAP if the individual is delinquent in payment of court-ordered support as determined by the Department for Income Support, Child Support Enforcement, unless the individual:**

**1. Is enrolled in a drug treatment program;**

**2. Is participating in a state or federally funded employment training program;**

**3. Meets good cause for nonpayment. Good cause shall include temporary situations resulting from illness, job change, or pendency of unemployment benefits;**

**4. Is a member of a household containing a child under the age of eighteen (18);**

**5. Is a member of a household containing an individual who is pregnant or three (3) months post-partum; or**

**6. Is:**

**a. Within twelve (12) months of incarceration for a period of at least thirty (30) days; and**

**b. Cooperating with the Department for Income Support, Child Support Enforcement.**

**(b) The disqualification of an individual in accordance with paragraph (a) of this subsection shall be in place as long as the individual remains delinquent as determined by Department for Income Support, Child Support Enforcement.**

**(c) The income, expenses, and resources of an individual disqualified in accordance with paragraph (a) of this subsection shall be processed in accordance with 921 KAR 3:035, Section 5(4).**

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.

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## CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Family Support

(As Amended at ARRS, April 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(11), [~~delinquency in payment of court-ordered child support through the Department of Income Support, Child Support Enforcement Program in accordance with 921 KAR 3:025, Section 3(11)~~], or ineligible immigrant [alien] status[~~;~~] shall be processed as established in this subsection.

(a) All resources of an ineligible member shall be considered

available to the remaining household members.

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

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

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

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

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

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

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

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

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

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

(a) An eligible household shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The shelter shall:

1. Have FNS authorization to redeem SNAP benefits at wholesalers; or
2. Meet the federal definition of a shelter as defined in 7 C.F.R. 271.2.

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

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

(9) The case of an SSI recipient shall be processed as

established in this subsection.

(a) An application may be filed at the:

1. Social Security Administration (SSA) Office; or
2. Local Department for Community Based Services office.

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

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

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

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

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

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

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

(c) Allowing the appropriate earnings deduction.

(11) Sponsored **immigrants [aliens]**.

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

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

a. Include total monthly earned and unearned income; and

b. Be reduced by:

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

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

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

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

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

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

1. Becomes a naturalized citizen;

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

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

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

5. Dies, or the sponsor dies.

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

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

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

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

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

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

(a) At the certification interview; or

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

Section 8. Incorporation by Reference. (1) The "FS-2, MID [SNAP] REVIEW NOTICE", 1/21/12/2018/20[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

BOARDS AND COMMISSIONS  
Board of Pharmacy  
(Amended After Comments)

201 KAR 2:380. Board authorized protocols.

RELATES TO: KRS 315.010(25), 315.191(1)(a), (f)  
STATUTORY AUTHORITY: KRS 315.010(25), 315.191(1)(a),

(f) NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.010(25) defines a prescription drug order, which includes orders issued through protocols authorized by the board. KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations necessary to regulate and control all matters pertaining to pharmacists, pharmacist interns, pharmacy technicians, and pharmacies. KRS 315.191(1)(f) authorizes the board to promulgate administrative regulations that are necessary to control the dispensing of prescription drug orders. This administrative regulation establishes procedures for board authorized protocols by which pharmacists may initiate the dispensing of noncontrolled medications or other professional services.

Section 1. Definition. "Prescriber" means any individual authorized to prescribe a legend drug.

Section 2. Procedures. A pharmacist may initiate the dispensing of noncontrolled medications, over-the-counter medications, or other professional services under the following conditions:

(1) A prescriber-approved protocol that meets the minimum requirements in Section 3 of this administrative regulation is in place, and is dated and signed by the prescriber and pharmacist authorized to initiate the dispensing of noncontrolled medications, over-the-counter medications, or other professional services;

(2) The protocol directs the care, based on current clinical guidelines, for conditions listed in Section 5 of this administrative regulation;

(3) The protocol has been approved by the board, who provides notice to the prescriber's licensure board within ten (10) business days of approval by the board;

(4) The pharmacist documents the dispensing event in the pharmacy management system, including:

(a) Documentation as required by 201 KAR 2:170 for the dispensing of prescription medication; and

(b) Documentation that the individual receiving the medication or other professional service was provided with education pursuant to Section 4 of this administrative regulation; and

(5) A pharmacist shall request the individual's primary care provider's information, provided one exists, and shall provide notification to the primary care provider within two (2) business days.

Section 3. Minimum Requirements of Protocol. Protocols shall contain the following elements:

(1) Criteria for identifying persons eligible to receive medication therapies or other professional services under the protocol, and referral to an appropriate prescriber if the patient is high-risk or treatment is contraindicated;

(2) A list of the medications, including name, dose, route, frequency of administration, and refills authorized to be dispensed under the protocol;

(3) Procedures for how the medications are to be initiated and monitored, including a care plan implemented in accordance with clinical guidelines;

(4) Education to be provided to the person receiving the dispensed medications, including aftercare instructions, if appropriate;

(5) Procedures for documenting in the pharmacy management system all medications dispensed, including notification of the prescriber signing the protocol, if requested;

- (6) Length of time protocol is in effect;
- (7) Date and signature of prescriber approving the protocol;
- (8) Dates and signatures of pharmacists authorized to initiate dispensing of medications or other professional services under the protocol; and
- (9) The date, and education or training of the pharmacist as referenced in Section 4 of this administrative regulation.

Section 4. Pharmacist Education and Training Required. A pharmacist who dispenses medication pursuant to a prescriber-approved protocol shall first receive education and training in the subject matter of the protocol from a provider accredited by the Accreditation Council for Pharmacy Education or by a comparable provider approved by the board. Documentation of education shall be provided to the board upon request. Education shall be obtained prior to initiating care under the protocol.

Section 5. Authorized Conditions. Board-authorized protocols may be established for the following conditions:

~~(1) Acute influenza infection pursuant to recommendations by the Centers for Disease Control and Prevention (CDC);~~

~~(2) Acute streptococcal pharyngitis infection;~~

~~(3) Acute, uncomplicated urinary tract infection;~~

~~(4) Acute cutaneous/mucocutaneous fungal infection;~~

(5) Alcohol use disorder utilizing naltrexone-based therapy pursuant to recommendations from the American Psychiatric Association;

~~(6)(5) Allergic rhinitis;~~

~~(7)(6) Anaphylaxis;~~

(8) Colorectal cancer prevention and screening;

(9) HCV infection screening

(10) HIV infection prophylaxis, pre- and post-exposure;

(11) HIV infection screening

~~(7) HIV infection prevention through pre-exposure prophylaxis pursuant to recommendations by the CDC;~~

~~(12)(8) Nutritional supplementation with vitamins and minerals;~~

~~(13)(9) Opioid use disorder pursuant to recommendations by the American Society of Addiction Medicine;~~

~~(14)(10) Tobacco use disorder;~~

~~(15)(11) Traveler's health pursuant to recommendations by the CDC;~~

~~(16)(12) Tuberculosis prevention and control through skin testing, and referral as necessary, pursuant to recommendations by the CDC; and~~

~~(17)(13) Self-care conditions appropriately treated with over-the-counter medications and products.~~

LARRY A. HADLEY, R.Ph., Executive Director

APPROVED BY AGENCY: April 6, 2021

FILED WITH LRC: April 7, 2021 at 8:30 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Larry Hadley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for board authorized protocols by which pharmacists may initiate the dispensing of noncontrolled medications or offer other professional services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for pharmacists to provide a high level of care to their patients, in accordance with protocols that have been provided from the prescriber and approved by the Board of Pharmacy. This will expand the scope of board authorized conditions which allow for prescriber approved protocols to include protocols for alcohol use disorder, colorectal cancer prevention and

screening, HCV infection screening, HIV infection prophylaxis, pre and post exposure and HIV infection screening.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 315.191(1)(a) authorizes the Board of Pharmacy to promulgate administrative regulations to regulate and control all matters pertaining to pharmacists and pharmacies. KRS 315.191(1)(f) authorizes the Board to promulgate administrative regulations pertaining to prescription drug orders. KRS 315.010(25) defines a prescription drug order to include protocols authorized by the Board. This administrative regulation establishes criteria for protocols to be authorized by the Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Prescribers, pharmacists, pharmacies, patients and the public will be able to ascertain what is required for pharmacist dispensing of medications pursuant to prescriber approved protocols.

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

(a) How the amendment will change this existing administrative regulation: This amendment will expand the scope of board-authorized conditions allowing prescriber approved protocols to include protocols for alcohol use disorder, colorectal cancer prevention and screening, HCV infection screening, HIV infection prophylaxis, pre and post exposure and HIV infection screening.

(b) The necessity of the amendment to this administrative regulation: To allow pharmacists to play a more critical clinical role in public health by expanding the scope to include four more authorized conditions for prescriber-approved protocols.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.002 and 315.005 authorize the board to regulate the practice of pharmacy. KRS 315.191 authorizes the board to promulgate administrative regulations pertaining to pharmacists and pharmacies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective regulation of pharmacists and pharmacies by providing an increased board approved conditions for potential prescriber approved protocols to include alcohol use disorder, colorectal cancer prevention and screening, HCV infection screening, HIV infection prophylaxis, pre and post exposure and HIV infection screening.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates pharmacists will be impacted, as their potential scope of practice could be increased. Individuals that wish to be treated for alcohol use disorder will have the ability to be treated in a pharmacy. Individuals wishing to be screened for colorectal cancer, HCV infection or HIV infection can now do so in a pharmacy, pursuant to prescriber approved protocol. Moreover, individuals wishing to obtain pre and post HIV infection prophylaxis can do so in a pharmacy that has a prescriber-approved protocol.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Pharmacies and pharmacists will have to familiarize themselves with new amended language in the regulation. The board will help to educate pharmacists and pharmacies in these changes.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Pharmacists and the public can refer to the correct information for accreditation questions.

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

(a) Initially: No costs will be incurred.

(b) On a continuing basis: No costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding to enforce the regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all pharmacists.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Pharmacy will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.191(a).

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No costs are required to administer this program for subsequent years.

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

#### EDUCATION AND WORKFORCE DEVELOPMENT CABINET

##### Kentucky Board of Education

##### Department of Education

##### (Amended After Comments)

#### 703 KAR 5:280. School improvement procedures.

RELATES TO: KRS 158.6453, 158.6455, 158.782, 160.346, 20 U.S.C. 6301

STATUTORY AUTHORITY: KRS 156.029(7), 156.070(5), 158.6453, 158.6455, 160.346, 20 U.S.C. 6301

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.029(7) requires the Kentucky Board of Education (KBE) to adopt policies and administrative regulations that shall govern the Kentucky Department of Education (department) in planning and operating programs within its jurisdiction. KRS 156.070(5) requires the KBE, upon the recommendation of the Commissioner of Education (commissioner), to establish policy or act on all programs, services, and other matters that are within the administrative responsibility of the department. KRS 158.6453(3)(a) requires the KBE to create an assessment system

that measures achievement of the state learning goals, ensures compliance with Title I of the federal Elementary and Secondary Education Act of 1965 (ESEA), 20 U.S.C. sec. 6301, et seq., as amended by the Every Student Succeeds Act (2015) or its successor, and ensures school accountability. KRS 158.6455 requires the KBE to create an accountability system to classify schools and LEAs, and to establish appropriate consequences for schools failing to meet accountability measures. KRS 158.782 requires the KBE to promulgate administrative regulations establishing the process for monitoring and periodic review of schools' turnaround efforts for schools identified for comprehensive support and improvement pursuant to KRS 160.346. KRS 160.346 establishes the process for the required audit and turnaround efforts for schools identified for comprehensive support and improvement. Additionally, KRS 160.346 requires the KBE to create state-wide exit criteria for identified schools, additional action to support schools continuously failing to meet improvement goals, and additional support for LEAs with a significant number of schools identified for comprehensive and targeted support and improvement. Section 1111(c) of Title I of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, 20 U.S.C. 6311(c) and (d), requires the KBE to identify the state's lowest achieving schools as schools identified for comprehensive support and improvement and for those schools to follow the requirements of 20 U.S.C. 6311(c) and (d) regarding school improvement. This administrative regulation establishes the process and procedures for school improvement efforts.

Section 1. Definitions. (1) "Additional Targeted Support and Improvement" means the process for schools identified pursuant to KRS 160.346(2)(b).

(2) "Advisory leadership team" means the team established pursuant to KRS 160.346(8)(f) [(7)(g)] and Section 7 [8] of this administration regulation.

(3) "Annual improvement" means a school reaching annual goals, established by the department, in the areas identified for comprehensive support and improvement.

(4) "Audit" means the process established in KRS 160.346[(5) and](6)-(7).

(5) "Audit team" means the department, which completes the audit [team selected by the LEA,] pursuant to KRS 160.346(6)-(7) [(5), to complete a school or district audit].

(6) "Charter school" means a "public charter school" as defined in KRS 160.1590(12).

(7) "Charter school board of directors" or "governing board" means charter school board of directors as defined in KRS 160.1590(6).

(8) "Comprehensive Support and Improvement" means the process for schools identified pursuant to KRS 160.346(3).

(9) "District" or "school district" means the local school district governed by a local board of education.

(10) "District audit" means an audit that:

(a) Reviews the functioning of the district and the district's ability to manage an intervention in a school identified for comprehensive support and improvement; and

(b) Meets the requirements of Section 4 [5] of this administrative regulation.

(11) "Evidence based interventions" is defined in the Elementary and Secondary Education Act, as reauthorized by the Every Student Succeeds Act (2015), 20 U.S.C.A. Section 7801.

(12) "Local education agency" or "LEA" means a local school district as established in KRS 160.010 and KRS 160.020 or a charter school board of directors as established in KRS 160.1590.

(13) "Minority" is defined in KRS 160.345(1)(a).

(14) "School audit" means an audit that:

(a) Reviews the functioning of a school;

(b) Assesses principal capacity for leadership of school turnaround; and

(c) Meets the requirements of KRS 160.346(6)-(7).

(15) "School improvement assistance" means a program designed by the department to support improved teaching and learning.

(16) "School improvement plan" means the plan created by schools identified for targeted support and improvement or additional targeted support and improvement pursuant to KRS 160.346(4)-(5) and embedded in the comprehensive school improvement plan required pursuant to 703 KAR 5:225.

(17) "Targeted Support and Improvement" means the process for schools identified pursuant to KRS 160.346(2)(a).

(18) "Turnaround plan" means the plan created pursuant to KRS 160.346(8)(g) [(7)(h)] and embedded in the comprehensive school improvement plan required pursuant to 703 KAR 5:225.

(19) "Turnaround team" means the team selected pursuant to KRS 160.346(8) [(7)](a).

~~Section 2. [Notification of Status for Comprehensive Support and Improvement. (1) Following notification of a school's identification for comprehensive support and improvement, an LEA shall, within thirty (30) days, declare its intent to either utilize the department for the audit team or another option pursuant to KRS 160.346(5).~~

~~(2) If the LEA declares its intent to use any option other than the department for the audit team, the LEA shall provide, to the Kentucky Department of Education, the following information:~~

~~(a) The name and address of each person included on the audit team;~~

~~(b) The role and responsibilities of each person included on the audit team;~~

~~(c) The occupation and any vendor affiliations of each person included on the audit team; and~~

~~(d) Each person or entity's documented expertise in diagnosing the causes of an organization's low performance and providing advice and strategies resulting in effective turnaround leadership.~~

~~(3) If the LEA declares its intent to use any other option other than the department for the audit team, the LEA shall ensure that all audit team members report potential conflicts of interest. The LEA shall report these conflicts of interest to the department and provide information regarding the LEA's work to remedy the conflicts of interest.~~

~~(4) Audit team members shall not be employed by or otherwise affiliated with the LEA or school under review.~~

~~(5) Upon receipt of the notification and appropriate information from the LEA, the department, within fifteen (15) days, shall review the proposals for non-department audit teams and either accept or deny the proposal. Denied proposals shall be returned to the LEA and the department shall advise the LEA to remedy the proposal.~~

~~(6) The LEA shall provide the information required in this Section utilizing the "Notification of Non-Department Audit Team Form" incorporated by reference in this administrative regulation.~~

~~(7) Non-department audit teams shall complete a Kentucky-specific induction training prior to conducting an audit.~~

Section 3.] Audit Team Membership. [For audit teams directed by the department:] (1) Pursuant to KRS 160.346(6)(a), a school, including a charter school, identified for comprehensive support and improvement shall undergo an audit conducted by the department.

(2) Members of the audit team shall be selected from qualified applicants by the department, and approved by the commissioner [of Education,] or his designee;

(3) [(2)] Members shall complete department-provided or department-approved training in any areas needed to effectively perform their duties;

(4) [(3)] Members shall hold appropriate certification or qualifications for the position being represented;

(5) [(4)] The team shall not include any members currently employed by or otherwise affiliated with the LEA or school under review;

(6) [(5)] The team shall include the following representation:

(a) The chairperson, who shall be designated by the department or its designee, and shall be:

1. A certified administrator approved by the department to provide school improvement assistance;

2. A certified administrator member of the review team; or

3. A similarly qualified professional approved by the



department;

(b) An individual approved by the department to provide school improvement assistance;

(c) A teacher who is actively teaching or has taught within the last three (3) years;

(d) A principal who is currently serving or has served as a principal within the last three (3) years;

(e) An LEA administrator who is currently serving or has served in an LEA administrative position within the last three (3) years;

(f) A parent or legal guardian who has or has had a school-aged child; and

(g) A university representative who is currently serving or has served in that capacity within the last three (3) years;

~~[(7)](6)]~~ The chair may serve in addition to the six (6) members outlined in subsection ~~(6)~~ ~~[(5)]~~ of this section, or may be selected from those six (6) members who also meet the qualifications of this section.

Section 3. ~~[4.]~~ School Audit. (1) A school audit shall be scheduled within forty-five (45) days of a school's identification for comprehensive support and improvement.

(2) ~~[The KBE recommends a school audit, in]~~ In addition to the requirements established in KRS 160.346(7)~~[(6)]~~, a school audit shall consist of and incorporate into the audit process and report the following criteria:

(a) Analysis of state and local education data;

(b) **At the discretion of the audit team, [An]** analysis and recommendation regarding the principal's capacity to lead turnaround in a school identified for comprehensive support and improvement **[and whether the principal should be replaced];**

(c) Review of comprehensive school improvement plans and other planning documents;

(d) Interviews with students, parents, all school council members, if applicable, school and LEA personnel, and community members;

(e) Direct observation;

(f) Administration of teacher and principal working conditions surveys and student satisfaction surveys;

(g) Review of school council minutes and agendas, if applicable; and

(h) Other information deemed necessary by the commissioner ~~[of Education,]~~ or his designee.

(3) ~~[Where the audit team is directed by the department, the]~~ The recommendation of the principal's ability to lead the intervention in the school, as required by ~~(2)(b) of this section~~ KRS 160.346(6)(a)2], shall be based upon an assessment consistent with the Professional Standards for Educational Leaders approved by the National Policy Board for Educational Administration and incorporated by reference in 16 KAR 3:090, Certifications for advanced educational leaders. ~~[of whether:~~

~~(a) The principal demonstrates maintenance and communication of a visionary purpose and direction committed to high expectations for learning as well as shared values and beliefs about teaching and learning;~~

~~(b) The principal leads and operates the school under a governance and leadership style that promotes and supports student performance and system effectiveness;~~

~~(c) The principal establishes a data-driven system for curriculum, instructional design, and delivery, ensuring both teacher effectiveness and student achievement;~~

~~(d) The principal ensures that systems are in place for accurate collection and use of data;~~

~~(e) The principal ensures that systems are in place to allocate human and fiscal resources to support improvement and ensure success for all students; and~~

~~(f) The principal ensures that the school implements a comprehensive assessment system that generates a range of data about student learning and system effectiveness and uses the results to guide continuous improvement.]~~

(4) ~~[An audit team not directed by the department may utilize the criteria established in subsection (3) of this section for the recommendation of principal capacity, as required by KRS~~

~~160.346(6)(a)2. An audit team not directed by the department shall include a recommendation as to the principal's capacity to serve as a leader in school intervention and turnaround at a school identified for comprehensive support and improvement. If that audit team chooses not to use the criteria established in subsection (3) of this section, it shall provide notification to the department as well as the framework to be used in the analysis of principal capacity and submit the criteria that shall be utilized to the department for approval.~~

~~(5) Upon identification as a school in need of comprehensive support and improvement, the authority of the school council shall be suspended.~~

~~(6) Pursuant to KRS 160.346, the authority of the school council may be restored if the school is not classified under comprehensive support and improvement status for two (2) consecutive years.~~

~~(7)]~~ Charter schools shall be subject to a school audit that shall include an addendum providing a determination regarding the governing board's capacity to provide support for turnaround. Each addendum shall include:

(a) Analysis of state and local education data;

(b) A review of the governing board's level of functioning and recommendation to the commissioner ~~[of Education]~~ as to whether the governing board has the capacity to manage the intervention in the charter school;

(c) Interviews with governing board members, students, parents, school personnel, authorizer, and community members~~[:.]~~

(d) Direct observations;

(e) Administration of teacher and principal working conditions surveys and student satisfaction surveys;

(f) Review of charter school governing board minutes and agendas; and

(g) Other information deemed necessary by the commissioner ~~[of Education]~~, or his designee, to assess the functionality of the governing board to support school improvement.~~]~~

~~(8) If the audit team chooses not to use the criteria established in subsection (7) of this section, it shall provide notification to the department as well as the framework to be used in the analysis of the governing board's capacity and submit the criteria that shall be utilized to the department for approval.]~~

Section 4. ~~[5.]~~ District Audit. (1) A district shall be subject to a district audit upon identification of a school within the district for comprehensive support and improvement.

(2) Within forty-five (45) days of identification by the department of a district containing a school identified for comprehensive support and improvement, an audit shall be scheduled to review the functioning of the district's administration and its specific leadership capacity related to each school identified for comprehensive support and improvement.

(3) Each district audit shall include:

(a) Analysis of state and local education data;

(b) A review of the district's level of functioning and recommendation to the commissioner ~~[of Education]~~ as to whether the district has the capacity to manage the intervention in each identified school;

(c) Review of comprehensive district improvement plan and other planning documents;

(d) Interviews with local board members, students, parents, school and district personnel, and community members;

(e) Direct observation;

(f) Administration of teacher and principal working conditions surveys and student satisfaction surveys;

(g) Review of school board minutes and agendas; and

(h) Other information deemed necessary by the commissioner ~~[of Education]~~, or his designee, to assess the functionality of the district to support school improvement.

(4) ~~[If the audit team is directed by the department, the]~~ The determination of the district's level of functioning and ability to manage the intervention in the school identified for comprehensive support and improvement shall be based upon an assessment of capacity in the following areas: (a) The district demonstrates maintenance and communication of a visionary purpose and

direction committed to high expectations for learning as well as shared values and beliefs about teaching and learning;

(b) The district leads and operates under a governance and leadership style that promotes and supports student performance and system effectiveness;

(c) The district establishes a data-driven system for curriculum, instructional design, and delivery, ensuring both teacher effectiveness and student achievement;

(d) The district ensures that systems are in place for accurate collection and use of data;

(e) The district ensures that systems are in place to allocate human and fiscal resources to support improvement and ensure success for all students; and

(f) The district ensures that a comprehensive assessment system, which generates a range of data about student learning and system effectiveness and uses the results to guide continuous improvement, is implemented.

(5) ~~[An audit team not directed by the department may utilize the criteria established in subsection (4) of this section for recommendation to the Commissioner of Education of the district's level of functioning and ability to manage the intervention in the school identified for comprehensive support and improvement. An audit team not directed by the department shall include a recommendation as to district functioning and capacity to manage the interventions at a school identified for comprehensive support and improvement. If that audit team chooses not to use the criteria established in subsection (4) of this section, it shall provide notification to the department as well as the framework to be used in the analysis of district functioning and capacity to manage the intervention in each identified school to the department for approval.]~~

(6) There shall be only one (1) district audit per district, per year, regardless of the number of schools identified for comprehensive support and improvement located in the district.

Section 5. [6.] Notification to Schools and LEAs of Audit Findings. (1) Following any school audit, the audit team shall submit all findings and the principal capacity recommendation to the commissioner [of Education].

(2) Following any charter school or district audit, the district or governing board audit findings and capacity recommendations shall be submitted to the commissioner [of Education] who shall then make a determination regarding the district or governing board's level of functioning and whether the district or governing board has the capacity to manage the intervention in each identified school.

(3) After completion of the initial school or district audits and within thirty (30) days of receiving the audit findings, the commissioner [of Education] shall notify in writing the school, district or [charter] governing board, and the charter authorizer of the audit findings and recommendation regarding principal or school leader's leadership capacity and authority and a determination regarding district or governing board's leadership capacity and authority. The superintendent shall then make any necessary determination regarding the principal or other certified staff pursuant to KRS 160.346(8)(c)-(d)(7)(e)-(f).

(4)(a) A school, including a charter school, or district that believes the recommendation regarding the principal or school leader's leadership capacity and authority or the district or governing board's leadership capacity and authority is grossly unfair may appeal such recommendation within fifteen (15) days after the commissioner notifies the school, district or governing board, and the charter authorizer of the audit findings, as described in subsection (3):

(b) The written request for an appeal shall be submitted by mail to the department at the address supplied in Section 16 of this administrative regulation and shall identify:

1. The reason(s) and supporting evidence that the recommendation regarding the principal or school leader's leadership capacity and authority or the district or governing board's leadership capacity and authority is believed to be grossly unfair; and

2. The requested adjustment to be made to the

recommendation regarding the principal or school leader's leadership capacity and authority or the district or governing board's leadership capacity and authority; and

(c) The request for an appeal shall be signed by the superintendent of the district or comparable leader of the charter school upon approval of the local board of education or governing board.

(5)(a) Upon receipt of the request for an appeal filed under subsection (4), the commissioner, or his designee, shall review such appeal against the standards set forth in either Section 3(3), if the appeal relates to the recommendation regarding the principal or school leader's leadership capacity and authority, or Section 4(4), if the appeal relates to the district or governing board's leadership capacity and authority, to determine whether to dispute the appeal:

(b) Within thirty (30) days of the request for an appeal filed under subsection (4), the commissioner shall determine whether to:

1. Adopt the requested adjustment to the recommendation regarding the principal or school leader's leadership capacity, and authority or the district or governing board's leadership capacity and authority, set forth in the request for an appeal as required by subsection (4)(b)2.; or

2. Dispute the requested adjustment to the recommendation regarding the principal or school leader's leadership capacity and authority, or the district or governing board's leadership capacity and authority, set forth in the request for an appeal as required by subsection (4)(b)2.;

(c) If the request for an appeal is disputed by the commissioner, an appeal shall be submitted to the hearing officer for the Kentucky Board of Education; and

(d) The hearing officer appointed shall conduct a hearing in accordance with KRS Chapter 13B and submit a written recommended order to the Kentucky Board of Education for the board's consideration in rendering its final order, in accordance with KRS Chapter 13B.

Section 6. [7.] Turnaround Team and Development of Turnaround Plan for School Identified for Comprehensive Support and Improvement. (1) Within fifteen (15) days after the commissioner notifies the school, district or charter governing board, and the charter authorizer of the audit findings, as described in Section 5(6)(3) of this administrative regulation, an LEA shall declare its intent to either utilize the department for the turnaround team or another vendor from the approved turnaround vendor list published [option] pursuant to KRS 160.346(1)(a) and (8)(a)(7) as well as Section 15 of this administrative regulation and, if the LEA declares its intent to use any option other than the department for the turnaround team, the LEA shall use the "Notification of Non-Department Turnaround Team Form;" [to provide the following information to the department:

(a) The name and address of each person or entity fulfilling the status of turnaround team;

(b) The role and responsibilities of each person or entity fulfilling the status of turnaround team; and

(c) The evidence-based interventions that shall be utilized by the person or entity fulfilling the status of turnaround team.]

(2) [If the LEA utilizes a private entity to serve as the turnaround team, pursuant to KRS 160.356(7)(a)(1), the LEA shall submit to the department evidence of the private entity's documented success at turnaround diagnosis, training, and improved performance of organizations and provide ongoing oversight of the private entity's work, functioning, and accomplishments as the turnaround team.

(3) If the LEA utilizes the local staff and community partners to serve as the turnaround team, pursuant to KRS 160.346(7)(a)(2), the LEA shall ensure the following:

(a) Schools having eight (8) percent or more minority students enrolled, as determined by the enrollment on the preceding October 1, shall have at least one (1) minority member serving on the turnaround team; and

(b) At least one (1) parent of a student in the identified school is selected as a member of the turnaround team.

(4) Upon receipt of the notification and appropriate information from the LEA, the department shall review within fifteen (15) days the proposals for non-department turnaround teams and either accept or deny the proposal. Denied proposals shall be returned to the LEA and the department shall advise the LEA to remedy the proposal.

(5) If the LEA utilizes the department to serve as the turnaround team, the turnaround team shall be comprised of team members selected and approved by the commissioner [of Education], or his designee, to provide school improvement assistance.

(3) A school, including a charter school, identified for comprehensive support and improvement shall be eligible to apply for funding under 20 U.S.C. 6303. Any funds awarded to a school pursuant to 20 U.S.C. 6303 shall be utilized to pay for turnaround activities, which may include assisting with funding an LEA's utilization of a non-department vendor from the approved turnaround vendor list published pursuant to KRS 160.346(1)(a) and (8)(a) as well as Section 15 of this administrative regulation.

(6) (4) Within forty-five (45) days after the commissioner notifies the school, district or [charter] governing board, and the charter authorizer of the audit findings, as described in Section 5[6](3) of this administrative regulation, the turnaround team shall develop a turnaround plan pursuant to KRS 160.346(8)(g)[(7)(h)].

(7) (5) In addition to the requirements established in KRS 160.346(8)(g)[(7)(h)], the turnaround plan shall be embedded in the comprehensive school improvement plan required pursuant to 703 KAR 5:225 and shall include:

(a) Evidence-based interventions to be utilized to increase student performance and address the critical needs identified in the school audit;

(b) A comprehensive list of persons and entities involved in the turnaround efforts and the specific roles each shall play in the school's turnaround; and

(c) A review of resource inequities that shall include an analysis of school level budgeting to ensure resources are adequately channeled towards school improvement.

(8) (6) The turnaround plan shall be approved by the superintendent and local board of education, as required by KRS 160.346(8)(g)[(7)(h)], who shall provide the necessary support and resources for the turnaround plan and submit the turnaround plan to the commissioner [of Education] for final approval.

(9) (7)(a) Following receipt of the turnaround plan specified in subsection (6) [(8)] of this section and before the beginning of the school year following the audit, the commissioner [of Education], in consultation with the advisory leadership team, superintendent, and local board of education, shall determine the sufficiency of the school's turnaround plan to meet the needs of the school's turnaround effort.

(b) If the commissioner [of Education] finds that the plan is not sufficient to meet the needs of the school turnaround effort for a school identified for comprehensive support and improvement, the department shall provide feedback detailing the deficiencies and advise the LEA and school to make changes to the plan.

Section 7. [8-] Advisory Leadership Team. (1) The principal or charter school leader of a school identified for comprehensive support and improvement shall provide to the department, in a format acceptable to the department, the names and addresses of advisory leadership team members appointed pursuant to KRS 160.346(8)(f)[(7)(g)] to the department.

(2) The department shall maintain a database of all advisory leadership team members appointed pursuant to KRS 160.346(8)(f)[(7)(g)].

(3) In establishing the advisory leadership team, the principal or charter school leader shall ensure that schools having eight (8) percent or more minority students enrolled, as determined by the enrollment on the preceding October 1, shall have at least one (1) minority member serving on the advisory leadership team.

(4) Meetings of the advisory leadership team shall be open to the public.

(5) Duties of the advisory leadership team shall include:

(a) Providing support for systems that seek to build capacity in

school leadership;

(b) Promoting positive school climate and culture; and

(c) Supporting the continual use of data-driven decision-making to support school improvement.

Section 8. [9-] Monitoring and Periodic Review of Plan Implementation. (1) Pursuant to the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act, 20 U.S.C.A. Section 6301, all schools identified for comprehensive support and improvement shall be subject to monitoring and periodic review by the department.

(2) Monitoring shall include:

(a) Onsite support by department staff if the department is chosen by the LEA to serve as the turnaround team pursuant to KRS 160.346(8)(a) or if more rigorous intervention by the department is warranted as established in Section 9 [40] of this administrative regulation;

(b) Annual review of school and LEA state accountability data;

(c) Review of indicators of school quality; and

(d) Other measures deemed necessary by the department to ensure compliance with the Every Student Succeeds Act, or its successor.

(3) Periodic review of the turnaround plan shall include:

(a) Periodic site visits;

(b) Direct observation; and

(c) Interviews with students, parents, all school council members, if applicable, school and LEA personnel, and community members.

Section 9. [40-] More Rigorous Intervention. (1) Schools identified for comprehensive support and improvement that do not exit that status after three (3) years shall be subject to intervention by the department including but not limited to:

(a) A school audit conducted by the department;

(b) Onsite assistance by department staff; and

(c) Evaluation and modification of the school turnaround plan.

(2) Schools identified for comprehensive support and improvement that do not exit after three (3) years shall be subject to an audit by the department every two (2) years, or as deemed necessary by the commissioner [of Education].

(3) Schools identified for comprehensive support and improvement that do not make annual improvement for two (2) consecutive years shall be subject to intervention by the department, as established in subsections (1) and (2) of this section, after the second year;

(4) Districts serving any number of schools identified for comprehensive support and improvement that do not exit after three (3) years, or two (2) years as established in subsection [(2)] (3) of this section, shall be subject to a district audit. Additional district audits for districts serving schools identified for comprehensive support and improvement that do not exit that status shall occur every two (2) years, or as deemed necessary by the commissioner [of Education]. No district, regardless of the number of schools identified for comprehensive support and improvement that fail to exit that status, shall have more than one (1) district audit every two (2) years.

Section 10. [44-] Targeted Support and Improvement and Additional Targeted Support and Improvement. (1) Upon identification as a school for targeted support and improvement or additional targeted support and improvement, the identified school shall comply with the requirements of KRS 160.346(4)-(5). The school improvement plan shall be embedded in the comprehensive school improvement plan required pursuant to 703 KAR 5:225.

(2) LEAs with a school identified for targeted support and improvement or additional targeted support and improvement shall monitor and provide support to the school to ensure the successful implementation of the school improvement plan.

Section 11. [42-] Significant Number of Schools. (1) In addition to providing notification to LEAs as to the identification of schools for comprehensive support and improvement, additional targeted support and improvement, or targeted support and improvement,

the department shall notify LEAs as to whether they shall be considered an LEA supporting a significant number of schools identified for [either] comprehensive support and improvement or targeted support and improvement, including additional targeted support and improvement.

(2) To determine whether an LEA meets this designation, the department shall calculate, based on the total number of A1 schools, as defined in 703 KAR 5:240, in the LEA, the LEA's percentage of schools identified for comprehensive support and improvement or [and the LEA's percentage of schools identified for] targeted support and improvement, including additional targeted support and improvement. Any LEA containing two (2) or more schools identified for comprehensive support and improvement or targeted support and improvement, including additional targeted support and improvement, and whose percentage of identified schools exceeds ten (10) percent of all schools within the district shall be designated an LEA supporting a significant number of schools identified for [either] comprehensive support and improvement or targeted support and improvement, including additional targeted support and improvement.

Section 12. [13.] Technical Assistance for LEAs Supporting a Significant Number of Schools Identified for Comprehensive Support and Improvement. (1) LEAs supporting a significant number of schools identified for comprehensive support and improvement shall receive the following technical assistance:

(a) A district audit, or school audit if a charter school, conducted by the department; and

(b) Onsite support from department staff.

(2) The district audit, or school audit if a charter school, completed by the department pursuant to subsection (1)(a) of this section shall take the place of any district or school audit conducted under Sections 3 and 4 [and 5] of this administrative regulation.

(3) Department staff shall:

(a) Coordinate with the LEA to ensure direct support of schools identified for comprehensive support and improvement;

(b) Review, via the district or school audit, if a charter school, resources and allocations to determine if they are being used effectively for school improvement;

(c) Work with the LEA to address any identified resource inequities that negatively impact schools and students; and

(d) Work with the LEA to develop sustainable systems to support school improvement.

Section 13. [14.] Technical Assistance for LEAs Supporting a Significant Number of Schools Identified for Targeted Support and Improvement. (1) LEAs supporting a significant number of schools identified for targeted support and improvement, including additional targeted support and improvement, shall receive the following technical assistance:

(a) Periodic site visits; and

(b) Onsite support by department staff.

(2) Department staff shall:

(a) Review LEA resources and allocations to determine if they are being used effectively for school improvement;

(b) Provide technical assistance to the LEA regarding resource allocation to support school improvement; and

(c) Connect LEAs with professional development opportunities to build capacity for school improvement efforts.

Section 14. [15.] Exit Criteria. (1) A school identified for comprehensive support and improvement pursuant to KRS 160.346(3)(a) or (c) shall exit that status if:

(a) It no longer meets the criteria for identification; and

(b) It demonstrates progress on the data that served as the basis for identification.

(2) Schools identified for comprehensive support and improvement pursuant to KRS 160.346(3)(b) shall exit that status if they no longer meet the criteria for identification.

(3) Schools identified for comprehensive support and improvement as a result of more than one (1) criteria shall exit if all relevant exit criteria are met.

(4) Schools identified for targeted support and improvement pursuant to KRS 160.346(2)(a) or additional targeted support and improvement pursuant to KRS 160.346(2)(b) shall exit that status if they:

(a) No longer meet the criteria for identification; and

(b) Demonstrate progress on the data that served as the basis for identification.

(5) Schools identified for additional targeted support and improvement pursuant to KRS 160.346(2)(b) that do not exit that status within three (3) years shall be identified for comprehensive support and improvement pursuant to KRS 160.346(3)(c).

Section 15. Approved Turnaround Vendor List. (1) On or after July 1 and prior to August 15 of each calendar year, an entity may request to be a KBE-approved turnaround vendor by submitting to the Chair of the KBE and the commissioner the "Turnaround Vendor Application" outlining evidence of the entity's documented success at turnaround diagnosis, training, improved performance of organizations, and expertise in using evidence-based strategies to improve student achievement, instruction, and schools.

(2) Within forty-five (45) days from receipt of a completed "Turnaround Vendor Application," the commissioner, or his designee, shall review and recommend the KBE approve or deny the "Turnaround Vendor Application."

(3) At the next regularly scheduled meeting of the KBE following the receipt of the recommendation from the commissioner, or his designee, pursuant to subsection (4) of this section, the KBE shall approve or deny a completed "Turnaround Vendor Application."

(4) Any entity with a "Turnaround Vendor Application" that has been approved by the KBE shall be placed on the approved turnaround vendor list that the KBE is required to maintain pursuant to KRS 160.346(1)(a) and, thereafter, may be selected, in accordance with KRS 160.346(8)(a), by an LEA to provide turnaround training and support to a school identified for comprehensive support and improvement.

(5) An entity placed on the KBE's approved turnaround vendor list shall annually by October 15 submit the following to the department:

(a) The name and address of each school, including charter school, identified for comprehensive support and improvement wherein the entity provided turnaround training and support during the immediately prior school year;

(b) The accountability system performance of each school, including charter school, identified for comprehensive support and improvement wherein the entity provided turnaround training and support during the immediately prior school year;

(c) An accounting of the funds the entity received during the immediately prior school year from an LEA in consideration for the entity providing turnaround training and support to a school, including charter school, identified for comprehensive support; and

(d) Any other information the department deems necessary to evaluating the performance of the turnaround vendor and reporting thereon to the KBE and the Interim Joint Committee on Education, as required by KRS 160.346(10).

(6) The KBE may revoke approval of an entity's "Turnaround Vendor Application" as a result of evidence collected pursuant to subsection (5) or through any other means and remove the entity from the approved turnaround vendor list that the KBE is required to maintain pursuant to KRS 160.346(1)(a).

(7) Any entity that has had approval of its "Turnaround Vendor Application" revoked by the KBE shall be disqualified from submitting a new "Turnaround Vendor Application" or being placed on the KBE approved turnaround vendor list for a period of two (2) years from the date of revocation.

(8) An entity may, by letter to the Chair of the KBE and the commissioner, withdraw its approved "Turnaround Vendor Application" and be removed from the approved turnaround vendor list that the KBE is required to maintain pursuant to KRS 160.346(1)(a). An entity voluntarily removed from the approved turnaround vendor list that the KBE is required to maintain pursuant to KRS 160.346(1)(a) shall be eligible to reapply using the "Turnaround Vendor Application" at any time.

(9) An entity with a "Turnaround Vendor Application" that has been denied by the KBE or one that has been voluntarily or involuntarily removed from the approved turnaround vendor list that the KBE is required to maintain pursuant to KRS 160.346(1)(a) shall be ineligible to be selected, in accordance with KRS 160.346(8)(a), by an LEA to provide turnaround training and support to a school, including charter school, identified for comprehensive support and improvement.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) ["Notification of Non-Department Audit Team Form," August 2019;

(b)] "Notification of Non-Department Turnaround Team Form," December 2020[August 2019-];

(b) "Turnaround Vendor Application," December 2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, Office of Continuous Improvement and Support, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

JASON E. GLASS, Ed.D., Commissioner

LU YOUNG, Chairperson

APPROVED BY AGENCY: April 13, 2020

FILED WITH LRC: April 13, 2020 at 3:54 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on February 22, 2021, at 10:00 a.m. in the State Board Room, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 28, 2021.

CONTACT PERSON: Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: The Elementary and Secondary Education Act of 1965 as amended by the Every Student Succeeds Act (ESSA) requires the Kentucky Department of Education (KDE) to adopt a system of accountability and support for low-achieving schools and districts. Specifically, Sections 1111(c)(4)(D) and 1111(d)(1) of the ESSA require the KDE to identify schools for comprehensive support and improvement (CSI), and Section 1111(d)(2) requires the KDE identify schools for targeted support and improvement (TSI). Additionally, KRS 160.346 requires the Kentucky Board of Education (KBE) to, among other items, maintain an "approved turnaround vendor list" and establish annual statewide exit criteria for schools identified for CSI or TSI. This regulation establishes a system of support and ongoing accountability for CSI and TSI schools in compliance with the ESSA and KRS 160.346.

(b) The necessity of this administrative regulation: This amended regulation is necessary because it establishes a system of support and ongoing accountability for CSI and TSI schools in

compliance with the ESSA and KRS 160.346. Amendments to 703 KAR 5:280 are necessary to align the regulation with KRS 160.346 as amended by Senate Bill (SB) 158 (2020).

(c) How this administrative regulation conforms to the content of the authorizing statute: This amended regulation conforms to federal and state statutes by establishing a system of support and ongoing accountability for CSI and TSI schools in compliance with the ESSA and KRS 160.346. Specifically, Sections 1111(c)(4)(D) and 1111(d)(1) of the ESSA require the KDE to identify schools for CSI, and Section 1111(d)(2) requires the KDE identify schools for TSI. Additionally, KRS 160.346 requires the KBE to, among other items, maintain an "approved turnaround vendor list" and establish annual statewide exit criteria for schools identified for CSI or TSI.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended regulation assists in the effective administration of federal and state statutes by establishing a system of support and ongoing accountability for CSI and TSI schools in compliance with the ESSA and KRS 160.346. Specifically, Sections 1111(c)(4)(D) and 1111(d)(1) of the ESSA require the KDE to identify schools for CSI, and Section 1111(d)(2) requires the KDE identify schools for TSI. Additionally, KRS 160.346 requires the KBE to, among other items, maintain an "approved turnaround vendor list" and establish annual statewide exit criteria for schools identified for CSI or TSI.

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

(a) How the amendment will change this existing administrative regulation: Substantive amendments to 703 KAR 5:280 are necessary to align the regulation with KRS 160.346 as amended by SB 158 (2020). Specifically, SB 158 (2020) impacts how and when schools are identified for CSI or TSI, including additional targeted support and improvement; requires all newly identified CSI schools receive an audit conducted by the Kentucky Department of Education (KDE); and, mandates turnaround efforts in CSI schools be led by an entity on the KBE's "approved turnaround vendor list," which is newly defined in SB 158 (2020).

(b) The necessity of the amendment to this administrative regulation: Substantive amendments to 703 KAR 5:280 are necessary to align the regulation with KRS 160.346 as amended by SB 158 (2020).

(c) How the amendment conforms to the content of the authorizing statute: Substantive amendments to 703 KAR 5:280 conform to federal and state statutes by establishing a system of support and ongoing accountability for CSI and TSI schools in compliance with the ESSA and KRS 160.346. Specifically, Sections 1111(c)(4)(D) and 1111(d)(1) of the ESSA require the KDE to identify schools for CSI, and Section 1111(d)(2) requires the KDE identify schools for TSI. Additionally, KRS 160.346 requires the KBE to, among other items, maintain an "approved turnaround vendor list" and establish annual statewide exit criteria for schools identified for CSI or TSI.

(d) How the amendment will assist in the effective administration of the statutes: Substantive amendments to 703 KAR 5:280 assist in the effective administration of federal and state statute by establishing a system of support and ongoing accountability for CSI and TSI schools in compliance with the ESSA and KRS 160.346. Specifically, Sections 1111(c)(4)(D) and 1111(d)(1) of the ESSA require the KDE to identify schools for CSI, and Section 1111(d)(2) requires the KDE identify schools for TSI. Additionally, KRS 160.346 requires the KBE to, among other items, maintain an "approved turnaround vendor list" and establish annual statewide exit criteria for schools identified for CSI or TSI.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local education agencies (LEAs), entities seeking placement on the KBE's "approved turnaround vendor list," the KBE, and the KDE will be impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative

regulation or amendment: LEAs with schools, including charter schools, identified for CSI must comply with the process established within the regulation, pursuant to KRS 158.6455(6), whereby “a school or school district shall be allowed to appeal any judgment made by the department...of a principal, superintendent, school, or school district which it considers grossly unfair.” LEAs with schools, including charter schools, identified for CSI must also select a turnaround team from the “approved turnaround vendor list” the KBE is required to maintain pursuant to KRS 160.346(1)(a) and (8)(a) and Section 15 of the revised regulation. LEAs must notify the KDE of selected turnaround teams using the Notification of Non-Department Audit Team Form incorporated by reference within the regulation. Entities seeking placement on the KBE’s “approved turnaround vendor list” must comply with Section 15 of the revised regulation, including utilization of the Turnaround Vendor Application incorporated by reference within the regulation. The KBE and the KDE will implement all aspects of the amended regulation, which aligns with SB 158 (2020) requiring, among other items, the KDE act as the audit team in all schools identified for CSI and the KBE establish and maintain an “approved turnaround vendor list,” sets forth revised criteria for the KDE-led audit team to determine a principal’s capacity to lead turnaround efforts in a CSI school; and, delineates a process, pursuant to KRS 158.6455(6), by which “a school or school district shall be allowed to appeal any judgment made by the department...of a principal, superintendent, school, or school district which it considers grossly unfair.”

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated budget impact related to the amendment of this administrative regulation for local education agencies or entities seeking placement on the KBE’s “approved turnaround vendor list.” While the KBE and the KDE may incur unknown costs in the form of additional staff time and dedicated resources with regard to the creation and maintenance of an “approved turnaround vendor list,” which the KBE is required to oversee pursuant to KRS 160.346(1)(a), providing a system of school improvement procedures and supports continues to be required by federal and state law, and Kentucky is estimated to receive \$600,000 in federal funding under Title I, Part A to support school improvement in identified schools.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amended regulation conforms to federal and state statutes, including the ESSA and KRS 160.346, and conformance with authorizing statutes ensures clarity and legal compliance for the entities identified in question (3). Further, the system of accountability and support for low-achieving schools and districts provided in this regulation is aimed at creating sustainable turnaround and, ultimately, spurring school and district improvement across Kentucky.

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

(a) Initially: The ESSA, which became effective in 2015, requires the KDE to adopt a system of accountability and support for low-achieving schools and districts. Specifically, Sections 1111(c)(4)(D) and 1111(d)(1) of the ESSA require the KDE to identify schools for CSI, and Section 1111(d)(2) requires the KDE identify schools for TSI. Additionally, KRS 160.346 requires the KBE to, among other items, maintain an “approved turnaround vendor list” and establish annual statewide exit criteria for schools identified for CSI or TSI. While the KBE and the KDE may incur unknown costs in the form of additional staff time and dedicated resources with regard to the creation and maintenance of an “approved turnaround vendor list,” which the KBE is required to oversee pursuant to KRS 160.346(1)(a), providing a system of school improvement procedures and supports continues to be required by the ESSA and KRS 160.346, and the KBE and the KDE have been complying with these federal and state statutes since their effective dates.

(b) On a continuing basis: While the KBE and the KDE may incur unknown costs in the form of additional staff time and dedicated resources with regard to the creation and maintenance of an “approved turnaround vendor list,” which the KBE is required to oversee pursuant to KRS 160.346(1)(a), providing a system of

school improvement procedures and supports continues to be required by the ESSA and KRS 160.346, and the KBE and the KDE have been complying with these federal and state statutes since their effective dates. Therefore, on a continuing basis, the KDE incurs costs for providing support, monitoring, and technical assistance to low-achieving schools and districts. Since the state legislature’s decision not to fund the Commonwealth School Improvement Fund in the 2018-2020 biennial budget, federal funding has supported this work. Kentucky is expected to receive \$600,000 under Title I, Part A of the ESSA to support school improvement in identified schools.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: While the KBE and the KDE may incur unknown costs in the form of additional staff time and dedicated resources with regard to the creation and maintenance of an “approved turnaround vendor list,” which the KBE is required to oversee pursuant to KRS 160.346(1)(a), providing a system of school improvement procedures and supports continues to be required by the ESSA and KRS 160.346, and the KBE and the KDE have been complying with these federal and state statutes since their effective dates. Federal funding is used for the implementation and enforcement of the obligations in the ESSA and KRS 160.346, including the provision of support, monitoring, and technical assistance to low-achieving schools and districts, and Kentucky is expected to receive \$600,000 under Title I, Part A of the ESSA to support school improvement in identified schools.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because the amendment to this administrative regulation applies equally to individuals, businesses, organizations, or state and local governments affected by this administrative regulation.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local education agencies (LEAs), the Kentucky Board of Education (KBE), and the Kentucky Department of Education (KDE).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.029(7), 156.070(5), 158.6453, 158.6455, 160.346, 20 U.S.C. 6301.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. For the first full year, there is no anticipated budget impact related to the amendment of this administrative regulation for LEAs; however, the KBE and the KDE may incur unknown costs in the form of additional staff time and dedicated resources with regard to the creation and maintenance of an “approved turnaround vendor list,” which the KBE is required to oversee pursuant to KRS 160.346(1)(a). However, because providing a system of school improvement procedures and supports continues to be required by the Elementary and Secondary Education Act of 1965 as amended by the Every Student Succeeds Act (ESSA) as well as KRS 160.346 and because the KBE and the KDE have been complying with these federal and state statutes since their effective dates, there is no anticipated additional cost in the first full year.

(4) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? While the KBE and the KDE may incur unknown costs for the first year in the form of additional staff time and dedicated resources with regard to the creation and maintenance of an "approved turnaround vendor list," which the KBE is required to oversee pursuant to KRS 160.346(1)(a), providing a system of school improvement procedures and supports continues to be required by the ESSA and KRS 160.346, and the KBE and the KDE have been complying with these federal and state statutes since their effective dates.

(d) How much will it cost to administer this program for subsequent years? While the KBE and the KDE may incur unknown costs in subsequent years in the form of additional staff time and dedicated resources with regard to the creation and maintenance of an "approved turnaround vendor list," which the KBE is required to oversee pursuant to KRS 160.346(1)(a), continuing costs are incurred as a result of the obligations in the ESSA and KRS 160.346 to provide support, monitoring, and technical assistance to low-achieving schools and districts. Since the state legislature's decision not to fund the Commonwealth School Improvement Fund in the 2018-2020 biennial budget, federal funding has supported this work. Kentucky is expected to receive \$600,000 under Title I, Part A of ESSA to support school improvement in identified schools.

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

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

**PUBLIC PROTECTION CABINET**  
**Department of Insurance**  
**Division of Health and Life Insurance and Managed Care**  
**(Amended After Comments)**

**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 [implement] 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 be 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" 3/2021[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: April 2, 2021

FILED WITH LRC: April 2, 2021 at 9:51 a.m.

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](mailto: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. Amendments were addressed based on Public Comments received, amending the LS-7 to remove the comma concerning the reporting period on line 6.

(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:

## CABINET FOR HEALTH AND FAMILY SERVICES

### Office of Inspector General Division of Certificate of Need (Amended After Comments)

#### 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[OHP] - 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[OHP] - 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[OHP] - 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[OHP] - Form 3, Notice of Appearance, shall be filed by a person who wishes to appear at a hearing.

(5) CON[OHP] - Form 4, Witness List, shall be filed by a person who elects to call a witness at a hearing.

(6) CON[OHP] - Form 5, Exhibit List, shall be filed by a person who elects to introduce evidence at a hearing.

(7) CON[OHP] - Form 6, Cost Escalation Form, shall be filed by a facility that elects to request an administrative escalation.

(8) CON[OHP] - Form 7, Request for Advisory Opinion, shall be filed by anyone electing to request an advisory opinion.

(9) CON[OHP] - 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[OHP] - 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[OHP] - 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[OHP] - 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, including an outpatient health care clinic listed on the hospital's license; or that redistributes beds among its existing licensure categories within the same hospital, including an outpatient health care clinic listed on the hospital's license.

(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: April 12, 2021

FILED WITH LRC: April 13, 2021 at 12:12 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kara Daniel and 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. The Amended After Comments version adds language to clarify that a hospital with an outpatient health care clinic may relocate or redistribute acute care beds to the clinic facility.

(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 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  
(Amended After Comments)

**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.,  
[94A.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)(f).

(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, including an outpatient health care clinic listed on the hospital's license, 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, including within an outpatient health care clinic listed on the hospital's license, 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: April 12, 2021

FILED WITH LRC: April 13, 2021 at 12:12 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 Persons: Kara Daniel and 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. The Amended After Comments version adds language to clarify that the notification requirement applies to a hospital with an outpatient health care clinic that relocates or redistribute acute care beds to the clinic facility.

(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.

(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:

#### 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

PROPOSED AMENDMENTS

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

**BOARDS AND COMMISSIONS**  
**Board of Pharmacy**  
**(Amendment)**

**201 KAR 2:061. Procedures followed by the Kentucky Board of Pharmacy in the investigation and hearing of complaints.**

RELATES TO: KRS 218A.205, 315.121, 315.131, 315.191(4)], 21 C.F.R. 310.305(b)

STATUTORY AUTHORITY: KRS 218A.205(3)(e), (f), (5), 315.191(1), (2), (3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations relating to the practice of pharmacy, including a process for complaints and hearings. KRS 315.191(2) provides the board with the authority to enforce pharmacy laws and regulations. KRS 218A.205(3)(e) (f) and (5) require the board to promulgate administrative regulations relating to complaints, licensure standards, and disciplinary actions. The administrative regulation establishes board procedure for investigations, the administrative hearings process, and the penalties for violations.

Section 1. Definitions. (1) "Adverse Drug Experience" means any adverse event associated with the use of a drug in humans, whether or not considered drug related, including the following: an adverse event occurring in the course of the use of a drug product in professional practice; an adverse event occurring from drug overdose, whether accidental or intentional; an adverse event occurring from drug abuse; an adverse event occurring from drug withdrawal; and any failure of expected pharmacological action;

(2) "Agreed Order" means a formal written agreement between the board and the licensee, permit holder or registrant that stipulates that a violation of pharmacy law may have occurred and specifies the disciplinary terms and conditions imposed on the licensee, permit holder or registrant.

(3) "Board" means the Kentucky Board of Pharmacy;

(4) "Charge" means a specific allegation alleging a violation of a specified provision of this chapter;

(5) "Complaint" means a formal administrative pleading that sets forth charges against a licensee, permit holder or registrant and commences a formal disciplinary proceeding;

(6) "Diversion agreement" means an interim agreement between the board and the licensee, permit holder or registrant that is utilized as a method of ensuring patient safety during a time mutually agreed upon. At the conclusion of the time period, the case review panel may dismiss the grievance, issue a complaint, issue a letter of concern or reprimand, modify the terms of the diversion agreement or enter into an agreed order with the licensee, permit holder or registrant.

(7) "Executive director" means the executive director of the Kentucky Board of Pharmacy;

(8) "FDA" means United States Food and Drug Administration;

(9) "General counsel" means the general counsel of the Kentucky Board of Pharmacy or any attorney hired or contracted with the Kentucky Board of Pharmacy to provide legal services;

(10) "Grievance" means any allegation in whatever form alleging misconduct by a licensee, permit holder or registrant;

(11) "Inordinate amount of compounded human drug products" means when a pharmacy has distributed interstate during any calendar year more than fifty (50) percent of the sum of the number of prescription orders for compounded human drug products that the pharmacy sent out of the facility in which the drug products were compounded during that same calendar year plus the number of prescription orders for compounded human drug products that were dispensed at the facility in which they were compounded during that same calendar year;

(12) "Letter of concern" means an advisory letter to notify a licensee, permit holder or registrant that, although there is insufficient evidence to support disciplinary action, the board believes the licensee, permit holder or registrant should modify or eliminate certain practices and that the continuation of those practices may result in action against the license, permit or registration;

(13) "Letter of reprimand" means a letter admonishing a licensee, permit holder or registrant for violating pharmacy law, but notifying the licensee, permit holder or registrant that in consideration of mitigating evidence, the board has determined that disciplinary action is not appropriate;

(14) "Pharmacy Law" means any provision of law in KRS Chapter 315 and 201 KAR Chapter 2 or any provision of law in KRS Chapter 217 or 218A relating to prescription drugs.

(15) "Product quality issue" means any incident that causes the drug product or its labeling to be mistaken for, or applied to, another article, any contamination, any significant chemical, physical, or other change or deterioration in the distributed drug product, or any failure of one (1) or more distributed batches of the drug product to meet the applicable specifications.

(16) "Serious adverse drug experience" means any adverse drug experience occurring at any dose that results in death, a life-threatening adverse drug experience, inpatient hospitalization or prolongation of existing hospitalization, a persistent or significant disability of incapacity, or a congenital anomaly or birth defect. Important medical events that may not result in death, be life-threatening, or require hospitalization may be considered a serious adverse drug experience when, based upon appropriate medical judgment, they may jeopardize the patient or subject and may require medical or surgical intervention to prevent one (1) of the above-mentioned outcomes;

(17) "Serious product quality issue" means any product quality issue that may have the potential to cause a serious adverse drug experience.

Section 2. Grievances. (1) A grievance[complaint] against a licensee may:

(a) Be submitted orally or in writing; [and]

(b) Originate from a consumer, competitor, health professional, government or provider agency, or other interested party.

(2) A grievance [complaint shall] can be [accepted] submitted anonymously, and if the grievance [complaint] is accompanied by sufficient corroborating evidence [as would allow the board to believe, based upon a totality of the circumstances,] that there is a reasonable probability that there has been a violation of pharmacy law, the grievance shall be accepted by the executive director or the general counsel, [exists that the complaint is meritorious.];

(3) A grievance [complaint] shall not be required to be sworn to or notarized.

(4) A grievance that alleges adverse drug exposure or a product quality issue from human drug products compounded in Kentucky and distributed outside the state shall be reviewed, and if the grievance is accepted and involves alleged serious adverse drug exposure or serious product quality issue, the grievance shall be reported to the FDA within five (5) business days from receipt of the grievance.

(5) A grievance that alleges adverse drug exposure or a product quality issue from a compounded human drug product that was compounded in Kentucky by a physician and distributed outside the state shall be reported to the Kentucky Board of Medical Licensure and the FDA within five (5) business days from receipt of the grievance.

Section 3 [2]. Investigations. (1) Except as provided by subsection (2) of this section, upon [receipt] acceptance of a grievance [complaint], the executive director [board] shall instruct

its staff or a special investigator to:

- (a) Conduct an investigation; and
- (b) ~~[Report the conclusions and recommendations of the investigation to the:~~

1. Executive director; and

2. Board member assigned by the board to review conclusions and recommendations relating to an investigation.] Except as provided by paragraph (d), notify the licensee, permit holder or registrant via written letter sent through the United States Postal Service that a grievance has been filed, and that the board is investigating the merits of the grievance. If during the investigation, it is alleged that another licensee, permit holder or registrant may have violated pharmacy law, that licensee, permit holder or registrant shall also be notified via written letter sent through the United States Postal Service that a grievance has been filed and the board is investigating the grievance. Any licensee, permit holder or registrant under investigation shall be given the opportunity to provide a written statement to the executive director; and

(c) Report the case to the case review panel within 120 days of the receipt of the grievance. If an extension of time is requested, the case shall be brought before the case review panel to approve or deny the extension of time. If an extension of time is approved, the licensee, permit holder or registrant that is the subject of the investigation shall be notified via written letter sent through the United States Postal Service of the extension of time. An extension cannot be granted for a period exceeding 120 days. Multiple extensions are permitted; and

(d) The executive director may hold an investigation in abeyance for a reasonable period of time or approve of a delay in notice to the licensee, permit holder or registrant in order to permit law enforcement or a government agency to perform or complete essential investigative tasks, following a request by law enforcement or a government agency.

(2) If the grievance ~~[complaint]~~ pertains to the improper, inappropriate, or illegal dispensing of controlled substances, the board shall:

(a) File a report with the Attorney General's office, the Office of Inspector General's office, and the Department of the Kentucky State Police within three (3) business days;

(b) Commence an investigation within seven (7) days of the grievance ~~[complaint]~~; and

(c) Produce a charging decision within 120 days of the receipt of the grievance ~~[complaint]~~, unless an extension for a definite time period is requested in writing by a law enforcement agency due to an ongoing criminal investigation.

(3) If the grievance pertains to human drug products compounded in Kentucky and distributed outside of Kentucky, the investigation shall include assessing whether there is a public health risk associated with the compounded drug product and whether any public health risk associated with the product is adequately contained.

(4) A special investigator shall only be utilized when a conflict of interest exists that prevents any board inspector from being assigned to investigate the grievance.

Section 4[3]. Case Review Panel (1) A panel consisting of [the] three (3) assigned board members, ~~[member the executive director, and the pharmacy drug inspector]~~ shall review the findings ~~[conclusions and recommendation]~~ relating to an investigation.

(2) Board staff or a special investigator shall provide the written findings and evidence from each investigation to the case review panel, executive director and general counsel at least seven (7) days prior to the meeting of the case review panel.

(3) The case review panel shall be empowered to request the attendance of any person, including the assigned inspector, at any meeting of the case review panel in regard to the investigation of any grievance or consideration of any disciplinary matter.

(4) The executive director and general counsel shall attend case review panel meetings in a non-voting, ex-officio capacity.

(5) The panel shall determine if a preponderance of the evidence exists or does not exist that the licensee, permit holder or registrant violated pharmacy law. If the panel determines that the

preponderance of the evidence indicates that the licensee, permit holder or registrant did not violate the law, the case review panel shall dismiss the case with or without prejudice or issue a letter of concern.

(6) After reviewing the evidence, if the case review panel determines that a preponderance of the evidence indicates that the licensee, permit holder or registrant violated pharmacy law, the case review panel, shall ~~[recommend]~~ adopt one (1) of the following dispositions~~[options to the board]~~:

(a) Non-adverse action against the licensee, permit holder or registrant. Non-adverse action includes:

1. Issuance of a letter of [a] reprimand ~~[restricting the licensee, permit or certificate holder]~~; or

2. Entry into a diversion agreement.

- (b) Attempt resolution of the case through an agreed order; or

- (c) The issuance of a formal complaint, order, and notice of hearing; or

- (e) Dismissal of the case with or without prejudice; or

- (d) Returning the case to the inspector or special investigator for further investigation.

(7) [(3)] Documentation of a letter of [board] reprimand, letter of concern or diversion agreement shall be maintained in [the appropriate] board records [files] for three (3) years.

(8) Within thirty (30) days of the case review panel decision, the licensee, permit holder, or registrant shall be informed via letter sent through the United States Postal Service of the decision of the case review panel.

(9) In the case of recusal by a member of the case review panel, the executive director shall replace the recused board member as a voting member of the case review panel.

(10) If the case review panel determines by a preponderance of the evidence that a grievance involving human drug products compounded in Kentucky and distributed to another state did violate pharmacy law, the board shall take action to ensure that the relevant pharmacy investigates the root cause of the problem that is the subject of the grievance and undertakes sufficient corrective action to address any identified public health risk related to the problem, including the risk that future similar problems may occur.[]

Section 4. (1) With the approval of the board, the executive director shall notify the licensee, permittee, or certificate holder, in writing, that he or she may request an administrative conference before the executive director and the pharmacy drug inspector to be held prior to the hearing.

(2) The licensee, permit or certificate holder shall be notified that he or she may appear with counsel.

(3) An administrative conference shall be held to determine whether an agreement may be reached to resolve the complaint that is acceptable to all parties.

(4) If an agreement is reached, it shall be submitted to the board for approval and board order.

Section 5. Settlement. (1) At any time after notice of a grievance or the filing of a complaint, a settlement conference may be requested by the licensee, permit ~~[or certificate]~~ holder, registrant, or ~~[the]~~ their attorney ~~[for that person]~~ to resolve a grievance or a complaint.

(2) If a settlement conference is requested, it shall be scheduled. The settlement conference shall include the general counsel ~~[board's attorney]~~, the licensee, permit ~~[or certificate]~~ holder, registrant, ~~[and]~~ the attorney for ~~[that]~~ the licensee, permit holder or registrant ~~[person]~~, and anyone else at the request of the licensee, permit holder or registrant.

(3) Except as provided in subsection (4), if the parties to a settlement conference ~~[agree on stipulations, proposed terms, and conditions for an agreed order to resolve the complaint, they shall forward the agreed order to the board for approval]~~ reach an agreement, general counsel, with the consent of the executive director, shall be authorized to resolve the case with a settlement agreement.

(4) If the case involves harm to any member of the public, diversion of controlled substances, proposed probation, suspension or revocation, the proposed settlement agreement



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[agreed order is] shall be reviewed [approved] by the case review panel. If the settlement agreement is approved by the case review panel, [board,] the grievance or complaint shall be considered resolved [and a hearing shall not be held].

Section 6. Hearings. All hearings shall be conducted in accordance with the provisions of KRS 315.131(1) and KRS Chapter 13B.

Section 7. Final Order. [Posthearing Proceedings.] (1) The board shall deliberate on issuance of a final order [on all cases] in closed session. Board members that voted on the disposition of the case for the case review panel shall recuse themselves. In the event of board member recusal and the need for a tie-breaking vote, the executive director shall be available to deliberate and vote on issuance of the final order.

(2) Board counsel shall not attend, or be involved in any manner with, the closed session.

(3) The specific findings of the board shall be made in open session following the board's deliberation.

Section 8. Required Penalties for Violations of KRS Chapter 218A. (1) Pursuant to KRS 218A.205(3)(f)(e)1., a licensee convicted of a felony offense related to dispensing a controlled substance shall, at a minimum, be permanently banned from dispensing any controlled substance.

(2) Pursuant to KRS 218A.205(3)(f)(e)2., the board shall impose restrictions short of a permanent ban from dispensing controlled substances on a licensee convicted of a misdemeanor offense relating to the dispensing of a controlled substance.

(3) Pursuant to KRS 218A.205(3)(f)(e)3., a licensee disciplined by the licensing board of another state relating to the improper, inappropriate, or illegal dispensing of a controlled substance shall, at a minimum, have the same disciplinary action imposed in Kentucky as the disciplinary action imposed by the licensing board of the other state.

(4) Pursuant to KRS 218A.205(3)(g)(f), the board shall submit all disciplinary actions to the National Practitioner Data Bank of the United States Department of Health and Human Services either directly or through a reporting agent.

Section 9. Required Reporting of Investigative Findings to the FDA. (1) At the conclusion of an investigation of a grievance involving a serious adverse drug experience or a serious product quality issue relating to a drug product compounded at a pharmacy in Kentucky but distributed outside the state, the board shall share, as permitted by state law, the findings of the investigation with the FDA.

(2) The Board will maintain records of grievances involving adverse drug experiences or product quality issues relating to human drug products compounded at a pharmacy, the investigations of the grievances, and any response to or action taken as a result of the grievance beginning when the board receives notice of the grievance. The board shall maintain these records for at least three (3) years. The three (3) year period begins on the date of final action on a grievance, or the date of a decision that the grievance requires no action.

Section 10. Information Sharing with the FDA. (1) On an annual basis, the board shall identify pharmacies that distribute inordinate amounts of compounded human drug products interstate and within thirty (30) days of identifying the pharmacy, notify FDA of such pharmacy.

(2) For pharmacies that have been identified as distributing inordinate amounts of compounded human drug products interstate during any calendar year, the board will identify during the same calendar year:

(a) The total number of prescription orders for sterile compounded human drugs distributed interstate; and

(b) The names of states in which the pharmacy is licensed; and

(c) The names of states into which the pharmacy distributed compounded human drug products; and

(d) Whether the state inspected for and found during its most

recent inspection that the pharmacy distributed compounded human drug products without valid prescription orders for individually identified patients.

(3) If the board becomes aware of a physician who is distributing any amount of compounded human drug products interstate, the board shall notify the Kentucky Board of Medical Licensure and within thirty (30) business days of identifying the physician, notify the FDA.

LARRY A. HADLEY, R.Ph., Executive Director

APPROVED BY AGENCY: April 13, 2021

FILED WITH LRC: April 13, 2021 at 4:07 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2021 at 1:00 p.m. Eastern Time at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for how the board of pharmacy handles grievances, investigations, review of investigations, disposition of investigations, hearings and the issuance of final orders. This administrative regulation also contains the procedures for handling grievances that involve violations of KRS 218A and compounding violations that have caused adverse drug experiences or presented product quality issues.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the Board to be able to protect the safety and health of the citizens of the Commonwealth. This administrative regulation creates procedures for investigating alleged violations of law and the process through which a licensee, permit-holder or registrant could face administrative penalty.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 315.191(1)(a) authorizes the Board to promulgate administrative regulations to regulate and control all matters pertaining to pharmacists and pharmacies. This administrative regulation provides the procedures through which the Board accepts grievances, conducts investigations and renders decisions when pharmacists or pharmacies have violated the law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 315.191(1)(a) authorizes the Board to promulgate regulations to allow for the control and regulation of licensees, permit holders and registrants. This administrative regulation provides the processes through which the board is to follow in enforcing the statutes and regulations by which the practice of pharmacy is governed.

(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 ensures adequate due process and notice requirements are provided for the licensee, permit holder or registrant to be made aware of any grievance against them, an

opportunity to respond, notice of the status of the investigation and notice of the findings of the case review panel in a timely manner. Moreover, this amendment changes the makeup of the case review panel to three members of the board. This amendment removes the administrative conference but bolsters the settlement conference availability. This amendment also creates a settlement process through which the general counsel and executive director can consent to some settlement agreements for the board. Lastly, this amendment adds language that is required by the board in signing a memorandum of understanding with the FDA to investigate and report to the FDA grievances involving adverse drug experiences and product quality issues from human drug products compounded in the Commonwealth of Kentucky.

(b) The necessity of the amendment to this administrative regulation: To ensure that licensees, permit holders and registrants are provided sufficient due process, to ensure that there are impartial decision makers to review all cases, and to ensure a process exists for investigating and reporting to the FDA grievances involving adverse drug experiences and product quality issues from human drug products compounded in the Commonwealth of Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.002 and 315.005 authorize the board to regulate the practice of pharmacy. KRS 315.191 authorizes the board to promulgate administrative regulations pertaining to pharmacists and pharmacies. This amendment involves the processes through which the board can investigate and dispose of grievances involving potential violations of pharmacy law.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective regulation of pharmacists and pharmacies by providing more robust due process to licensees, permit holders and registrants and by ensuring that an impartial decision maker is determining case outcomes for the board of pharmacy. Moreover, this amendment is ensuring that the public is protected and that the board investigates and reports to the FDA grievances involving adverse drug experiences and product quality issues from human drug products compounded in the Commonwealth of Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees, permit holders and registrants with the board will be impacted due to a change in the internal processes the board must follow when accepting grievances, conducting investigations and reviewing cases and rendering final outcomes. This amended regulation affords licensees, permit holders and registrants more due process rights.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation only impacts actions that the board of pharmacy has to take. It does not create any new rule for a licensee, permit holder or registrant.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees, permit holders and registrants will be afforded greater due process rights.

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

(a) Initially: No costs will be incurred.

(b) On a continuing basis: No costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding to enforce the regulation.

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required because of this amended regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all licensees, permit holders and registrants.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Pharmacy will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.191(a).

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

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

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

(c) How much will it cost to administer this program for the first year? No increased costs are required to administer this amended regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No costs are required to administer this program for subsequent years.

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

#### BOARDS AND COMMISSIONS Kentucky Board of Medical Licensure (Amendment)

**201 KAR 9:270. Professional standards for prescribing, [or] dispensing, or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.**

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

STATUTORY AUTHORITY: KRS 311.565(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licensees. KRS 218A.205(3)(a) and (b) require the board to establish mandatory prescribing and dispensing standards related to controlled substances. KRS 311.842(1)(b) requires that the board promulgate administrative regulations establishing professional standards for prescribing and administering controlled substances by physician assistants. This administrative regulation establishes the professional standards for any board licensee [physicians practicing in Kentucky] who prescribes, dispenses, [prescribe or dispense] or administers Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of

Kentucky.

Section 1. Minimum Qualifications for Prescribing, [or] Dispensing, or Administering Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone. Except as provided in Section 3 of this administrative regulation, a licensee [licensed physician] shall not prescribe, [or] dispense, or administer Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone unless that licensee [physician] possesses the minimum qualifications established in this section.

(1) The licensee [physician] shall obtain and maintain in good standing a waiver and license as issued by the Drug Enforcement Administration (DEA) to prescribe Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for the treatment of opioid use disorder in the Commonwealth of Kentucky.

(2) The licensee [physician] shall successfully complete the approved educational programs required by this subsection.

(a) The prescribing licensee [physician] shall be a DEA-licensed prescriber of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone and shall have obtained Buprenorphine certification through completion of a Substance Abuse and Mental Health Services Administration ("SAMHSA") certified course.

(b) For each three (3) year continuing education cycle, each DEA-licensed prescriber of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone shall complete at least twelve (12) hours of continuing medical education certified in Category I specific to addiction medicine as part of the required continuing medical education hours set forth in 201 KAR 9:310 and 201 KAR 9:360.

(3) The licensee [physician] shall enroll in the Kentucky Health Information Exchange to the extent necessary to query and pull information from the Kentucky Health Information Exchange. The licensee [physician] shall not report the prescribing, [or] dispensing, or administering [of] Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for medically-supervised withdrawal or as maintenance treatment for a patient diagnosed with opioid use disorder into the Kentucky Health Information Exchange unless otherwise required by law.

Section 2. Professional Standards for Prescribing, [or] Dispensing, or Administering Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for Medically-Supervised Withdrawal or the Treatment of Opioid Use Disorder.

(1)(a) Except as provided in paragraph (b) of this subsection, transmucosal Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone shall only be prescribed, [or] dispensed, or administered for medically-supervised withdrawal or as a maintenance treatment for a patient diagnosed with opioid use disorder.

(b) Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone shall not be used for the treatment of pain or any other condition, unless delivered in a Federal Drug Administration (FDA) approved form and for an FDA approved purpose.

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

(a) To a pregnant patient;

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

(c) As administered under supervision in a physician's office or other healthcare facility, including hospitals, urgent care settings, surgical care centers, residential treatment facilities, and correctional facilities; or

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

(3)(a) Except as provided in paragraph (b) of this section, Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone shall not be prescribed, [or] dispensed, or administered to a patient who is also being prescribed benzodiazepines, other sedative hypnotics, stimulants or other opioids, without consultation of a physician who is certified by the American Board

of Addiction Medicine, the American Board of Preventive Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry.

(b) A licensee [physician] may prescribe, [or] dispense, or administer Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone to a patient who is also being prescribed benzodiazepines, other sedative hypnotics, stimulants, or other opioids, without consultation in order to address an extraordinary and acute medical need not to exceed a combined period of thirty (30) days.

(4) Except as provided in Section 3 of this administrative regulation, each licensee [licensed physician] who prescribes, [or] dispenses, or administers Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for medically-supervised withdrawal or for the treatment of opioid use disorder shall fully comply with the professional standards established in this subsection.

(a) Prior to or at least within two (2) weeks of initiating treatment, the prescribing, [or] dispensing, or administering licensee [physician] shall:

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

- a. The patient's history of present illness;
- b. The patient's history of substance use;
- c. The patient's social and family history;
- d. The patient's past medical and psychiatric histories;
- e. A focused physical examination of the patient;
- f. Screening for HIV and hepatitis serology; and
- g. Arranging appropriate laboratory tests, which shall include a CBC, a drug screen, and a CMP;

2. Obtain the patient's consent and authorizations in order to obtain the patient's prior medical records.

a. Upon receipt of the medical records, the prescribing, [or] dispensing, or administering licensee [physician] shall review and incorporate the information from the records into the evaluation and treatment of the patient.

b. If the prescribing, [or] dispensing, or administering licensee [physician] is unable, despite best efforts, to obtain the patient's prior medical records, the licensee [physician] shall document those efforts in the patient's chart;

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

4. Explain treatment alternatives and the risks and the benefits of treatment with Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone to the patient;

5. Obtain written informed consent from the patient in a manner that meets professional standards; and

6. If the patient is a female of child-bearing age and ability, meet the requirements of paragraph (b) of this subsection.

(b) Except as provided in Section 3 of this administrative regulation, the requirements of this paragraph shall apply to the treatment of a female of child-bearing age and ability.

1. Prior to initiating treatment, the licensee [physician] shall require that the patient submit to a pregnancy test and, if pregnant, the licensee [physician] shall provide counseling as to the risk of neonatal abstinence syndrome which shall be consistent with current SAMHSA guidance.

2.a. Unless the licensee is certified by the American Board of Addiction Medicine, the American Board of Preventive Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry or an obstetrician or maternal-fetal medicine specialist, a licensee [physician] who prescribes, [or] dispenses, or administers Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone to a patient who is pregnant or breastfeeding shall first obtain and document consultation with another independent physician that the potential benefit of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone use outweighs the potential risk of use.

b. The consultation shall be obtained from a physician who is

certified by the American Board of Addiction Medicine, the American Board of Preventive Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry or from an obstetrician or maternal-fetal medicine specialist.

(c) Except as provided by paragraph (d) of this subsection, while initiating treatment with Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone, the licensee [~~prescribing or dispensing physician~~] shall comply with the requirements of this paragraph.

1. The licensee [~~prescribing or dispensing physician~~] shall recommend to the patient an in-office observed induction protocol.

a. Except as provided in clause b. of this subparagraph, the licensee [~~prescribing or dispensing physician~~] shall supervise the in-office observed induction protocol.

b. If an in-office observed induction does not occur, the licensee [~~prescribing or dispensing physician~~] shall appropriately record the circumstances in the patient chart.

2. The licensee [~~prescribing or dispensing physician~~] shall document the presence of opioid withdrawal before the first dose is given by using a standardized instrument, such as the clinic opioid withdrawal scale (COWS) or other similarly recognized instrument.

3. The licensee [~~prescribing or dispensing physician~~] shall initiate treatment with a dose not to exceed the dose equivalency of four (4) milligrams buprenorphine generic tablet, which:

a. May be followed by subsequent doses if withdrawal persists; and

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

(d) If the patient is transferred from another treatment provider and has previously experienced withdrawal without a relapse and has not had a lapse in treatment, the licensee [~~prescribing or dispensing physician~~] shall:

1. Document that fact;

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

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

(e) After initial induction of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone, the licensee [~~prescribing or dispensing physician~~] shall meet the requirements established in this paragraph.

1. If the licensee [~~physician~~] prescribes, ~~or~~ dispenses, ~~or administers~~ Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone medication, the licensee [~~physician~~] shall implement a treatment plan that requires objective behavioral modification by the patient. The behavioral modification shall include the patient's participation in a behavioral modification program that may include counseling or a twelve (12) step facilitation.

2. The licensee [~~physician~~] shall prescribe, ~~or~~ dispense, ~~or administer~~ to the patient an amount of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone that:

a. Is necessary to minimize craving and opiate withdrawal;

b. Does not produce opiate sedation;

c. Except as provided in subclauses (i) through (iv) of this clause, is to be taken no more frequently than once daily;

(i) If the patient is pregnant, is to be taken no more than twice daily;

(ii) If the patient is receiving a daily dosage of less than 16mg, is to be taken no more than twice daily;

(iii) If the patient is simultaneously engaged in cancer treatment, hospice or palliative care, is to be taken bid or tid; or

(iv) If the patient is undergoing a major surgery, being any operative or invasive procedure or delivery, or has suffered a significant physical trauma, being any acute, blunt, blast or penetrating bodily injury that has a risk of death, physical disability or impairment, is to be taken bid or tid for up to fourteen (14) days; and

d. Is able only to supply the patient until the next licensee

[~~physician~~] visit, which shall be scheduled as required by subparagraph 3. of this paragraph.

3.a. The licensee [~~prescribing or dispensing physician~~] shall ensure that the patient is seen:

(i) No later than ten (10) days after induction and then at intervals of no more than ten (10) days for the first month after induction; and

(ii) At intervals of no more than fourteen (14) days for the second month after induction.

b.(i) If the patient demonstrates objective signs of positive treatment progress, the licensee [~~prescribing or dispensing physician~~] shall ensure that the patient is seen at least once monthly thereafter.

(ii) If two (2) years after initiation of treatment, the patient is being prescribed Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for opioid use disorder and the patient has demonstrated objective signs of positive treatment progress, including documented evidence that the patient has been compliant with the treatment plan and all treatment directives for at least two (2) years, then the licensee [~~prescribing or dispensing physician~~] may require that the patient be seen only by the licensee [~~prescribing or dispensing physician~~] at least once every three (3) months.

(iii) The licensee [~~prescribing or dispensing physician~~] shall see the patient in shorter intervals if the patient demonstrates any noncompliance with the treatment plan.

c. If extenuating circumstances arise that require a patient to unexpectedly reschedule a physician visit, the licensee [~~prescribing or dispensing physician~~] shall make best efforts to see the patient as soon as possible and document the circumstances in the patient chart.

4. At least every three (3) months after initiation of treatment, the licensee [~~prescribing or dispensing physician~~] shall evaluate the patient to determine whether the patient's dosage should be continued or modified and shall appropriately document that evaluation and clinical reasoning in the patient's chart.

5. At least once every three (3) months, the licensee [~~prescribing or dispensing physician~~] shall obtain KASPER reports to help guide the treatment plan.

a. If the KASPER indicates any abnormal findings, the licensee [~~prescribing or dispensing physician~~] shall incorporate those findings into appropriate clinical reasoning to support the continuation or modification of treatment and shall accurately document the same in the patient record.

b. Appropriate clinical reasoning may include adjustment of dose strength, adjustment of frequency of visits, increased drug screening, a consultation with a specialist, or an alternative treatment.

c. Every twelve (12) months following initiation of treatment, if a patient's prescribed daily therapeutic dosage exceeds the dose equivalency of sixteen (16) milligrams buprenorphine generic tablet per day and the licensee [~~prescribing or dispensing physician~~] is not certified by the American Board of Addiction Medicine, the American Board of Preventive Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry, then the licensee [~~prescribing or dispensing physician~~] shall obtain a consultation from a physician who is certified by the American Board of Addiction Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry for an opinion as to whether continued treatment and dosage is appropriate and shall accurately document the results of that consultation in the patient chart.

d. The licensee [~~prescribing or dispensing physician~~] shall adjust dosages according to the individual patient's condition and within acceptable and prevailing medical standards, with the goal of improving the patient's quality of life and ability to function in the community.

e. Every twelve (12) months following initiation of treatment, the licensee [~~prescribing or dispensing physician~~] shall evaluate for and document the medical necessity for continued treatment at the

established dose.

f. The licensee [~~prescribing or dispensing physician~~] shall ensure that the patient is drug tested. A patient in early stages of treatment shall be tested at least once weekly and as the patient becomes more stable in treatment, the frequency of drug testing may be decreased, but shall be performed at least on a monthly basis. Individual consideration may be given for less frequent testing if a patient is in sustained remission. If the patient returns to substance use after a period of abstinence, the licensee [~~prescribing or dispensing physician~~] shall resume the early treatment testing schedule, in conjunction with an adapted or intensified treatment plan.

(i) Each drug screen shall at a minimum screen for buprenorphine, methadone, opioids, THC, benzodiazepines, amphetamines, and cocaine.

(ii) If a drug screen indicates any abnormal findings, the licensee [~~prescribing or dispensing physician~~] shall incorporate those findings into appropriate clinical reasoning to support the continuation or modification of treatment and shall accurately document the same in the patient record.

(iii) Appropriate clinical reasoning may include adjustment of dose strength, adjustment of frequency of visits, increased drug screening, a consultation with a specialist, or an alternative treatment.

6. The licensee [~~prescribing or dispensing physician~~] shall document a plan for handling any lost or stolen medication, which shall not provide for the automatic replacement of medication prior to the specified interval date.

Section 3. Use of transmucosal buprenorphine-mono-product or buprenorphine-combined-with-naloxone for treatment of opioid use disorder in an emergency situation or inpatient setting. (1) In an emergency, including in a hospital emergency department or similar outpatient urgent care setting, or in an inpatient setting, licensees [~~physicians~~] may offer and initiate buprenorphine treatment to patients who present with opioid use disorder, without meeting the requirements established in Sections 1 and 2 of this administrative regulation and to the extent permitted by federal law, if:

(a) The licensee [~~physician~~] has determined that the use of buprenorphine-mono-product or buprenorphine-combined-with-naloxone will not result in a harmful interaction with other medications or substances in the patient's system, including benzodiazepines, sedative hypnotics, carisoprodol, or tramadol;

(b) The licensee [~~physician~~] obtains and documents written informed consent from the patient specific to risks and benefits of buprenorphine treatment; and

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

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

Section 4. Professional Standards for Documentation of Patient Assessment, Education, Treatment Agreement and Informed Consent, Action Plans, Outcomes, and Monitoring.

(1) Each licensee [~~physician~~] prescribing, [or] dispensing, or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-With-Naloxone shall obtain and document all relevant information in a patient's medical record in a legible manner and in sufficient detail to enable the board to determine whether the licensee [~~physician~~] is conforming to professional standards for prescribing, [or] dispensing, or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-With-Naloxone and other relevant professional standards.

(2) If a licensee [~~physician~~] is unable to conform to professional standards for prescribing, [or] dispensing, or administering

Buprenorphine-Mono-Product or Buprenorphine-Combined-With-Naloxone as set forth in this administrative regulation due to circumstances beyond the licensee's [~~physician's~~] control, or the licensee [~~physician~~] makes a professional determination that it is not appropriate to comply with a specific standard, based upon the individual facts applicable to a specific patient's diagnosis and treatment, the licensee [~~physician~~] shall document those circumstances in the patient's record and only prescribe, [or] dispense, or administer Buprenorphine-Mono-Product or Buprenorphine-Combined-With-Naloxone to the patient if the patient record appropriately justifies the prescribing, [or] dispensing, or administering of Buprenorphine-Mono-Product or Buprenorphine-Combined-With-Naloxone under the circumstances and in accordance with SAMHSA guidelines.

Section 5. Violations. Failure to comply with or a violation of the professional standards established in Sections 2, 3, and 4 of this administrative regulation shall constitute a "departure from, or failure to conform to the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky," in violation of KRS 311.850(1)(p) and (s), KRS 311.595(12) and (9), as illustrated by KRS 311.597(4), and may constitute a violation of KRS 311.595(9), as illustrated by KRS 311.597(3), subjecting the licensee [~~licensed physician~~] to sanctions authorized by KRS 311.595 and 311.850.

SANDRA R. SHUFFETT, President

APPROVED BY AGENCY: March 26, 2021

FILED WITH LRC: March 26, 2021 at 2:48 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2021, at 9:00 a.m., at the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leanne K. Diakov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish acceptable and prevailing medical standards for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the requirements for Board licensees prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This

administrative regulation acts specifically to establish the requirements for individual Board licensees prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

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

(a) How the amendment will change this existing administrative regulation: During the 2020 regular legislative session, the General Assembly amended the physician assistant statutes in order to allow that they may prescribe and administer controlled substances, including Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone, and require that the Board adopt regulation setting forth prescribing standards for them. This administrative regulation amendment is necessary in order to hold physician assistants who prescribe or administer buprenorphine products accountable to the same standards as physicians.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend the administrative regulation in order to hold physician assistants who prescribe or administer buprenorphine products accountable to the same standards as physicians.

(c) How the amendment conforms to the content of the authorizing statutes: During the 2020 regular legislative session, the General Assembly amended the physician assistant statutes in order to allow that they may prescribe and administer controlled substances, including Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone, and require that the Board adopt regulation setting forth prescribing standards for them. This administrative regulation amendment is necessary in order to hold physician assistants who prescribe or administer buprenorphine products accountable to the same standards as physicians.

(d) How the amendment will assist in the effective administration of the statutes: During the 2020 regular legislative session, the General Assembly amended the physician assistant statutes in order to allow that they may prescribe and administer controlled substances, including Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone, and require that the Board adopt regulation setting forth prescribing standards for them. This administrative regulation amendment is necessary in order to hold physician assistants who prescribe or administer buprenorphine products accountable to the same standards as physicians.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect all physician assistants licensed in the Commonwealth of Kentucky who prescribe, dispense or administer Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

(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: Physicians and physicians assistants will be required to follow the same professional standards for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with the requirements of this administrative regulation known to the Board.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits to physicians and physician assistants include having consistent professional standards for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone; benefits to the agency and the Commonwealth of Kentucky include curbing of the prescription drug epidemic and increasing patient access to appropriate treatment.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Medical Licensure will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.205(3)(a) and (b), KRS 311.565(1)(a), KRS 311.842(1)(b)

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

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

##### Kentucky Board of Emergency Medical Services (Amendment)

**202 KAR 7:201. Emergency medical responders[First responders].**

RELATES TO: KRS 311A.010, 311A.025, 311A.030, 311A.060, 311A.095, [311A.140,] 311A.140, 311A.145, 311A.160

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, [311A.140,] 311A.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.020 requires the board to promulgate administrative regulations relating to emergency medical [first] responders. KRS 311A.025 and KRS 311A.160 require the board to establish standards relating to emergency medical[first] responders. This administrative regulation establishes the standards relating to emergency medical responders.

Section 1. Emergency Medical Responder [First Responder] Student Eligibility. (1) Individuals shall be eligible to enroll as a student in an Emergency Medical Responder [first responder] training program if the applicant:

(a) Is at least fifteen (15) years of age; and

(b) 1. Is currently enrolled in grades 9-12 with a minimum GPA of 2.0; or

2. Holds a high school diploma, high school equivalency diploma [or GED], or home school diploma.

(2) The student applicant shall:

(a) ~~[Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;~~

~~(b) Not currently be subject to disciplinary action pursuant to KRS Chapter 311A that would prevent certification; [and]~~

~~(b) Pass a criminal background check through the Kentucky Administrative Office of the Courts (AOC) meeting the requirements of KRS 311A.050; and~~

~~(c) Meet all additional requirements established by the EMS Training and Educational Institution (TEI) [EMS-TEI].~~

Section 2. Certification Requirements. (1) Individuals desiring initial certification as an Emergency Medical Responder [first responder] shall:

~~(a) [Meet all of the requirements of Section 1 of this administrative regulation;~~

~~(b) Be at least sixteen (16) years of age;]~~

~~(c) Be currently enrolled as a student in grades 9-12 with a minimum GPA of 2.0 or hold a high school diploma or GED;~~

~~(d) (b) Successfully complete a board approved training program that [which] conforms to the United States Department of Transportation, National Highway Traffic Safety Administration, National Emergency Medical Services Educational Standards-Instructional Guidelines for the Emergency Medical Responder, except that the education curriculum shall not be satisfied by the completion of refresher or transition courses alone; [1995 National Standard Curriculum, NREMT-FR as the curriculum for education, which shall not be satisfied by the completion of refresher or transition courses alone;]~~

~~(c) Meet all educational standards established in 202 KAR 7:601;~~

~~(d) [(e)] Obtain certification [NREMT's registration] as a[n] NREMT-Emergency Medical Responder [NREMT-FR];~~

~~(e) [(f)] Submit a completed application for EMR Initial in KEMSIS [and signed "First Responder Initial Certification Application";]~~

~~(f) [(g)] Present written evidence of completion of current HIV/AIDS training required by KRS 311A.110;~~

~~(h) Pay the fee required for certification pursuant to [by] 202 KAR 7:030; [and~~

~~(i) Present written evidence of completion of current training in CPR that:~~

~~1. Shall be taught by an individual who holds instructor certification at an appropriate level from:~~

~~a. The American Red Cross;~~

~~b. The AHA;~~

~~c. The National Safety Council;~~

~~d. The ASHI; or~~

~~e. Another board approved organization; [and~~

~~2. Shall provide instruction and testing in:~~

~~a. One (1) rescuer CPR;~~

~~b. Two (2) rescuer CPR;~~

~~c. Techniques of changing from one (1) to two (2) rescuers during the performance of CPR;~~

~~d. Techniques of changing rescuers during the performance of two (2) rescuer CPR;~~

~~e. Techniques for relief of obstruction of the airway;~~

~~f. CPR of infants and small children;~~

~~g. Barrier to mouth, barrier to nose, or barrier to stoma resuscitation for adults, small children, and infants;~~

~~h. Use of oral and nasal airways;~~

~~i. Use of bag-valve-mask or other ventilation device;~~

~~j. Use of supplemental oxygen; and~~

~~k. Use and operation of an AED.~~

~~(2) An applicant for certification as a first responder shall successfully complete all NREMT testing and become Kentucky certified within two (2) years after the completion date of the first responder course.]~~

~~(g) Undergo a background check pursuant to KRS 311A.050~~

and 311A.100, which shall be:

1. National in scope for an applicant not currently certified at any level in Kentucky;

2. Statewide in scope for an applicant with current certification in Kentucky;

3. Less than six (6) months old when the applicant submits to the board all requirements for certification;

4. Provided by a vendor that has been contracted through the board; and

5. Submitted to the board by the company that conducts the background check; and

(h) Be a citizen of the United States, a permanent resident of the United States, or otherwise lawfully present in the United States, as evidenced by submission to the board of:

1. A Social Security card;

2. Birth certificate;

3. A United States Citizenship and Immigration Services (U.S.C.I.S) Permanent Resident Card (form I-551/Green Card); or

4. Other legal authorization to live and work in the United States.

Section 3. Renewal of Certification [Recertification] and Continuing Education Requirements. (1) An Emergency Medical Responder [first responder] shall be eligible for certification renewal [recertification] if:

~~(a) The applicant submits a [signed and] completed ["Universal"] EMR Certification Renewal Application [for] in KEMSIS [Recertification/Relicensure];~~

~~(b) [The applicant maintains written evidence of current completion of training in CPR meeting the requirements as outlined in Section 2 of this administrative regulation;]The applicant maintains written evidence of:~~

~~1. HIV/AIDS training required by KRS 311A.120;~~

~~2. Pediatric Abusive Head Trauma training required by KRS 311A.120; and~~

~~3. Awareness of Sexual Violence Training required by KRS 311A.120;]~~

~~(c) The applicant maintains written evidence of completion of current HIV/AIDS training required by KRS 311A.110;]~~

~~(c) [(d)] The applicant pays the fee pursuant to [established in] 202 KAR 7:030; and~~

~~(d) [(e)] The applicant maintains evidence of [either]:~~

~~1. Current certification by the NREMT as an Emergency Medical Responder, except that if this option is used, the board may request, though a continuing education audit, proof of continuing education to verify compliance with the requirements of this section [Current registration by the NREMT as an NREMT-FR]; or~~

~~2. Successful completion of the NREMT Emergency Medical Responder National Continued Competency Program- for Continuing Education, which shall be validated by entities authorized to conduct continuing education pursuant to 202 KAR 7:601. [Successful completion of continuing education that:~~

~~a. Includes seventeen (17) contact hours of continuing education, of which:~~

~~(i) One (1) shall be in disaster management or mass casualty incidents; and~~

~~(ii) Two (2) may be in HIV/AIDS; and~~

~~b. Shall be validated by:~~

~~(i) The instructor, medical director, training officer, course coordinator, or provider of the continuing education offering; or~~

~~(ii) A medical director, service director, or training officer of the first responder's ambulance service, first response agency, fire department, or rescue squad.]~~

~~(2) An application for certification renewal [recertification] shall be denied if:~~

~~(a) Prior to the certification expiration date, the [first responder] applicant has not met the applicable requirements of [Section 3-of] this section [administrative regulation]; or~~

~~(b) The applicant has been subjected to disciplinary action that prevents certification renewal [recertification] at the time of application.~~

~~(3) A certified Emergency Medical Responder [first responder],~~

in good standing, who is a member of a National Guard or a military reserve unit [who is] called to active duty by presidential order pursuant to 10 U.S.C. §§ 121 and 673b, shall be renewed according to KRS 12.355 upon submission of the Military Extension Application [may be given a one (1) year extension following release from active duty to meet the applicable requirements for recertification listed in this Administrative Regulation. The first responder shall submit a written request for this extension within sixty (60) days of release from active duty].

(4) The board [KBEMS] office may audit an Emergency Medical Responder's [a first responder's] continuing education and continuing education records. The Emergency Medical Responder shall submit the documentation requested within ten (10) business days of receipt of the board's request.

(5) The Emergency Medical Responder [first responder] shall maintain documentation of all continuing education for three (3) [four (4)] years from the date of completion.

(6) If documentation of continuing education hours consistent with this administrative regulation are not received using the board-approved submission process within ten (10) business days of receipt of the board's request, the Emergency Medical Responder certification for the individual shall be summarily revoked and the individual shall reapply for certification through Reinstatement, if eligible.

(7) The ten (10) business days for submission shall not apply to investigations pursuant to KRS Chapter 311A.

Section 4. Reinstatement of Certification. (1) An Emergency Medical Responder whose certification has lapsed may reinstate his or her certificate by submitting to the board:

(a) A completed EMR Reinstatement Certification Application in KEMSIS;

(b) Evidence of previous certification as an Emergency Medical Responder in the Commonwealth of Kentucky;

(c) Proof of current training in:

1. Pediatric Abusive Head Trauma as required by KRS 311A.120;

2. Awareness of Sexual Violence Training required by KRS 311A.120;

(d) Evidence of successful completion of the NREMT Emergency Medical Responder National Continued Competency Program for Continuing Education within twelve (12) months preceding his or her application for reinstatement of Emergency Medical Responder; and

(e) Evidence of current skills by completing and submitting validation of those skills on the Kentucky Emergency Medical Responder Skills Verification Report prior to beginning work for a licensed agency in Kentucky. The verification report shall be completed by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.

(2) The applicant shall pay the fee required for reinstatement pursuant to 202 KAR 7:030.

(3) The applicant shall undergo a national background check provided by a vendor that has been contracted through the board. The applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check.

(4) Background checks that are older than six (6) months shall not be considered current, and the applicant shall undergo another national background check prior to approval of reinstatement of certification.

(5) The applicant for reinstatement of certification shall bear the burden of proof of previous certification in Kentucky if the previous certification is in issue or dispute.

(6) An applicant who is ineligible for certification pursuant to KRS 311A.050 through 311A.090 shall be ineligible for reinstatement.

Section 5. Emergency Medical [First] Responder Reciprocity.

(1) An individual who is [A person] certified in [another] a contiguous state to the Commonwealth of Kentucky or [territory of the United States or member of the United States military who is

registered] by the NREMT as a[an] NREMT-Emergency Medical Responder[NREMT-FR] or any member of the United States Armed Forces, or veteran who has transitioned within the past six (6) years from the United States Armed Forces, and has been registered by the National Registry as a NREMT-Emergency Medical Responder or EMT shall be eligible for [direct] reciprocity for [initial] Kentucky certification as an Emergency Medical Responder [a first responder] if the applicant submits [individual]:

(a) A completed EMR Reciprocity Application in KEMSIS [Is at least sixteen (16) years of age]; and

(b) Proof of the applicant's [Holds current] unrestricted certification [registration] as a NREMT-Emergency Medical Responder or Emergency Medical Responder certification in a contiguous state to the Commonwealth of Kentucky; and [NREMT-FR; and

(c) 1. Is currently enrolled in grades 9-12 with a minimum GPA of 2.0; or

2. Holds a high school diploma or GED.

(2) The individual shall:

(a) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(b) Have successfully completed a training program, which utilized the United States Department of Transportation, National Highway Traffic Safety Administration, 1995 National Standard Curriculum, Emergency Medical Technician-First Responder as the curriculum for education if any individual initially certified after January 1, 1986. An earlier edition of the National Standard Curriculum which has been supplemented by the completion of the First Responder Transition Course shall be considered to meet this requirement, which shall not be satisfied by the completion of refresher or transition courses alone;

(c) Submit a completed and signed "First Responder Initial Certification Application";

(d) Present written evidence of completion of current HIV/AIDS training required by KRS 311A.110;

(e) Present written evidence of completion of current training in CPR that meets the requirements of Section 2(1)(i) of this administrative regulation;

(f) Pay the fee required by 202 KAR 7:030;

(g) Not have been convicted of, entered a guilty plea or Alford plea to a felony offense, or have completed a diversion program for a felony offense; and

(h) Not have been subjected to discipline that would prevent reciprocity at the time of application.]

(c) Proof of current training in:

1. HIV/AIDS training required by KRS 311A.120;

2. Pediatric Abusive Head Trauma as required by KRS 311A.120;

3. Awareness of Sexual Violence Training required by KRS 311A.120

(2) An applicant shall pay the fee required for reciprocity pursuant to 202 KAR 7:030.

(3) An applicant for Emergency Medical Responder reciprocity shall undergo a national background check provided by a vendor that has been contracted through the board.

(a) An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check; and

(b) Background checks that are older than six (6) months shall not be considered current, and the applicant shall undergo another national background check prior to approval of certification through reciprocity.

(4) An applicant shall not have been convicted of offenses described in KRS 311A.050.

(5) An applicant shall not have been subjected to discipline that would prevent reciprocity at the time of application.

(6) An Emergency Medical Responder certified pursuant to Section 2 of this administrative regulation shall not perform any procedures or skill on which the Emergency Medical Responder has not been trained. An Emergency Medical Responder who



performs a skill for which the Emergency Medical Responder does not have documented training shall have exceeded the scope of practice and shall be in violation of KRS 311A.050.

(7) An Emergency Medical Responder certified pursuant to this section shall complete the Kentucky supplemental Emergency Medical Responder curricula for the procedures listed in 202 KAR 7:701 prior to beginning work for a licensed agency in Kentucky.

(a) Kentucky supplemental Emergency Medical Responder curricula consistent with 202 KAR 7:701 shall be provided during employee orientation, or by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.

(b) Verification of competency on the supplemental curricula procedures in 202 KAR 7:701 shall be maintained by the Emergency Medical Responder for a minimum of three (3) years. Failure to submit the EMR Supplemental Curriculum Training Verification Report upon request shall result in revocation of the Emergency Medical Responder certification.

(c) If an Emergency Medical Responder certified pursuant to this section fails to supply verification of competency as required by subsection (7) of this section, the Emergency Medical Responder shall be ineligible to apply for and receive Emergency Medical Responder reciprocity certification until the applicant has submitted the EMR Supplemental Curriculum Training Verification Report as required by 202 KAR 7:701, and shall reapply for Reciprocity through the process listed in this section.

Section 6. Scope of Practice. An Emergency Medical Responder shall provide emergency medical services consistent with the skills and procedures in the National EMS Scope of Practice Model and 202 KAR 7:701.

Section 7. Expiration of Certification. (1) Certification periods and expiration dates shall be pursuant to KRS 311A.095.

(2) If an Emergency Medical Responder's certification lapses or expires, the Emergency Medical Responder shall cease provision of emergency medical services.

(3) An Emergency Medical Responder who has allowed his or her certification to lapse or expire shall reinstate certification pursuant to Section 6 of this administrative regulation.

Section 8. Surrender of Certification. (1) An Emergency Medical Responder surrendering certification shall:

(a) Submit a completed Application for EMR Surrender of Certification in KEMSIS; and

(b) Pay the fee pursuant to 202 KAR 7:030.

(2) The applicant shall notify the board's licensed service director(s) with whom the applicant is affiliated immediately upon surrendering his or her certification.

Section 9. Reporting Requirements. (1) An Emergency Medical Responder shall maintain current demographic information in KEMSIS including:

(a) Legal name;

1. Any changes to an Emergency Medical Responder's legal name shall be submitted using the Name Change application in KEMSIS; and

2. One of the following documents as verification of name change:

a. Social Security Card;

b. Driver's license; or

c. Passport;

(b) Mailing address;

(c) Email address; and

(d) Phone number.

(2) An Emergency Medical Responder who does not comply with this section shall be subject to disciplinary action pursuant to KRS Chapter 311A.

Section 10. [Section 5.] Exemptions from Emergency Medical [First] Responder Administrative Regulations. [The Kentucky] Certification requirements for an Emergency Medical Responder [first responder] shall not apply to:

(1) United States military personnel or state National Guard or

employees of the United States government while providing services on a United States government-owned or operated facility, while engaged in the performance of their official duties under federal law, or while providing assistance in mass casualty or disaster type situation; or

(2) An Emergency Medical Responder [A first responder] certified in another state or territory of the United States who:

(a) Comes into Kentucky to transport a patient from another state into Kentucky; or

(b) Is transporting a patient through the state of Kentucky to an out-of-Kentucky location.[

Section 6. Reinstatement of Certification. (1) A first responder whose certification has lapsed for a period not exceeding five (5) years, may reinstate their certificate by submitting to the board:

(a) A completed and signed "First Responder Certification Reinstatement Application";

(b) Written evidence of current completion of training in CPR meeting the requirements as outlined in Section 2(1)(i) of this administrative regulation;

(c) Written evidence of completion of current HIV/AIDS training required by KRS 311A.110;

(d) Payment of the fee established in 202 KAR 7:030;

(e) Evidence of previous certification as a first responder in Kentucky;

(f) Evidence of successful completion of continuing education within twelve (12) months preceding their application for reinstatement that includes seventeen (17) contact hours of continuing education, of which:

1. One (1) shall be in disaster management or mass casualty incidents; and

2. Two (2) may be in HIV/AIDS; and

(g) Evidence of successful completion of the National Standard Curriculum for EMT-First Responder Refresher Course within twelve (12) months preceding their application for reinstatement or continuing education hours that meet the requirements of the curriculum.

(2) A first responder, whose certification has lapsed for a period that exceeds five (5) years, may reinstate their certificate by complying with Sections 1 and 2 of this administrative regulation.

(3) An application for reinstatement of certification shall not be considered if:

(a) The applicant is subject to disciplinary action pursuant to KRS Chapter 311A;

(b) The applicant is an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense; or

(c) The applicant has been subjected to discipline that would prevent reinstatement at the time of application.]

Section 11 [7]. Public Notice of Negative Action. The board office shall cause to be published on the board website the name of an Emergency Medical Responder who:

(1) Is fined;

(2) Is placed on probationary status;

(3) Is placed on restricted status;

(4) Is suspended; or

(5) Has had his or her certification revoked. [The KBEMS office shall cause to be published, in the KBEMS News or similar publication of the board, or otherwise disseminate the name of a first responder that is fined, is placed on probationary status, is placed on a restricted status, is suspended, or has had their certification revoked.

Section 8. Temporary Certificate. (1) KBEMS staff may issue a temporary certificate to an individual who:

(a) Submits a completed "Application for Temporary Certificate";

(b) Is at least sixteen (16) years of age;

(c) Understands, reads, speaks, and writes the English language with a comprehension and performance level equal to at least the 9th grade of education, otherwise known as Level 4, verified by testing as necessary;

~~(d) Provides proof of being currently certified or licensed in another state or territory of the United States or is currently registered by the NREMT;~~

~~(e) Presents written evidence of completion of current HIV/AIDS training required by KRS 311A.110;~~

~~(f) Presents written evidence of completion of current training in CPR that meets the requirements of Section 2 of this administrative regulation;~~

~~(g) Pays the fee required by 202 KAR 7:030;~~

~~(h) Provides the board with a copy of a statewide criminal background check from their state of residence;~~

~~(i) Is not an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense; and~~

~~(j) Has not been disciplined by or has action pending against or had a certificate or license in the field of health care denied, limited, suspended, or probated by a certifying or licensing entity in Kentucky or other state or territory under the jurisdiction of the United States.~~

~~(2) A temporary certificate may be issued for a period which shall not exceed six (6) months and shall not be reissued or renewed.]~~

Section 12 [9]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "National Emergency Medical Services Education Standards-Emergency Medical Responder Instructional Guidelines", The United States Department of Transportation, National Highway Traffic Safety Administration, DOT HS 811 077B, January 2009 ["First Responder Initial Certification Application" (June 2003)];

(b) "EMR Initial Certification Application" in KEMSIS, July 2019 ["Universal Application for Recertification/Relicensure" (June 2003)];

(c) "EMR Certification Renewal Application" in KEMSIS, July 2019; ["First Responder Certification Reinstatement Application" (June 2003); and]

(d) "EMR Reciprocity Certification Application" in KEMSIS, July 2019; [The United States Department of Transportation, National Highway Traffic Administration, 1995 National Standard Curriculum, Emergency Medical Technician-First Responder.]

(e) "EMR Reinstatement Certification Application" in KEMSIS, July 2019;

(f) "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 810 657, February 2007;

(g) "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 812 666, February 2019;

(h) "EMR Skills Verification Report", July 2019;

(i) "EMR Supplemental Curriculum Training Verification Report", July 2019;

(j) "EMR Certification Surrender Application" in KEMSIS, July 2019;

(k) "National Registry of Emergency Medical Technicians National Continued Competency Program EMR", October 2016;

(l) "American Heart Association Guidelines for CPR and Emergency Cardiovascular Care", November 2018;

(m) "National Registry of Emergency Medical Technicians Emergency Medical Responder Psychomotor Examination Users Guide", September 2016;

(n) "Name Change Application" in KEMSIS, July 2019;

(o) "Military Extension Application" in KEMSIS, July 2019; and

(p) "United States Citizenship and Immigration Services (U.S.C.IS) Permanent Resident Card (form I-551/Green Card)", July 2019.

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509, by appointment, [2545 Lawrenceburg Road, Frankfort, Kentucky 40621,] Monday through Friday, 8 a.m. to 4:30 p.m.

PHILIP DIETZ, Chairman

APPROVED BY AGENCY: April 8, 2021

FILED WITH LRC: April 14, 2021 at 3:54 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on June 28, 2021 at 1:00 p.m. Eastern Standard Time at the Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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:** Chuck O'Neal, Deputy Executive Director of Administration, Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509, phone (859) 256-3587, email [chuck.oneal@kctcs.edu](mailto:chuck.oneal@kctcs.edu).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chuck O'Neal

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 311A.020 requires the board to promulgate administrative regulations relating to first responders. KRS 311A.025 and KRS 311A.160 require the board to establish standards relating to emergency medical responders. This administrative regulation establishes standards relating to emergency medical responders.

(b) The necessity of this administrative regulation: KRS 311A.020 requires the board to promulgate administrative regulations relating to first responders. KRS 311A.025 and KRS 311A.160 require the board to establish standards relating to emergency medical responders. This administrative regulation establishes standards relating to emergency medical responders. The amendment provides terminology updates such as the categorization change from "First Responder" to "Emergency Medical Responder." Additionally, these amendments are necessary to allow Kentucky Emergency Medical Responders the opportunity to become certified and maintain certification to protect the citizens of the Commonwealth of Kentucky. Educational and certification processes are streamlined, and unnecessary or repetitive language across other administrative regulations have been removed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.020, KRS 311A.025 and KRS 311A.160 by establishing standards relating to emergency medical responders.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.020 requires the board to promulgate administrative regulations relating to first responders. KRS 311A.025 and KRS 311A.160 require the board to establish standards relating to emergency medical responders. This administrative regulation will effectively establish the standards relating to emergency medical responders. This administrative regulation will assist Emergency Medical Responders in becoming certified utilizing more simplistic guidelines and processes and provides additional guidance on educational requirements, and will allow the board to provide more effective customer service to applicants for certification.

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

(a) How the amendment will change this existing administrative regulation: This amendment streamlines certification application processes for Emergency Medical Responders and provides additional guidance on application processes and responsibilities of the Emergency Medical Responder. Additionally, unnecessary and dated requirements and terminology have been removed.

(b) The necessity of the amendment to this administrative

regulation: The amendment provides terminology updates such as the categorization change from "First Responder" to "Emergency Medical Responder." Additionally, these amendments are necessary to allow Kentucky Emergency Medical Responders the opportunity to become certified and maintain certification to protect the citizens of the Commonwealth of Kentucky. Educational and certification processes are streamlined, and unnecessary or repetitive language across other administrative regulations have been removed.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.020, KRS 311A.025 and KRS 311A.160 by establishing standards relating to emergency medical responders.

(d) How the amendment will assist in the effective administration of the statutes: KRS 311A.020 requires the board to promulgate administrative regulations relating to first responders. KRS 311A.025 and KRS 311A.160 require the board to establish standards relating to emergency medical responders. This administrative regulation establishes standards relating to emergency medical responders. This administrative regulation amendment streamlines processes for administrative body processing and removes barriers to certification for the Emergency Medical Responder. Streamlined processes allow the administrative body to more effectively and efficiently certify applicants.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Emergency Medical Services, its members, and staff, emergency medical services providers, emergency medical responders, and local governments will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Kentucky Board of Emergency Medical Services, its members, and staff, emergency medical services providers, emergency medical responders, and local governments shall implement and satisfy the standards and requirements of 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 cost to any entity identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants seeking certification as an Emergency Medical Responder will benefit from decreased certification requirements and processing time.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no cost to the administrative body to implement this administrative regulation.

(a) Initially: There will be no cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the administrative body to implement this administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because this amendment applies equally to all licensed agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Emergency Medical Services, its members, and staff, emergency medical services providers, emergency medical responders, and local governments will be affected by this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.020 requires the board to promulgate administrative regulations relating to first responders. KRS 311A.025 and KRS 311A.160 require the board to establish standards relating to emergency medical responders. This administrative regulation establishes standards relating to emergency medical responders.

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not impose any costs on state or local government.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not impose any costs on state or local government.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not impose any costs.

Other Explanation:

## KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

### Kentucky Board of Emergency Medical Services (Amendment)

#### 202 KAR 7:301. Emergency medical technician[EMT].

RELATES TO: KRS 311A.010, 311A.025, 311A.060, 311A.095, [311A.140,] 311A.130, 311A.140, 311A.145, 311A.165

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, [311A.140,] 311A.140, 311A.165

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.025 requires the board to promulgate administrative regulations relating to Emergency Medical Technicians [EMTs]. This administrative regulation establishes requirements for Emergency Medical Technicians [EMTs].

Section 1. Emergency Medical Technician [EMT] Student Eligibility. (1) Individuals shall be eligible to enroll as a student in an Emergency Medical Technician [EMT] education and training program if the applicant:

(a) Is at least seventeen (17) [sixteen-(16)] years of age; and  
(b) 1. Is currently enrolled in grades 9-12 with a minimum GPA of 2.0; or

2. Holds a high school diploma, high school equivalency diploma [or GED], or home school diploma.

(2) The student applicant shall:

(a) [Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

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~~(b)] Not currently be subject to disciplinary action pursuant to KRS Chapter 311A that would prevent certification;~~

~~(b) Pass a criminal background check through the Kentucky Administrative Office of the Courts (AOC) meeting the requirements of KRS 311A.050; and~~

~~(c) Meet all additional requirements established by the EMS Training and Educational Institution (EMS-TEI). [EMS-TEI; and~~

~~(d) Hold a valid motor vehicle operator's license or learners permit from a state or territory in the United States.]~~

Section 2. Certification Requirements. (1) Individuals desiring initial certification as an Emergency Medical Technician [EMT] shall:

~~(a) [Meet all of the requirements of Section 1 of this administrative regulation;~~

~~(b)] Be at least eighteen (18) years of age;[~~

~~(c) Hold a high school diploma or GED;~~

~~(d)] (b) Successfully complete a[an] board approved education and training program that conforms to the curriculum of the United States Department of Transportation, National Highway Traffic Safety Administration National Emergency Medical Services Educational Standards-Instructional Guidelines for the Emergency Medical Technician, except that the educational curriculum shall not be satisfied by the completion of refresher or transition courses alone [1994 National Standard Curriculum for Emergency Medical Technician-Basic, which shall not be satisfied by the completion of refresher or transition courses alone];~~

~~(c) Meet all educational standards established by 202 KAR 7:601;~~

~~(d) [(e)] Obtain certification [NREMT registration] as a[an] NREMT-Emergency Medical Technician [NREMT-B];~~

~~(e) [(f)] Submit a completed EMT Initial Certification Application in KEMSIS; [and signed "Emergency Medical Technician Initial Certification Application,"]~~

~~(f) [(g)] Present written evidence of completion of current HIV/AIDS training required by KRS 311A.110;~~

~~(h)] Pay the fee required for certification pursuant to [by] 202 KAR 7:030 [and];~~

~~(g) Undergo a background check pursuant to KRS 311A.050 and 311A.100, which shall be:~~

~~1. National in scope for an applicant not currently certified at any level in Kentucky;~~

~~2. Statewide in scope for an applicant with current certification in Kentucky;~~

~~3. Less than six (6) months old when the applicant submits to the board all requirements for certification;~~

~~4. Provided by a vendor that has been contracted through the board; and~~

~~5. Submitted to the board by the company that conducts the background check; and~~

~~(h) Be a citizen of the United States, a permanent resident of the United States, or otherwise lawfully present in the United States, as evidenced by submission to the board of:~~

~~1. A Social Security card;~~

~~2. Birth certificate;~~

~~3. A United States Citizenship and Immigration Services (U.S.C.IS) Permanent Resident Card (form I-551/Green Card); or~~

~~4. Other legal authorization to live and work in the United States.]~~

~~(i) Present written evidence of completion of current training in CPR that:~~

~~1. Shall be taught by an individual who holds instructor certification at an appropriate level from:~~

~~a. The American Red Cross;~~

~~b. The AHA;~~

~~c. The National Safety Council;~~

~~d. The ASHL; or~~

~~e. Another board approved organization; and~~

~~2. Provides instruction and testing in:~~

~~a. One (1) rescuer CPR;~~

~~b. Two (2) rescuer CPR;~~

~~c. Techniques of changing from one (1) to two (2) rescuers during the performance of CPR;~~

~~d. Techniques of changing rescuers during the performance of two (2) rescuer CPR;~~

~~e. Techniques for relief of obstruction of the airway;~~

~~f. CPR of infants and small children;~~

~~g. Barrier to mouth, barrier to nose, or barrier to stoma resuscitation for adults, small children, and infants;~~

~~h. Use of oral and nasal airways;~~

~~i. Use of bag-valve-mask or other ventilation device;~~

~~j. Use of supplemental oxygen; and~~

~~k. Use and operation of an AED.~~

~~(2) An applicant for certification as an EMT shall successfully complete all NREMT testing and become Kentucky certified within two (2) years after the completion date of their EMT course.]~~

Section 3. Renewal of Certification [Recertification] and Continuing Education Requirements. (1) An Emergency Medical Technician [EMT] shall be eligible for certification renewal [recertification] if:

~~(a) The applicant submits a completed EMT Certification Renewal Application in KEMSIS [and signed "Universal Application for Recertification/Relicensure"];~~

~~(b) The applicant maintains written evidence of: [current completion of training in CPR meeting the requirements as outlined in Section 2(1)(i) of this administrative regulation;]~~

~~1. HIV/AIDS training required by KRS 311A.120;~~

~~2. Pediatric Abusive Head Trauma required by KRS 311A.120; and~~

~~3. Awareness of Sexual Violence Training required by KRS 311A.120.~~

~~(c) [The applicant maintains written evidence of completion of current HIV/AIDS training required by KRS 311A.110;~~

~~(d)] The applicant pays the fee required for renewal pursuant to [established in] 202 KAR 7:030; and~~

~~(d)] [(e)] The applicant maintains evidence of [either]:~~

~~1. Current certification [registration] by the NREMT as an Emergency Medical Technician, except that if this option is used, the board may request, through a continuing education audit, proof of continuing education to verify compliance with the requirements of this section; or [NREMT-B; or]~~

~~2. Successful completion of the NREMT Emergency Medical Technician National Continued Competency Program National Component for Continuing Education, which shall be validated by entities authorized to conduct continuing education pursuant to 202 KAR 7:601. ["EMT Basic Minimum Continuing Education Requirement" that:~~

~~a. Includes twenty-four (24) structured contact hours of continuing education, of which sixteen (16) hours shall be within mandatory topic areas and eight (8) hours may be electives to include the following minimum contact hours and topics:~~

~~(i) One (1) in disaster management or mass casualty incidents;~~

~~(ii) Two (2) in airway management;~~

~~(iii) Three (3) in patient assessment;~~

~~(iv) Four (4) in medical or behavioral emergencies;~~

~~(v) Four (4) in trauma; and~~

~~(vi) Two (2) in obstetrics or gynecology, infants and children; and~~

~~b. Shall be validated by:~~

~~(i) The instructor, medical director, training officer, course coordinator, or provider of the continuing education offering; or~~

~~(ii) A medical director, service director, or training officer of the EMT's ambulance service, first response agency, fire department, rescue squad or other medical employer.]~~

~~(2) An application for [renewal of] certification renewal shall be denied if:~~

~~(a) Prior to the certification expiration date, the [EMT] applicant has not met the applicable requirements of this section; or~~

~~(b) The applicant has been subjected to disciplinary action that prevents certification renewal [recertification] at the time of application.~~

~~(3) A certified Emergency Medical Technician [EMT], in good standing, who is a member of a National Guard or a military reserve unit [and is] called to active duty by presidential order pursuant to 10 U.S.C. §§ 121 and 673b, shall be renewed~~

according to KRS 12.355 upon submission of the Military Extension Application. [may be given a one (1) year extension following release from active duty to meet the applicable requirements for recertification listed in this administrative regulation. The EMT shall submit a written request for this extension within sixty (60) days of release from active duty.]

(4) The board [KBEMS] office may audit an Emergency Medical Technician's [EMT's] continuing education and continuing education records. The Emergency Medical Technician shall submit the documentation requested within ten (10) business days of receipt of the board's request.

(5) If documentation of continuing education hours consistent with this administrative regulation are not received using the board-approved submission process within ten (10) business days of receipt of the board's request, the Emergency Medical Technician certification for the individual shall be summarily revoked and the individual shall reapply for certification through reinstatement if eligible.

(6) The ten (10) business days for submission shall not apply to investigations pursuant to KRS Chapter 311A.

(7) The Emergency Medical Technician [EMT] shall maintain documentation of all continuing education for three (3) [four] years from the date of completion.

Section 4. Reinstatement of Certification. (1) An Emergency Medical Technician whose certification has lapsed may reinstate his or her certificate by submitting to the board:

(a) A completed EMT Reinstatement Certification Application in KEMSIS;

(b) Evidence of previous certification as an Emergency Medical Technician in the Commonwealth of Kentucky;

(c) Current training in:

1. Pediatric Abusive Head Trauma as required by KRS 311A.120;

2. Awareness of Sexual Violence Training required by KRS 311A.120; and

(d) Payment of the fee pursuant to 202 KAR 7:030.

(2) The applicant for reinstatement of certification shall undergo a national background check provided by a vendor that has been contracted through the board.

(a) An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check; and

(b) Background checks that are older than six (6) months shall not be considered current, and the applicant shall undergo another national background check prior to approval of reinstatement of certification.

(3) An applicant for reinstatement of certification shall submit to the board evidence of successful completion of the NREMT Emergency Medical Technician National Continued Competency Program for Continuing Education within twelve (12) months preceding his or her application for reinstatement of the Emergency Medical Technician

(4) The applicant for reinstatement of certification shall bear the burden of proof of previous certification in Kentucky if the previous certification is in issue or dispute.

(5) An applicant for reinstatement of a lapsed certification shall provide evidence of current skills by completing and submitting validation of those skills on the Kentucky Emergency Medical Technician Skills Verification Report. The verification report shall be completed by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.

(6) An applicant who is ineligible for certification pursuant to KRS 311A.050 through 311A.090 shall be ineligible for reinstatement.

Section 5 [4]. Emergency Medical Technician [EMT] Reciprocity. (1) An individual who is [A person] certified in [another] a contiguous state to the Commonwealth of Kentucky or [territory of the United States or member of the United States military who is registered] by the NREMT as an Emergency Medical Technician [NREMT-B] or any member of the United States Armed Forces, or

veteran who has transitioned within the past six (6) years from the United States Armed Forces, and has been registered by the National Registry as a NREMT-Emergency Medical Technician shall be eligible for [direct] reciprocity for [initial] Kentucky certification as an Emergency Medical Technician if the applicant submits a completed EMT Reciprocity Certification Application in KEMSIS and proof of: [EMT if the individual:]

(a) [Is at least eighteen (18) years of age;

(b)] The applicant's [Holds current] unrestricted certification [registration] as a NREMT- Emergency Medical Technician or Emergency Medical Technician certification in a contiguous state to the Commonwealth of Kentucky[NREMT-B];

(b) Current training in:

1. HIV/AIDS training required by KRS 311A.120;

2. Pediatric Abusive Head Trauma as required by KRS 311A.120;

3. Awareness of Sexual Violence Training required by KRS 311A.120.;

(c) Completes a training program that conforms to the curriculum of the United States Department of Transportation, National Highway Traffic Safety Administration, 1994 National Standard Curriculum for Emergency Medical Technician-Basic, which shall not be satisfied by the completion of refresher or transition courses alone;

(d) Holds a high school diploma or GED; and

(e) Holds a valid motor vehicle operators license from a state or territory in the United States.

(2) The individual shall:

(a) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(b) Submit a completed and signed "Emergency Medical Technician Initial Certification Application";

(c) Present written evidence of completion of current HIV/AIDS training required by KRS 311A.110;

(d) Present written evidence of completion of current training in CPR that meets the requirements of Section 2(1) (i) of this administrative regulation;

(e)] (2) An applicant shall pay the fee required for certification through reciprocity pursuant to [by] 202 KAR 7:030, [;

(f) Not have been convicted of, entered a guilty plea or Alford plea to a felony offense, or have completed a diversion program for a felony offense;]

(3) An applicant for Emergency Medical Technician reciprocity shall undergo a national background check provided by a vendor that has been contracted through the board.

(a) An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check; and

(b) Background checks that are older than six (6) months shall not be considered current, and the applicant shall undergo another national background check prior to approval of certification through reciprocity.

(4) An applicant shall not have been convicted of offenses described in KRS 311A.050.

[(g)] (5) An applicant shall not have been subjected to discipline that would prevent reciprocity at the time of application.]; and]

(6) An Emergency Medical Technician certified pursuant to Section 2 of this administrative regulation shall not perform any procedures or skill on which the Emergency Medical Technician has not been trained. An Emergency Medical Technician who performs a skill for which the Emergency Medical Technician does not have documented training shall have exceeded the scope of practice and shall be in violation of KRS 311A.050.

(7) An Emergency Medical Technician certified pursuant to this section shall complete the Kentucky supplemental Emergency Medical Technician curricula for the procedures listed in 202 KAR 7:701 prior to beginning work for a licensed agency in Kentucky.

(a) Kentucky supplemental Emergency Medical Technician curricula consistent with 202 KAR 7:701 shall be provided during

employee orientation, or by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.

(b) Verification of competency on the supplemental curricula procedures in 202 KAR 7:701 shall be maintained by the Emergency Medical Technician for a minimum of three (3) years. Failure to submit the EMT Supplemental Curriculum Training Verification Report upon request shall result in revocation of the Emergency Medical Technician certification.

(c) If an Emergency Medical Technician certified pursuant to this section fails to supply verification of competency as required by subsection (7) of this section, the Emergency Medical Technician shall be ineligible to apply for and receive Emergency Medical Technician reciprocity certification until the applicant has submitted the EMT Supplemental Curriculum Training Verification Report as required by 202 KAR 7:701, and shall reapply for reciprocity through the process listed in this section.†

(h) Have successfully completed a training program, which utilized the United States Department of Transportation, National Highway Traffic Safety Administration 1994 National Standard Curriculum, Emergency Medical Technician-Basic as the curriculum for education if any individual initially certified after January 1, 1986. An earlier edition of the National Standard Curriculum which has been supplemented by the completion of the EMT-Basic transition course shall be considered to meet this requirement.†

Section 6. Scope of Practice. An Emergency Medical Technician shall provide emergency medical services consistent with the skills and procedures in the National EMS Scope of Practice Model and 202 KAR 7:701.

Section 7. Expiration of Certification. (1) Certification periods and expiration dates shall be pursuant to KRS 311A.095.

(2) If an Emergency Medical Technician's certification lapses or expires, the Emergency Medical Technician shall cease provision of emergency medical services.

(3) An Emergency Medical Technician who has allowed his or her certification to lapse or expire shall be required to reinstate certification pursuant to Section 6 of this administrative regulation.

Section 8. Downgrading Certification. (1) An Emergency Medical Technician currently certified as an Emergency Medical Technician by the board shall be eligible for certification downgrade if:

(a) The certification is in good standing with no pending disciplinary action;

(b) The applicant submits a completed EMT Certification Downgrade Application in KEMSIS; and

(c) The applicant pays the fee pursuant to 202 KAR 7:030;

(2) An Emergency Medical Technician shall only be eligible to downgrade his or her certification to an Emergency Medical Responder certification.

(3) Certification periods and expiration dates shall be pursuant to KRS 311A.095.

(4) An applicant shall undergo a background check pursuant to KRS 311A.050 and 311A.100. The background check shall be:

(a) Statewide in scope for an applicant with current certification in Kentucky;

(b) Less than six (6) months old when the applicant submits to the board all requirements for certification; and

(c) Provided by a vendor that has been contracted through the board.

(5) The applicant shall provide proof of:

(a) Current certification by the NREMT as an Emergency Medical Technician; or

(b) Successful completion of the NREMT Emergency Medical Technician National Continued Competency Program for Continuing Education, which shall be validated by entities authorized to conduct continuing education pursuant to 202 KAR 7:601;

(c) Current training in:

1. Pediatric Abusive Head Trauma required by KRS 311A.120; and

2. Awareness of Sexual Violence Training required by KRS 311A.120.

(6) Downgrade shall be denied if the applicant has not met the requirements of this section or has been subject to disciplinary action that prevents certification at the time of application.

(7) The applicant shall be responsible for meeting the renewal requirements of the downgraded certification level issued prior to expiration of that certification.

(8) To reinstate the certification or license that was previously held, the applicant shall meet the regulatory requirements for that level of certification or licensure.

(9) The applicant shall notify the board's licensed service director(s) with whom the applicant is affiliated immediately upon downgrading his or her certification.

(10) Once the applicant has downgraded his or her certification or license, the applicant shall no longer be permitted to provide emergency medical services at the previous certification or license level held.

(11) An applicant applying for downgrade who does not comply with this section of the administrative regulation shall be subject to disciplinary action pursuant to KRS Chapter 311A.

(12) All endorsements, certifications, or licenses held at the previous certification or license level shall be void at the completion of the downgrade.

Section 9. Surrender of Certification. (1) An Emergency Medical Technician surrendering certification shall:

(a) Submit a completed EMT Certification Surrender Application in KEMSIS; and

(b) Pay the fee pursuant to 202 KAR 7:030.

(2) The applicant shall notify the board's licensed service director(s) with whom the applicant is affiliated immediately upon surrendering his or her certification.

Section 10. Reporting Requirements. (1) An Emergency Medical Technician shall maintain current demographic information in KEMSIS including:

(a) Legal name;

1. Any changes to an Emergency Medical Technician's legal name shall be submitted using the Name Change application in KEMSIS; and

2. One of the following documents as verification of name change:

a. Social Security card;

b. Driver's license; or

c. Passport;

(b) Mailing address;

(c) Email address; and

(d) Phone number.

(2) An Emergency Medical Technician who does not comply with this section shall be subject to disciplinary action pursuant to KRS Chapter 311A.

Section 11. [5]. Exemptions from Emergency Medical Technician [EMT] Administrative Regulations. Certification requirements for an Emergency Medical Technician [EMT] shall not apply to:

(1) United States military personnel or state National Guard or employees of the United States government while providing services on a United States government owned or operated facility, while engaged in the performance of their official duties under federal law, or while providing assistance in mass casualty or disaster type situation; or

(2) An Emergency Medical Technician [EMT] certified in another state or territory of the United States who:

(a) Comes into Kentucky to transport a patient from another state into Kentucky; or

(b) Is transporting a patient through the state of Kentucky to an out-of-Kentucky location.†

Section 6. Reinstatement of Certification. (1) An EMT whose certification has lapsed for a period not exceeding five (5) years, may reinstate their certificate by submitting:

(a) A completed and signed "Emergency Medical Technician Certification Reinstatement Application";

(b) Written evidence of current completion of training in CPR meeting the requirements as outlined in Section 2(1) (i) of this administrative regulation;

(c) Written evidence of completion of current HIV/AIDS training required by KRS 311A.110;

(d) Payment of the fee established in 202 KAR 7:030;

(e) Evidence of previous certification as an EMT in Kentucky;

(f) Evidence of additional successful completion within twelve (12) months preceding their application for reinstatement of the "EMT Basic Minimum Continuing Education Requirement" that includes twenty-four (24) structured contact hours of continuing education, of which sixteen (16) hours shall be within mandatory topic areas and eight (8) hours may be electives to include the following minimum contact hours and topics:

1. One (1) in disaster management or mass casualty incidents;

2. Two (2) in airway management;

3. Three (3) in patient assessment;

4. Four (4) in medical or behavioral emergencies;

5. Four (4) in trauma; and

6. Two (2) in obstetrics or gynecology, infants and children;

(g) Evidence of successful completion of the National Standard Curriculum for Emergency Medical Technician Refresher Course or continuing education hours that meet the requirements of the Curriculum; and

(h) Evidence of validation of skills maintenance by completing the EMT Recertification Report.

(2) An EMT, whose certification has lapsed for a period that exceeds five (5) years, may reinstate their certificate by complying with Sections 1 and 2 of this administrative regulation.

(3) An application for reinstatement of certification shall not be considered if:

(a) The applicant is subject to disciplinary action pursuant to KRS Chapter 311A;

(b) The applicant is an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense; or

(c) The applicant has been subjected to discipline that would prevent reinstatement at the time of application.]

Section 12 [7]. Public Notice of Negative Action. The board[KBEMS] office shall cause to be published[, on the board Web site [in the KBEMS News or similar publication of the board, or otherwise disseminate] the name of an Emergency Medical Technician who [EMT that]:

(1) Is fined;

(2) Is placed on probationary status;

(3) Is placed on restricted status;

(4) Is suspended; or

(5) Has had his or her certification revoked.[is fined, is placed on probationary status, is placed on a restricted status, is suspended, or has had their certification revoked.

Section 8. Temporary Certificate. (1) KBEMS staff may issue a temporary certificate to an individual who:

(a) Submits a completed "Application for Temporary Certificate";

(b) Is at least eighteen (18) years of age;

(c) Understands, reads, speaks, and writes the English language with a comprehension and performance level equal to at least the 9th grade of education, otherwise known as Level 4, verified by testing as necessary;

(d) Provides proof of being currently certified or licensed in another state or territory of the United States or is currently registered by the NREMT;

(e) Presents written evidence of completion of current HIV/AIDS training required by KRS 311A.110;

(f) Presents written evidence of completion of current training in CPR that meets the requirements of Section 2 of this administrative regulation;

(g) Pays the fee required by 202 KAR 7:030;

(h) Provides the board with a copy of a statewide criminal

background check from their state of residence;

(i) Is not an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense; and

(j) Has not been disciplined by or has action pending against or had a certificate or license in the field of health care denied, limited, suspended, or probated by a certifying or licensing entity in Kentucky or other state or territory under the jurisdiction of the United States.

(2) A temporary certificate may be issued for a period which shall not exceed six (6) months and shall not be reissued or renewed.]

Section 12 [9]. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "National Emergency Medical Services Education Standards-Emergency Medical Technician Instructional Guidelines", The United States Department of Transportation, National Highway Traffic Safety Administration, DOT HS 811 077C, January 2009; [The United States Department of Transportation, National Highway Traffic Safety Administration, "1994 National Standard Curriculum, Emergency Medical Technician" (1994 Edition);]

(b) "EMT Initial Certification Application" in KEMSIS, July 2019; [The "Emergency Medical Technician Initial Certification Application" (June 2003);]

(c) "EMT Certification Renewal Application" in KEMSIS, July 2019; [The "Universal Application Recertification/Relicensure" (June 2003);]

(d) "EMT Reciprocity Certification Application" in KEMSIS July 2019;]

(e) "The Kentucky Board of Emergency Medical Services Emergency Medical Technician Minimum Continuing Education Requirements. Total Contact Hours" (June 2003); and]

(f) "EMT Reinstatement Certification Application" in KEMSIS, July 2019; [The "Emergency Medical Technician Reinstatement Application" (June 2003);]

(g) "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 810 657, February 2007;

(h) "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 812 666, February 2019;

(i) "EMT Skills Verification Report", July 2019;

(j) "EMT Supplemental Curriculum Training Verification Report", July 2019;

(k) "EMT Certification Downgrade Application" in KEMSIS, July 2019;

(l) "EMT Certification Surrender Application" in KEMSIS, July 2019;

(m) "National Registry of Emergency Medical Technicians National Continued Competency Program EMT", October 2016;

(n) "American Heart Association Guidelines for CPR and Emergency Cardiovascular Care", November 2018;

(o) "National Registry of Emergency Medical Technicians Emergency Medical Technician Psychomotor Examination Users Guide", September 2016;

(p) "Name Change Application" in KEMSIS, July 2019;

(q) "Military Extension Application" in KEMSIS, July 2019; and

(r) "United States Citizenship and Immigration Services (U.S.C.I.S) Permanent Resident Card (form I-551/Green Card)", July 2019.

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509, by appointment, [2545 Lawrenceburg Road, Frankfort, Kentucky 40601.] Monday through Friday, 8 a.m. to 4:30 p.m.

PHILIP DIETZ, Chairman

APPROVED BY AGENCY: April 8, 2021

FIELD WITH LRC: April 14, 2021 at 3:54 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 28, 2021 at 1:00 p.m. Eastern Standard Time at the Kentucky Board of

Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: Chuck O'Neal, Deputy Executive Director of Administration, Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509, phone (859) 256-3587, email [chuck.oneal@kctcs.edu](mailto:chuck.oneal@kctcs.edu).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chuck O'Neal

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 311A.025 requires the board to promulgate administrative regulations relating to Emergency Medical Technicians. This administrative regulation establishes requirements for Emergency Medical Technicians.

(b) The necessity of this administrative regulation: KRS 311A.025 requires the board to promulgate administrative regulations relating to Emergency Medical Technicians. This administrative regulation establishes requirements for Emergency Medical Technicians. These amendments are necessary to allow Kentucky Emergency Medical Technicians the opportunity to become certified and maintain certification to protect the citizens of the Commonwealth of Kentucky. Educational and certification processes are streamlined, and unnecessary or repetitive language across other administrative regulations have been removed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.025 by establishing requirements for Emergency Medical Technicians

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.025 requires the board to promulgate administrative regulations relating to Emergency Medical Technicians. This administrative regulation establishes requirements for Emergency Medical Technicians. This administrative regulation will assist Emergency Medical Technicians in becoming certified utilizing more simplistic guidelines and processes and provides additional guidance on educational requirements, and will allow the board to provide more effective customer service to applicants for certification.

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

(a) How the amendment will change this existing administrative regulation: This amendment streamlines certification application processes for Emergency Medical Technicians and provides additional guidance on application processes and responsibilities of the Emergency Medical Technician. Additionally, unnecessary and dated requirements and terminology have been removed.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to allow Kentucky Emergency Medical Technicians the opportunity to become certified and maintain certification to protect the citizens of the Commonwealth of Kentucky. Educational and certification processes are streamlined, and unnecessary or repetitive language across other administrative regulations have been removed.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 311A.025 by establishing requirements for Emergency Medical Technicians.

(d) How the amendment will assist in the effective administration of the statutes: KRS 311A.025 requires the board to promulgate

administrative regulations relating to Emergency Medical Technicians. This administrative regulation establishes requirements for Emergency Medical Technicians. This amendment streamlines processes for administrative body processing and removes barriers to certification for the Emergency Medical Technician. Streamlined processes allow the board to certify applicants more effectively and efficiently.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Emergency Medical Services, its members, and staff, local governments, emergency medical services providers, and Emergency Medical Technicians will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Kentucky Board of Emergency Medical Services, its members, staff, and licensed agencies shall implement the standards relating to Emergency Medical Technicians pursuant to this administrative regulation and shall execute their duties consistent with this amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants seeking certification as an Emergency Medical Technician will benefit from decreased certification requirements and processing time.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no cost to the administrative body to implement this administrative regulation.

(a) Initially: There will be no cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the administrative body to implement this administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because this amendment applies equally to all licensed agencies.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Emergency Medical Services, its members, and staff, local governments, emergency medical services providers, and Emergency Medical Technicians will be affected by this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.025 requires the board to promulgate administrative regulations relating to Emergency Medical Technicians. This administrative regulation establishes requirements for Emergency Medical Technicians.

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



first full year the administrative regulation is to be in effect.

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not impose any costs on state or local government.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not impose any costs on state or local government.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not impose any costs.

Other Explanation:

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE  
SYSTEM  
Kentucky Board of Emergency Medical Services  
(Amendment)**

**202 KAR 7:330. Advanced Emergency Medical Technician  
[Requirements for examination, certification, and  
recertification of the advanced emergency medical  
technician].**

RELATES TO: KRS 38.030, Chapter 39, 39A.050, 311A.010, 311A.020, 311A.025, 311A.050, 311A.090, 311A.095, 311A.100, 311A.110, 311A.127, 311A.140, 311A.145, 311A.150, 311A.195, 10 U.S.C. 121, 672(b)

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.025(2) requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations relating to the standards for training, education, examination, certification, practice, and recertification of the Advanced Emergency Medical Technician (AEMT). This administrative regulation establishes requirements for Advanced Emergency Medical Technician[examination, certification, and recertification of the AEMT].

Section 1. Advanced Emergency Medical Technician Student Eligibility. (1) Individuals shall be eligible to enroll as a student in an Advanced Emergency Medical Technician education and training program if the applicant:

(a) Is at least eighteen (18) years of age;

(b) Holds a high school diploma, high school equivalency diploma, or home school diploma; and

(c) Is currently certified at a minimum of an Emergency Medical Technician by the board or the NREMT.

(2) The student applicant shall:

(a) Not currently be subject to disciplinary action pursuant to KRS Chapter 311A that would prevent certification;

(b) Pass a criminal background check through the Kentucky Administrative Office of the Courts (AOC) meeting the requirements of KRS 311A.050; and

(c) Meet all additional requirements established by the EMS Training and Educational Institution (EMS-TEI).

Section 2 [4]. Certification Requirements. (1) Individuals desiring initial certification as an Advanced Emergency Medical Technician shall: [An applicant for initial certification as an AEMT

shall complete an educational course that:]

(a) Successfully complete a board approved education and training program that conforms to the curriculum of the United States Department of Transportation, National Highway Traffic Safety Administration National Emergency Medical Services Educational Standards-Instructional Guidelines for the Advanced Emergency Medical Technician, except that the educational curriculum shall not be satisfied by the completion of refresher or transition courses alone; [Meets or exceeds the National Emergency Medical Services Educational Standards Instructional Guidelines for an AEMT; and]

(b) Meet[Meets] all educational standards established in 202 KAR 7:601;:]

(c) Obtain certification as a NREMT-Advanced Emergency Medical Technician;

(d) Be a citizen of the United States, a permanent resident of the United States, or otherwise lawfully present in the United States, as evidenced by submission to the board of:

1. A Social Security card;

2. Birth certificate;

3. A United States Citizenship and Immigration Services (U.S.C.I.S) Permanent Resident Card (form I-551/Green Card); or

4. Other legal authorization to live and work in the United States.

(e) Submit a completed AEMT Initial Certification Application in KEMSIS; and

(f) Pay the fee pursuant to 202 KAR 7:030 for certification as an Advanced Emergency Medical Technician.]

(2) An applicant for initial certification as an AEMT in Kentucky shall pass the examination required to obtain the National Registry of Emergency Medical Technicians certification for an AEMT.

(3) An applicant for initial certification as an AEMT shall provide proof that the applicant has:

(a) Completed a college degree; or

(b)1. Obtained a high school diploma; or

2. Successfully taken the General Educational Development (GED) test.

(4) An applicant for AEMT shall complete and submit a signed EMS Responder Application.

(5) An applicant for AEMT shall submit valid evidence of completion of the following courses:

(a) HIV/AIDS training required by KRS 311A.110; and

(b) Pediatric Abusive Head Trauma required by KRS 311A.127.

(6) An applicant for AEMT shall pay to KBEMS the fee established in 202 KAR 7:030 for certification as an AEMT.

(7) An applicant for AEMT shall submit to KBEMS an unexpired cardiopulmonary resuscitation (CPR) card or other current evidence of completion of a CPR course that:

(a) Meets all standards of the American Heart Association Basic Life Support for Healthcare Provider course; and

(b) Includes a psychomotor examination component and a cognitive assessment.

(8) [2] An applicant shall undergo a background check pursuant to KRS 311A.050 and 311A.100. The background check [required] shall be:

(a) National in scope for an applicant not currently certified at any level in Kentucky;

(b) Statewide in scope for an applicant with current certification in Kentucky;

(c) Less than six (6) months old when the applicant submits to the board [KBEMS] all requirements for certification; and

(d) Provided by a vendor that has been contracted through the board [KBEMS or an official federal entity].

[3] [(9)] An applicant shall not directly submit a background check. The background check shall be submitted to the board [Kentucky Board of Emergency Medical Services] by the company [or federal entity] that conducts the background check.[

(10) An applicant shall have two (2) years from the completion date appearing on the course completion form for the applicant's AEMT course to:

(a) Pass the National Registry exam for AEMT certification; and

~~(b) Fulfill all requirements for certification as an AEMT established in this section.]~~

Section 3. Renewal of Certification and Continuing Education Requirements. (1) An Advanced Emergency Medical Technician shall be eligible for certification renewal if:

(a) The applicant submits a completed AEMT Certification Renewal Application in KEMSIS;

(b) The applicant maintains written evidence of:

1. HIV/AIDS training required by KRS 311A.120;

2. Pediatric Abusive Head Trauma as required by KRS 311A.120; and

3. Awareness of Sexual Violence Training required by KRS 311A.120;

(b) The applicant pays the fee required for renewal pursuant to 202 KAR 7:030; and

(3) The applicant maintains evidence of:

(a) Current certification by the National Registry of Emergency Medical Technicians as an Advanced Emergency Medical Technician, except that if this option is used, the board may request, through a continuing education audit, proof of continuing education to verify compliance with the continuing education requirements of this section; or

(b) Successful completion of the NREMT Advanced Emergency Medical Technician National Continued Competency Program, for Continuing Education which shall be validated by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.

(4) An application for certification renewal shall be denied if:

(a) Prior to the certification expiration date, the applicant has not met the applicable requirements of this section; or

(b) The applicant has been subjected to disciplinary action that prevents certification renewal at the time of application.

(5) An applicant who is subject to pending administrative action pursuant to KRS 311A.050 through 311A.090 shall be eligible to renew certification unless the applicant:

(a) Is temporarily suspended pursuant to KRS 311A.075;

(b) Has failed to perform an action ordered by the board pursuant to KRS 311A.055 or 311A.060; or

(c) Is delinquent on fines or fees owed to the board pursuant to KRS 311A.055, 311A.060, or 202 KAR 7:030.

(6) A certified Advanced Emergency Medical Technician, in good standing, who is a member of a branch of the United States National Guard or a military reserve unit called to active duty by presidential order pursuant to 10 U.S.C. §§ 121 and 673b, shall be renewed in accordance with KRS 12.355 upon submission of the Military Extension Application.

(7) The board office may audit an Advanced Emergency Medical Technician's continuing education and continuing education records.

(8) The Advanced Emergency Medical Technician shall submit the documentation requested within ten (10) business days of receipt of the board's request. If documentation of continuing education hours consistent with this administrative regulation are not received using the board-approved submission process within ten (10) business days of receipt of the board's request, the Advanced Emergency Medical Technician certification for the individual shall be summarily revoked and the individual shall reapply for certification through Reinstatement if eligible.

(9) The ten (10) business days for submission shall not apply to investigations pursuant to KRS Chapter 311A.

(10) The Advanced Emergency Medical Technician shall maintain documentation of all continuing education for three (3) years from the date of completion.

Section 4. Reinstatement of Certification. (1) An Advanced Emergency Medical Technician whose Kentucky certification has lapsed shall be eligible for reinstatement of certification if the applicant submits:

(a) A completed AEMT Reinstatement Certification Application in KEMSIS; and

(b) Evidence of:

1. Previous certification as an Advanced Emergency Medical

Technician in the Commonwealth of Kentucky;

2. Current training in:

a. Pediatric Abusive Head Trauma as required by KRS 311A.120; and

b. Awareness of Sexual Violence Training required by KRS 311A.120.

(2) The applicant shall pay the fee pursuant to 202 KAR 7:030.

(3) The applicant for reinstatement of certification shall undergo a national background check provided by a vendor that has been contracted through the board.

(a) An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check; and

(b) Background checks that are older than six (6) months shall not be considered current, and the applicant shall undergo another national background check prior to approval of reinstatement of certification.

(4) The applicant for reinstatement of certification shall bear the burden of proof of previous certification in Kentucky if the previous certification is in issue or dispute.

(5) An applicant for reinstatement of an Advanced Emergency Medical Technician certification shall submit evidence of formal completion of continuing education hours as required in Section 3 of this administrative regulation. Completion of the hours shall have occurred within the twelve (12) months preceding application for reinstatement of the Advanced Emergency Medical Technician.

(6) An applicant for reinstatement of a lapsed certification shall provide evidence of current skills by completing and submitting validation of those skills on the Kentucky Advanced Emergency Medical Technician Skills Verification Report. The Advanced Emergency Medical Technician Skills Verification Report shall be completed by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.

(7) An applicant who is ineligible for certification pursuant to KRS 311A.050 through 311A.090 shall be ineligible for reinstatement.

Section 5. Advanced Emergency Medical Technician Reciprocity. (1) An individual who is certified in a contiguous state to the Commonwealth of Kentucky or by the NREMT as an Advanced Emergency Medical Technician or any member of the United States Armed Forces, or veteran who has transitioned within the past six (6) years from the United States Armed Forces, and has been registered by the National Registry as an Advanced Emergency Medical Technician or EMT and has successfully completed the Army 68 Whiskey course shall be eligible for reciprocity for certification as an Advanced Emergency Medical Technician in Kentucky if the applicant submits:

(a) A completed AEMT Reciprocity Certification Application in KEMSIS;

(b) Proof of the applicant's unrestricted NREMT certification as an Advanced Emergency Medical Technician or Advanced Emergency Medical Technician certification in a contiguous state to the Commonwealth of Kentucky; and

(c) Completion of current training in:

1. HIV/AIDS training required by KRS 311A.120;

2. Pediatric Abusive Head Trauma training required by KRS 311A.120; and

3. Awareness of Sexual Violence Training required by KRS 311A.120.

(2) An applicant shall pay the fee required for certification through reciprocity pursuant to 202 KAR 7:030.

(3) An applicant for Advanced Emergency Medical Technician reciprocity shall undergo a national background check provided by a vendor that has been contracted through the board. An applicant shall not directly submit a background check. The background check shall be submitted to the board by the company that conducts the background check. Background checks that are older than six (6) months shall not be considered current, and the applicant shall undergo another national background check prior to approval of certification through reciprocity.

(4) An applicant shall not have been convicted of offenses

described in KRS 311A.050.

(5) An applicant shall not have been subjected to discipline that would prevent reciprocity at the time of application.

(6) An Advanced Emergency Medical Technician certified pursuant to Section 2 of this administrative regulation shall not perform any procedures or skill on which the Advanced Emergency Medical Technician has not been trained. An Advanced Emergency Medical Technician who performs a skill for which the Advanced Emergency Medical Technician does not have documented training shall have exceeded the scope of practice and shall be in violation of KRS 311A.050.

(7) An Advanced Emergency Medical Technician certified pursuant to this section shall complete the Kentucky supplemental Advanced Emergency Medical Technician curricula for the procedures listed in 202 KAR 7:701 prior to beginning work for a licensed agency in Kentucky.

(8) Kentucky supplemental Advanced Emergency Medical Technician curricula consistent with 202 KAR 7:701 shall be provided during employee orientation, or by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.

(9) Verification of competency on the supplemental curricula procedures in 202 KAR 7:701 shall be maintained by the Advanced Emergency Medical Technician for a minimum of three (3) years. Failure to submit the AEMT Supplemental Curriculum Training Verification Report shall result in revocation of Advanced Emergency Medical Technician certification.

(10) If an Advanced Emergency Medical Technician certified pursuant to this section fails to supply verification of competency as required by subsection (7) of this section the Advanced Emergency Medical Technician shall be ineligible to apply for and receive Advanced Emergency Medical Technician reciprocity certification until the applicant has submitted the AEMT Supplemental Curriculum Training Verification Report as required pursuant to 202 KAR 7:701, and shall reapply for Reciprocity through the process set forth in this section.

Section 6 [2]. Scope of Practice. (1) An Advanced Emergency Medical Technician [AEMT] shall provide emergency medical services consistent with the skills and procedures in the National EMS Scope of Practice Model and 202 KAR 7:701.1

(2) In addition to the skills and procedures in the National EMS Scope of Practice Model, the scope of practice of a Kentucky AEMT shall include the following procedures:

- (a) Quantitative and qualitative capnography and capnometry;
- (b) Bilevel Positive Airway Pressure and Continuous Positive Airway Pressure (BIPAP/CPAP) devices;
- (c) End tidal Carbon Dioxide (ETCO<sub>2</sub>) Detection;
- (d) Acquisition of a non-interpretive twelve (12) lead electrocardiogram (ECG);
- (e) Transmission of a non-interpretive twelve (12) lead electrocardiogram (ECG); and
- (f) Establish and maintain adult intraosseous infusion.

(3) Eligibility to perform the supplemental procedures shall require an AEMT to complete education on and training for the skill performed. The supplemental curriculum required shall consist of:

- (a) Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using a noninvasive monitoring device—Application of 12-lead electrocardiogram electrodes and monitor;
- (b) Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using a noninvasive monitoring device—Application and interpretation of quantitative capnography and end tidal carbon dioxide monitoring;
- (c) Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using Bilevel Positive Airway Pressure and Continuous Positive Airway Pressure Devices; and
- (d) Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using intraosseous infusion in the adult.

(4) An AEMT shall adhere to the protocols the employing service's medical director submitted to KBEMS for approval. Deviation from the protocols shall only occur if:

- (a) The AEMT's medical director or designated on-line medical control orders otherwise;
- (b) Compliance with approved protocols is not in the patient's

medical best interest; or

(c) The AEMT does not have the equipment or medication to adhere to the protocol.

(5) An AEMT shall document deviation from an approved protocol as part of the patient care report.

(6) If providing emergency medical services during a disaster or emergency that qualifies as part of the Emergency Management Assistance Compact, pursuant to KRS 39A.050 or if acting pursuant to another agreement made pursuant to KRS Chapter 39, an AEMT certified in another state may perform the skills and procedures approved by the certifying state.]

Section 7 [3]. Expiration of Certification. (1) Certification periods and expiration dates shall be pursuant to KRS 311A.095.

(2) If an Advanced Emergency Medical Technician's [AEMT's] certification lapses or expires, the Advanced Emergency Medical Technician [AEMT] shall cease provision of emergency medical services.

(3) If the AEMT has chosen to maintain certification at the EMT level, the AEMT shall apply for renewal of EMT certification prior to the expiration date.

(4) An Advanced Emergency Medical Technician [AEMT] who has allowed his or her [all levels of] certification to lapse or expire shall be required to reinstate certification pursuant to Section 4 [7] of this administrative regulation.1

Section 4. Renewal of Certification and Continuing Education Requirements. (1) To be eligible for renewal of certification, an AEMT shall submit to the board:

- (a) A completed and signed EMS Responder Application; and
  - (b) The fee established in 202 KAR 7:030.
- (2) The applicant shall maintain written evidence of:
- (a) Current training in HIV/AIDS treatment and recognition required by Section 1(5)(a) of this administrative regulation; and
  - (b) Current training in Pediatric Abusive Head Trauma as required by KRS 311A.127.

(3) An applicant for renewal of certification as an AEMT shall maintain evidence of:

- (a) Current certification by the National Registry of Emergency Medical Technicians as an AEMT; or
- (b) Completion of the AEMT continuing education requirement of forty-eight (48) total instructional hours. The forty-eight (48) instructional hours shall be composed of twelve (12) elective hours in subject areas chosen by the AEMT and thirty-six (36) hours that include the following minimum contact hours for the following subject areas:

- 1. Twelve (12) hours in airway, breathing, and cardiology, with a minimum of one (1) hour in each topic;
- 2. Six (6) hours in medical emergencies, excluding cardiology;
- 3. Five (5) hours in trauma;
- 4. Six (6) hours in obstetrics;
- 5. Six (6) hours in pediatrics; and
- 6. One (1) hour in disaster management.

(c) The twelve (12) elective hours required for an AEMT to recertify shall not include more than four (4) hours in a single category in the list provided in paragraph (b)1. through 6. of this subsection.

(4) To be used for renewal of certification, the AEMT's continuing education hours shall be certified as valid by:

- (a) The course's instructor, medical director, training officer, coordinator, or provider that offered the hours; or
- (b) A medical director, service director, or training officer of the AEMT's ambulance service, first response agency, fire department, rescue squad, or other medical employer.

(5) An applicant for AEMT shall not be eligible for renewal of certification if the applicant does not complete all hours required by the end of the AEMT's certification period.

(6) An applicant's certification that is based upon completion of continuing education hours that are subsequently proven untrue, inaccurate, or fraudulent through a board audit shall be invalid pursuant to [KRS 311A.140(4) and] 311A.050(2)(b).

(7) An applicant who is subject to pending administrative action pursuant to KRS 311A.050 through 311A.090 shall be eligible to

renew certification unless the applicant:

- (a) Is temporarily suspended pursuant to KRS 311A.075;
  - (b) Has failed to perform an action ordered by the board pursuant to KRS 311A.055 or 311A.060; or
  - (c) Is delinquent on fines or fees owed to the board pursuant to KRS 311A.055, 311A.060, or 202 KAR 7:030.
- (8) A certified AEMT who is not undergoing disciplinary action with the board and who is a member of a branch of the United States military or a National Guard or military reserve unit shall be eligible for an extension of the time limit to renew certification if the AEMT:
- (a) Is called to federal active duty by presidential order pursuant to 10 U.S.C. 121 and 673b during the current certification period; or
  - 2. Is called to state active duty for an extended period of time by order of the governor pursuant to KRS 38.030;
  - (b) Because of the call to active duty, is unable to complete the continuing education hours required for renewal of certification; and
  - (c) Submits a written request for an extension within thirty (30) days prior to or sixty (60) days after release from active duty.
- (9) The extension granted pursuant to subsection (8) of this administrative regulation shall not exceed one (1) year beyond the effective date of release from active duty for the AEMT. The AEMT shall be required to provide a DD 214 or other relevant federal documents as proof of the release date.
- (10) If asked by the office of the board to provide the documentation of continuing education hours an AEMT used as a basis for renewal of certification, the AEMT shall submit the documentation within ten (10) business days of receipt of the board's request.
- (11) The ten (10) business days for submission shall not apply to investigations pursuant to KRS Chapter 311A.

Section 5. AEMT Reciprocity. (1) An individual who is certified by the NREMT as an AEMT shall be eligible for direct reciprocity for initial certification as an AEMT in Kentucky if the applicant submits a completed and signed EMS Responder Application and proof of:

- (a) The applicant's unrestricted NREMT certification as an AEMT; and
  - (b) Completion of current training in:
    - 1. HIV/AIDS training required by KRS 311A.110;
    - 2. Pediatric Abusive Head Trauma training required by KRS 311A.127; and
    - 3. CPR that meets the requirements of Section 1(7) of this administrative regulation; and
  - (c) Submission of the Kentucky Required Mandatory Supplemental Curriculum for AEMT Initial Training Verification Report.
- (2) An applicant shall pay the fee required for initial certification through reciprocity pursuant to 202 KAR 7:030.
- (3) An applicant for AEMT direct reciprocity shall undergo a national background check and have the results submitted to the board. Background checks that are older than six (6) months shall not be considered current, and the applicant shall be required to undergo another national background check prior to approval of certification through reciprocity.
- (4) An AEMT certified pursuant to Section 1 of this administrative regulation shall not perform any procedures or skill on which the AEMT has not been trained. An AEMT who performs a skill for which the AEMT does not have documented training shall have exceeded the scope of practice and shall be in violation of KRS 311A.060.

(5) An AEMT certified pursuant to Section 1 of this administrative regulation shall complete the Kentucky supplemental AEMT curricula for the procedures listed in Section 2(3) of this administrative regulation within six (6) months of receiving certification through direct reciprocity.

(6) Verification of competency on the supplemental curricula procedures in Section 2(3) of this administrative regulation shall be submitted to the board within six (6) months of receiving certification. Failure to submit verification shall result in revocation

of AEMT certification, and the board shall issue a new certificate at the level of EMT for the remaining certification period.

(7) If an AEMT certified pursuant to this section fails to supply verification of competency as required by subsection (6) of this section and the AEMT's certificate is reissued at the EMT level of certification, the AEMT shall be ineligible to apply for and receive AEMT reciprocity certification until the applicant has submitted verification of competency in the supplemental procedures in Section 2(3) of this administrative regulation.]

Section 8. Downgrading Certification. (1) An Advanced Emergency Medical Technician currently certified as an Advanced Emergency Medical Technician by the board shall be eligible for certification downgrade if:

- (a) The certification is in good standing with no pending disciplinary action;
  - (b) The applicant submits a completed AEMT Certification Downgrade Application in KEMSIS; and
  - (c) The applicant pays the fee established in 202 KAR 7:030.
- (2) An Advanced Emergency Medical Technician is only eligible to downgrade his or her certification to an Emergency Medical Technician or Emergency Medical Responder certification.
- (3) Certification periods and expiration dates shall be pursuant to KRS 311A.095.
- (4) An applicant shall undergo a background check pursuant to KRS 311A.050 and 311A.100. The background check shall be:
- (a) Statewide in scope for an applicant with current certification in Kentucky;
  - (b) Less than six (6) months old when the applicant submits to the board all requirements for certification; and
  - (c) Provided by a vendor that has been contracted through the board.

(5) The applicant shall provide proof of:

- (a) Current certification by the NREMT as an Advanced Emergency Medical Technician; or
- (b) Successful completion of the NREMT Advanced Emergency Medical Technician National Continued Competency Program for Continuing Education, which shall be validated by entities authorized to conduct continuing education pursuant to 202 KAR 7:601;

(c) Current training in:

- 1. Pediatric Abusive Head Trauma required by KRS 311A.120; and
- 2. Awareness of Sexual Violence Training required by KRS 311A.120.

(6) Downgrade shall be denied if the applicant has not met the requirements of this section or has been subject to disciplinary action that prevents certification at the time of application.

(7) The applicant shall be responsible for meeting the renewal requirements of the downgraded certification level issued prior to expiration of that certification.

(8) To reinstate the certification or license that was previously held, the applicant shall meet the regulatory requirements for that level of certification or licensure.

(9) The applicant shall notify the board's licensed service director(s) with whom the applicant is affiliated immediately upon downgrading his or her certification.

(10) Once the applicant has downgraded his or her certification or license, the applicant is no longer permitted to provide emergency medical services at the previous certification or license level held.

(11) An applicant applying for downgrade who does not comply with this section shall be subject to disciplinary action pursuant to KRS Chapter 311A.

(12) All endorsements, certifications, or licenses held at the previous certification or license level shall be void at the completion of the downgrade.

Section 9. Surrender of Certification. (1) An Advanced Emergency Medical Technician surrendering certification shall:

- (a) Submit a completed AEMT Certification Surrender Application in KEMSIS; and
- (b) Pay the fee established in 202 KAR 7:030.

(2) The applicant shall notify the board's licensed service director(s) with whom the applicant is affiliated immediately upon surrendering his or her certification.

Section 10. Reporting Requirements. (1) An Advanced Emergency Medical Technician shall maintain current demographic information in KEMSIS including:

(a) Legal name:

1. Any changes to an AMET's legal name shall be submitted using the Name Change application in KEMSIS; and

2. One (1) of the following documents as verification of name change:

a. Social Security card;

b. Driver's license; or

c. Passport;

(b) Mailing address;

(c) Email address; and

(d) Phone number.

(2) An Advanced Emergency Medical Technician who does not comply with this section shall be subject to disciplinary action pursuant to KRS Chapter 311A.

Section 11 [6]. Exemptions from Advanced Emergency Medical Technician [AEMT] Administrative Regulations. Certification requirements for an Advanced Emergency Medical Technician [AEMT] shall not apply to:

(1) United States military members, state National Guard personnel, or employees of the United States government if the individual provides emergency medical services:

(a) [1-] On land owned by the United States government; [or]

(b) [2-] In facilities owned by the United States government; [or]

(c) [(b)1-] In the performance of official duties under federal law; [or]

(d) [2-] As part of assistance for a mass casualty or disaster incident pursuant to federal law or official state assistance request; or

(2) An Advanced Emergency Medical Technician [AEMT] certified in another state or territory of the United States who:

(a) Enters Kentucky with a patient being transported to a medical facility or other final destination in Kentucky; or

(b) Travels through Kentucky during the course of a patient transport from an out-of-state location to a destination outside of Kentucky.[

Section 7. Reinstatement of Certification. (1) An AEMT whose Kentucky certification has lapsed shall be eligible for reinstatement of certification if:

(a) The lapse in certification has not exceeded a period of three (3) years; and

(b) The applicant submits:

1. A completed and signed EMS Responder Application; and

2. Evidence of:

a. Current certification at the AEMT level or higher with the National Registry; or

b. Current training in:

(i) HIV/AIDS training required by KRS 311A.110;

(ii) Pediatric Abusive Head Trauma as required by KRS 311A.127; and

(iii) Healthcare CPR as required by Section 1(7) of this administrative regulation.

(2) The applicant shall pay the fee pursuant to 202 KAR 7:030.

(3) The applicant shall undergo a national background check and have the results presented to the office of the board. If the background check is older than six (6) months, the applicant shall be required to undergo and have new results submitted to the board.

(4) The applicant for reinstatement of certification shall bear the burden of proof of previous certification in Kentucky if the previous certification is in issue or dispute.

(5) An applicant for reinstatement of an AEMT certification shall submit evidence of formal completion of continuing education hours as required in Section 4 of this administrative regulation. Completion of the hours shall have occurred within the twelve (12)

months preceding application for reinstatement of the AEMT.

(6) An applicant for reinstatement of a lapsed certification shall provide evidence of current skills by completing and submitting validation of those skills on the Kentucky Advanced EMT Skills Verification Report.

(7) An AEMT whose certification has lapsed for longer than three (3) years shall not be eligible for reinstatement but shall be considered an initial certification and shall meet all requirements in Section 1 of this administrative regulation.

(8) An applicant ineligible for certification pursuant to KRS 311A.050 through 311A.090 shall be ineligible for reinstatement.]

Section 12. Public Notice of Negative Action. The board office shall cause to be published on the board website the name of an Advanced Emergency Medical Technician who:

(1) Is fined;

(2) Is placed on probationary status;

(3) Is placed on restricted status;

(4) Is suspended; or

(5) Has had his or her certification revoked.]

Section 8. AEMT certification through previous pilot projects.

(1) An AEMT who obtained certification as an AEMT through training in a pilot project previously approved by the board shall maintain certification until the end of the current certification period without the completion of additional requirements.

(2) An AEMT certified through a previously approved pilot project who applies for renewal at the end of the current certification period shall meet all requirements for renewal of certification in Section 4 of this administrative regulation.

(3) An applicant certified as an AEMT in a previously approved pilot project and who meets the requirements for renewal of certification as an AEMT in Section 4 of this administrative regulation shall not be limited to the geographic boundaries established in the original pilot project but shall be considered fully certified and geographically unrestricted to practice as an AEMT in the state of Kentucky.]

Section 13.[9-] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "National Emergency Medical Services Education Standards-Advanced Emergency Medical Technician Instructional Guidelines", The United States Department of Transportation, National Highway Traffic Safety Administration, DOT HS 811 077D, January 2009 [National Highway Traffic Safety Administration, DOT HS 811-077A, January 2009];

(b) "AEMT Initial Certification Application" in KEMSIS, July 2019 ["EMS Responder Application", KBEMS E-1, September 2012];

(c) "AEMT Certification Renewal Application" in KEMSIS, July 2019 ["American Heart Association's Basic Life Support for Healthcare Providers Course", American Heart Association, 2011];

(d) "AEMT Reciprocity Certification Application" in KEMSIS, July 2019 ["National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 810-657, February 2007];

(e) "AEMT Reinstatement Certification Application" in KEMSIS, July 2019 ["Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using a noninvasive monitoring device-- Application of 12 lead electrocardiogram electrodes and monitor", KBEMS E-29, March 2013];

(f) "AEMT Supplemental Curriculum Training Verification Report", July 2019;

(g) "AEMT Skills Verification Report", July 2019;

(h) "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 810 657, February 2007;

(i) "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 812 666, February 2019;

(j) "AEMT Certification Downgrade Application" in KEMSIS, July 2019;

(k) "AEMT Certification Surrender Application" in KEMSIS, July 2019;

(l) "National Registry of Emergency Medical Technicians

National Continued Competency Program AEMT", October 2016;

(m) "American Heart Association Guidelines for CPR and Emergency Cardiovascular Care", November 2018;

(n) "National Registry of Emergency Medical Technicians Advanced Emergency Medical Technician Psychomotor Examination Users Guide", September 2016;

(o) "Name Change Application" in KEMSIS, July 2019;

(p) "Military Extension Application" in KEMSIS, July 2019; and

(q) "United States Citizenship and Immigration Services (U.S.C.IS) Permanent Resident Card (form I-551/Green Card)", July 2019; "Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using a noninvasive monitoring device— Application and interpretation of quantitative capnography and end tidal carbon dioxide monitoring", KBEMS E-30, March 2013;

(g) "Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using Bilevel Positive Airway Pressure and Continuous Positive Airway Pressure Devices", KBEMS E-32, March 2013;

(h) "Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using intraosseous infusion in the adult", KBEMS E-31, March 2013;

(i) "Kentucky Required Mandatory Supplemental Curriculum for AEMT Initial Training Verification Report", KBEMS E-26, March 2013; and

(j) "Kentucky Advanced EMT Skills Verification Report", KBEMS E-28, March 2013.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509, by appointment, [KCTCS, 300 N. Main Street, Versailles, Kentucky 40383] Monday through Friday, 8 a.m. to 4:30 p.m.

PHILIP DIETZ, Chairman

APPROVED BY AGENCY: April 8, 2021

FIELD WITH LRC: April 14, 2021 at 3:54 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 28, 2021 at 1:00 p.m. Eastern Standard Time at the Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: Chuck O'Neal, Deputy Executive Director of Administration, Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509, phone (859) 256-3587, email [chuck.oneal@kctcs.edu](mailto:chuck.oneal@kctcs.edu).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chuck O'Neal

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 311A.025(2) requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations relating to the standards for training, education, examination, certification, practice, and recertification of the advanced emergency medical technician (AEMT). This administrative regulation establishes requirements for Advanced Emergency Medical Technicians.

(b) The necessity of this administrative regulation: KRS 311A.025(2) requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations relating to the

standards for training, education, examination, certification, practice, and recertification of the advanced emergency medical technician (AEMT). This administrative regulation establishes requirements for Advanced Emergency Medical Technicians. These amendments are necessary to allow Kentucky Advanced Emergency Medical Technicians the opportunity to become certified and maintain certification to protect the citizens of the Commonwealth of Kentucky. Educational and certification processes are streamlined, and unnecessary or repetitive language across other administrative regulations have been removed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.025 by establishing the requirements for Advanced Emergency Medical Technicians.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.025(2) requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations relating to the standards for training, education, examination, certification, practice, and recertification of the advanced emergency medical technician (AEMT). This administrative regulation establishes requirements for Advanced Emergency Medical Technician. This administrative regulation will assist Advanced Emergency Medical Technicians in becoming certified utilizing more simplistic guidelines and processes and provides additional guidance on educational requirements and will allow the board to provide more effective customer service to applicants for certification.

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

(a) How the amendment will change this existing administrative regulation: This amendment streamlines certification application processes for Advanced Emergency Medical Technicians and provides additional guidance on application processes and responsibilities of the Advanced Emergency Medical Technician. Additionally, unnecessary and dated requirements and terminology have been removed.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to allow Kentucky Advanced Emergency Medical Technicians the opportunity to become certified and maintain certification to protect the citizens of the Commonwealth of Kentucky. Educational and certification processes are streamlined, and unnecessary or repetitive language across other administrative regulations have been removed.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 311A.025(2) requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations relating to the standards for training, education, examination, certification, practice, and recertification of the advanced emergency medical technician (AEMT). This administrative regulation establishes requirements for Advanced Emergency Medical Technician.

(d) How the amendment will assist in the effective administration of the statutes: KRS 311A.025(2) requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations relating to the standards for training, education, examination, certification, practice, and recertification of the advanced emergency medical technician (AEMT). This administrative regulation establishes requirements for Advanced Emergency Medical Technician. This administrative regulation amendment streamlines processes for administrative body processing and removes barriers to certification for the Advanced Emergency Medical Technician. Streamlined processes allow the administrative body to certify applicants more effectively and efficiently.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Emergency Medical Services, its members, staff, and licensed agencies will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Kentucky Board of Emergency Medical Services, its members, staff, and licensed agencies shall implement the standards relating to Advanced Emergency Medical Technicians pursuant to this administrative regulation and shall execute their duties consistent with this amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants seeking certification as an Advanced Emergency Medical Technician will benefit from decreased certification requirements and processing time.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no cost to the administrative body to implement this administrative regulation.

(a) Initially: There will be no cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the administrative body to implement this administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because this amendment applies equally to all licensed agencies.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Emergency Medical Services, its members, staff, and licensed agencies will be affected by this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.025 requires the board to promulgate administrative regulations relating to Advanced Emergency Medical Technicians. This administrative regulation establishes requirements for Advanced Emergency Medical Technicians.

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not impose any costs on state or local government.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not impose any costs on state or local government.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not impose any costs.

Other Explanation:

#### KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

##### Kentucky Board of Emergency Medical Services (Amendment)

#### 202 KAR 7:401. Paramedics.

RELATES TO: KRS 311A.025, 311A.030, 311A.080, 311A.110, 311A.135, 311A.170

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.115, 311A.125, 311A.135, 311A.170

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.025 requires the board to promulgate administrative regulations relating to requirements and procedures for licensure, relicensure and reciprocity for Paramedics. This administrative regulation establishes those requirements and procedures.

Section 1. Paramedic Student Eligibility. Individuals shall be eligible to enroll as a student in a Paramedic education and training program if the applicant:

(1) Is at least eighteen (18) years of age;

(2) Holds a high school diploma, high school equivalency diploma [or GED], or home school diploma;

(3) ~~[Understands, reads, speaks, and writes the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;~~

(4) ~~Holds current unrestricted certification as an Emergency Medical Technician or Advanced Emergency Medical Technician [EMT] in Kentucky or holds current unrestricted certification [registration] with the National Registry of Emergency Medical Technicians (NREMT) as an Emergency Medical Technician or Advanced Emergency Medical Technician [NREMT-B];~~

(4) ~~[(5)] Is not currently subject to disciplinary action pursuant to KRS Chapter 311A that would prevent licensure; and [-]~~

(5) ~~[(6)] Meets all additional requirements established by the EMS Training and Educational Institution (EMS-TEI). [EMS-TEI; and~~

(7) ~~Holds a valid motor vehicle operators license from a state or territory of the United States.]~~

Section 2. Licensure Requirements. (1) Individuals desiring initial licensure as a P[ar]amedic shall:

(a) ~~Successfully complete a board approved education and training program that conforms to the curriculum of the United States Department of Transportation, National Highway Traffic Safety Administration, National Emergency Medical Services Educational Standards- Paramedic Instructional Guidelines; [Meet all of the requirements contained in Section 1 of this administrative regulation;]~~

(b) ~~Successfully complete[ within thirty (30) months of the beginning of the course,] all EMS-Training and Educational Institute (EMS-TEI) [EMS-TEI] requirements for the education or training program which:~~

1. ~~Meet or exceed the National Emergency Medical Services Educational Standards- Paramedic Instructional Guidelines [Utilize the United States Department of Transportation, National Highway Traffic Safety Administration, 1998 National Standard Curriculum for Emergency Medical Technician-Paramedic], which shall not be satisfied by the completion of refresher or transition courses alone; [and]~~

2. ~~Meet all educational standards established in 202 KAR 7:601; [Shall not contain less than the median number of didactic, practical laboratory, and clinical and field internship hours for each subject and skill as contained in the "Field and Pilot Test Didactic and Practical Laboratory Hours Report" and "Field and Pilot Test~~

Clinical Report" of the United States Department of Transportation, National Highway Traffic Administration, 1998 National Standard Curriculum for Emergency Medical Technician-Paramedic;]

(c) Present evidence of completion of education and training regarding determination of death and preservation of evidence as required by KRS 311A.185;

(d) Obtain certification as a Paramedic by the National Registry of Emergency Medical Technicians [NREMT registration as a NREMT-P];

(e) Submit a completed Paramedic Initial License Application in KEMSIS [signed "Application for Paramedic Examination and Licensure"];

(f) [Present written evidence of completion of current HIV/AIDS education or training required by KRS 311A.110; and

(g)] Pay the fee pursuant to [required by] 202 KAR 7:030;[.]

(g) Undergo a background check pursuant to KRS 311A.050 and 311A.100;

1. The background check shall be:

a. National in scope for an applicant not currently certified at any level in Kentucky;

b. Statewide in scope for an applicant with current certification in Kentucky;

c. Less than six (6) months old when the applicant submits to the board all requirements for licensure; and

d. Provided by a vendor that has been contracted through the board;

2. An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check; and

(h) Be a citizen of the United States, a permanent resident of the United States, or otherwise lawfully present in the United States, as evidenced by submission to the board of:

1. A Social Security card;

2. Birth certificate;

3. A United States Citizenship and Immigration Services (U.S.C.I.S) Permanent Resident Card (form I-551/Green Card); or

4. Other legal authorization to live and work in the United States;

(2) (a) A Paramedic licensed pursuant to this section shall complete training regarding determination of death and preservation of evidence as required by KRS 311A.185 prior to beginning work for a licensed agency in Kentucky.

(b) Training in determination of death and preservation of evidence as required by KRS 311A.185 shall be provided during employee orientation, or by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.[

(2) An applicant for licensure as a paramedic shall successfully complete all NREMT testing and become Kentucky licensed within two (2) years after fulfilling all of the requirements of their paramedic education or training program, including the completion of the field summative evaluation.];

Section 3. Renewal of Licensure [Relicensure] and Continuing Education Requirements. (1) A Paramedic shall be eligible for license renewal [relicensure] if:

(a) The applicant submits [to the KBEMS office a signed,] a completed Paramedic License Renewal Application in KEMSIS ["Universal Application for Recertification/Relicensure"];

(b) The applicant maintains written evidence of:

1. HIV/AIDS training required by KRS 311A.120;

2. Pediatric Abusive Head Trauma as required by KRS 311A.120;

3. Awareness of Sexual Violence Training required by KRS 311A.120; and

4. Training regarding determination of death and preservation of evidence as required by KRS 311A.185;[completion of current education or training in CPR that:

1. Shall be taught by an individual who holds instructor certification at an appropriate level from:

a. The American Red Cross;

b. The AHA;

c. The National Safety Council;

d. The ASHI; or

e. Another board approved organization; and

2. Shall provide instruction and testing in:

a. One (1) rescuer CPR;

b. Two (2) rescuer CPR;

c. Techniques of changing from one (1) to two (2) rescuers during the performance of CPR;

d. Techniques of changing rescuers during the performance of two (2) rescuer CPR;

e. Techniques for relief of obstruction of the airway;

f. CPR of infants and small children;

g. Barrier to mouth, barrier to nose, or barrier to stoma resuscitation for adults, small children, and infants;

h. Use of oral and nasal airways;

i. Use of bag-valve-mask or other ventilation device;

j. Use of supplemental oxygen; and

k. Use and operation of an AED;

(c) The applicant maintains written evidence of completion of current HIV/AIDS training required by KRS 311A.110;]

(c) [(d)] The applicant pays the fee pursuant to [established in] 202 KAR 7:030; and

(d) [(e)] The applicant maintains evidence of [any of the following]:

1. Current certification [registration] by the NREMT as a[an] Paramedic [NREMT-P]; and if this option is used the board may request, through a continuing education audit, proof of continuing education to verify compliance with the continuing education requirements of this section; or

2. NREMT Paramedic National Continued Competency Program Paramedic for Continuing Education.[Successful completion of the University of Maryland-Baltimore-Campus Critical Care-Emergency Medical Transport Program; or

3. Successful completion of sixty (60) hours of continuing education of which:

a. A maximum of sixteen (16) hours per course may be claimed for obtaining, maintaining, or instructing provider certification in:

(i) ACLS;

(ii) PALS;

(iii) BTLIS;

(iv) PHTLS; or

(v) PEPP; and

b. Thirty (30) of the required sixty (60) hours shall be obtained in the following areas:

(i) Two (2) in preparatory;

(ii) Four (4) in airway management;

(iii) Five (5) in cardiac management;

(iv) Four (4) in medical or behavioral emergencies;

(v) Five (5) in trauma;

(vi) Two (2) in obstetrics or gynecology;

(vii) Five (5) in pediatrics; and

(viii) Three (3) in operations.

(2) All applicants for relicensure shall complete a minimum of one (1) hour in disaster management or mass casualty incidents education or training.

(3) Each applicant shall provide evidence of current certification in ACLS through either the AHA or ASHI at the time of application.];

(2) [(4)] All continuing education shall be validated by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.];

(a) The instructor, medical director, training officer, course coordinator, or provider of the continuing education offering; or

(b) A medical director, service director, or training officer of the ambulance service, first response agency, fire department, rescue squad or other medical employer.];

(3) [(5)] An application for renewal of licensure shall be denied if:

(a) Prior to the licensure expiration date, the Paramedic applicant has not met the applicable requirements of this administrative regulation; or

(b) The applicant has been subjected to disciplinary action that prevents relicensure at the time of application.



(4) [(6)] A licensed P[ar]amedic, in good standing, who is a member of a National Guard or a military reserve unit [and is] called to active duty by presidential order pursuant to 10 U.S.C. §§ 121 and 673b shall be renewed in accordance with KRS 12.355 upon submission of the Military Extension Application. [may be given a one (1) year extension following release from active duty to meet the applicable requirements for relicensure listed in this section. The paramedic shall submit a written request for this extension within sixty (60) days of release from active duty.]

(5) [(7)] The board [KBEMS] office may audit a Paramedic's continuing education and continuing education records. The Paramedic shall submit the documentation requested within ten (10) business days of receipt of the board's request.

(6) If documentation of continuing education hours consistent with this administrative regulation are not received using the board-approved submission process within ten (10) business days of receipt of the board's request, the Paramedic license for the individual shall be summarily revoked and the individual shall reapply for licensure through reinstatement if eligible.

(7) The ten (10) business days for submission shall not apply to investigations pursuant to KRS Chapter 311A.

(8) The Paramedic shall maintain documentation of all continuing education for three (3) [four (4)] years from the date of completion.

Section 4. Reinstatement of License. (1) A Paramedic whose Kentucky license has lapsed may reinstate their license if the applicant submits:

(a) A completed Paramedic Reinstatement License Application in KEMSIS;

(b) Evidence of previous licensure as a Paramedic in the Commonwealth of Kentucky;

(c) Evidence of current training in:

1. Pediatric Abusive Head Trauma as required by KRS 311A.120;

2. Awareness of Sexual Violence Training required by KRS 311A.120; and

3. Training regarding determination of death and preservation of evidence as required by KRS 311A.185.

(d) Payment of the fee pursuant to 202 KAR 7:030;

(e) The applicant for reinstatement of license shall undergo a national background check provided by a vendor that has been contracted through the board; and

1. An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check;

2. Background checks that are older than six (6) months shall not be considered current, and the applicant shall undergo another national background check prior to approval of reinstatement of license;

(f) The applicant for reinstatement of licensure shall bear the burden of proof of previous licensure in Kentucky if the previous Paramedic license is in issue or dispute.

(2) An applicant shall provide evidence of successful completion of the NREMT-Paramedic national continued competency program for continuing education within the twelve (12) months preceding application for reinstatement of the Paramedic license.

(3) An applicant shall provide evidence of current skills competency by completing and submitting validation of those skills on the Kentucky Paramedic Skills Verification Report. The verification report shall be completed by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.

(4) An applicant ineligible for licensure pursuant to KRS 311A.050 through 311A.090 shall be ineligible for reinstatement.

Section 5[4]. Paramedic Reciprocity. (1) Pursuant to KRS 311A.142, an individual who is certified or licensed [A person certified or licensed] in a contiguous state to the Commonwealth of Kentucky or [another state or territory of the United States or registered] by the NREMT as a[an] Paramedic [NREMT-P] or any member of the United States Armed Forces, or veteran who has

transitioned within the past six (6) years from the United States Armed Forces, and has been registered by the National Registry as a Paramedic or has obtained National Registry as a Paramedic by successfully completing a board-approved bridge course to transition from the Army 68 Whiskey course to Paramedic that meets the National Emergency Medical Services Education Standards for Paramedic shall be eligible for [direct] reciprocity for [initial] Kentucky licensure as a Paramedic if the applicant submits [individual]:

(a) A completed Paramedic Reciprocity License Application in KEMSIS; and [Is at least eighteen (18) years of age;]

(b) Proof of the applicant's [Holds current] unrestricted certification [registration] as a[an] NREMT Paramedic or Paramedic certification or license in a contiguous state to the Commonwealth of Kentucky [NREMT-P];

(c) Completion of current training in:

1. HIV/AIDS training required by KRS 311A.120;

2. Pediatric Abusive Head Trauma training required by KRS 311A.120;

3. Awareness of Sexual Violence Training required by KRS 311A.120; and

4. Training regarding determination of death and preservation of evidence as required by KRS 311A.185.;

(c) Holds a high school diploma or GED; and

(d) Holds a valid motor vehicle operator's license from a state or territory of the United States.;

(2) An applicant shall pay the fee required for licensure through reciprocity pursuant to 202 KAR 7:030. [The individual shall:

(a) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(b) Not have been found guilty of, entered a guilty plea or Alford plea to a felony offense or have completed a diversion program for a felony offense;

(c) Not have been subjected to discipline that would prevent reciprocity at the time of application;

(d) Submit an "Out-Of-State Paramedic Application" signed by the applicant;

(e) Submit written evidence of completion of current HIV/AIDS training required by KRS 311A.110;

(f) Present evidence of completion of training regarding the protocol governing the discontinuance of resuscitation, determination of death and preservation of evidence;

(g) Pay the fee required by 202 KAR 7:030; and

(h) Have successfully completed a training program, which utilized the United States Department of Transportation, National Highway Traffic Safety Administration, 1998 National Standard Curriculum, Emergency Medical Technician-Paramedic as the curriculum for education if any individual initially certified or licensed after January 1, 1985. An earlier edition of the National Standard Curriculum which was in effect in at the time of initial certification or licensure shall be considered to meet this requirement.;

(3) An applicant for Paramedic reciprocity shall undergo a national background check and have the results submitted to the board. Background checks that are older than six (6) months shall not be considered current, and the applicant shall undergo another national background check prior to approval of licensure through reciprocity.

(4) An applicant shall not have been convicted of offenses described in KRS 311A.050.

(5) An applicant shall not have been subjected to discipline that would prevent reciprocity at the time of application.

(6) A Paramedic licensed pursuant to this section shall not perform any procedures or skill on which the Paramedic has not been trained. A Paramedic who performs a skill for which the Paramedic does not have documented training shall have exceeded the scope of practice and shall be in violation of KRS 311A.050.

(7) A Paramedic licensed pursuant to this section shall complete training regarding determination of death and preservation of evidence as required by KRS 311A.185 prior to

beginning work for a licensed agency in Kentucky.

(a) Training in determination of death and preservation of evidence as required by KRS 311A.185 shall be provided during employee orientation, or by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.

(b) Kentucky supplemental Paramedic curricula consistent with 202 KAR 7:701 shall be provided during employee orientation, or by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.

(c) Verification of competency on the supplemental curricula procedures in 202 KAR 7:701 shall be maintained by the Paramedic for a minimum of three (3) years. Failure to submit the Paramedic Supplemental Curriculum Training Verification Report upon request shall result in revocation of the Paramedic license.

(8) If a Paramedic licensed pursuant to this section fails to supply verification of competency as required by subsection (7) of this section, the Paramedic shall be ineligible to apply for and receive Paramedic reciprocity license until the applicant has submitted the Paramedic Supplemental Curriculum Training Verification Report as required by 202 KAR 7:701 and shall reapply for reciprocity through the process listed in this section.

Section 6. Scope of Practice. A Paramedic shall provide emergency medical services consistent with the skills and procedures in the National EMS Scope of Practice Model and 202 KAR 7:701.

Section 7. Expiration of Licensure. (1) Licensure periods and expiration dates shall be pursuant to KRS 311A.095.

(2) If a Paramedic license lapses or expires, the Paramedic shall cease provision of emergency medical services.

(3) A Paramedic who has allowed his or her license to lapse or expire shall be required to reinstate his or her licensure pursuant to Section 6 of this administrative regulation.

Section 8. Downgrading Licensure. (1) A Paramedic currently licensed as a Paramedic by the board shall be eligible for licensure downgrade if:

(a) The license is in good standing with no pending disciplinary action;

(b) The applicant submits a completed Paramedic License Downgrade Application in KEMSIS; and

(c) The applicant pays the fee pursuant to 202 KAR 7:030;

(2) A Paramedic is only eligible to downgrade their license to an Advanced Emergency Medical Technician, Emergency Medical Technician, or Emergency Medical Responder certification.

(3) Certification periods and expiration dates shall be pursuant to KRS 311A.095.

(4) The applicant shall undergo a background check pursuant to KRS 311A.050 and 311A.100. The background check shall be:

(a) Statewide in scope for an applicant with current certification in Kentucky;

(b) Less than six (6) months old when the applicant submits to the board all requirements for certification; and

(c) Provided by a vendor that has been contracted through the board.

(5) The applicant shall provide proof of:

(a) Current certification by the NREMT as a Paramedic; or

(b) Successful completion of the NREMT Paramedic National Continued Competency Program Paramedic for Continuing Education which shall be validated by entities authorized to conduct continuing education pursuant to 202 KAR 7:601;

(c) Completion of training in:

1. Pediatric Abusive Head Trauma required by KRS 311A.120; and

2. Awareness of Sexual Violence Training required by KRS 311A.120.

(6) Downgrade shall be denied if the applicant has not met the requirements of this section or has been subject to disciplinary action that prevents certification at the time of application.

(7) The applicant shall be responsible for meeting the renewal requirements of the downgraded certification level issued prior to expiration of that certification.

(8) To reinstate the certification or license that was previously held, the applicant shall meet the regulatory requirements for that level of certification or licensure.

(9) The applicant shall notify the board's licensed service director(s) with whom the applicant is affiliated immediately upon downgrading his or her license.

(10) Once the applicant has downgraded his or her certification or license, the applicant shall not provide emergency medical services at the previous certification or license level held.

(11) An applicant applying for downgrade that does not comply with this section shall be subject to disciplinary action pursuant to KRS Chapter 311A.

(12) All endorsements, certifications, or licenses held at the previous certification or license level shall be void at the completion of the downgrade.

Section 9. Surrender of License. (1) A Paramedic surrendering licensure shall:

(a) Submit a completed Paramedic License Surrender Application in KEMSIS; and

(b) Pay the fee pursuant to 202 KAR 7:030.

(2) The applicant shall notify the board's licensed service director(s) with whom the applicant is affiliated immediately upon surrendering his or her license.

Section 10. Reporting Requirements. (1) A Paramedic shall maintain current demographic information in KEMSIS including:

(a) Legal name;

1. Any changes to the Paramedic's legal name shall be submitted using the Name Change application in KEMSIS; and

2. One (1) of the following documents as verification of name change:

a. Social Security card;

b. Driver's license; or

c. Passport;

(b) Mailing address;

(c) Email address; and

(d) Phone number.

(2) A Paramedic that does not comply with this section shall be subject to disciplinary action pursuant to KRS Chapter 311A.

Section 11. Determination of Death Protocol. (1) The Paramedic shall determine and document that the following signs of death are present:

(a) Unresponsiveness;

(b) Apnea;

(c) Absence of a palpable pulse at the carotid site;

(d) Bilaterally fixed and dilated pupils; and

(e) Except in a case of trauma, asystole determined in two (2) leads on an electrocardiograph.

(2) The Paramedic shall determine that one (1) of the following factors or conditions exist:

(a) Lividity of any degree;

(b) Rigor mortis of any degree;

(c) Presence of venous pooling in the body;

(d) Damage or destruction of the body which is incompatible with life;

(e) A copy of the Kentucky Emergency Medical Services Do Not Resuscitate (DNR) Order or identification bracelet or other means of identification evidencing a patient's desire not to be resuscitated in accordance with KRS 311A.170; or

(f) A properly executed Kentucky Medical Orders for Scope of Treatment (MOST) form.

(3) If a Paramedic has determined and documented that the conditions of subsections (1) and (2) of this section exist, the Paramedic may, subject to the provisions of this administrative regulation, declare the patient dead.

(4) The Paramedic may contact medical control or other licensed physician, if authorized in writing by the medical director, for advice and assistance in making a determination required by this administrative regulation.

(5) If a Paramedic determines a patient to be dead, the Paramedic shall remain on the scene unless the Paramedic's

personal safety is jeopardized, until the arrival of the coroner, deputy coroner, or law enforcement officer from that jurisdiction.

Section 12. Discontinuance of Resuscitative Efforts. (1) A Paramedic may discontinue resuscitation if:

(a) The patient has suffered cardiac arrest prior to arrival at the hospital;

(b) The Paramedic has performed the resuscitative efforts required in the resuscitation protocol of the ambulance service medical director;

(c) The resuscitative efforts were unsuccessful; and

(d) The patient meets the criteria established in Section 11(1) of this administrative regulation.

(2) A Paramedic may also discontinue resuscitation:

(a) If the safety of the Paramedic is at risk; or

(b) At mass casualty incidents.

(3) A Paramedic may discontinue resuscitation initiated by someone other than a Paramedic if:

(a) The patient has suffered cardiac arrest;

(b) The resuscitative efforts required in the resuscitation protocol of the ambulance service medical director have been performed and documented;

(c) The resuscitative efforts were unsuccessful; and

(d) The patient meets the criteria established in Section 11(1) of this administrative regulation.

(4) If a Paramedic discontinues resuscitation on a patient prior to transport of the patient to a medical facility, the Paramedic shall make the notifications required by KRS 72.020 and at least one (1) member of the ambulance crew shall remain on the scene until the arrival of a coroner, deputy coroner or law enforcement officer.

(5) If a Paramedic discontinues resuscitation on a patient during transport to a medical facility, the Paramedic shall make the notifications required by KRS 72.020 to the officials of the county in which the Paramedic discontinued resuscitation. Upon making the notification, the Paramedic shall determine from the coroner whether to remain at that location, to return the deceased to a facility within the primary service area of the ambulance provider, or to continue on to the medical facility with the deceased.

(6) A Paramedic shall discontinue resuscitation efforts if presented with a properly executed Kentucky Emergency Medical Services Do Not Resuscitate (DNR) Order, or properly executed Kentucky Medical Orders for Scope of Treatment (MOST) form.

Section 13. Training of Paramedics in Determination of Death and Preservation of Evidence.

(1) The training program shall not be less than one (1) hour in length and, at a minimum, shall include:

(a) Information on and a copy of KRS 311A.170;

(b) Information on and a copy of this administrative regulation;

(c) Information on and a copy of KRS 72.020;

(d) Information on and a copy of KRS 446.400;

(e) Information on the duties of and role of the coroner and state medical examiner; and

(f) Information on preservation of evidence at the scene of a death.

(2) The training shall be:

(a) Provided as part of a Paramedic training course conducted by an approved EMS-TEI via:

1. Classroom instruction;

2. Video conferencing or other distance learning media; or

3. Video presentation or computer based learning; and

(b) Conducted under the supervision of a medical director.

(3) The medical director of the ambulance service or EMS provider conducting the training shall request the coroner of the county in which the training is provided to attend and participate in the training.

(4) The EMS-TEI or the medical director providing the training shall maintain the following records:

(a) A copy of the course outline used in the training to verify that the training has been conducted in accordance with the requirements of this administrative regulation;

(b) A sign-in sheet with the printed and signed names and certification or license numbers and state of license of all

Paramedics who successfully completed the training, including the signature of the educator supervising the education program; and

(c) Curriculum vitae for each member of the course faculty.

(5) A certificate or letter of certification shall be provided to each participant in the program at the conclusion of the training.

(6) The board office shall maintain an approved curriculum that may be used by entities providing training specified by this administrative regulation.

Section 14. Critical Care Endorsement. (1) A Paramedic licensed by the board may be granted a critical care endorsement upon completion of the Application for Paramedic Critical Care Endorsement, payment of the fee pursuant to 202 KAR 7:030, and completion of a training program that minimally meets the objectives of the University of Maryland Baltimore Campus CCEMTP Program. The ambulance service director and EMS medical director shall validate verification of the program having met the specified training standards;

(2) The critical care endorsement shall be valid if the Paramedic maintains current licensure as a Paramedic by the board.

(3) A Paramedic with a critical care endorsement may perform the skills and procedures included in the Paramedic's education and training subject to authorization by the medical director through established protocols.

Section 15 [5]. Exemptions from Paramedic Administrative Regulations. The Kentucky licensure requirements for a Paramedic shall not apply to:

(1) United States military members, [personnel or state] National Guard personnel, or employees of the United States government if the individual provides emergency medical services;

(a) On land owned by the United States government;

(b) In facilities owned by the United States government;

(c) In the performance of official duties under federal law; or

(d) As part of assistance for a mass casualty or disaster incident pursuant to federal law or official state assistance request; or

(2) A Paramedic licensed in another state or territory of the United States who:

(a) Enters Kentucky with a patient being transported to a medical facility or other final destination in Kentucky; or

(b) Travels through Kentucky during the course of a patient transport from an out-of-state location to a destination outside of Kentucky. [while providing services on a United States government-owned or operated facility, while engaged in the performance of their official duties under federal law, or while providing assistance in mass casualty or disaster type situation; or

(2) A paramedic licensed or certified in another state or territory of the United States who:

(a) Comes into Kentucky to transport a patient from another state into Kentucky; or

(b) Is transporting a patient through the state of Kentucky to an out-of-Kentucky location.

Section 6. Reinstatement of License. (1) A paramedic whose license has lapsed for a period not exceeding five (5) years, may reinstate their license by submitting:

(a) A signed "Universal Reinstatement Application";

(b) Written evidence of current completion of training in CPR meeting the requirements as outlined in Section 3(1) (b) of this administrative regulation;

(c) Written evidence of completion of current HIV/AIDS training required by KRS 311A.110;

(d) Payment of the fee established in 202 KAR 7:030;

(e) Evidence of previous certification or licensure as a paramedic in Kentucky; and

(f) Evidence of successful completion within twelve (12) months preceding their application for reinstatement of the National Standard Curriculum for EMT-Paramedic Refresher Course or continuing education hours that meet the requirements of the curriculum.

(2) A paramedic, whose license has lapsed for a period that

exceeds five (5) years, may reinstate their license by complying with Sections 1 and 2 of this administrative regulation.

(3) An application for reinstatement of licensure shall not be considered if:

(a) The applicant is subject to disciplinary action pursuant to KRS Chapter 311A;

(b) The applicant is an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense; or

(c) The applicant has been subjected to discipline that would prevent reinstatement at the time of application.

~~Section 7. Demonstration of Competency. A paramedic applying for relicensing or reinstatement shall demonstrate continuing competency of skills by:~~

~~(1) Written verification of competency as evidenced by signature on the relicensing or reinstatement application of a medical director, ambulance service director or ambulance service training director; or~~

~~(2) Submission of evidence of current registration as a:~~

~~(a) NREMT-P; or~~

~~(b) Completion of:~~

~~1. ACLS;~~

~~2. PALS or PEPP; and~~

~~3. BTLIS, PHTLS, or CCEMTP.~~

~~Section 8. Critical Care Endorsement. (1) A paramedic licensed by the board may be granted a critical care endorsement MTP upon presentation of a board approved application and completion of a training program that minimally meets the objectives of the University of Maryland Baltimore Campus CCEMTP Program. The ambulance service director and EMS medical director shall validate verification of the program having met the specified training standards.~~

~~(2) The critical care endorsement shall be valid so long as the paramedic maintains:~~

~~(a) Current licensure as a paramedic by the board; and~~

~~(b) Current certification as a CCEMTP or verification of continued clinical competence by the paramedic's EMS medical director.~~

~~(3) A paramedic with a critical care endorsement shall be authorized to perform the skills and procedures included in their education and training subject to authorization by the medical director through established protocols.~~

~~(4) A licensed paramedic with a critical care endorsement shall be responsible for providing the KBEMS office with copies of their current CCEMTP credentials.]~~

Section 16 [9]. Public Notice of Negative Action. The board [KBEMS] office shall cause to be published[,] on the board Web site the name of a Paramedic that:

(1) Is fined;

(2) Is placed on probationary status;

(3) Is placed on restricted status;

(4) Is suspended; or

(5) Has had his or her certification revoked.[in the KBEMS News or similar publication of the board, or otherwise disseminate the name of a paramedic that is fined, is placed on probationary status, is placed on a restricted status, is suspended, or has had their license revoked.

Section 10. Temporary Certificate. (1) KBEMS staff may issue a temporary certificate to an individual who:

(a) Submits a completed "Application for Temporary Certificate";

(b) Is at least eighteen (18) years of age;

(c) Understands, reads, speaks, and writes the English language with a comprehension and performance level equal to at least the 9th grade of education, otherwise known as Level 4, verified by testing as necessary;

(d) Provides proof of being currently certified or licensed as a paramedic in another state or territory of the United States or is currently registered by the NREMT as a paramedic;

~~(e) Presents written evidence of completion of current HIV/AIDS training required by KRS 311A.110;~~

~~(f) Presents written evidence of completion of current training in CPR that meets the requirements of Section 2 of this administrative regulation;~~

~~(g) Pays the fee required by 202 KAR 7:030;~~

~~(h) Provides the board with a copy of a statewide criminal background check from their state of residence;~~

~~(i) Is not an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense; and~~

~~(j) Has not been disciplined by or has action pending against or had a certificate or license in the field of health care denied, limited, suspended, or probated by a certifying or licensing entity in Kentucky or other state or territory under the jurisdiction of the United States.~~

~~(2) A temporary certificate may be issued for a period which shall not exceed six (6) months and shall not be reissued or renewed.~~

~~Section 11. Determination of Death Protocol. (1) The paramedic shall determine and document that the following signs of death are present:~~

~~(a) Unresponsiveness;~~

~~(b) Apnea;~~

~~(c) Absence of a palpable pulse at the carotid site;~~

~~(d) Bilaterally fixed and dilated pupils; and~~

~~(e) Except in a case of trauma, asystole determined in two (2) leads on an electrocardiograph.~~

~~(2) The paramedic shall determine that one (1) of the following factors or conditions exist:~~

~~(a) Lividity of any degree;~~

~~(b) Rigor mortis of any degree;~~

~~(c) Presence of venous pooling in the body;~~

~~(d) Damage or destruction of the body which is incompatible with life; or~~

~~(e) A copy of the EMS "Do Not Resuscitate (DNR) Form" or identification bracelet or other means of identification evidencing a patient's desire not to be resuscitated in accordance with KRS 311A.170.~~

~~(3) If a paramedic has determined and documented that the conditions of subsections (1) and (2) of this section exist, the paramedic may, subject to the provisions of this administrative regulation, declare the patient dead.~~

~~(4) The paramedic may contact medical control or other licensed physician, if authorized in writing by the medical director, for advice and assistance in making a determination required by this administrative regulation.~~

~~(5) If a paramedic determines a patient to be dead, the paramedic shall remain on the scene unless their personal safety is jeopardized, until the arrival of the coroner, deputy coroner, or law enforcement officer from that jurisdiction.~~

~~Section 12. Discontinuance of Resuscitative Efforts. (1) A paramedic may discontinue resuscitation if:~~

~~(a) The patient has suffered cardiac arrest prior to arrival at the hospital;~~

~~(b) The paramedic has performed the resuscitative efforts required in the resuscitation protocol of the ambulance service medical director;~~

~~(c) The resuscitative efforts were unsuccessful; and~~

~~(d) The patient meets the criteria established in Section 11(1) of this administrative regulation.~~

~~(2) A paramedic may also discontinue resuscitation:~~

~~(a) If the safety of the paramedic is at risk; or~~

~~(b) At mass casualty incidents.~~

~~(3) A paramedic may discontinue resuscitation initiated by someone other than a paramedic if:~~

~~(a) The patient has suffered cardiac arrest;~~

~~(b) The resuscitative efforts required in the resuscitation protocol of the ambulance service medical director have been performed and documented;~~

~~(c) The resuscitative efforts were unsuccessful; and~~

(d) The patient meets the criteria established in Section 11(1) of this administrative regulation.

(4) If a paramedic discontinues resuscitation on a patient prior to transport of the patient to a medical facility, the paramedic shall make the notifications required by KRS 72.020 and at least one (1) member of the ambulance crew shall remain on the scene until the arrival of a coroner, deputy coroner or law enforcement officer.

(5) If a paramedic discontinues resuscitation on a patient during transport to a medical facility, the paramedic shall make the notifications required by KRS 72.020 to the officials of the county in which the paramedic discontinued resuscitation. Upon making the notification, the paramedic shall determine from the coroner whether to remain at that location, to return the deceased to a facility within the primary service area of the ambulance provider, or to continue on to the medical facility with the deceased.

(6) A paramedic shall discontinue resuscitation efforts if presented with a properly executed EMS DNR Form.]

Section 17 [43]. The Paramedic shall document all items required by Sections 11 and 12 of this administrative regulation on the Patient Care Report [Ambulance Run Form] required by KRS 311A.190.[]

Section 14. Training of Paramedics in Determination of Death and Preservation of Evidence.

(1) The training program shall not be less than one (1) hour in length and, at a minimum, shall include:

- (a) Information on and a copy of KRS 311A.170;
- (b) Information on and a copy of this administrative regulation;
- (c) Information on and a copy of KRS 72.020;
- (d) Information on and a copy of KRS 446.400;
- (e) Information on the duties of and role of the coroner and state medical examiner; and

(f) Information on preservation of evidence at the scene of a death.

(2) The training shall be:

(a) Provided as part of a paramedic training course conducted by an approved EMS-TEI via:

- 1. Classroom instruction;
- 2. Video conferencing or other distance learning media; or
- 3. Video taped presentation or computer based learning; and
- (b) Conducted under the supervision of a medical director.

(3) The medical director of the ambulance service or EMS provider conducting the training shall request the coroner of the county in which the training is provided to attend and participate in the training.

(4) The EMS-TEI or the medical director providing the training shall maintain the following records:

(a) A copy of the course outline used in the training to verify that the training has been conducted in accordance with the requirements of this administrative regulation;

(b) A sign-in sheet with the printed and signed names and certification or license numbers and state of license of all paramedics who successfully completed the training, including the signature of the educator supervising the education program; and

(c) Curriculum vitae for each member of the course faculty.

(5) A certificate or letter of certification shall be provided to each participant in the program at the conclusion of the training.

(6) The KBEMS office shall maintain an approved curriculum that may be used by entities providing training specified by this administrative regulation.[]

Section 18 [45]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "National Emergency Medical Services Education Standards-Paramedic Instructional Guidelines", The United States Department of Transportation, National Highway Traffic Safety Administration, DOT HS 811 077E, January 2009;

(b) "Paramedic Initial License Application" in KEMSIS, July 2019;

(c) "Paramedic License Renewal Application" in KEMSIS, July 2019;

(d) "Paramedic Reciprocity License Application" in KEMSIS,

July 2019;[The United States Department of Transportation, National Highway Traffic Administration, "1998 National Standard Curriculum, Emergency Medical Technician-Paramedic" (1998 Edition);]

(b) Field and Pilot Test Didactic and Practical Laboratory Hours Report of the United States Department of Transportation, National Highway Traffic Administration, 1998 National Standard Curriculum for Emergency Medical Technician-Paramedic;

(c) Field and Pilot Test Clinical Report of the United States Department of Transportation, National Highway Traffic Administration, 1998 National Standard Curriculum for Emergency Medical Technician-Paramedic;

(d) "Application For Paramedic Examination and Licensure" (June 2003);

(e) "Out Of State Paramedic Application" (June 2003);

(f) "Application for Paramedic License Reinstatement" (June 2003);

(g) (e) Kentucky Board of Emergency Medical Services, Pre-Hospital Determination of Death and Preservation of Evidence Training Curriculum (05-02); and]

(f) "Paramedic Reinstatement License Application" in KEMSIS, July 2019;

(g) {(h)} "Kentucky Emergency Medical Services Do Not Resuscitate (DNR) Order", July 2019;[;]

(h) "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 810 657, February 2007;

(i) "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 812 666, February 2019;

(j) "Kentucky Medical Orders for Scope of Treatment (MOST) Form", July 2019;

(k) "Application for Paramedic Critical Care Endorsement" in KEMSIS, July 2019;

(l) "Paramedic Skills Verification Report", July 2019;

(m) "Paramedic License Downgrade Application" in KEMSIS, July 2019;

(n) "Paramedic License Surrender Application", in KEMSIS July 2019;

(o) "National Registry of Emergency Medical Technicians National Continued Competency Program Paramedic", October 2016;

(p) "American Heart Association Guidelines for CPR and Emergency Cardiovascular Care", November 2018;

(q) "National Registry of Emergency Medical Technicians Paramedic Psychomotor Examination Users Guide", September 2016;

(r) "Name Change Application" in KEMSIS, July 2019;

(s) "Military Extension Application" in KEMSIS, July 2019; and

(t) "United States Citizenship and Immigration Services (U.S.C.IS) Permanent Resident Card (form I-551/Green Card)", July 2019.

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509, by appointment [2545 Lawrenceburg Road, Frankfort, Kentucky 40604], Monday through Friday, 8 a.m. to 4:30 p.m.

PHILIP DIETZ, Chairman

APPROVED BY AGENCY: April 8, 2021

FIELD WITH LRC: April 14, 2021 at 3:54 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 28, 2021 at 1:00 p.m. Eastern Standard Time at the Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written

comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: Chuck O'Neal, Deputy Executive Director of Administration, Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509, phone (859) 256-3587, email [chuck.oneal@kctcs.edu](mailto:chuck.oneal@kctcs.edu).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chuck O'Neal

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 311A.025 requires the board to promulgate administrative regulations relating to requirements and procedures for licensure, relicensure and reciprocity for paramedics. This administrative regulation establishes those requirements and procedures.

(b) The necessity of this administrative regulation: KRS 311A.025 requires the board to promulgate administrative regulations relating to requirements and procedures for licensure, relicensure and reciprocity for paramedics. This administrative regulation establishes those requirements and procedures. These amendments are necessary to allow Kentucky Paramedics the opportunity to become licensed and maintain licensure to protect the citizens of the Commonwealth of Kentucky. Educational and licensure processes are streamlined, and unnecessary or repetitive language across other administrative regulations have been removed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.025 by establishing the requirements and procedures for licensure, relicensure, and reciprocity for paramedics.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.025 requires the board to promulgate administrative regulations relating to requirements and procedures for licensure, relicensure and reciprocity for paramedics. This administrative regulation establishes those requirements and procedures. This administrative regulation will assist Paramedics in becoming licensed utilizing more simplistic guidelines and processes and provides additional guidance on educational requirements and will allow the board to provide more effective customer service to applicants 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 streamlines licensure application processes for Paramedics and provides additional guidance on application processes and responsibilities of the Paramedic. Additionally, unnecessary and dated requirements and terminology have been removed.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to allow Paramedics the opportunity to become licensed and maintain licensure to protect the citizens of the Commonwealth of Kentucky. Educational and licensure processes are streamlined, and unnecessary or repetitive language across other administrative regulations have been removed.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.025 by establishing the requirements and procedures for licensure, relicensure, and reciprocity for paramedics.

(d) How the amendment will assist in the effective administration of the statutes: KRS 311A.025 requires the board to promulgate administrative regulations relating to requirements and procedures for licensure, relicensure and reciprocity for paramedics. This administrative regulation establishes those requirements and procedures.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Emergency Medical Services, its members, and staff, local governments,

emergency medical services providers, and paramedics will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Kentucky Board of Emergency Medical Services, its members, staff, and licensed agencies shall implement the standards relating to Emergency Medical Technicians pursuant to this administrative regulation and shall execute their duties consistent with this amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants seeking licensure as a Paramedic will benefit from decreased licensure requirements and processing time.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no cost to the administrative body to implement this administrative regulation.

(a) Initially: There will be no cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the administrative body to implement this administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because this amendment applies equally to all licensed agencies.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Emergency Medical Services, its members, and staff, local governments, emergency medical services providers, and paramedics will be affected by this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.025 requires the board to promulgate administrative regulations relating to requirements and procedures for licensure, relicensure and reciprocity for paramedics. This administrative regulation establishes those requirements and procedures.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no revenue for subsequent years. (c) How much will it cost to administer this program for the first year? This administrative regulation will not impose any costs on state or local government.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not impose any costs on state or local government.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not impose any costs.

Other Explanation:

## KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

### Kentucky Board of Emergency Medical Services (Amendment)

#### 202 KAR 7:540. Emergency Medical Services data collection, management, and compliance.

RELATES TO: KRS 311A.020, 311A.035, 311A.045, 311A.060, 311A.155, 311A.190, 23 U.S.C. 403(b)(1)(A)(iv), 405(c)(3)(C), 42 U.S.C. 300d-4(b)(1)

STATUTORY AUTHORITY: KRS 311A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.190 authorizes the Kentucky Board of Emergency Medical Services to promulgate administrative regulations concerning EMS information that ambulance services shall furnish to the board and authorizes the Kentucky Board of Emergency Medical Services to require collection and submission of EMS data that will allow for analysis of the state's needs for provision of EMS and that will allow the state to participate in the National Emergency Medical Services Information System (NEMSIS), a multi-partnered project that is funded by the National Highway Traffic Safety Administration, the Health Resources and Services Administration, the Centers for Disease Control and Prevention, the Federal Emergency Management Administration, and HRSA's Office of Rural Health Policy. This administrative regulation establishes standards and criteria for data collection, submission, and compliance.

#### Section 1. Data Collection and Statewide Compliance Plan.

(1) The board shall require each licensed ambulance service to collect and submit run report data that aids in identifying patient care needs in the Commonwealth of Kentucky.

(2) The board shall collect, maintain, and use data provided by licensed ground and air ambulance services to assist the board and other state and federal agencies relevant to emergency management or public health.

(3) The information and data collected shall be used at a minimum to determine demographic trends and other emerging situations involving the provision of EMS to and the medical transport of individuals within the state.

(4) The board shall collect and use the submitted data to develop and adopt a statewide plan for EMS Information and Analysis.

#### Section 2. Data Management Committee.

(1) A Data Management Committee shall be established by this section.

(2) The Data Management Committee shall consist of seven (7) members appointed by the board chair in the manner established in 202 KAR 7:020.

(3) Any office of the board staff member specifically employed through or designated by the Kentucky Community and Technical College System (KCTCS) for the purpose of EMS data collection and analysis shall serve as the staff liaison for the Data Management Committee.

(4) The Data Management Committee shall be responsible for the following:

(a) The development of a statewide plan for data collection and compliance;

(b) Identification of information initiatives for EMS in Kentucky;  
(c) Identification and research of funding sources tied to EMS data collection;

(d) Assistance to licensed services with questions or other needs associated with this administrative regulation, KRS Chapter 311A, and other issues associated with the board's statutory authority to require data collection and submission; and

(e) Matters identified by board members, the chair, or the executive director that involve data collection, data submission, or information use.

(5) The Data Management Committee shall be conducted in accordance with 202 KAR 7:020 and the board bylaws.

(6) The Data Management Committee shall schedule on an annual basis at least six (6) regular meetings.

Section 3. Data Collection and Submission. (1) Each licensed ground and air ambulance service shall collect data relevant to patient care in Kentucky.

(2) Each service shall collect data at a rate that allows the service to submit the required data elements to the board on a schedule established by Section 5 of this administrative regulation.

(3) Each service shall ensure data is collected and electronically entered only by the certified or licensed EMS professional involved in the delivery of care for the incident reported.

(4) Clinical data entry by individuals unaffiliated with the incident is not permitted and may subject the agency to discipline in accordance with KRS Chapter 311A.

Section 4. (1) The most recent version of the National EMS Information System (NEMSIS) data dictionary, US Department of Transportation National Highway Traffic Safety Administration (NHTSA) Uniform Pre-Hospital Emergency Medical Services (EMS) Dataset found at [www.nemsis.org](http://www.nemsis.org) shall be Kentucky's standard for required data elements.

(2) The board may specify additional mandatory, required, recommended, or optional data elements be documented and submitted to the board as determined by the needs of the data program, EMS system, or research projects. ~~[shall not require information that is not contained within the most recent version of the NEMSIS data dictionary found at [www.nemsis.org](http://www.nemsis.org).]~~

(3) The required data set shall be known as the Kentucky State Ambulance Reporting System (KSTARS) ~~[Emergency Medical Services Information System (KEMSIS)]~~ project.

(4) Modifications to the state required data elements may be received by the Data Management Committee continuously and evaluated not more than bi-annually or as determined by the Committee Chair at regularly scheduled or special called meetings of the Committee.

(a) The Data Management Committee shall evaluate the requested state data standard modification and vote to recommend modification or to take no action on the request;

(b) Recommendations on modification to the state data standard from the Data Management Committee shall then be forwarded to the board for action;

(c) If approved by the board, the office of the board shall initiate coordination of system and process modifications with applicable software vendors within fourteen (14) days;

(d)1. Licensed Kentucky EMS agencies shall coordinate with software vendors to implement modifications to applicable agency software within 120 days of notice.

2. Licensed Kentucky EMS agencies retain ultimate responsibility for data submission as required by this administrative regulation.

Section 5. Compliance; Manner and Rate of Submission. (1) Each licensed service shall submit data electronically upon the full implementation of KSTARS ~~[KEMSIS]~~.

(2) Data shall be provided electronically to KBEMS no later than seventy-two (72) hours after incident completion for ninety (90) percent of responses per calendar month. ~~[the fifteenth day of the month following the last day of the prior reporting month. (Example: The day of submission for data collected in January~~

shall be February 15-)]

(3) Failure to timely submit collected data at the rate required by subsection (2) of this section shall subject a service to disciplinary action pursuant to KRS Chapter 311A and late fees pursuant to 202 KAR 7:030.

Section 6. Quality of Data Determined by Completeness and Accuracy. (1) The board shall determine a service's compliance with data collection requirements by the quality of data submitted.

(2) The quality of a service's data shall be determined by the completeness and the accuracy of the submitted data using incident validation scores.

(3) A service shall submit data that meets both components of compliance.[]

~~(4) The board shall determine data completeness by comparing a service's number of submitted records with the number of the service's submitted records that contain fully incomplete or partially incomplete fields.~~

~~(5) The accuracy of data shall be determined by comparing the total number of fields in a service's submitted records with the total number of a service's fields completed correctly.]~~

(4) [(6)] The board shall impose on a service a plan of correction pursuant to KRS 311A.060 and 202 KAR 7:501 if a service's rate of accuracy, completeness, or both falls below ninety (90) percent for three (3) consecutive months.[]

~~(7) The eligibility of a service to receive block grant funds pursuant to 202 KAR 7:520 shall be dependent on compliance with the data collection requirements in this administrative regulation.]~~

(5) [(8)] Failure to comply with a plan of correction shall subject a service to disciplinary action pursuant to KRS 311A.060.

(6) [(9)] The board staff shall report to the Data Management Committee a determination of incomplete or inaccurate data submission that results in a plan of correction.

Section 7. Run Reports. (1) Each ambulance service shall provide a copy of the completed run report, or its electronic equivalent, to the receiving medical facility prior to departure.

(2) A service that cannot leave a copy of the completed run report, or its electronic equivalent, with the receiving medical facility prior to departure shall leave a continuation of care form that contains at least the following data elements for the patient:

- (a) First name;
- (b) Last Name;
- (c) Date of birth;
- (d) Complaint;
- (e) Duration of complaint;
- (f) Time units of duration of complaint;
- (g) Provider's primary impression;
- (h) Current medications;
- (i) Medical/surgical history;
- (j) Medication allergies;
- (k) SBP (Systolic Blood Pressure);
- (l) DBP (Diastolic Blood Pressure);
- (m) Heart rate;
- (n) Respiratory rate;
- (o) Date/time medication administered;
- (p) Medication given;
- (q) Condition of patient at destination;
- (r) Unit notified by dispatch date/time;
- (s) EMS agency name; and
- (t) EMS provider name.

(3) If a service provides the receiving hospital or other healthcare facility with a continuation of care form that meets the requirements of subsection (2) of this section, the service shall have twenty-four (24) hours to provide the full patient care report.

(4) The twenty-four (24) hour timeframe for delivery of the full patient care report shall not apply to situations involving mass disaster, mass casualty, or other documented emergency of similar scope.

Section 8. Data Use and Confidentiality. (1) Unless otherwise required by law, the board shall not release information of a confidential or private nature or any information protected by local,

state, or federal non-disclosure laws.

(2) The board may release information of a statistical nature that does not reveal or contain personal information.

(3) The board may share information with research, state, and other organizations that have a shared interest in the promotion of EMS or patient care.

(4) Unless otherwise required by law, the board shall not release information for purely commercial uses.

Section 9. Incorporation by Reference. (1) "National Highway Traffic Safety Administration, Office of Emergency Medical Services, NEMSIS Data Dictionary, NHTSA v3.5.0, EMS Data Standard", 2019["US Department of Transportation National Highway Traffic Safety Administration (NHTSA) Uniform Pre-Hospital Emergency Medical Services (EMS) Dataset" 2005, [www.nemsis.org/theProject/historyofNemsis.html](http://www.nemsis.org/theProject/historyofNemsis.html)], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509. [Kentucky Community and Technical College System Office, 300 North Main Street, Versailles, Kentucky 40383], Monday through Friday, 8:30 a.m. to 4:30 p.m.

(3) This material may also be obtained at <https://nemsis.org/what-is-nemsis/history-of-nemsis/>.

PHILIP DIETZ, Chairman

APPROVED BY AGENCY: April 8, 2021

FIELD WITH LRC: April 14, 2021 at 3:54 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 28, 2021 at 1:00 p.m. Eastern Standard Time at the Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: Chuck O'Neal, Deputy Executive Director of Administration, Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509, phone (859) 256-3587, email [chuck.oneal@kctcs.edu](mailto:chuck.oneal@kctcs.edu).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chuck O'Neal

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards and criteria for EMS data collection, submission, and compliance.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards and criteria for EMS data collection, submission, and compliance as authorized by KRS 311A.190.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311A.190 authorizes the board to promulgate administrative regulations concerning EMS information that ambulance services shall furnish to the board and authorizes the board to require collection and submission of EMS data that will allow for analysis of the state's needs for provision of EMS and that will allow the state to participate in the National Emergency Medical Services Information System (NEMSIS), a multi-partnered project that is funded by the National Highway Traffic Safety Administration, the Health Resources and Services Administration, the Centers for



Disease Control and Prevention, the Federal Emergency Management Administration, and HRSA's Office of Rural Health Policy. This administrative regulation establishes standards and criteria for data collection, submission, and compliance.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists, and will assist, in the effective administrative of KRS 311A.190 by establishing standards and criteria for EMS data collection, submission, and compliance.

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

(a) How the amendment will change this existing administrative regulation: This amendment modifies and clarifies existing reporting requirements, establishes procedures for modifying the state data standard, and removes unnecessary requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update Kentucky EMS data reporting to be consistent with national requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 311A.190 authorizes the board to promulgate administrative regulations concerning EMS information that ambulance services shall furnish to the board and authorizes the board to require collection and submission of EMS data that will allow for analysis of the state's needs for provision of EMS and that will allow the state to participate in the National Emergency Medical Services Information System (NEMSIS). The amendment conforms to KRS 311A.190 by establishing standards and criteria for EMS data collection, submission, and compliance.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administrative of KRS 311A.190 by establishing standards and criteria for EMS data collection, submission, and compliance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky EMS agencies will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To comply with this amendment, all EMS agencies must satisfy the requirements and follow the data reporting procedures set forth 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): This amendment imposes no additional costs on EMS agencies.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All Kentucky EMS agencies and personnel will benefit from up-to-date data reporting requirements and the establishment of procedures to modify the state data standard.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no cost to the administrative body to implement this administrative regulation.

(a) Initially: There will be no cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the administrative body to implement this administrative regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: No funding source is necessary 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: An increase in fees or funding will not be necessary to implement this amendment.

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

administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because this amendment applies to all Kentucky EMS agencies.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The administrative regulation will impact all Kentucky EMS agencies.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.190 authorizes the board to promulgate administrative regulations concerning EMS information that ambulance services shall furnish to the board and authorizes the board to require collection and submission of EMS data that will allow for analysis of the state's needs for provision of EMS and that will allow the state to participate in the National Emergency Medical Services Information System (NEMSIS), a multi-partnered project that is funded by the National Highway Traffic Safety Administration, the Health Resources and Services Administration, the Centers for Disease Control and Prevention, the Federal Emergency Management Administration, and HRSA's Office of Rural Health Policy. This administrative regulation establishes standards and criteria for data collection, submission, and compliance.

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not impose any costs on state or local government.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not impose any costs on state or local government.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not impose any costs.

Other Explanation:

#### KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM Kentucky Board of Emergency Medical Services (Amendment)

#### 202 KAR 7:601. Training, education, and continuing education

RELATES TO: KRS [Chapter 271](#), 311A.050, 311A.110, 311A.115, 311A.120, 311A.130, [Chapter 362](#), [Chapter 365](#)

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.060, 311A.110, 311A.115, 311A.120, 311A.125, 311A.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.110, 311A.115, 311A.120, and 311A.125 require the board to promulgate administrative regulations establishing standards related to the training and education of emergency medical

services personnel. KRS 311A.130 requires proper in-service and in-house in-service training and education. KRS 311A.025 requires the board to establish levels of certification. This administrative regulation establishes requirements for an organization to be approved by the board as an Emergency Medical Service Training and Education Institute (EMS-TEI) and also establishes standards for the certification and recertification of emergency medical services[EMS] educators and providers.

Section 1. Education Committee. (1) The board shall create and recognize a standing committee on EMS Education.

(2) The Education Committee shall consist of seven (7) voting members representative of EMS Educators in the Commonwealth [state] of Kentucky. The Education Committee shall consist of:

(a) One (1) voting member of the board;

(b) One (1) director, coordinator or lead instructor affiliated with a board-certified EMS-TEI 4.

(c) One (1) director, coordinator, or lead instructor affiliated with a board-certified EMS-TEI 3.

(d) One (1) director, coordinator, or lead instructor affiliated with a board-certified EMS-TEI 2.

(e) One (1) director, coordinator, or lead instructor affiliated with a board-certified EMS-TEI CE.

(f) Two (2) EMS educators at large affiliated with a board-certified EMS-TEI. ~~At least one (1) voting member of the Education Committee shall also be a member of the Kentucky Board of Emergency Medical Services.~~

(3) The Education Committee shall schedule on an annual basis at least six (6) regular meetings of the committee.

(4) The purpose and charge of the Education Committee shall be to:

(a) Assist the board in developing a strategic plan for EMS education in the [state of Kentucky] Commonwealth of Kentucky;

(b) Act as a resource for EMS educators and EMS-TEIs in the Commonwealth of Kentucky; and

(c) Assume the lead role in formulating, drafting, and sending to the board for approval and subsequent promulgation of all administrative regulations that set the standards and requirements for EMS education and EMS provider certification in the Commonwealth of Kentucky.

Section 2. EMS-TEI Certification. (1) Only an entity certified by the board as an EMS-TEI shall be authorized to conduct training and education programs in the Commonwealth of Kentucky that lead to certification or licensure by the board [Kentucky Board of Emergency Medical Services (KBEMS)]. Training shall include:

(a) In person;

(b) Online or hybrid; and

(c) Laboratory, clinical, or field internship.

(2) An applicant for certification as an EMS-TEI in the Commonwealth of Kentucky may be certified at the following levels:

(a) EMS-TEI 1, which includes EMR and continuing education;

(b) EMS-TEI 2, which includes EMR, ~~[and] EMT, and continuing education;~~

(c) EMS-TEI 3, which includes EMR, EMT, ~~[and] AEMT, and continuing education;~~

(d) EMS-TEI 4, which includes~~[include]~~ EMR, EMT, AEMT, ~~[and EMT-P,] Paramedic, and continuing education;~~ or

(e) EMS-TEI CE, which includes continuing education only.

(3) An applicant may seek one (1) ~~[or multiple] level[levels]~~ of certification during the two (2) year certification term. A single applicant, agency, or business shall not hold more than one (1) identical TEI certification simultaneously.

(4) An applicant for a level of EMS-TEI certification shall meet all requirements ~~[of]~~ for that level.

(5) An applicant for certification as an EMS-TEI shall electronically submit a completed Training and Educational Institution (TEI) Application, the appropriate EMS-TEI pre-inspection worksheet (Level 1-4 or CE Only), and upload all required documentation listed in the EMS-TEI pre-inspection worksheet to the EMS-TEI KEMSIS account. [An applicant for certification at a level of EMS-TEI shall submit a completed

Training and Educational Institution (TEI), KBEMS-E14, with the Kentucky Board of Emergency Medical Services (KBEMS-)]

(6) An applicant shall submit a nonrefundable fee pursuant to 202 KAR 7:030 with the Training and Education Institution (TEI) Application. [An applicant shall submit fees as required by 202 KAR 7:030 with the Training and Education Institution (TEI), KBEMS-E14.]

(7) An applicant applying for an EMS-TEI certification shall meet all requirements for that level within sixty (60) days of submitting the Training and Education Institution (TEI) Application for certification. An applicant that exceeds the sixty (60) day requirement shall reapply and resubmit all required fees.

(8) An Emergency Medical Services (EMS) training and educational entity not residing in the Commonwealth of Kentucky but seeking to do business in Kentucky as an EMS-TEI, shall obtain EMS-TEI certification with the board before teaching any EMS courses that lead to certification or licensure by the board. Such courses include:

(a) Initial EMS certification courses; and

(b) EMS continuing education courses. This does not include continuing education courses covered in Section 13(1) of this administrative regulation.

(9) An EMS-TEI that had its certification revoked shall be eligible to apply for certification as an EMS-TEI two (2) years after the date of revocation. This will be enforced by name of entity holding the EMS-TEI certification and name of owner or operator listed on the TEI Application and official business license(s) filed by the entity, owner or operator with local, county and state officials.

(10) An EMS-TEI may surrender its certification prior to the end of a certification period by notifying the board in writing of the intent to do so thirty (30) days prior to the intended effective date of the surrender.

(a) An EMS-TEI surrendering its certification while classes are underway shall notify the students impacted by the closure in writing at least thirty (30) days prior to the intended effective date of closure.

(b) An EMS-TEI surrendering its certification while courses are underway shall complete the courses underway before surrendering its EMS-TEI certification or fully refund all tuition and fees paid by the students in the courses underway that are impacted by the EMS-TEI closure.

(11) An EMS-TEI that does not comply with Section 2(10) of this administrative regulation shall not be eligible to reapply for EMS-TEI certification for a period of five (5) years from the date of closure. This administrative regulation shall not preclude civil action against the TEI Owner, Director, or business.

Section 3. ~~[Initial]~~ Certification Requirements for EMS-TEIs. (1) If an applicant [is organized as a business entity and] is required [pursuant to KRS Chapters 271, 362, and 365] to file as a business entity with Kentucky's Secretary of State, the applicant for EMS-TEI certification shall provide proof of registration with the Kentucky Secretary of State to the board that the EMS-TEI is legally able to conduct business in the Commonwealth of [state] Kentucky. The applicant shall provide documentation of exemption status if not registered with the Kentucky Secretary of State and proof of registration with local, county or state officials as an individual operator or a Doing Business As (DBA).

(2) If an applicant is required to notify, obtain permission, or obtain license from another regulatory entity in the Commonwealth of Kentucky to operate as an educational entity, it shall be the responsibility of the applicant to make the appropriate notifications, obtain permission, or obtain license to legally operate in the Commonwealth of Kentucky. An EMS-TEI that fails to comply with Section 3(1) or (2) of this administrative regulation shall be subject to disciplinary action by the board pursuant to KRS Chapter 311A.

(3) Facilities.

(a) Facilities where EMS-TEI courses are conducted shall be maintained and operated in compliance with the safety and health requirements pursuant to local, city, and county ordinances and federal and state laws; and

1. Sponsored or approved by a sponsoring agency;

2. Enrollment shall not exceed the design characteristics of the

facilities:

3. Controlled environment, including:

a. Temperature;

b. Humidity;

c. Lighting; and

4. Adequate and appropriate for instruction in classrooms and laboratories;

(b) Provide appropriate space for students to participate in classroom activities, kinematic learning and practice activities;

(c) Provide appropriate space for instructor preparation; and

(d) Adequate and secure storage for instructional materials.

(4) [(2)] An applicant shall provide the board with an organizational chart indicating, at a minimum:

(a) The names, contact information, and addresses of the owner, operator, chief administrative officer, and other personnel necessary for operation of the entity as an EMS-TEI;

(b) The name[names] and [addresses] contact information of the EMS-TEI's [designated agent for receiving service] director;

(c) The name and [address] contact information of the EMS-TEI's medical director; proof that the medical director is qualified pursuant to 202 KAR 7:801; and a [document] memorandum of understanding or contract executed between the owner of the EMS-TEI and the medical director outlining the relationship, duties, and requirements of a medical director for an EMS-TEI. The memorandum of understanding or contract shall include at a minimum that:

1. The medical director shall be responsible for medical oversight of the program;

2. The medical director shall review and approve the educational content of the program curriculum;

3. The medical director shall review and approve the instruments and processes used to evaluate students in didactic, laboratory, clinical, and field internship;

4. The medical director shall review the progress of each student throughout the program, and assist in the determination of appropriate corrective measures, when necessary;

5. The medical director shall engage in cooperative involvement with the program director; and

6. The medical director's interaction shall be in a variety of settings, such as lecture, laboratory, clinical, field internship. Interaction may be by synchronous electronic methods.[-; and]

(d) The name and [address] contact information of the EMS-TEI's program coordinator[-; and]

(e) The names and contact information of all EMS-TEI Instructors.

(5) EMS training courses that require accreditation by the National Registry of EMT's (NREMT) shall submit current accreditation to the board upon request. [(3) Beginning January 1, 2013, if the EMS-TEI will be offering courses leading to certification or licensure for EMS personnel in Kentucky that is dependent on EMS-TEI accreditation, the applicant for EMS-TEI shall submit proof of accreditation.]-

(a) An accredited letter of review is acceptable in the interim for newly formed EMS-TEIs that are required by the NREMT to obtain accreditation for testing purposes. This does not apply to out of state applicants. Out of state applicants that are required by the NREMT to obtain accreditation for testing purposes must provide documentation of full accreditation prior to receiving EMS-TEI certification by the board.

(b) Continuous accreditation status must be maintained by the EMS-TEI as required by this administrative regulation. Failure to maintain continuous accreditation status by the TEI shall be grounds for summary revocation of the TEI certification.

(6) EMS-TEIs shall obtain and maintain professional liability malpractice insurance of a minimum of \$1 million. The EMS-TEI shall provide proof of professional liability malpractice insurance upon initial certification, certification renewal, and upon application for certification upgrade.

Section 4. Certification Periods and Inspections. (1) An EMS-TEI shall display the current certificate issued through the board: [Kentucky Board of Emergency Medical Services]

(a) In a prominent place in the EMS-TEI's business; [-

(b) In the classroom if classes are being conducted away from the primary business location; and

(c) Provided electronically to the student if the classes are being conducted online.

(2) Certification of an EMS-TEI shall be valid for a period of two (2) years unless limited by disciplinary action.

(3) Prior to expiration of the two (2) years certification period, an EMS-TEI may apply for recertification for a subsequent two (2) year period.

(4) Upon application for recertification, an applicant shall electronically ~~[resubmit]~~submit:

(a) ~~[an]~~ A Training and Educational Institution (TEI), [KBEMS-E14] Certification Renewal Application through the EMS-TEI KEMSIS account with the board.[-] and

(b) The appropriate EMS-TEI pre-inspection worksheet (Level 1-4 or CE Only) and upload all required documentation listed in the EMS-TEI pre-inspection worksheet (Level 1-4 or CE Only) to the EMS-TEI KEMSIS account;

(5) An EMS-TEI seeking certification renewal ~~[recertification]~~ shall pay all applicable nonrefundable fees upon application. Failure to pay fees or subsequent rejection of a payment method shall result in denial of the Training and Educational Institution (TEI) Application, [KBEMS-E14].

(6) An applicant for EMS-TEI renewal shall meet all renewal requirements prior to the expiration date of the TEI certification.

(a) A TEI that does not comply with all renewal requirements prior to the certification expiration date shall expire.

(b) A TEI that allows the TEI certification to expire shall be required to apply as an initial EMS TEI.

(7) [(6)] An ~~[A newly certified]~~ EMS-TEI applying for initial or certification upgrade shall undergo an inspection prior to offering ~~[the EMS-TEI's first class] classes~~. The type of inspection, on-site or virtual, shall be determined by the office of the board and the EMS-TEI shall be responsible for establishing the virtual connection at their facility if necessary. ~~[Failure to submit to the inspection shall result in immediate revocation of the certification.]~~

(8) [(7)] Each inspection shall ensure that the EMS-TEI has met all applicable requirements ~~[in Section 5]~~ of this administrative regulation. If the board's inspection finds that the EMS-TEI has failed to meet a requirement, the EMS-TEI shall correct all deficiencies prior to offering a class and receiving subsequent certification as an EMS-TEI. [-

~~(8) The board shall inspect an EMS-TEI upon submission of the EMS-TEI's notice of intent to upgrade the level of courses offered.]~~

(9) The board may conduct inspections of EMS-TEIs for initial, renewal, certification upgrade, or to monitor compliance with statutory and regulatory requirements for TEIs. Inspections may be scheduled or unscheduled. ~~[The board may inspect an EMS-TEI upon submission of the Training and Educational Institution (TEI), KBEMS-E14, to renew certification as an EMS-TEI.]~~

(10) The office of the board shall conduct an application review of required documentation and inspection of the EMS-TEI applicant no later than sixty (60) days following the submission of the Training and Educational Institution (TEI) Application by the EMS-TEI applicant for initial certification and upgrades. ~~[The board shall conduct the inspection of an EMS-TEI no more than ninety (90) days following KBEMS' receipt of notice of intent to upgrade.]~~

(11) Approval of notice of intent to upgrade shall not extend the two (2) year EMS-TEI certification period.

(12) An EMS-TEI requesting a name change or change in ownership shall notify the board in KEMSIS no later than thirty (30) days prior to the name change or change in ownership by completing:

(a) A new Training and Educational Institution (TEI) Application electronically through the EMS-TEI KEMSIS account;

(b) Legal documentation reflecting the legal name or ownership change or registration with the Kentucky Secretary of State Office reflecting the change which shall be uploaded with the TEI application in KEMSIS; and

(c) Payment of the application fee pursuant to 202 KAR 7:030 in KEMSIS.

Section 5. EMS-TEI Operating Requirements.

(1) Each EMS-TEI shall maintain files for a period of three (3) ~~seven (7)~~ years beyond the end date of each EMS Course program that contain the following documentation:

(a) For courses requiring accreditation, all documents necessary for the EMS-TEI to have met the accrediting agency's standards, policies, and guidelines;

(b) A copy of the last accreditation self-study and letter of accreditation

(c) [(b)] The student attendance sign-in sheets for each course taught, including:

1. Lectures;
2. Practical skills lessons; and
3. Clinical and field rotations;

(d) [(e)] A master copy of each set of ~~[written]~~ examinations administered and answer keys for the exams;

(e) [(d)] A master copy of practical skills examination forms;

(f) [(e)] A master copy of each course syllabus;

(g) [(f)] Current, written affiliation agreements executed between hospitals or EMS agencies and the EMS-TEI;

(h) [(g)] Health records for students as may be required by the EMS-TEI or as expressly required in written affiliation agreements and determined necessary for students to complete clinical assignments, field-internships, or summative field evaluations;

(i) [(h)] Records of all disciplinary actions taken against a student, if applicable. Records shall include notification to students of the complaint; responses, if applicable, made by or on behalf of the student; and actions taken as a result of a complaint or other documented incident, grievance, or deficiency;

(j) [(i)] For students requiring remediation, documentation of specific activities or procedures requiring remediation and actions taken in response to deficiencies, including how the specific remediation was accomplished and ~~[(f)]~~ the success or failure of remediation;

(k) [(j)] A master file of the objectives and competencies to be achieved by students during each educational program; and

(l) [(k)] Documentation of other ~~[another requirement]~~ requirements that the EMS-TEI has established as part of the offered courses.

(2) Failure of an EMS-TEI to maintain records required by the board shall result in disciplinary action against an EMS-TEI.

(3) The board [KBEMS] shall require an EMS-TEI to submit a copy of the EMS-TEI's annual accreditation report electronically through the EMS-TEI's KEMSIS account if accreditation is necessary for licensure or certification of the students taking the EMS-TEI's offered course.

(4) EMS-TEIs shall conduct an annual review and revision of all courses and programs to ensure the EMS-TEI has complied with necessary updates to courses, programs, and accepted educational standards. The participants involved with the annual review shall include:

(a) The program director;

(b) Program coordinator;

(c) Medical director;

(d) An instructor or a faculty member that was actively involved in teaching courses during the preceding twelve (12) months of the annual review; and

(e) A student that successfully completed a course offered through the EMS-TEI during the preceding twelve (12) months of the annual review.

(5) An EMS-TEI shall document in writing the required annual review and updates resulting from the annual assessment.

(6) Documentation of the annual review shall be in writing, signed by the program director, [owner or] program coordinator, and medical director. The annual review shall be maintained in the course or TEI program files and submitted to the board electronically with the annual TEI renewal application~~[file]~~.

(7) An EMS-TEI shall assure that all physical resources required by the curriculum, including classrooms, skill practice areas, notices of where to purchase or access textbooks, instructional aides, equipment, and supplies shall be:

(a) Available at each class session where skills are taught or practiced;

(b) Adequate in number to allow for practice by students enrolled; and

(c) In good working order and well-maintained.

(8) An EMS-TEI shall maintain and protect the privacy of all records pertaining to the health and safety of patients, students, and faculty members that are obtained or developed through or as a result of participation in training and educational activities with the EMS-TEIs.

(9) The EMS-TEI shall be responsible for knowing and following all federal and state laws ~~[and requirements established in 202 KAR Chapter 7]~~ relevant to safeguarding privacy of records, including educational and health records.

(10) The EMS-TEI shall develop and make available to all prospective students a clearly defined admissions policy ~~[and procedure]~~.

(11) An EMS-TEI's admission policy shall include specific requirements for students to gain admission, maintain enrollment, and all academic requirements necessary to successfully complete the offered course or program. The admission policy shall be provided to the student at the start of the course and a verified receipt by signature shall be kept in the student's file including any changes to the admission policy while the student is enrolled in the course. Admissions policies ~~[and procedures]~~ shall include at a minimum:

(a) Tuition rates and fees associated with the training and education program;

(b) Fees and other costs associated with remediation;

(c) A descriptive synopsis of the curriculum for each type of course taught;

(d) Course educational objectives;

(e) Classroom lecture and skills practice schedules;

(f) Clinical or field rotation locations with ~~[tentative]~~ beginning and ending dates;

(g) Participation requirements for each clinical or field rotation site;

(h) Continued course competency and course completion requirements; and

(i) [(h)] Citations to and language of prohibited actions pursuant to KRS [Chapter] 311A.050 that provide grounds for sanctions against or denial of individuals making application for certification or licensure by the board.

(12) EMS-TEIs shall establish written policies that provide for:

(a) The creation and use of course or program advertising that accurately portrays the course or program content as offered by the EMS-TEI;

(b) A uniform process for filing, investigating, and resolving complaints or grievances by applicants, students, preceptor sites, patients, members of the general public, or faculty members;

(c) A procedure for a student to withdraw from a course and a clear statement of refund policies and the steps necessary for a student to obtain a refund of tuition or fees already paid;

(d) Faculty to acquire or develop examinations for each course offered;

(e) The establishment of and adherence to examination procedures and policies;

(f) The requirements for a student to take and pass examinations in courses the EMS-TEI offers including requirements that shall be met during the course for the student to be eligible to take the National Registry of EMTs certification exam; and

(g) Public disclosure, both in print and Web-based materials, concerning the EMS-TEI student cumulative pass rate on the NREMT certification exam for the calendar year. The disclosure shall be updated by January 31 of each year and shall include at a minimum:

1. All provider levels tested;

2. Date range for which the report was calculated;

3. EMS-TEI name, number, and physical address;

4. Number of students that took the exam; and

5. Cumulative pass rate calculated by percentage. ~~[Notification to all students and prospective students of their right to ask for and obtain the pass—fail rates of past students who have taken the National Registry Exam or other board approved certification test.~~

The pass—fail rate shall be calculated for courses given within the last two (2) years.]

(13) An EMS-TEI shall assure that each student, while participating in a clinical or field rotation, is clearly identified as a student [and by first and last name]. Identification shall be accomplished by use of:

- (a) [A] Nameplate;
- (b) A uniform; or
- (c) Other publicly apparent means.

(14) A student or a faculty member shall maintain proper personal and professional conduct during classroom, clinical, and field internship activities.

(15) [(14)] EMS-TEIs shall have [include] a program director [chief administrative officer (CAO) or designee] who shall be responsible for:

(a) All aspects of the program, including administration, organization, and supervision of the educational program [Administer and oversee the EMS-TEI];

(b) Assuring[Assure] the quality and credentials of the program coordinator, EMS educators, EMS educator adjuncts, and students accepted into the EMS-TEI's programs or courses;

(c) Assuring[Assure] the security of examination results and materials;

(d) Monitoring[Monitor] the activities of the EMS-TEI's faculty and students; [and]

(e) Maintaining[Maintain] records and documents and submit reports[-];

(f) Continuously reviewing the quality and improvement of the educational program;

(g) Long range planning and ongoing development of the program;

(h) The orientation, training, and supervision of clinical and field internship preceptors; and

(i) The effectiveness and quality of fulfillment of responsibilities delegated to another qualified individual.

(16) [(15)] EMS-TEIs shall include faculty and instructional staff who shall be responsible for:

(a) Didactic, clinical instruction, or supervised practice in each location where students are assigned; and

(b) Coordination, supervision, and frequent assessment of the students' progress in achieving acceptable program requirements.[If applicable, an EMS-TEI shall have a Paramedic Course Coordinator for paramedic training and education courses. The Paramedic Course Coordinator shall maintain a Level III EMS Educator status in the Commonwealth of Kentucky.]

(17) [(16)] A certified EMS-TEI shall maintain an ongoing level of competence, evidenced by a minimum annual pass rate for each level of instruction of seventy (70) [fifty (50)] percent calculated [based] upon a third attempt cumulative [measurement] pass rate of students who have taken the National Registry of EMTs and other board-approved exam(s) [exam for the first time] within the twelve (12) [twenty-four (24)] months immediately preceding the EMS-TEI's renewal date.

(a) The minimum annual pass rate shall be calculated, and compliance determined by, the office of the board.

(b) An EMS-TEI that fails to maintain a seventy (70) percent pass rate for each level of instruction as required by this section shall notify all students enrolled in courses offered by the EMS-TEI that the EMS-TEI is not in compliance with testing standards.[

(17) An EMS-TEI's competency shall also be demonstrated by compliance with KRS Chapter 311A and 202 KAR Chapter 7. and the EMS-TEI's process for remediating students who take but fail to pass the board-approved test.]

(18) If an EMS-TEI fails to meet an ongoing level of competence determined according to this administrative regulation and demonstrated by compliance with KRS Chapter 311A and 202 KAR Chapter 7 [section], the EMS-TEI shall be subject to a plan of correction mediated through the office of the board.[-]

(19) An EMS-TEI that cannot maintain an ongoing level of competence may be subject to discipline pursuant to KRS Chapter 311A.

(19) If requested by the office of the board, the EMS-TEI shall

submit graduate data to the Kentucky Center for Education and Workforce Statistics including:

(a) Student's name;

(b) Date of birth;

(c) Social security number;

(d) Gender;

(e) Ethnicity;

(f) Residency at point of graduation; and

(g) The Classification of Instructional Programs (CIP) code, if applicable.

(20) The EMS-TEI director shall keep the EMS-TEI KEMSIS account information updated, including:

(a) The EMS-TEI demographics;

(b) The EMS-TEI personnel roster; and

(c) The EMS-TEI policy and procedures required by this administrative regulation.

(21)(a) The program director of EMS-TEIs offering initial certification courses shall create and maintain, with current information, a National Registry of EMTs educational program account.

(b) The EMS education program name, director name, address, and contact information listed with NREMT shall match the EMS-TEI program information listed in KEMSIS.[An EMS-TEI that cannot maintain an ongoing level of competence may be subject to discipline pursuant to KRS 311A.]

Section 6. Disciplinary Action. (1) As certified entities under the board's jurisdiction, all EMS-TEIs shall be subject to the disciplinary procedures and sanctions established in KRS Chapter 311A.

(2) Discipline of an EMS-TEI as a certified entity shall not prevent the board from taking disciplinary action against a certified or licensed individual associated with the EMS-TEI at any level of certification or licensure applicable.

Section 7. Reporting Requirements for EMS-TEI. (1) An EMS-TEI shall submit electronically to the board [KBEMS] the documents as required by [subsection (2) of] this section for all EMS courses or psychomotor testing that lead to certification by The National Registry of EMTs [licensure] or certification or licensure by the board.

(2) An EMS-TEI shall submit the following documents to the board office:

(a) Course N[otification Application [form] submitted no less than fourteen (14) days prior to the course start date; [and]

1. An EMS-TEI shall notify the board within seven (7) days of any changes to a board approved class or psychomotor testing start and end date using Course Change Notification Application.

2. The start and end date shall only be changed once and cannot exceed ninety (90) days from the original start and end date.

3. A course or psychomotor test shall have a start date in the same calendar year in which the course or psychomotor testing number is issued.

(b) Initial Educational [Institution] Course Roster[Rosters] submitted no less than fourteen (14) days prior to the course start date listed on the Course Notification Application;

(c) If applicable, the Comprehensive Skills Evaluation Report within thirty (30) days of the course completion date listed on the Course Notification Application;

(d) Final Educational Course Roster within thirty (30) days of course completion date listed on the Course Notification Application;

(e)1. Psychomotor Exam Application submitted no less than fourteen (14) days prior to the psychomotor exam start date.

2. Psychomotor examinations leading to board certification or licensure shall be conducted using board approved psychomotor examination procedures.

(3) Upon submission of all documents required by [subsection (2) of] this section for courses or psychomotor testing that lead to certification by The National Registry of EMTs and licensure or certification by [-the office of] the board, the TEI shall be assigned[assign] a course or psychomotor testing number or other

identifier [to the course].

(4) An EMS-TEI that fails to provide documents as required by subsection (2) of this section shall be subject to disciplinary action pursuant to KRS Chapter 311A up to and including revocation of the TEI. [An EMS-TEI shall notify the board office thirty (30) days prior to the start of a course. Failure to notify KBEMS shall violate this section of this administrative regulation and may subject the EMS-TEI to disciplinary action under KRS 311A.]

(5) A course [class] or psychomotor testing shall not commence until the EMS-TEI has obtained an identification code and notified the board as required in this section.

(6) A course or psychomotor testing that does not meet all requirements of this administrative regulation may [shall] not lead to certification or licensure for the EMS students enrolled in the course or psychomotor testing.

(7) An EMS-TEI shall notify the board within seven (7) days of any changes to the lead instructor of an initial course that leads to certification or licensure by the board.

(8)(a) An EMS-TEI shall notify the board within seven (7) days of cancellation of an initial certification or licensure course.

(b) An EMS-TEI that cancels an initial certification or licensure course that is underway or planned shall fully refund all tuition and fees paid by the students in the course that are impacted by the course cancellation.

Section 8. Requirements for All Training and Education Courses. (1) All EMS educational programs in Kentucky that lead to EMS Provider certification by The National Registry of Emergency Medical Technicians (NREMT) and certification or licensure by the board shall: [All EMS training and education courses that lead to certification or licensure by KBEMS shall:]

(a) Comply with this administrative regulation;

(b) Not begin [commence] until the EMS-TEI has filed all documents required pursuant to Section 7 [(2)] of this administrative regulation;

(c) Not begin until the EMS-TEI has paid all fees required pursuant to 202 KAR 7:030;

(d) Use the National Emergency Medical Services Education Standards [—Instructional Guidelines] that are appropriate for the level of EMS provider course being offered;

(e) Teach students the Kentucky and National EMS Scope of Practice Models;

(f) Meet the course administrative and faculty requirements in this administrative regulation, if applicable, [and] as established by the NREMT [board] approved accrediting agency; and

(g) Use educators [lead instructors] certified by the board [KBEMS] as EMS educators who are minimally certified or licensed at the level of the offered course.

(h) 1. An EMS-TEI shall ensure that all student course work including lectures, practical skills lessons, and clinical or field rotations for courses that lead to certification by the National Registry of EMTs and certification and licensure by the board be completed within thirty (30) days of the course completion date listed on the Course Notification Application.

2. The board shall not accept any changes made to course completion documents listed in Section 7 of this administrative regulation if submitted less than thirty (30) days of the course completion date as listed on the Course Notification Application.

3. In exceptional circumstances, the EMS-TEI may submit a Final Course Roster of students approved by the EMS-TEI program director and medical director for course work extension required in Section 5 of this administrative regulation.

(i) The EMS-TEI director shall approve all students to test with the National Registry of EMTs within seven (7) days of successful completion of an initial certification course and completion of all necessary documents and applications by the student.

(2) The EMS-TEI may use an assistant instructor who is not a board-certified educator to instruct no more than twenty-five (25) percent of the classroom education time [adjunct faculty] for initial certification or licensure courses, [if the adjunct faculty:

(a) Meets one (1) of the requirements established in Section 13 of this administrative regulation; and

(b) Teach for no more than five (5) percent of the classroom

education time for each EMS course without the supervision of the program coordinator or certified instructor present and available in the classroom.]

(3) The EMS-TEI shall maintain an instructor to student ratio of no more than 1:15 for [shall have additional skills educators for] classroom sessions where skills are practiced. These sessions shall not proceed without the presence of:

(a) A certified educator for the first fifteen (15) [ten (10)] students; and

(b) An additional educator or adjunct faculty for each one (1) to fifteen (15) [ten (10)] additional students. Additional adjunct faculty used shall:

1. Not be required to be certified as an EMS educator but shall be certified by the board as an EMS provider at or above the level for the course being taught; or

2. Be a Registered Nurse (RN), Advanced Practice Registered Nurse (APRN), Physician (DO or MD), or Physician Assistant (PA); and

(4) The EMS-TEI program director and medical director shall approve any assistant instructor or adjunct faculty before the individual may assist in instruction. [and shall meet at least one (4) requirement established in Section 13 of this administrative regulation.]

(5) [(4)] The EMS-TEI shall have a medical director qualified pursuant to 202 KAR 7:801, who shall:

(a) Be employed by or under memorandum of understanding or a written contract with the EMS-TEI to serve as the medical director of the program;

(b) Be routinely available to the EMS-TEI to provide consultation regarding issues related to the training and education program;

(c) Participate in the approval of the didactic clinical and evaluation material and student progress review;

(d) Meets the applicable accrediting agency standards, policies, and guidelines;

(e) Provide medical consultation and guidance to the course faculty; and

(f) Certify [Certifies] the skills of all [of the] EMS-TEI [EMS-TEI's] students who are enrolled in courses leading to EMS Provider certification by The National Registry of Emergency Medical Technicians (NREMT) or certification or licensure by the board.

(6) [(5)] An EMS-TEI shall maintain a written contractual affiliation agreement or memorandum of understanding [agreement] with each clinical rotation site that outlines, at a minimum, the responsibilities of each entity and reporting requirements for students involved in clinical and field training and education.

(7) [(6)] An EMS-TEI shall provide faculty from the EMS-TEI training and education program, clinical coordinators, or designees under contract with the EMS-TEI to oversee student activity while in the clinical or field internship setting.

(8) The EMS-TEI shall provide clinical or field preceptor training to all clinical or field preceptors overseeing students during clinical or field internship rotations.

Section 9. Emergency Medical Responder Training and Education Course Requirements. [Each Emergency Medical Responder (EMR) training and education course shall follow:]

(1) Each Emergency Medical Responder (EMR) training and education course shall:

(a) Include all training and education requirements established in KRS Chapter 311A, 202 KAR 7:201, and 202 KAR 7:701;

(b) Use the National Emergency Medical Services Education Standards – Emergency Medical Responder Instructional Guidelines for the duration of course including individual class segments; and

(c) Ensure student competency throughout the course by a validated examination measuring process.

(2) To be eligible for certification as an EMR, a student shall also receive instruction covering the National and Kentucky EMS Scope of Practice for an EMR.

(3) EMR candidates shall meet all student eligibility requirements pursuant to 202 KAR 7:201. [All training and

education requirements established in KRS Chapter 311A and 202 KAR 7:201; and

(2) ~~The National Emergency Medical Services Education Standards – Instructional Guidelines for duration of course and individual class segments;~~

Section 10. Emergency Medical Technician Training and Education Course Requirements. (1) Each Emergency Medical Technician (EMT) training and education course shall:

(a) Include all training and education requirements established in KRS Chapter 311A, and 202 KAR 7:301, and 202 KAR 7:701; and

(b) Use the National Emergency Medical Services Education Standards – Emergency Medical Technician Instructional Guidelines for duration of course and individual class segments; and

(c) Ensure student competency throughout the course by a validated examination measuring process.

(2) To be eligible for certification as an EMT[EMTs], a student shall receive instruction covering the National and Kentucky EMS Scope of Practice for an EMT.

(3) Each student shall complete [a] clinical [or] and field rotation that meets the requirements for EMT education as determined by this administrative regulation, and including the National and Kentucky EMS Scope of Practice for an EMT student as approved by the applicable accrediting agency's minimum requirements.

(4) [(3)] The minimum requirements of clinical or field rotations for EMTs shall include [minimally]:

(a) [A] Clinical [or] and field rotations [consisting of at least twenty-four (24) hours] conducted at a [in a hospital emergency department, public health department, urgent treatment center, physician's office,] licensed ambulance service or other licensed health care facility selected by the EMS-TEI director and medical director that, if applicable, meets nationally accepted accreditation standards;

(b) Interviews and assessments [of] on a minimum of ten (10) patients with at least five (5) interviews and assessments conducted in a pre-hospital ambulance service setting; and

(c) Recording the patient history and [completing] assessment on a [prehospital] care report form for each of the ten (10) patients required in paragraph (b) of this subsection.

(5) [(4)] If a student fails to achieve the [a] goals[goal] established by [for] the EMS-TEI for the EMT education program, the EMS-TEI [CAO–Officer–or] program director and medical director shall require the student to repeat the failed portion of the EMT education program. [a clinical or field rotation experience.]

(6) [(5)] If a student is required to repeat a portion of the EMT education program, [a clinical or field rotation experience,] the [CAO–or] program director and medical director shall have a written procedure for remediation that ensures the student shall be provided with adequate due process protections that include at a minimum:

(a) Notification of allegations or academic issues;

(b) A right for the student to be heard on the subject of the allegations or academic issues; and

(c) A right for the student to appeal the decision of the EMS-TEI to the director and medical director about the allegations or academic issues[.]; and

(d) The notification to the student shall be in writing and signed and dated by all witnesses.

(6) If additional time is required, the notification to the student shall be signed and dated by the student.

(7) EMT candidates shall meet all student eligibility requirements pursuant to 202 KAR 7:301.

(8) EMT students shall meet health and immunization standards as required through established TEI policy, or policies established by contracted TEI clinical sites.

Section 11. Advanced-Emergency Medical Technician Training and Education Programs.

(1) Advanced-Emergency Medical Technician (AEMT[A-EMT]) training and education course requirements. Each AEMT training

and education course shall:

(a) Include all training and education [as required] pursuant to KRS Chapter 311A, 202 KAR 7:330, and 202 KAR 7:701; and

(b) Use the National Emergency Medical Services Education Standards – Advanced Emergency Medical Technician Instructional Guidelines for duration of course and individual class segments; and [Follow the National Emergency Medical Services Education Standards – Instructional Guidelines.]

(c) Ensure student competency throughout the course by a validated examination measuring process.

(2) To be eligible for certification as an AEMT[A-EMTs], a student shall complete a clinical and [or] field rotation that meets the requirements for AEMT[A-EMT] education as determined by this administrative regulation and including the National and Kentucky EMS Scope of Practice for an AEMT[A-EMT] student as approved by the applicable accrediting agency's minimum requirements.

(3) The minimum requirements of clinical and field rotations for AEMTs[A-EMTs] shall include:

(a) Clinicals or field rotations [that] conducted at a licensed [occur in a hospital emergency department, public health department, urgent treatment center, physician's office, licensed advanced life support] ambulance service, or other licensed [advanced] health care facility[.]; selected by the EMS-TEI director and medical director that, if applicable, meets nationally accepted accreditation standards;

(b) Interviews and assessments on [of] a minimum of twenty (20) [thirty-five (35)] patients, including at least ten (10) [fifteen (15)] interviews and assessments while the student is actively in the role of team leader with a licensed ambulance service; and

(c) Record of patient history and assessment on a [prehospital] care report form for each of the twenty (20) [thirty-five (35)] patients required in paragraph (b) of this subsection.

(4) If a student fails to achieve the [a] goals[goal] established by the EMS-TEI for the AEMT[A-EMT] education program, the EMS-TEI [chief administrative officer–or] program director and medical director shall require the student to repeat the failed portion of the AEMT education program. [a clinical or field rotation experience.]

(5) If a student is required to repeat a portion of the AEMT education program, [a clinical or field rotation experience,] the [CAO–or] program director and medical director shall have a written procedure for remediation that ensures the student shall be provided with adequate due process protections that include at a minimum:

(a) Notification of allegations or academic issues;

(b) A right for the student to be heard on the subject of the allegations or academic issues; and

(c) A right for the student to appeal the decision of the EMS-TEI to the director and medical director about the allegations or academic issues[.]; and

(d) The notification to the student shall be in writing and signed and dated by the:

1. Student;

2. TEI Administrator;

3. Medical Director; and

4. Course Coordinator.

(6) AEMT candidates shall meet all student eligibility requirements pursuant to 202 KAR 7:330. [If the EMS-TEI requires the student to complete additional ride-time, the EMS-TEI shall give the student written notification for the student to sign and date.]

(7) AEMT students shall meet health and immunization standards as required through established TEI policy, or policies established by contracted TEI clinical sites.

Section 12. Paramedic Training and Education Programs. Paramedic training and education course requirements. (1) Each Paramedic training and education course shall:

(a) Include all training and education as required by this administrative regulation, KRS Chapter 311A, 202 KAR 7:401, 202 KAR 7:701, and any other Kentucky statutes or administrative regulations that place mandates upon paramedic students; and

(b) Use the National Emergency Medical Services Education Standards – Paramedic Instructional Guidelines for duration of course and individual class segments; and

(c) Ensure student competency throughout the course by a validated examination measuring process.

(2) To be eligible for licensure as a paramedic, a student shall complete a clinical or field rotation that meets the requirements for paramedic education as determined by this administrative regulation [and] including the National and Kentucky EMS Scope of Practice for a Paramedic student as approved by the applicable accrediting agency's minimum requirements.

(3) The minimum requirements of clinical or field rotations for paramedics shall include:

(a) ~~Clinicals or field rotations [that shall be] conducted at [in] a [hospital-emergency department, public health department, urgent treatment center, physician's office,] licensed [advanced-life support] ambulance service[,] or other licensed [advanced] health care facility selected by the EMS-TEI director and medical director that, if applicable, meets nationally accepted accreditation standards;~~

(b) ~~[Interviews and assessments of a minimum of seventy-five (75) patients, including at least fifty (50) interviews and assessments while the student is actively in the role of team leader with a licensed ambulance service; and~~

(c) ~~Record of patient history and assessment on a prehospital care report form for each of the [seventy-five (75)] patients required in [subsection (3)(b) of] this section.~~

(4) ~~If a student fails to achieve the [a] goals[goal] established by [for] the EMS-TEI for the EMS education program, the EMS-TEI [chief administrative officer or] program director and medical director shall require the student to repeat the failed portion of the paramedic education program. [a clinical or field rotation experience.]~~

(5) ~~If a student is required to repeat a portion of the paramedic education program [a clinical or field rotation experience], the [CAO or] program director and medical director shall have a written procedure for remediation that ensures the student shall be provided with adequate due process protections that include at a minimum:~~

(a) ~~Notification of allegations or academic issues;~~

(b) ~~A right for the student to be heard on the subject of the allegations or academic issues; [and]~~

(c) ~~A right for the student to appeal the decision of the EMS-TEI to the director and medical director about the allegations or academic issues[.]; and~~

(d) ~~The notification to the student shall be in writing and signed and dated by the:~~

- ~~1. Student;~~
- ~~2. TEI Administrator;~~
- ~~3. Medical Director; and~~
- ~~4. Course Coordinator.~~

(6) ~~Paramedic candidates shall meet all student eligibility requirements pursuant to 202 KAR 7:401. [If additional time is required to be completed for remediation, the EMS-TEI shall provide written notification of the additional time required and shall obtain a dated signature from the student.]~~

(7) ~~Paramedic students shall meet health and immunization standards as required through established TEI policy, or policies established by contracted TEI clinical sites.~~

Section 13. Continuing Education. (1) Training and education courses provided to individuals ~~[outside the roster of a licensed service and] that fulfill the continuing education requirements necessary to receive [recertify or renew] a certification or licensure from the board shall be provided by:~~

(a) ~~An entity certified by the board [KBEMS] as an EMS-TEI;~~

(b) ~~An agency or department having contractual agreements with a board [KBEMS] certified EMS-TEI that is in good standing and not subject to disciplinary action;~~

(c) ~~A board [KBEMS] approved symposia, state, national, or international school;~~

(d) ~~A board [KBEMS] approved or nationally accredited online [on-line] or distance education provider, but which shall not provide~~

more than ~~ninety (90) [fifty–(50)]~~ percent of the total continuing education hours to fulfill the continuing education [CE] requirements for renewal pursuant to KRS Chapter 311A or 202 KAR Chapter 7; or

(e) One (1) or more of the approved continuing education entities listed below:

1. The Commission on Accreditation for Pre-Hospital Continuing Education (CAPCE);

2. Kentucky Board of Nursing;

3. Kentucky Board of Medical Licensure;

4. Kentucky Board of Respiratory Care;

5. Department of Homeland Security and all department components;

6. U.S. Fire Administration and all department components;

7. Kentucky Department of Criminal Justice (DOCJT);

8. Kentucky Cabinet for Health and Family Services; or

9. Courses approved by any State EMS Office that are offered and or completed outside the Commonwealth of Kentucky.[

(e) ~~A course that has been accredited by the board=approved accrediting agency for continuing education.]~~

(2) Continuing education courses shall:

(a) Contain material relevant to the job specifications and professional development of EMS personnel; and

(b) Be conducted at an EMS level appropriate for the discipline of the participants.

(3) EMS-TEIs that provide continuing education shall provide course completion documentation by hardcopy or electronically to all participants that successfully complete the continuing education course. The course completion documentation shall contain at a minimum the following items:

(a) Official name of the EMS-TEI as listed in the EMS-TEI KEMSIS account and certification number of the EMS-TEI issued by the board;

(b) Name of primary instructor and state EMS office EMS provider number;

(c) Name of course;

(d) Breakdown of completed hours and subject categories instructed that meet the continuing education requirements established by 202 KAR 7:201, 202 KAR 7:301, 202 KAR 7:330, and 202 KAR 7:401; and

(e) Signature of one of the following EMS-TEI representatives:

1. Director;

2. Course coordinator; or

3. Course instructor.

Section 14. Continuing Education Instructor Requirements. (1) The following persons shall be qualified to conduct continuing education courses for persons certified or licensed by the board [KBEMS]:

(a) An EMS provider [paramedic licensed by the board or] licensed or certified by the board that holds a continuing education educator credential [in another state];

(b) A physician (DO or MD) or Physician Assistant (PA) licensed in Kentucky or another state, who has specific expertise in an area of a prehospital discipline;

(c) A registered nurse (RN) or Advanced Practice Registered Nurse (APRN) licensed in Kentucky or another state, who has specific expertise in an area of a prehospital discipline;

(d) An EMS Educator certified in Kentucky; or

(e) An individual who is at least one (1) of the following and who shall be limited to teaching the specific subject approved by the EMS-TEI director and medical director:

1. Certified by a state or federal agency to teach or perform subject matter relevant to the National Emergency Medical Services Education Standards [–Instructional Guidelines] and National and Kentucky EMS Scope of Practice for a prehospital discipline;

2. Certified by a nationally recognized entity to provide EMS related training and education;

3. A presenter at a National or State Symposium accredited by an agency or other board [KBEMS] approved entity; or

4. A presenter approved by an EMS medical director who has specific expertise in an area of a prehospital discipline. [as



uniquely qualified by experience or education; or

5. A presenter approved as being uniquely qualified by an emergency response agency's chief administrative officer.]

(2) The EMS-TEI or other approved contractual department or agency providing continuing education shall be required to:

(a) Maintain a roster, objectives, and outline for every continuing education course taught on file for a period of three (3) [seven (7)] years beyond the end date of each EMS Course; [and]

(b) Maintain all documentation to have met the applicable accreditation agency standards, policies, and guidelines established in this administrative regulation; and [-.]

(c) Meet the requirements of this administrative regulation.

(3) If requested by the board, the EMS-TEI shall submit to the board [KBEMS] the required documents for EMS continuing education courses taught within the preceding three (3) [seven (7)] years that lead to re-certification or re-licensure by the board [KBEMS], including:

(a) Contractual agreements;

(b) The continuing education instructor [educator's] curriculum vitae or resume that includes at a minimum the educator's name, address, phone number, email address, education history, and employment history documenting the qualifications listed in Section 14(1) have been met;

(c) A completed Continuing Education[al Institution] Course Student Roster. The course roster shall include the participants name, signature, participant KEMSIS number, and board EMS credential held. If rosters are created or stored electronically, there shall be a verification of attendance component that can be verified by the board if requested; and

(d) Objectives, syllabi [and], outline, and a list of instructor resources used for each continuing education course.

Section 15. Pilot Programs. (1) A board certified TEI that is in good standing may apply for an Educational Pilot Program. [A licensed EMS provider agency may apply to KBEMS for authorization to perform a pilot program.]

(2) A pilot program shall involve specialized training and education, as well as associated procedures not otherwise provided for in 202 KAR Chapter 7.

(3) Educational Pilot Programs shall be subject to the provisions of 202 KAR 7: 565. [A licensed EMS provider agency seeking authorization for a pilot program shall submit a written request to the board.]

(4) An authorized entity approved by the board to conduct a pilot program shall agree in writing:

(a) To submit periodic reports related to the progress of the pilot program; and

(b) To abide by the board established requirements for the pilot program.

(5) An individual otherwise certified or licensed by the board who successfully completes an approved pilot program shall perform the procedures relevant to the training and education received in the pilot program subject to protocols established by the medical director for the pilot program.

(6) The board may establish pilot program limitations on:

(a) The geographic area or service location where the procedure may be performed; and

(b) The performance of the procedure subject to a:

1. Specific and defined event;

2. Disaster; or

3. Designated directive.

(7) The board may authorize the use of physicians or other medical professionals to supervise and monitor the training and education of students involved in a pilot program.

(8) The board may restrict or limit actions that involve the performance of an invasive procedure or the administration of medication subject to:

(a) Required physician or medical director oversight; or

(b) The use of protocols that have been submitted to the board for review and approved by the state medical advisor and the board.]

Section 16. EMS Educators. (1) An EMS Educator may be

certified at the following levels:

(a) EMR Educator, which certifies the individual to teach EMR initial certification and continuing education courses [Level I—EMR Educator, which certifies the individual to teach EMR courses or EMR continuing education];

(b) EMT Educator, which certifies the individual to teach EMR and EMT initial certification and continuing education courses; [Level II—EMT Educator, which certifies the individual to teach EMT and EMR courses or EMT and EMR continuing education; or]

(c) AEMT Educator, which certifies the individual to teach EMR, EMT, and AEMT initial certification and continuing education courses; [Level III—Advanced Educator, which certifies the individual to teach EMR, EMT, A-EMT, and paramedic courses or continuing education.];

(d) Paramedic Educator, which certifies the individual to teach EMR, EMT, AEMT, and Paramedic initial certification and continuing education courses; or [Level IIIIR—Registered nurses and physicians who are not currently certified as an EMT, A-EMT, or paramedic shall only be certified as Level III instructors who teach A-EMTs or paramedics.];

(e) CE Educator, which certifies the individual to teach continuing education courses at or below the level of EMS provider certification or license issued by the board.

(2) Depending on the level of certification sought, an applicant for certification as a Kentucky EMS educator shall:

(a) Already hold a certificate or license in Kentucky as an Emergency Medical Responder (EMR), an Emergency Medical Technician (EMT), an Advanced Emergency Medical Technician (AEMT[A-EMT]), or a Paramedic; or

(b)1. Hold a license in Kentucky or another state as a Registered Nurse (RN), Advanced Practice Registered Nurse (APRN), Physician (DO or MD), or Physician Assistant (PA);

2. A Registered Nurse (RN), Advanced Practice Registered Nurse (APRN), Physician (DO or MD), or Physician Assistant (PA) shall be considered an advanced EMS provider at the paramedic level only for the purpose of credentialing the individual as an EMS educator;

(c) [(b)] Not be issued a certificate as an EMS educator for a level of instruction higher than his or her [their] EMS provider certification or license;

(d) [(e)] Have successfully completed:

1. The National Association of EMS Educators Emergency Medical Services Education Standards [—Instructional Guidelines] for Educating EMS Instructors [educators] course;

2. An [A-KBEMS-] approved EMS educator course that meets the objectives of the [National Highway Traffic Safety Administration (NHTSA)] National Highway Traffic Safety Administration National Guidelines for Educating EMS Instructors and the National Emergency Medical Services Education Standards which [and] is designed to represent a common core for teaching knowledge and skills to assist in the education of adult learners; [or]

3. One (1) of the following EMS educator courses:[A Bachelor's Degree or higher in education;]

a. International Fire Service Training Association (IFSTA) Fire Instructor Course;

b. Eastern Kentucky University's EMC 440 EMS Instruction Course;

c. An instructor course that is equivalent to the EMS educator course objectives found in the U.S. Department of Transportation / National Highway Traffic Safety; or

4. Holds an unrestricted and current license or certification as a teacher or educator through a state board of education in the United States;

(e) [(d)] Have been certified or licensed for a minimum of four (4) years as an EMS provider at the same level or at a higher level for which the applicant seeks to become an EMS educator;

(e) Provide documentation that two (2) years of the four (4) years' experience required in this section is experience providing care with an EMS organization that complies with the requirements of KRS Chapter 311A or 202 KAR Chapter 7.

(ff) Provide documentation using the KBEMS Lecture and Skill Verification Form that the applicant has assisted with a course that

meets the following requirements:

1. The board has approved the course as leading to certification or licensure;

2. Assistance with the course has been under the supervision of a board-certified EMS educator through a board-certified EMS-TEI with the approval of the program director and medical director [who attests using the board approved Certified Educator form that the educator has served as a course coordinator or lead educator for at least three (3) separate courses and who has not been subject to disciplinary action or reprimand by the board pursuant to KRS Chapter 311A within the past thirty-six (36) months]; and

3. The courses[course] in which the applicant can [will] assist to meet the requirements of subsection (3) of this section shall be in a board-approved initial course at or below the level of educator the applicant is seeking. [is at the same level of EMS educator the applicant is seeking];

4. Continuing education courses shall not be accepted to meet the requirements of this section;

(g) Provide evidence of completion of a board sponsored orientation program;

(f) [(h)] Submit a completed; [EMS Responder Application and pay all established fees;]

1. CE Educator Initial Application;

2. EMR Educator Initial Application;

3. EMT Educator Initial Application;

4. AEMT Educator Initial Application; or

5. Paramedic Educator Initial Application;

(g) Pay all fees pursuant to 202 KAR 7:030; and

(h) Undergo a background check pursuant to KRS 311A.050 and 311A.100.

1. The background check shall be:

a. National in scope for an applicant not currently certified or licensed at any level in Kentucky;

b. Statewide in scope for an applicant with current certification or licensure in Kentucky;

c. Less than six (6) months old when the applicant submits to the board all requirements for Educator certification; and

d. Provided by a vendor that has been contracted through the board.

2. An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check.

(3) [If applying to become a Level I or II] Applicants applying for EMR, EMT, AEMT, or Paramedic Educator certification shall:

(a) Be certified minimally as an EMT to teach EMTs or EMRs and minimally certified as an EMR to teach only EMRs;

(b) submit documented proof on the Lecture and Skills Verification Form that the applicant:

(a)[1.] Completed a minimum of five (5) presentations meeting the objectives of the National Emergency Medical Services Education Standards for Educating EMS Instructors. [-Instructional Guidelines and EMS Scope of Practice Model National education for EMT or EMR as applicable for level of certification]; and

(b)[2.] Demonstrated skills from at least five (5) subjects meeting the objectives of the National Emergency Medical Services Education Standards for Educating EMS Instructors. [-Instructional Guidelines and EMS Scope of Practice Model National education for EMT or EMR as applicable for level of certification;

3. Completed all presentations and all skills demonstrations on different topics for a total of ten (10) separate topics; and

4. Attended a minimum of fifty (50) percent of clock hours of the course; and]

(4) Applicants applying for CE [If applying to become a Level III] Educator shall:

(a) [Be certified as a paramedic or higher; and

(b) Present documented proof of completing a nationally recognized or EMS-TEI instructor course. [instruction in a minimum of fifty (50) classroom clock hours in a minimum of five (5) different subject areas that shall include instruction in pharmacology, cardiac emergencies, and traumatic injuries, meeting the

objectives of the National Emergency Medical Services Education Standards -Instructional Guidelines and EMS Scope of Practice Model for paramedic education.];

(5) The expiration date of an EMS educator certification shall correspond to those established in KRS Chapter 311A and 202 KAR Chapter 7. [

(6) Documented proof of the educator's experience shall be submitted on the Educator Practical Requirements form.];

Section 17. Renewal of EMS Educator Certification. (1) An EMS educator shall be eligible to renew the EMS educator certification if the applicant for renewal:

(a) Has maintained state certification or licensure as an EMS provider or as a Registered Nurse (RN), Advanced Practice Registered Nurse (APRN), Physician (DO or MD), or Physician Assistant (PA) at a level equal to or greater than the level at which they are certified as an EMS educator;

(b) Retains [Has submitted to the board written] evidence of completing all training and education pursuant to [as required by] KRS Chapter 311A;

(c) During the preceding two (2) years, has been actively engaged in instruction and obtained [a minimum of fifty-two (52) contact hours that include] at least four (4) [eight (8)] hours [contact hours] on topics related to methods of instruction (MOI); [-The eight (8) relevant to MOI:

1. May include a board approved and required educator update; and

2. The chief administrative officer of the EMS-TEI employing the instructor shall provide proof of the courses or contact hours if requested to do so in an audit by the board;]

(d) Is not subject to discipline pursuant to KRS Chapter 311A;

(e) Has paid fees pursuant to [required by] 202 KAR 7:030; and

(f) Has submitted to the board a completed Educator Renewal [EMS Responder] Application.

(2) The EMS educator shall maintain all training and education documentation outlined in this administrative regulation for three (3) [four (4)] years from the date of completion.

(3) The board [KBEMS] office may audit an EMS educator's continuing education and EMS provider continuing education records.

Section 18. EMS Educator reinstatement. [(4)] An EMS Educator whose certification has lapsed [for a period not exceeding five (5) years] may reinstate [his certificate]. To reinstate a certificate, the EMS educator shall submit:

(1)[(a)] Submit a [A] completed; [EMS Responder Application;]

(a) CE Educator Reinstatement Application;

(b) EMR Educator Reinstatement Application;

(c) EMT Educator Reinstatement Application;

(d) AEMT Educator Reinstatement Application; or

(e) Paramedic Educator Reinstatement Application;

(2)[(b)] Submit evidence of at least four (4) [sixteen (16)] hours of training in methodology of instruction (MOI);

(3)[(c)] Written evidence of completion of a board sponsored EMS Educator orientation course; and

(d) Pay [Payment of] the reinstatement fee pursuant to [as established in] 202 KAR 7:030;[-]

(4) Submit evidence of previous certification as an EMS Educator in Kentucky; and

(5) Undergo a background check pursuant to KRS 311A.050 and 311A.100.

(a) The background check shall be:

1. National in scope for an applicant not currently certified or licensed at any level in Kentucky;

2. Statewide in scope for an applicant with current certification or licensure in Kentucky;

3. Less than six (6) months old when the applicant submits to the board all requirements for Educator certification; and

4. Provided by a vendor that has been contracted through the board.

(b) An applicant shall not directly submit a background check to meet the requirements of this section. The background check

shall be submitted to the board by the company that conducts the background check.]

(2) An EMS Educator whose certification has lapsed for a period exceeding five (5) years shall seek certification as an initial applicant.]

Section 19. Transition for Currently Certified Educators. An educator certified prior to the effective date of this administrative regulation [after October 2012] shall be transitioned as follows:

(1) Level I Educator shall be certified as an EMR Educator [EMS instructors shall be certified as Level I educators];

(2) Level II Educator shall be certified as an EMT Educator [Instructors shall be certified as Level II Educators];

(3) Level III Educator shall be certified as a Paramedic Educator; and [Currently certified Level III Instructors shall be certified as Level III educators];

(4) [Level I and Level II shall be certified as Level I and Level II educators; and

(5) Level III instructors currently licensed as paramedics shall be certified as Level I, Level II, and Level III educators; and

(6) Level IIIR Educator shall be certified as Level III Educator. [III instructors currently licensed as RNs or physicians shall be certified as Level IIIR educators.]

Section 20. EMS Educator Reciprocity. A person certified as an EMS Educator [instructor] in another state or United States [US] territory shall be eligible for Kentucky EMS Educator[instructor] certification upon [demonstrating]:

(1) Evidence of certification or licensure as an EMS provider for a minimum of four (4) years at the same level or at a higher level for which they are applying to be a Kentucky EMS educator;

(2) Proof of four (4) years' educational experience in another state or territory;

(3) (1) Submission of a completed [EMS Responder Application];

(a) CE Educator Reciprocity Application;

(b) EMR Educator Reciprocity Application;

(c) EMT Educator Reciprocity Application;

(d) AEMT Educator Reciprocity Application; or

(e) Paramedic Educator Reciprocity Application;]

(4) Evidence of at least sixteen (16) board-approved hours of training in methodology of instruction (MOI);

(5) Written evidence of completion of a board-sponsored EMS Educator orientation course; and]

(2) [(6)] Payment of the educator fee pursuant to [as established in] 202 KAR 7:030.[:]

(3)(a) Submission of proof that the applicant is certified as an EMS educator in another state or United States territory;

(b) The applicant may only apply for educator certification at the same level of Educator certification currently held in another state or U.S. territory;

(4) Submission of certification or license by the board as an EMS provider or license as a Registered Nurse (RN), Advanced Practice Registered Nurse (APRN), Physician (DO or MD), or Physician Assistant (PA); and

(5) Submission to a background check pursuant to KRS 311A.050 and 311A.100.

(a) The background check shall be:

1. National in scope for an applicant not currently certified or licensed at any level in Kentucky;

2. Statewide in scope for an applicant with current certification or licensure in Kentucky;

3. Less than six (6) months old when the applicant submits to the board all requirements for Educator certification; and

4. Provided by a vendor that has been contracted through the board.

(b) An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check.]

Section 21. EMS Educator Temporary Certification.

(1) An EMS educator applicant holding EMS educator

certification or licensure from another state or US territory may be granted a temporary certification in Kentucky upon submission of the EMS Responder Application.

(2) A temporary card shall not be valid for more than one (1) year.

(3) At the end of one (1) year, an applicant for reciprocity who has not completed the requirements established in Section 18 of this administrative regulation shall not be eligible for an extension or renewal of the temporary certification period.

(4) An Applicant failing to meet the time limit for obtaining certification through reciprocity shall seek certification as a Kentucky EMS Educator by completing all requirements for initial certification.

Section 22. EMS Evaluator.

(1) An applicant for certification as an EMS evaluator shall:

(a) 1. Be currently certified as a Level I, Level II, or Level III] EMS educator; or

2. Hold current unrestricted licensure in a state as a physician;

(b) Have completed a board-approved evaluator training program;

(c) Have a minimum of two (2) years' patient care experience prior to serving as an evaluator;

(d) Submit a completed EMS Responder Application; and

(e) Have paid all fees required by 202 KAR 7:030.

(2) The certification period of an EMS evaluator shall be contemporaneous with the expiration date of a certificate or license issued by the board, the KBN or KBML, or the state that issues his or her license.

(3) An EMS evaluator shall be certified as:

(a) Level I, which qualifies the evaluator to assess EMR candidates for certification;

(b) Level II, which certifies the evaluator to assess EMT and EMR candidates for certification; or

(c) Level III, which certifies the individual to evaluate paramedic, EMT, AEMT, and EMR candidates for certification or licensure. A licensed physician or registered nurse who is not also a licensed or certified EMS provider shall evaluate paramedics only. A person certified as an A-EMT may evaluate A-EMTs, EMTs, and EMRs.

(4) An individual shall not be endorsed as an EMS evaluator at a level greater than the level at which certified or licensed as an EMS educator.

Section 23. Renewal of EMS Evaluator Endorsement. A person who holds an endorsement as an EMS evaluator shall be eligible to renew the EMS evaluator endorsement if the individual:

(1) Maintains current state certification or licensure as a provider;

(2) During the certification period, participates in a minimum of two (2) separate evaluations on two (2) separate dates or attends a board-sponsored evaluator class;

(3) Is not subject to discipline pursuant to KRS Chapter 314A;

(4) Submits to the board a completed EMS Responder Application; and

(5) Pays all fees required by 202 KAR 7:030.]

Section 21 [24]. Educator [and Evaluator] Oversight. The board [KBEMS] may conduct unscheduled [scheduled or, if part of an official investigation, unscheduled] visits to an EMS educator's classroom or to an EMS psychomotor examination [evaluation] site to verify compliance with KRS Chapter 311A and 202 KAR Chapter 7, instructional quality, and evaluative standards required by[in] this administrative regulation.

Section 22 [25]. Incorporation by reference. (1) The following material is incorporated by reference:

(a) "Training and Educational Institution (TEI) Application in KEMSIS", 2019 [KBEMS-E14,] July [2012];

(b) "Course Notification Application in KEMSIS", July 2019 [KBEMS-E22, September 2012];

(c) "Initial Educational [Institution] Course Roster", July 2019 [KBEMS-E23, September 2012];

(d) “National Emergency Medical Services Education Standards [– Instructional Guidelines]”, National Highway Traffic Safety Administration [Association], DOT HS 811 077A, January 2009;

1. “National Emergency Medical Services Education Standards-Emergency Medical Responder Instructional Guidelines”, National Highway Traffic Safety Administration, DOT HS 811 077B, January 2009;

2. “National Emergency Medical Services Education Standards-Emergency Medical Technician Instructional Guidelines”, National Highway Traffic Safety Administration, DOT HS 811 077C, January 2009;

3. “National Emergency Medical Services Education Standards-Advanced Emergency Medical Technician Instructional Guidelines”, National Highway Traffic Safety Administration, DOT HS 811 077D, January 2009;

4. “National Emergency Medical Services Education Standards-Paramedic Instructional Guidelines”, National Highway Traffic Safety Administration, DOT HS 811 077E, January 2009.

(e) “National EMS Scope of Practice Model”, National Highway Traffic Safety Administration [Association], DOT HS 810 657, February 2007;

(f) “National EMS Scope of Practice Model”, National Highway Traffic Safety Administration, DOT HS 812 666, February 2019 [“EMS Responder Application”, KBEMS-E1, September 2012];

(g) “National Guidelines for Educating EMS Instructors”, National Highway Traffic Safety Administration, August 2002 [“Certified Educator”, KBEMS-E24, September 2012]; [and]

(h) CoAEMSP Interpretations of the Standards and Guidelines”, February 2019 [“Educator Practical Requirements”, KBEMS-E20, July 2012];

(i) “Lecture and Skills Verification Form”, July 2019;

(j) “Final Educational Course Roster”, July 2019;

(k) “Continuing Education Course Student Roster”, July 2019;

(l) “Course Change Notification Application” in KEMSIS, July 2019;

(m) “Psychomotor Exam Application” in KEMSIS, July 2019;

(n) “Comprehensive Skill Evaluation Report”, July 2019;

(o) “CE Educator Initial Application” in KEMSIS, July 2019;

(p) “EMR Educator Initial Application” in KEMSIS, July 2019;

(q) “EMT Educator Initial Application” in KEMSIS, July 2019;

(r) “AEMT Educator Initial Application” in KEMSIS, July 2019;

(s) “Paramedic Educator Initial Application” in KEMSIS, July 2019;

(t) “CE Educator Reciprocity Application” in KEMSIS, July 2019;

(u) “EMR Educator Reciprocity Application” in KEMSIS, July 2019;

(v) “EMT Educator Reciprocity Application” in KEMSIS, July 2019;

(w) “AEMT Educator Reciprocity Application” in KEMSIS, July 2019;

(x) “Paramedic Educator Reciprocity Application” in KEMSIS, July 2019;

(y) “CE Educator Reinstatement Application” in KEMSIS, July 2019;

(z) “EMR Educator Reinstatement Application” in KEMSIS, July 2019;

(aa) “EMT Educator Reinstatement Application” in KEMSIS, July 2019;

(bb) “AEMT Educator Reinstatement Application” in KEMSIS, July 2019;

(cc) “Paramedic Educator Reinstatement Application” in KEMSIS, July 2019; and

(dd) “Educator Renewal Application” in KEMSIS, July 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the [Kentucky Community and Technical College,] Office for[of] the Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509, by appointment [300 North Main Street, Versailles, Kentucky 40383], Monday through Friday, 8[8:30] a.m. to 4:30 p.m.

PHILIP DIETZ, Chairman

APPROVED BY AGENCY: April 8, 2021

FILED WITH LRC: April 14, 2021 at 3:54 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 28, 2021, at 1:00 p.m. Eastern Standard Time at the Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: Chuck O’Neal, Deputy Executive Director of Administration, Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509, phone (859) 256-3587, email chuck.oneal@kctcs.edu.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chuck O’Neal

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 311A.110, KRS 311A.115, KRS 311A.120, and KRS 311A.125 require the board to promulgate administrative regulations establishing standards related to the training and education of emergency medical services personnel. KRS 311A.130 requires proper in-service and in-house in-service training and education. KRS 311A.025 requires the board to establish levels of certification. This administrative regulation establishes requirements for an organization to be approved by the board as an Emergency Medical Service Training and Education Institute (EMS-TEI) and also establishes standards for the certification and recertification of emergency medical services educators and providers.

(b) The necessity of this administrative regulation: KRS 311A.110, KRS 311A.115, KRS 311A.120, and KRS 311A.125 require the board to promulgate administrative regulations establishing standards related to the training and education of emergency medical services personnel. KRS 311A.130 requires proper in-service and in-house in-service training and education. KRS 311A.025 requires the board to establish levels of certification. This administrative regulation is necessary to establish requirements for an organization to be approved by the board as an Emergency Medical Service Training and Education Institute (EMS-TEI) and establish standards for the certification and recertification of emergency medical services educators and providers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311A.110, KRS 311A.115, KRS 311A.120, and KRS 311A.125 require the board to promulgate administrative regulations establishing standards related to the training and education of emergency medical services personnel. KRS 311A.130 requires proper in-service and in-house in-service training and education. KRS 311A.025 requires the board to establish levels of certification. This administrative regulation conforms to the content of these statutes by establishing requirements for an organization to be approved by the board as an Emergency Medical Service Training and Education Institute (EMS-TEI) and establishing standards for the certification and recertification of emergency medical services educators and providers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

KRS 311A.110, KRS 311A.115, KRS 311A.120, and KRS

311A.125 require the board to promulgate administrative regulations establishing standards related to the training and education of emergency medical services personnel. KRS 311A.130 requires proper in-service and in-house in-service training and education. KRS 311A.025 requires the board to establish levels of certification. This administrative regulation will assist in the effective administration of these statutes by establishing requirements for an organization to be approved by the board as an Emergency Medical Service Training and Education Institute (EMS-TEI) and establishing standards for the certification and recertification of emergency medical services educators and providers.

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

(a) How the amendment will change this existing administrative regulation: This amendment will modify and update educational mandates for all levels of EMS professionals entering the field, as well as regulatory requirements for EMS training and educational institutions, educators, and renewal requirements for educators and training and educational institutions.

(b) The necessity of the amendment to this administrative regulation: Educational standards for the EMS professions have been updated across the nation over the last few years. The amendments to this administrative regulation align with nationally accepted educational standards and training center requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.025, KRS 311A.110, KRS 311A.115, KRS 311A.120, KRS 311A.125, KRS 311A.130 by establishing requirements for an organization to be approved by the board as an Emergency Medical Service Training and Education Institute (EMS-TEI) and establishing standards for the certification and recertification of emergency medical services educators and providers.

(d) How the amendment will assist in the effective administration of the statutes: KRS 311A.020 requires the board to establish procedures and processes for committees and subcommittees. This administrative regulation will assist in the effective administration of KRS 311A.025, KRS 311A.110, KRS 311A.115, KRS 311A.120, KRS 311A.125, KRS 311A.130 by establishing requirements for an organization to be approved by the board as an Emergency Medical Service Training and Education Institute (EMS-TEI) and establishing standards for the certification and recertification of emergency medical services educators and providers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Emergency Medical Services, its members, and staff, local governments, emergency medical services providers, emergency medical services educators, and emergency medical services personnel will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Kentucky Board of Emergency Medical Services, its members, staff, and licensed agencies shall conform to the procedures and standards established by this administrative regulation regarding approval as an Emergency Medical Service Training and Education Institute (EMS-TEI) and certification and recertification as emergency medical services educators and providers.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All entities will benefit from enhanced educational delivery guidance.

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

administrative body to implement this administrative regulation: There will be no cost to the administrative body to implement this administrative regulation.

(a) Initially: There will be no cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the administrative body to implement this administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because this amendment applies equally to all licensed agencies.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Emergency Medical Services, its members, and staff, local governments, emergency medical services providers, emergency medical services educators, and emergency medical services personnel will be affected by this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.110, KRS 311A.115, KRS 311A.120, and KRS 311A.125 require the board to promulgate administrative regulations establishing standards related to the training and education of emergency medical services personnel. KRS 311A.130 requires proper in-service and in-house in-service training and education. KRS 311A.025 requires the board to establish levels of certification. This administrative regulation establishes requirements for an organization to be approved by the board as an Emergency Medical Service Training and Education Institute (EMS-TEI) and also establishes standards for the certification and recertification of emergency medical services educators and providers.

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not impose any costs on state or local government.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not impose any costs on state or local government.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not impose any costs.

Other Explanation:

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

**301 KAR 1:400. Assessing fish kill damages.**

RELATES TO: KRS 150.460(1), (3), 150.990(7)

STATUTORY AUTHORITY: KRS 150.990(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.460(1) and (3) make it illegal for a person to pollute the waters of the commonwealth. KRS 150.990(7) holds a person who violates KRS 150.460 liable to the department in an amount not to exceed the value of any fish or wildlife killed or destroyed. This administrative regulation establishes the standard the department shall use to determine the replacement value of fish killed in pollution cases.

Section 1. The department shall use the American Fisheries Society Special Publication 35[30], "Investigation and Monetary Values[Valuation] of Fish and Freshwater Mollusk[Mussel] Kills", to assess the replacement value of fish killed in violation of KRS 150.460(1) or (3).

Section 2. Incorporation by Reference. (1) The American Fisheries Society Special Publication 35[30]: "Investigation and Monetary Values[Valuation] of Fish and Freshwater Mollusk[Mussel] Kills", 2017[2003] edition, is incorporated by reference.

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

BRIAN CLARK, Deputy Commissioner

MIKE E. BERRY, Secretary

APPROVED BY AGENCY: April 12, 2021

FILED WITHY LRC: April 14, 2021 at 9:24 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 28, 2021 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through June 30, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes the standard the department shall use to determine the replacement value of fish killed in pollution cases.

(b) The necessity of the administrative regulation: This administrative regulation is necessary to provide a standard set of criteria to be used when assessing fish kill damages.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.460(1) and (3) make it illegal for a person to pollute the waters of the commonwealth. KRS 150.990(7) holds a person who violates KRS 150.460 liable to the

department in an amount not to exceed the value of any fish or wildlife killed or destroyed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by providing a fair and standard approach to determine the amount that a person who violates KRS 150.460 will be liable for.

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

(a) How the amendment will change the existing administrative regulation: This amendment will update the publication used for fish kill damage assessment to the newest edition.

(b) The necessity of the amendment to this administrative regulation: As monetary values of fish kills have changed over time, it is necessary to update the assessment publication to the most current version.

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

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

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: All individuals or businesses who are responsible for fish kill damages will be affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: Those responsible for fish kill damages will now be liable for the monetary damages calculated from the updated publication.

(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: Those liable for fish kill damages will be responsible for the amount calculated from the updated publication.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Cost will be based on severity of the fish kill.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Fish kills that are the result of entities identified in question (3) will be assessed in a fair and standard manner with the most up to date monetary values.

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

(a) Initially: There will be no initial costs to implement this administrative regulation.

(b) On a continuing basis: There will be no continuing costs to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: There will be no increased fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All responsible parties will be assessed fish kill damages using the same publication.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' Divisions of Fisheries and Law Enforcement will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.460(1) and (3) make it illegal for a person to pollute the waters of the commonwealth. KRS 150.990(7) holds a

person who violates KRS 150.460 liable to the department in an amount not to exceed the value of any fish or wildlife killed or destroyed.

(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? Any revenue generated for KDFWR would be based on the severity of the fish kill if it were to occur.

(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? Any revenue generated in subsequent years for KDFWR would be based on the severity of the fish kill if it were to occur.

(c) How much will it cost to administer this program for the first year? Administration costs to assess a fish kill are based on the severity of the fish kill if it were to occur.

(d) How much will it cost to administer this program for subsequent years? Administration costs to assess a fish kill are based on the severity of the fish kill if it were to occur.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### TOURISM, ARTS AND HERITAGE CABINET (Amendment)

##### 301 KAR 2:228. Sandhill crane hunting requirements.

RELATES TO: KRS 150.010, 150.305, 150.340, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.170(3), (4), 150.330, 150.603(2), 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.170(3)(4) authorizes license exemptions for people under twelve (12) and resident owners of farmlands, including their spouses and dependent children who hunt on those farmlands. KRS 150.330 authorizes take and possession of migratory birds when in compliance with the provisions of the Federal Migratory Bird Treaty Act and authorizes hunting of migratory birds with the appropriate permits. KRS 150.603(2) requires a person sixteen (16) years or older to possess a hunting license and a Kentucky migratory game bird and waterfowl permit in order to hunt migratory birds. This administrative regulation establishes the requirements for taking sandhill cranes within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Crane" means a sandhill crane.

(2) "Wildlife Management Area" or "WMA" means a tract of land that:

(a) Is controlled by the department through ownership, lease, license, or cooperative agreement; and

(b) Has "Wildlife Management Area" or "WMA" as part of its official name.

Section 2. Applications and Permits. (1) To apply for a crane hunting permit a person shall:

(a) Complete the online application process, not more than once per calendar year, on the department's Web site at fw.ky.gov between September 1 and September 30;

(b) Possess a valid hunting license by September 30, unless the applicant is license exempt as established in[pursuant to] KRS 150.170; and

(c) Pay a three (3) dollar application fee[; and

(d) ~~Not apply more than once~~].

(2) The department shall:

(a) Rank each applicant with a random electronic draw from all qualified applicants;

(b) Issue a crane hunting permit and one (1) crane tag to all ranked applicants up to the maximum number of crane tags allowed by the United States Fish and Wildlife Service for that season, as established in 50 C.F.R. 20, except that if the number of applicants:

1. Exceeds the maximum number of tags, then those applicants ranking higher than the maximum will not receive a permit; and

2. Is less than the maximum number of tags available, then the additional tags will be assigned to applicants in the order of ranking until all tags are assigned;

(c) Issue each permit via the department's Web site at fw.ky.gov;

(d) Issue the appropriate number of metal leg tags to each permit recipient prior to the crane hunting season; and

(e) Disqualify an applicant who does not possess a hunting license prior to September 30, unless the applicant is license exempt as established in[pursuant to] KRS 150.170.

(3) A person who does not have access to the internet may call the department's toll-free number at 1-800-858-1549 for assistance in applying.

(4) A crane hunting permit shall not be transferable.

(5) A person selected to receive a permit shall pass a bird identification test provided by the department prior to receiving a permit.

(6) A permit recipient shall complete and submit a post-season crane hunting survey on the department's website no later than fourteen (14) days after the close of the season.

(7) A person who fails to complete the post-season survey by the date specified in subsection 6 of this section shall be ineligible to be drawn the following year.

Section 3. Season, Bag Limits, and Hunting Requirements. (1) Unless license exempt as established in[pursuant to] KRS 150.170, a person shall not hunt a crane without a:

(a) Valid Kentucky hunting license;

(b) Valid Kentucky crane hunting permit; and

(c) Kentucky migratory game bird and waterfowl permit.

(2) A permit recipient shall possess a printed copy of a valid crane hunting permit:

(a) While crane hunting; and

(b) When in possession of a harvested crane.

(3) The season shall be from December 7 through January 31[for fifty-six (56) consecutive days ending on the last Sunday in January of the following year].

(4) The bag limit shall be:

(a) Two (2) cranes daily for permit holders with two (2) or more crane tags; or

(b) One (1) crane for permit holders with one (1) tag.

(5) A person shall only hunt cranes from sunrise to sunset.

(6) A person who has harvested a crane shall attach a department-issued metal tag to the leg of the crane prior to moving the carcass.

(7) A person shall check a harvested crane on the day the crane is harvested by:

(a) Calling 800-245-4263 and providing the information requested by the automated check-in system; or

(b) Completing the check-in process on the department's Web site at fw.ky.gov; and

(c) Recording and retaining the check-in confirmation number for the rest of the current season.

(8) A hunter who has harvested a crane shall possess the check-in confirmation number when in the field during the current season.

(9) A person shall not knowingly falsify the harvest of a crane on the automated check-in system.

(10) A person hunting cranes shall not use or possess a shotgun shell containing:

(a) Lead shot; or

(b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting.

(11) A person shall not use the following to take cranes:

(a) A shotgun larger than ten (10) gauge;

(b) A shotgun shell larger than three and one-half (3 1/2) inches; or

(c) A shotgun shell with shot larger than size "T".

(12) A person hunting a crane on a Wildlife Management Area shall comply with the applicable WMA waterfowl hunting requirements, as established in ~~pursuant to~~ 301 KAR 2:222, except that on:

~~(a) [en] Barren River WMA crane hunting shall be prohibited within 100 yards of the normal summer pool level of 552 feet in the embayments established in subparagraphs 1. [paragraphs—(a)] through 3. [(e)] of this paragraph [subsection]:~~

~~1. [(a)] Beaver Creek;~~

~~2. [(b)] Peters Creek; and~~

~~3. [(e)] Skaggs Creek; and [.]~~

~~(b) [(43)—On] Green River Lake, crane hunting shall be prohibited within 100 yards of the normal summer pool level of 675 feet, east of the Hwy 551 bridge in the embayments established in subparagraphs 1. [paragraphs—(a)] and 2. [(b)] of this paragraph [subsection]:~~

~~1. [(a)] Green River to the Snake Creek Boat Ramp; and~~

~~2. [(b)] Casey Creek to the Hwy 76 bridge.~~

BRIAN CLARK, Deputy Commissioner

MIKE E. BERRY, Secretary

APPROVED BY AGENCY: April 13, 2021

FILED WITHY LRC: April 14, 2021 at 11:24 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 28, 2021 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through June 30, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Frazee

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes sandhill crane seasons, bag limits and requirements on public lands within federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the U.S. Fish and Wildlife Service (USFWS).

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the 2018-2019 sandhill crane hunting requirements on private and public lands in accordance with the USFWS and Department management objectives.

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

regulation establishes procedures for the taking of migratory game birds within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing sandhill crane hunting seasons and area specific requirements, this administrative regulation maintains and manages migratory game bird conservation efforts consistent with national and international management goals.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the timing of the season and season length to coincide with duck seasons.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide simplified regulations by making crane season similar to duck seasons.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: For the 2019-2020 season, there were a total of 545 applicants for the crane quota hunt.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will now be required to hunt during the December 7 thru January 31 time period.

(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 in order to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The change simplifies regulations for migratory bird hunters so duck and crane seasons coincide.

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

(a) Initially: This administrative regulation change will result in no initial change in administrative cost to the Department

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

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering was not applied since the same requirements and limits apply to all crane hunters.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Wildlife Division and Law Enforcement Division.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1), 150.170(3),(4), 150.330, KRS 150.603(2), and 50 C.F.R. Parts 20 and 21.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the



first full year the administrative regulation is to be in effect.

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

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

(c) How much will it cost to administer this program for the first year? No new costs will be incurred in the administration of this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No new costs will be incurred in the administration of this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the regulatory frameworks that a state may allow. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect roosting areas important to wintering sandhill cranes in Kentucky. Cranes are very susceptible to disturbance in roosting areas and closure maintains the use of these areas by cranes. The Department imposes more restrictive hunting regulations on sandhill cranes in an effort to meet management objectives while still providing quality hunting opportunity.

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

**701 KAR 5:100. [Guidelines for alternative models for] School-based decision making guidelines.**

RELATES TO: KRS 160.345

STATUTORY AUTHORITY: KRS 156.070, 160.345

NECESSITY, FUNCTION, AND CONFORMITY: [The State Board for Elementary and Secondary Education is directed by] KRS 160.345(7) grants the Kentucky Board of Education (KBE) final authority [to review] for approval of applications for alternative models for school-based decision making (SBDM). This administrative regulation establishes the application process, as well as approval guidelines for alternative models for school-based decision making. Additionally, the KBE is required to exempt, upon

request, a school that meets the requirements of KRS 160.345(5) from implementing SBDM. This administrative regulation establishes the application process as well as approval guidelines for receiving a SBDM exemption pursuant to KRS 160.345(5). Further, KRS 160.345(6) requires new and experienced SBDM members complete professional development activities provided by the Kentucky Department of Education (department) through providers that have been endorsed by the department. This administrative regulation clarifies training requirements for SBDM members and prescribes the process for a training provider to be endorsed by the department. Finally, KRS 160.345(6) requires the department collect the names and addresses for each SBDM member. This administrative regulation establishes the SBDM database and associated reporting requirements.

Section 1. Definitions. (1) "Classified employee" shall have the same meaning as defined in KRS 161.011(1)(a).

(2) "Parent" shall have the same meaning as defined in KRS 160.345.

(3) "Teacher" shall have the same meaning as defined in KRS 160.345. [The membership of school councils shall be maintained at the 3-2-1 ratio set forth in KRS 160.345(2) so that parental membership shall not fall below one-third (1/3) of voting members. Any representation of classified staff or of students on the school council shall either be as nonvoting members of the council or on committees advisory to the council, whichever the council itself shall decide.]

Section 2. Alternative Models for School-Based Decision Making. (1) On or after January 1 and prior to March 1 of each calendar year, a school choosing to develop an alternative model for school-based decision making (SBDM) pursuant to KRS 160.345(7) shall submit a completed Alternative School-Based Decision Making Application through its local board of education to the Commissioner of Education (Commissioner) for consideration by the Kentucky Board of Education (KBE).

(2) The Kentucky Department of Education (department) shall provide technical assistance, upon request, to districts prior to submission of the Alternative School-Based Decision Making Application to help ensure minimum compliance with the required components set forth in KRS 160.345(7).

(3) Within thirty (30) days from receipt of a completed Alternative School-Based Decision Making Application, the Commissioner, or his designee, shall review and recommend the KBE approve or deny the Alternative School-Based Decision Making Application.

(4) At the next regularly scheduled meeting of the KBE following the receipt of the recommendation from the Commissioner, or his designee, pursuant to subsection (3) of this Section, the KBE shall approve or deny the Alternative School-Based Decision Making Application.

(5) Implementation of an approved Alternative School-Based Decision Making Application shall begin on July 1 unless otherwise specified in the Alternative School-Based Decision Making Application submitted to and approved by the KBE.

(6) An alternative SBDM model approved by the KBE is subject to ongoing review but shall be valid until the earlier of the following occurs:

(a) The school implements a traditional SBDM that complies with KRS 160.345 following a majority vote by the existing SBDM to do so and evidence of the council's majority vote to reinstate the traditional SBDM model is communicated in writing to the department;

(b) The school qualifies for and is granted, where applicable, an SBDM exemption under Section (3) of this administrative regulation;

(c) The school is identified for comprehensive support and improvement and has its SBDM authority transferred to the superintendent pursuant to KRS 160.346; or

(d) The KBE revokes approval for the alternative SBDM model.

(7) The department shall maintain a record of all schools that apply for an alternative SBDM model and a record of all approved alternative SBDM models.

(8) An Alternative School-Based Decision Making Application shall not be necessary for changes to an SBDM that maintain the parent, teacher, and administrator voting membership ratio prescribed in KRS 160.345. An SBDM may add one or more non-voting members upon a majority vote of the existing SBDM without submission of an Alternative School-Based Decision Making Application.

(1) If a school can demonstrate that it had in operation prior to July 13, 1990, a successful school-based decision making model composed of a different membership than specified in KRS 160.345(2), it may apply to the State Board for Elementary and Secondary Education for approval of its model under KRS 160.345(7) regarding alternative models. Priority for approval of alternative models shall be given to those preexisting models which add parents in numbers sufficient to meet the 3-2-1 statutory configuration.

(2) To demonstrate that a school had a formal, operational, decision-making entity in place before July 13, 1990, it shall submit written evidence of decisions and actions taken by the decision-making body and implemented in the school. Groups that were informal and advisory in that they were dealing with peripheral issues not covered in the Kentucky Education Reform Act of 1990 shall not qualify for alternative model approval.

(3) In the case of requests for approval of alternative models which were in operation prior to July 13, 1990, the school shall show evidence that the model in existence has been subjected to review, evaluation, and recommendation regarding its continuation by representatives of the parents, students, certified personnel, and the administrators of the school, and that two-thirds (2/3) of the faculty (all certified members of the school including any itinerant teacher assigned to the school for payroll purposes) have agreed to apply for the continued use of that model for school-based decision-making.

### Section 3. Exemptions from School-Based Decision Making.

(1) On or after January 1 and prior to March 1 of each calendar year, a school required to implement school-based decision making pursuant to KRS 160.345 may seek an SBDM exemption by submitting a written request to the Commissioner for consideration by the KBE.

(2) The department shall provide technical assistance, upon request, to districts prior to submission of the written request to help ensure minimum compliance with the required components set forth in KRS 160.345(5).

(3) Within thirty (30) days from receipt of the written request, the Commissioner, or his designee, shall review and verify the school meets the requirements set forth in KRS 160.345(5).

(4) Once the Commissioner, or his designee, has verified the school meets the requirements set forth in KRS 160.345(5), the school's written request shall be submitted to the KBE for final approval pursuant to KRS 160.345(5). If the Commissioner, or his designee, are unable to verify the school has met the requirements for exemption set forth in KRS 160.345(5), the Commissioner shall recommend that the KBE deny the exemption request.

(5) Implementation of an approved school-based decision making exemption shall begin on July 1 unless otherwise specified in the written request submitted to and approved by the KBE.

(6) An SBDM exemption approved by the KBE shall be valid for one (1) school year; however, a school may annually re-apply for an SBDM exemption if it meets the requirements set forth in KRS 160.345(5).

(7) The department shall maintain a record of all schools that apply for an SBDM exemption and a record of all approved SBDM exemptions. Each application for alternative models from schools which began school-based decision making after July 13, 1990, shall be based on the 3-2-1 statutory configuration so that parental membership shall not fall below one-third (1/3) of voting members; shall have no more than two (2) year terms of office, and shall show any student or classified staff representation as nonvoting or advisory. The other requests shall be approved or rejected after a case-by-case review by the board and recommendation by the Department of Education.

Section 4. Training for School-Based Decision Making Members. (1) SBDM members shall satisfy training required under KRS 160.345 by completing department provided training or training provided by individuals that have been endorsed by the department to provide such training.

(2) To be endorsed by the department to provide SBDM member training, an individual shall successfully complete a training program, as required by the department, on an annual basis.

(3) The department shall maintain a record of individuals that it has endorsed to provide training to SBDM members.

(4) Individuals the department has endorsed to provide training to SBDM members shall use training modules developed or approved by the department.

(5) If an individual the department has endorsed to provide training to SBDM members would like to use non-department training modules to meet the requirements of KRS 160.345(6), such training modules shall be approved in advance by the department.

(6) To have a training module approved by the department, an individual or entity shall submit the following in writing to the department for review:

(a) The title of module;

(b) The number of training hours the module provides;

(c) The intended audience of the module;

(d) An overview of the module, including topics addressed and anticipated outcomes for attendees; and

(e) Other evidence deemed necessary by the department.

(7) The department shall maintain a record of non-department trainings that have been approved to meet the requirements of KRS 160.345(6). [KRS 160.345(7) stipulates that the school shall submit its application for an alternative model "through" the local board to the Commissioner of Education and the State Board for Elementary and Secondary Education for approval. The state board interprets that provision to mean that the local board shall transmit the request to the state as quickly as possible. In exercising this function, the local board is serving as transmittal agent and shall not have the right to delay or deny a school's request for an alternative model.]

Section 5. Database of School-Based Decision Making Members. (1) By November 1 of each year, each school shall provide, in a format acceptable to the department, the following information to the department:

(a) The names and addresses of each SBDM member; and

(b) Verification that each SBDM member has completed the training required by KRS 160.345(6).

(2) The department shall maintain a database of all SBDM members, including training verifications for SBDM members. All alternative models approved by the state board pursuant to any provision contained in this administrative regulation shall be valid for an indefinite period, subject to continuous review by the state board. This approval for an indefinite period, subject to continuous review by the state board, shall apply to all alternative models approved prior to and subsequent to the date of enactment of this administrative regulation.]

Section 6. Incorporation by Reference. (1) "Alternative School-Based Decision Making Application," February 2021 is incorporated by reference.

(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. [The Kentucky Department of Education shall keep records of all schools which apply for, and all schools which are granted, an alternative model for school-based decision-making.]

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS

156.070(5).

JASON E. GLASS, Ed.D., Commissioner  
LU YOUNG, Chairperson

APPROVED BY AGENCY: April 13, 2021

FILED WITH LRC: April 13, 2021 at 11:27 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on June 22, 2021, at 10:00 a.m. in the State Board Room, 5<sup>th</sup> Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 2021.

CONTACT PERSON: Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5<sup>th</sup> Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application process as well as approval guidelines for alternative models for school-based decision making, as well as approval guidelines for receiving a SBDM exemption pursuant to KRS 160.345(5). This administrative regulation clarifies training requirements for SBDM members and prescribes the process for a training provider to be endorsed by the department. This administrative regulation establishes the SBDM database and associated reporting requirements.

(b) The necessity of this administrative regulation: The KBE is required to exempt, upon request, a school that meets the requirements of KRS 160.345(5) from implementing SBDM. Further, KRS 160.345(6) requires new and experienced SBDM members complete professional development activities provided by the Kentucky Department of Education (department) through providers that have been endorsed by the department. Finally, KRS 160.345(6) requires the department collect the names and addresses for each SBDM member. Amendments to 701 KAR 5:100 are necessary to align the regulation with KRS 160.345 and provides procedures for the implementation of these statutory requirements.

(c) How this administrative regulation conforms to the content of the authorizing statute: This amended regulation conforms to state statute by establishing an application process as well as approval guidelines for alternative models for school-based decision making. This administrative regulation establishes the application process as well as approval guidelines for receiving a SBDM exemption pursuant to KRS 160.345(5). This administrative regulation clarifies training requirements for SBDM members and prescribes the process for a training provider to be endorsed by the department. This administrative regulation establishes the SBDM database and associated reporting requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the application process as well as approval guidelines for receiving a SBDM exemption pursuant to KRS 160.345(5). This administrative regulation clarifies training requirements for SBDM members and prescribes the process for a training provider to be endorsed by the department. This administrative regulation establishes the SBDM database and associated reporting requirements.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this regulation change the existing regulation by incorporating the application for alternative SBDM models into the regulation. The amendment also provides clarifications related to timelines and the inclusion of non-voting members on an SBDM council.

(b) The necessity of the amendment to this administrative regulation: Amendments to 701 KAR 5:100 are necessary to further clarify the requirements of KRS 160.345.

(c) How the amendment conforms to the content of the authorizing statute: This amended regulation conforms to state statute by establishing an application process as well as approval guidelines for alternative models for school-based decision making. This administrative regulation establishes the application process as well as approval guidelines for receiving a SBDM exemption pursuant to KRS 160.345(5). This administrative regulation clarifies training requirements for SBDM members and prescribes the process for a training provider to be endorsed by the department. This administrative regulation establishes the SBDM database and associated reporting requirements.

(d) How the amendment will assist in the effective administration of the statutes: This amended regulation assists in the effective administration of the statute by establishing an application process as well as approval guidelines for alternative models for school-based decision making. This administrative regulation establishes the application process as well as approval guidelines for receiving a SBDM exemption pursuant to KRS 160.345(5). This administrative regulation clarifies training requirements for SBDM members and prescribes the process for a training provider to be endorsed by the department. This administrative regulation establishes the SBDM database and associated reporting requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local education agencies (LEAs), school-based decision making councils, the KBE, and the KDE will be impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: LEAs with schools having school-based decision making authority and an interest in SBDM alternative model and/or SBDM exemption must comply with the process established within the regulation, pursuant to KRS 160.345. Entities seeking placement on the KDE's endorsed SBDM trainer list must comply with Section 4 of this regulation. The KBE is required to annually report SBDM council members.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The KBE and the KDE may incur unknown costs in the form of additional staff time and dedicated resources with regard to the approval of an alternative model application and/or written request for SBDM exemption, which the KBE is required to approve pursuant to KRS 160.345(5) and KRS 160.345(7). State funding is used for the implementation and enforcement of the obligations established in KRS 160.345.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amended regulation conforms to state statute, KRS 160.345, and conformance with authorizing statutes ensures clarity and legal compliance for the entities identified in question (3).

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

(a) Initially: The KBE and the KDE may incur minimal costs in the form of additional staff time and dedicated resources with regard to the approval of an alternative model application and/or written request for SBDM exemption, which the KBE is required to approve pursuant to KRS 160.345(5) and KRS 160.345(7). State funding is used for the implementation and enforcement of the obligations established in KRS 160.345.

(b) On a continuing basis: The KBE and the KDE may incur minimal costs in the form of additional staff time and dedicated resources with regard to the approval of an alternative model application and/or written request for SBDM exemption, which the KBE is required to approve pursuant to KRS 160.345(5) and KRS 160.345(7). State funding is used for the implementation and enforcement of the obligations established in KRS 160.345.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funding is used for the implementation and enforcement of the obligations established in KRS 160.345.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because the amendment to this administrative regulation applies equally to individuals, businesses, organizations, or state and local governments affected by this administrative regulation.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local education agencies (LEAs), the Kentucky Board of Education (KBE), and the Kentucky Department of Education (KDE).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6455, 160.345 160.346

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. For the first full year, there is no anticipated budget impact related to the amendment of this administrative regulation for LEAs; however, the KBE and the KDE may incur minimal costs in the form of additional staff time and dedicated resources with regard to the approval of an alternative model application and/or written request for SBDM exemption, which the KBE is required to approve pursuant to KRS 160.345(5) and KRS 160.345(7).

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? The KBE and the KDE may incur minimal costs in the form of additional staff time and dedicated resources with regard to the approval of an alternative model application and/or written request for SBDM exemption, which the KBE is required to approve pursuant to KRS 160.345(5) and KRS 160.345(7).

(d) How much will it cost to administer this program for subsequent years? The KBE and the KDE may incur unknown costs in subsequent years in the form of additional staff time and dedicated resources with regard to the approval of an alternative model application and/or written request for SBDM exemption, which the KBE is required to approve pursuant to KRS 160.345(5) and KRS 160.345(7).

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

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

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

##### 702 KAR 3:060. Procedure for payment of employees.

RELATES TO: KRS 157.390, 157.395, 160.291, 160.450, 161.210(1)

STATUTORY AUTHORITY: KRS 156.070(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.291 provides for all school employees working on a continuing, regular basis of less than twelve (12) months a year to be paid regularly, on dates determined by the employing board of education, with the gross salary received on each pay date to be equal to the employee's annual salary divided by the number of pay dates and with payments deemed to be for services rendered. KRS 160.450 provides for the fiscal year of all school districts to begin on July 1 and end on June 30. KRS 161.210 requires a teacher or other person in a public school to submit reports at the time and in the manner prescribed by the state board. KRS 156.070 gives the Kentucky Board of Education the management and control of the public schools. KRS 157.395 requires a local board of education to provide a public school teacher who has attained certification from the National Board for Professional Teaching Standard with an annual salary supplement [of \$2000] for the life of the certificate while the teacher is employed as a teacher or mentor in the field of national certification. A teacher who attained certification from the National Board for Professional Teaching Standards before July 1, 2020 shall receive a national board certification salary supplement of \$2,000 for the life of the certificate. A teacher who attains certification after July 1, 2020, shall receive an annual national board certification salary supplement for the life of the certificate in accordance with the amount appropriated for this purpose by the General Assembly. If an annual supplement amount appropriated by the General Assembly is less than \$2,000, the local board may provide an additional supplement up to the amount required for the total annual supplement to equal \$2,000. A local board of education requests reimbursement for these purposes from the fund to Support Education Excellence in Kentucky (SEEK). This administrative regulation establishes procedures relative to payment of certified and classified school employees.

Section 1. A board of education shall establish a calendar for payment of salaries to all school employees working on a continuing, regular basis of less than twelve (12) months a year and may require a teacher to present reports of attendance and other necessary reports before the salary check is delivered.

Section 2. A board of education may adopt a policy whereby employees' salaries may be made payable for a period in excess of the number of months for which the school is operated, not exceeding twelve (12) months if the board adopts one (1) of the following plans:

(1) The board of education shall write all deferred salary checks on or before June 30 of the current fiscal year and these deferred checks shall then be delivered at the regular pay periods in July and August of the following fiscal year; or

(2) The board of education shall set up a payroll account into which shall be transferred on the order of the board of education on or before June 30, the gross amount for salaries earned by employees but not paid. The amounts transferred into this payroll account shall be held for the payment of deferred employees' salaries and shall not be used for any other purpose. Payment of salaries from this fund shall be at the regular pay periods in July and August of the following fiscal year.

Section 3. Upon written request to the superintendent by a school district employee, a local board of education shall pay all deferred salary checks to the employee. To comply with the written request, a local board shall provide the deferred checks prior to the end of the fiscal year and no later than the first regular payroll date occurring after completion of the employee's responsibilities or

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duties.

Section 4. (1) A board of education shall pay an annual national board certification salary supplement [of \$2,000] to a teacher who has attained certification from the National Board for Professional Teaching Standards who works as a teacher or mentor in the field of certification at least fifty (50) percent of the time.

(2) A board of education shall request reimbursement for salaries supplements paid during a school year by submitting the following information to the Department of Education by May 15 of that school year:

- (a) Teacher's name;
- (b) [Social Security number;
- (c)] Field of national certification;
- (c)] Subject and grade;
- (d)] Date of certification;

(e)] For teachers eligible for the first time, the date of completion of all requirements for the National Board for Professional Teaching certificate;

(f)] School name; and

(g)] Reimbursement amount requested.

(3) If an eligible teacher satisfactorily completes all requirements for the National Board for Professional Teaching certificate by September 1 of the school year, the salary supplement [of \$2,000] shall be added to the teacher's annual salary. If the teacher becomes eligible for the national board certification salary supplement during the school year, the school district shall pay the portion of the salary supplement equal to the portion of the school year during which the teacher was eligible. ~~If an eligible teacher completes all requirements for the National Board for Professional Teaching certificate between September 2 and December 31 of the school year, the salary supplement of \$1,000 shall be added to the teacher's annual salary.~~

(4) If the teacher becomes ineligible for the national board certification salary supplement during the school year, the school district shall pay the portion of the salary supplement equal to the portion of the school year during which the teacher was eligible.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

JASON GLASS, Ed.D., Commissioner of Education  
LU YOUNG, Chair

APPROVED BY AGENCY: April 15, 2021

FILED WITH LRC: April 15, 2021 at 10:44 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on June 22, 2021, at 10:00 a.m. in the State Board Room, 5<sup>th</sup> Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 2021.

CONTACT PERSON: Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5<sup>th</sup> Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amendment

brings the regulation into conformity with the provisions of KRS 157.395.

(b) The necessity of this administrative regulation: KRS 157.395 was amended to change the requirements for national board certification salary supplements to teachers attaining national board certification after July 1, 2020. This amendment brings the regulation into conformity with the statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 156.070(4) permits the Kentucky Board of Education to promulgate administrative regulations for the efficient management, control, and operation of the schools and programs under its jurisdiction. This amendment provides for the efficient administration of the reimbursement of salary supplements for nationally board certified teachers as required by KRS 157.395.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment provides for the efficient administration of the reimbursement of salary supplements for nationally board certified teachers as required by KRS 157.395.

(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: Pursuant to KRS 157.395, teachers attaining national board certification after July 1, 2020, shall receive an annual national board certification salary supplement for the life of the certificate in accordance with the amount appropriated for this purpose by the General Assembly. If an annual supplement amount appropriated by the General Assembly is less than two thousand dollars (\$2,000), the local board may provide an additional supplement up to the amount required for the total annual supplement to equal two thousand dollars (\$2,000). Teachers with certificates issued prior to July 1, 2020 shall receive two thousand dollars (\$2,000) for the life of the certificate.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to bring the regulation into conformity with the provisions of KRS 157.395.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 156.070(4) permits the Kentucky Board of Education to promulgate administrative regulations for the efficient management, control, and operation of the schools and programs under its jurisdiction. This amendment provides for the efficient administration of the reimbursement of salary supplements for nationally board certified teachers as required by KRS 157.395.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides for the efficient administration of the reimbursement of salary supplements for nationally board certified teachers as required by KRS 157.395.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: School districts and national board certified teachers.

(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: Neither districts nor national board certified teachers will be impacted by the change in regulation. The amendment conforms the regulation to the existing statute. The statute was amended to permit districts to reimburse teachers attaining national board certification after July 1, 2020 based on the amount appropriated by the General Assembly.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Amending the regulation to conform to KRS 157.395 will eliminate conflicting provisions between the statute and regulation reducing confusion for school districts and teachers attaining national board certification.

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

this administrative regulation:

(a) Initially: There should be no cost to implement. The regulation amends an existing program.

(b) On a continuing basis:

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

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

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

(9) TIERING: Is tiering applied? No, this regulation uniformly applies to all school districts.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 157.395.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment brings the regulation into conformity with KRS 157.395. That statute permits a school district to provide an annual national board certification salary supplement for teachers attaining a certificate after July 1, 2020 in accordance with the amount appropriated by the General Assembly. If the annual supplement amount appropriated by the General Assembly is less than two thousand dollars (\$2,000), the local board may provide an additional supplement up to the amount required for the total annual supplement to equal two thousand dollars (\$2,000). Prior to the proposed amendment, the regulation required districts to pay an annual supplement of two thousand dollars (\$2,000) to all national board certified teachers. Teachers attaining a certification prior to July 1, 2020 will receive a two thousand dollars (\$2,000) annual supplement for the life of their certificate. Districts providing a supplement of less than two thousand dollars (\$2,000) in accordance with the amount appropriated by the General Assembly may have a reduction in expenditures.

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

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

(c) How much will it cost to administer this program for the first year? Unknown. However, because this is an amendment of an existing program, no new costs are expected.

(d) How much will it cost to administer this program for subsequent years? Unknown. However, because this is an amendment of an existing program, no new costs are expected.

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

Revenues (+/-): N/A

Expenditures (+/-): Districts may experience a reduction in expenditures if electing to provide an annual supplement in the amount appropriated by the General Assembly. If the district does not provide an additional amount to teachers with national board certificates attained after July 1, 2020 to bring the supplement up to two thousand dollars (\$2,000), then the district will have reduced expenditures. It is unknown how many districts will provide such supplements.

Other Explanation:

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

#### 703 KAR 5:070. Procedures for the inclusion of special populations in the state-required assessment and accountability programs.

RELATES TO: KRS 158.6451, 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 156.029, 156.070, 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453 requires the Kentucky Board of Education to create and implement a statewide assessment program that measures the achievement of students, schools and districts, complies with the federal Every Student Succeeds Act of 2015, Pub. L. No. 114-95 and ensures accountability. KRS 158.6455 provides the Kentucky Board of Education with the authority to promulgate administrative regulations to establish a system of determining successful schools and a system of rewards and assistance for certified staff in schools and districts. This administrative regulation establishes procedures for the inclusion of special student populations in the state-required assessment and accountability programs.

Section 1. Incorporation by Reference. (1) "Procedures for Inclusion of Special Populations in the State-Required Assessment and Accountability Programs", April 2021 [~~December 2016~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Assessment and Accountability, 5th floor, 300 Building, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

JASON E. GLASS, Ed.D., Commissioner

LU YOUNG, ED.D., Chairperson

APPROVED BY AGENCY: April 13, 2021

FILED WITH LRC: April 13, 2021 at 12:59 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on June 22, 2021, at 10:00 a.m. in the State Board Room, 5th Floor, Kentucky Department of Education, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

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.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: 703 KAR 5:070,

which incorporates by reference “Inclusion of Special Populations in the State-Required Assessment and Accountability Programs,” April 2021, establishes procedures for the inclusion of special populations of students in the state-required assessment and accountability system that classifies schools and districts.

(b) The necessity of this administrative regulation: KRS 158.6455 provides the Kentucky Board of Education with the authority to promulgate administrative regulations to establish a system of determining successful schools and a system of rewards and assistance for certified staff in schools and districts. In addition, KRS 158.6453 requires the Kentucky Board of Education to create and implement a statewide assessment program that measures the achievement of students, schools and districts, complies with the federal Every Student Succeeds Act of 2015, Pub. L. No. 114-95 and ensures accountability.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for implementation of the statewide assessment and accountability system. The regulation provides procedures for inclusion of special populations in the requirements of KRS 158.6453, KRS 158.6455 and the federal Every Student Succeeds Act of 2015, Pub. L. No. 114-95.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance on the inclusion of student special populations in the state-required assessment and accountability programs. The regulation defines accommodations permitted with state-required testing for students with education plans (i.e., Individual Education Program (IEP), 504 Plan and Program Services Plan for English learners) and for students enrolled in particular programs (i.e., alternative programs, state agency, home/hospital settings); and for students participating in the alternate assessment program.

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

(a) How the amendment will change this existing administrative regulation: The amendments throughout the regulation make language more concise by adding new language or by removing outdated or confusing language. In addition, language has been updated to align with direction and guidance received by the U.S. Department of Education and recent audit findings.

In an effort to reduce audit findings, Section Two – Inclusion of Students As English Learners (EL) was amended to clarify frequently mis-understood requirements. This includes amendments to clarify processes for the identification and planning processes for English Learners. The amendments re-organize section two, create a definition for the Program Service Plan (PSP), specify the membership of a PSP committee, and create a requirement for schools to administer a KDE created Home Language Survey. Section two also makes minor language changes to align the regulation to the ESSA, including the inclusion of a opt out requirements for parents of EL students and monitoring requirements. Amendments to section 2 also includes removal of language that Kindergarten students cannot exit EL status, which is a result from a recent audit finding.

(b) The necessity of the amendment to this administrative regulation: These amendments provide specific improvements to procedures and guidelines for the state assessment and accountability program that measures the achievement of students, schools and districts, complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor, and ensures accountability as required by KRS 158.6453 and KRS 158.6455.

(c) How the amendment conforms to the content of the authorizing statute: These amendments provide specific details and guidance regarding implementation of the state assessment and accountability system in Kentucky public schools.

(d) How the amendment will assist in the effective administration of the statutes: These amendments provide specific procedures and guidance to ensure consistent implementation of accountability in Kentucky schools and districts.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this

administrative regulation: All public-school districts in Kentucky and supporting staff in the Kentucky Department of Education.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The amendments will impact schools and districts and the Kentucky Department of Education by providing the administrative procedures and guidance necessary to ensure consistent application of accountability by schools and districts as required by KRS 158.6453.

(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 Kentucky Department of Education, schools and districts shall apply consistently the specific procedures and guidance in the state assessment and accountability system. Minimal action required by schools and districts as a result of the amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The schools and districts will consistently apply procedures and guidance in the assessment and accountability system.

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

(a) Initially: Additional costs are not anticipated.

(b) On a continuing basis: Additional costs are not anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Additional costs are not anticipated. State and federal funds to the extent any additional costs are incurred.

(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 will be necessary.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6453; KRS 158.6455

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Regulation does not generate revenue or

establish fees.

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

**703 KAR 5:225. Continuous improvement planning for schools and districts.**

RELATES TO: KRS 158.645, 158.649, 158.6451, 158.6453, 158.6455, 160.346, 20 U.S.C. 6311

STATUTORY AUTHORITY: KRS 158.649, 158.6453, 158.6455, 160.346

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide accountability system that measures the achievement of students, schools, and districts; complies with the federal Elementary and Secondary Education Act, 20 U.S.C. secs. 6301 et seq., as amended by the Every Student Succeeds Act (ESSA), or its successor; and ensures accountability. KRS 158.6455 requires the Kentucky Board of Education, following the revision of academic standards and development of a student assessment program, to create an accountability system to classify schools and districts, including a formula for accountability, goals for improvement, and rewards and consequences. This administrative regulation establishes the comprehensive school and district improvement plan process. The requirements are key components of the continuous improvement process in Kentucky and ultimately fulfillment of school, district, and state goals under the Kentucky State Plan as required by the ESSA.

Section 1. Definitions. (1) "Charter school" means a "public charter school" and shall have the same meaning as defined in KRS 160.1590(12).

(2) "Charter school board of directors" or "governing board" means charter school board of directors and shall have the same meaning as defined in KRS 160.1590(6).

(3) "Comprehensive District Improvement Plan" or "CDIP" means a plan developed by the local school district with the input of parents, faculty, staff, and representatives of school councils from each school in the district, based on a review of relevant data that includes targets, strategies, activities, and a time schedule to support student achievement and student growth, and to eliminate achievement gaps among groups of students.

(4) "Comprehensive School Improvement Plan" or "CSIP" means a plan developed by the school council, or successor, and charter schools with the input of parents, faculty, and staff, based on a review of relevant data that includes targets, strategies, activities, and a time schedule to support student achievement and student growth, and to eliminate achievement gaps among groups of students.

Section 2. Monitoring. (1) The department shall review and approve all submissions required by this administrative regulation.

(2) The department shall monitor implementation of each CDIP or CSIP and shall provide guidance based upon information, which may include the following:

- (a) Progress reports from the school through the district;
- (b) Data reviews;
- (c) On-site observation; and
- (d) Other information supplied at the option of the district or school.

(3) In addition to the activities undertaken by the department, each school district or governing board shall monitor compliance of its respective schools.

Section 3. Comprehensive School and District Improvement Plan Process. (1) Each school or district shall, ~~[by January 1 of each school year,]~~ develop, review, and revise a comprehensive school or district improvement plan.

(2) The structure of a school or district comprehensive improvement plan shall include:

(a) Completion of a narrative summary of the current state of the school ~~[the Continuous Improvement Diagnostic]~~ between August 1 and October 1 of each school year;

(b) Completion of the needs assessment between October 1 and November 1 of each school year that shall include:

- 1. A description of the data reviewed and the process used to develop the needs assessment;
- 2. A review of the previous plan and its implementation to inform development of the new plan; ~~[and]~~
- 3. Perception data gathered from the administration of a valid and reliable measure of teaching and learning conditions; and

4. Any additional requirements made necessary by the receipt of federal funds authorized by the Elementary and Secondary Education Act.

(c) Process for development of the CSIP or CDIP, to be completed between November 1 and January 1 of each school year, which shall include:

- 1. Analysis of data to determine causes and contributing factors;
- 2. Prioritization of needs; and
- 3. Development of goals, objectives, strategies, and activities based on the needs assessment and root cause analysis that shall include targets or measures of success, timelines, persons responsible, a budget that includes resources needed and source of funding, and a process for meaningful stakeholder communications and input;

(d) A set of assurances, approved by and on file with the local board of education, with a signed declaration by the superintendent that all schools in the district are in compliance with the requirements of the statutes and administrative regulations included in those assurances; ~~[and]~~

(e) A process for annual review and revision by the school or district; ~~[.]~~

(f) A district level plan for providing an equitable education to English Learners, to be completed by May 1 of each school year; and

(g) Other components required by state statutes or regulations. Unless otherwise noted, all additional components of the CSIP or CDIP must be complete by May 1 of each school year.

(3) Continuous improvement and capacity building shall drive the development of the plan.

(4) Other required components in the process shall include:

(a) A standards-based process for measuring organizational effectiveness that shall include purpose and direction, governance and leadership, teaching and assessing for learning, resources and support systems, and using results for continuous improvement;

(b) A data driven self-evaluation based on the standards, including a means to gather meaningful stakeholder input;

(c) A written improvement plan based on the issues identified in the self-evaluation;

(d) A set of assurances that includes a determination of compliance with each assurance and the ability to upload any supporting documentation needed;

(e) Electronic submission of all elements of the plan;

(f) Monitoring implementation of the plan through implementation and impact checks; and

(g) Evaluation of the effectiveness based on the strategies and activities in the plan. ~~[.]~~

~~(5) A CSIP shall also include the elements required of schools pursuant to KRS 158.649(5).]~~

(5) [(6)] The CDIP for each district shall be posted to the district's Web site. The CSIP for each school shall be posted to the school's Web site.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

JASON E. GLASS, Ed.D., Commissioner  
 LU YOUNG, ED.D., Chairperson



APPROVED BY AGENCY: April 13, 2021

FILED WITH LRC: April 13, 2021 at 12:45 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this proposed administrative regulation shall be held on June 22, 2021, at 10:00 a.m. in the State Board Room, 5th Floor, Kentucky Department of Education, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

**CONTACT PERSON:** Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: The Elementary and Secondary Education Act (ESEA), as reauthorized by the Every Student Succeeds Act (ESSA), 20 U.S.C 6301, requires states receiving Title I Part A funding to adopt a system of accountability. An element of that accountability system is a system of goal making and planning that is utilized by schools and districts. Districts will address identified needs through setting goals in their Comprehensive School Improvement Plan (CSIP) and Comprehensive District Improvement Plan (CDIP), which will be reviewed annually. Much of Kentucky's support and monitoring activities for all schools and districts regarding federal and state programs center around the development, revision and monitoring of the CSIP or CDIP.

(b) The necessity of this administrative regulation: The amendments to this regulation reduce administrative burden by removing named diagnostics and creating provisions for elements of the CDIP or CSIP which may be incorporated by other state statutes or regulations. These changes provide added flexibility for KDE by allowing the department to remove unnecessary components out of Kentucky's improvement planning management system (eProve). The amendments also help ensure that the regulation stays up-to-date as required elements are changed by other state statutes or regulations.

(c) How this administrative regulation conforms to the content of the authorizing statute: The regulation conforms to the authority given to the Kentucky Board of Education in KRS 158.6453 and 158.6455. It also aligns with the requirements under the ESEA, 20 U.S.C 6301, as reauthorized by the ESSA.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation outlines the continuous improvement process in Kentucky that is used by schools and districts in their pursuit of their school, district, and state goals under the state accountability system. These are systems that will be utilized to meet federal requirements under the required accountability system.

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

(a) How the amendment will change this existing administrative regulation: These amendments create added flexibilities designed to reduce administrative burden for both the KDE and local schools and districts. This is accomplished by removing named diagnostics, clarifying timelines, and creating provisions for the treatment of CSIP or CDIP elements added by other state statutes or regulations.

(b) The necessity of the amendment to this administrative regulation: The continuous improvement process provided in this

regulation is a necessary element of Kentucky's accountability system because of the direct tie to school and district goal setting and planning to meet those goals. It is also an element of the Kentucky State Plan that was submitted for approval to the United States Department of Education.

(c) How the amendment conforms to the content of the authorizing statute: KRS 158.6453 and 158.6455 spell out the required elements of the assessment and accountability system. The continuous improvement process described in this regulation is directly tied to the goal setting and planning required to meet the improvement required in the accountability system and uses the data required in the assessment system.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to this regulation reduce administrative burden by removing named diagnostics and creating provisions for elements of the CDIP or CSIP which may be incorporated by other state statutes or regulations. These changes provide added flexibility for KDE by allowing the department to remove unnecessary components out of Kentucky's improvement planning management system (eProve). The amendments also help ensure that the regulation stays up-to-date as required elements are changed by other state statutes or regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected by the amendments made in this regulation include: All public schools and school districts. The KDE as it is tasked with providing guidance, support, technical assistance, and review and oversight of the submitted CSIPs and CDIPs.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Schools and districts already comply with the continuous improvement framework as provided in this regulation as it was a component of the previous system.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no additional cost to schools and districts because they are already complying with the framework provided in this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The supports provided in this regulation will lead schools and districts to sustainable school improvement through intentional goal setting, planning, reflection, and action.

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

(a) Initially: The requirements in this regulation existed prior to the ESSA reauthorization and this regulation amendment. As a result, there is no initial cost. Federal funding is utilized for this work.

(b) On a continuing basis: KDE incurs an ongoing cost of staff and resources. Federal funding is utilized for this work.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funding under Title I Part A.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and districts.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be

impacted by this administrative regulation? Local education agencies and the Kentucky Department of Education 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 158.6453, KRS 158.6455, and 20 U.S.C. 6301

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No additional expenditures are anticipated because of this amendment.

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

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

(c) How much will it cost to administer this program for the first year? This framework existed prior to the amendment in this regulation. As a result, there is no initial cost. Federal funding is utilized for this work.

(d) How much will it cost to administer this program for subsequent years? KDE incurs an ongoing cost of staff and resources. Federal funding is utilized for this work.

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

Revenues (+/-): N/A

Expenditures (+/-): NA

Other Explanation: N/A

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

**703 KAR 5:240. Accountability administrative procedures and guidelines.**

RELATES TO: KRS 158.6451, 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453(3)(a) and KRS 158.6455(2)(a) require the Kentucky Board of Education to promulgate administrative regulations to create and implement a balanced statewide assessment and accountability program that measures the achievement of students, schools, and districts; complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor; and ensures accountability. This administrative regulation establishes administrative procedures and guidelines for Kentucky's assessment and accountability program.

Section 1. Definitions. (1) "A1" means a school that:

(a) Is under administrative control of a principal and eligible to establish a school-based decision-making council; and

(b) Is not an alternative education program operated by, or as a part of, another school.

(2) "Alternative education program" is defined by KRS 160.380(1)(a).

(3) "Full Academic Year" means 100 or more instructional days of enrollment within the school year.

Section 2. Assigning Students for School and District Accountability. (1)(a) A student enrolled in an A1 school for a full academic year shall be counted in the accountability membership of the A1 school and shall be attributed to the A1 school for accountability purposes. This shall include state agency children or other students who have been enrolled in an A1 school by any authority. (b) A student qualifying as an early graduate based on criteria defined in 704 KAR 3:305 shall be included in the school's accountability calculation in the year in which the student graduates whether or not the student has a full academic year of

enrollment.

(2) A student enrolled in an A1 school and attending an alternative education program during the year as a result of local school district policies or procedures shall be counted in the accountability membership of the A1 school and shall be attributed to the A1 school for accountability purposes if the student's combined enrollment in the A1 school and alternative education program is a full academic year.

(3) A student enrolled in an alternative education program for a full academic year as a result of local school district policies or procedures without any enrollment in an A1 school during the same year shall be attributed to the accountability of the district that the student would have attended if not enrolled in the alternative education program.

(4) A student not enrolled in any A1 school or an alternative education program for a full academic year, but enrolled in a district for a full academic year, shall be assigned to the district for accountability purposes.

(5) The Department of Education shall monitor alternative school placements. If evidence indicates a district is inappropriately placing students into alternative programs to avoid inclusion in accountability, it shall be further investigated by the Department of Education.

Section 3. Assigning Students for State Accountability. (1) Students enrolled in alternative education programs, and not attributed to an A1 school or district, shall be aggregated into a state level accountability report.

(2) If a student, before completing a full academic year in a school or district as provided in Section 2 of this administrative regulation, is enrolled in an alternative education program by a court, a governmental agency other than a Kentucky public school, or Kentucky school district, the student shall be accountable to the state.

Section 4. Inclusion of Schools in Accountability. (1) All A1 schools shall receive annual accountability classifications as established in 703 KAR 5:270, for the state's assessment and accountability system.

(2)(a) For reporting purposes, all alternative education programs shall receive annual accountability reports based on tested students.

(b) Reports for alternative education programs shall be separate from the A1 school accountability reporting.

(c) The alternative education program reports shall outline the unique features and characteristics of the alternative education program and the appropriate uses and limitations of the data.

Section 5. Standard Grade Configuration for Accountability. (1) Accountable grade level configurations shall be elementary, middle, or high school.

(a) Elementary shall include any configuration of grades K-5 or K-6.

(b) Middle school shall include any configuration of grades 5-8 or 6-8.

(c) High school shall include any configuration of grades 9-12.

(2) An A1 school or an alternative education program shall fall into one (1), two (2), or three (3) grade level configurations for accountability reporting.

Section 6. Reporting of Schools with Changed School Service Area. (1)(a) For reporting purposes, a school's past data trend shall be removed from public reporting if a school has a significant change in its stable population.

(b) A school shall be considered to have a stable population, if as a result of a change in service area boundaries or local board of education policies affecting student population served by a school, the population of the school remains at sixty (60) percent or higher of its original students from the previous year in the accountability grades.

(c) To determine if the population is stable, the number of students in the stable population shall be divided by the total number of students in the grades included in the accountability

calculations.

1. If the stable population is sixty (60) percent or higher, the school's past trend data shall be reported.

2. If the stable population is less than sixty (60) percent, the school's past trend data shall not be reported.

(2) A school district shall notify the Department of Education of any school that will have an unstable population compared to the prior year by June 30.

Section 7. Data Review and School or District Appeal of Accountability Classifications. (1) A written request for a data review shall be submitted to the Department of Education within ten (10) days after the Department of Education officially releases the final accountability classifications as established in 703 KAR 5:270, to the public.

(2) A written appeal of a final accountability classification shall be submitted to the Commissioner of Education within forty-five (45) days after the Department of Education officially releases the accountability classifications. The appeal of a final classification shall:

(a) Identify clearly the basis for the wrongful effect on the calculations used to place a school into a classification; and

(b) Detail the requested adjustment to be made to the calculations used to place a school into a classification.

(3)(a) The request for an appeal for a school accountability classification shall be signed by the principal upon approval of the school council. If there is no school council, the request shall also be signed by the superintendent, upon approval of the local board of education.

(b) The request for an appeal for a district accountability classification shall be signed by the superintendent upon approval of the local board of education.

(4)(a) Department of Education staff shall review the request for an appeal against the standards set forth in KRS 158.6455 (6).

(b) A committee shall be appointed by the Commissioner of Education to review the pending appeals and make recommendations to the Commissioner of Education as to whether to dispute an appeal. The committee may include a teacher, a parent, a principal, a district assessment coordinator, a superintendent, and a counselor.

(c) If the appeal is disputed by the department, it shall submit the request to the hearing officer for the Kentucky Board of Education.

(5) The hearing officer shall conduct a hearing in accordance with KRS Chapter 13B. The hearing officer shall submit a written recommended order to the Kentucky Board of Education for the board's consideration in rendering its final order, in accordance with KRS Chapter 13B.

Section 8. Student Participation in State Assessments. (1)(a) All students enrolled shall participate at the appropriate grade level for the state-required assessments in grades 3-12.

(b) For assessment and accountability purposes, the state shall not use the primary level designator and all students in grades 3-12 shall be assigned a single grade level. The assigned grade level shall determine the state tests to administer.

(c) Exceptions for testing shall be made for medical-exempted students [or extraordinary circumstances].

(d) Students categorized as English Learners (EL) shall follow testing guidelines set forth by the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor.

(2) For the state assessments in grades 3-12, a school shall test all students during the test window that are enrolled in each accountability grade on the first day of the school's testing window and shall complete a roster in the electronic application provided by the Department of Education.

(3) A student retained in a grade in which state-required assessments are administered shall participate in the assessments for that grade again and shall continue to be included in all accountability calculations.

(4) A student who is suspended or expelled but continues to receive instructional services required under KRS 158.150 shall participate in the state-required assessments.

Section 9. Students Not Participating in State-Required Assessments. (1) If a student does not participate in state-required assessments, the school at which the student was enrolled on the first day of the testing window shall include the student in the roster in the electronic application provided by the Department of Education.

(2) A student who does not take the state assessments and does not qualify for approved exempted status shall be assigned the lowest reportable score on the appropriate test for accountability calculations.

(3) A student reaching the age of twenty-one (21) years of age who no longer generates state funding under Support Education Excellence in Kentucky shall not be required to participate in state-required assessments.

(4) A student who is expelled and legally not provided instructional services under the standards established in KRS 158.150 shall not be considered to be enrolled for a full academic year, and shall not be included in accountability calculations.

(5) If a student has been expelled or suspended at some point during a year and is enrolled but does not complete the state-required assessment, the student shall be included in the accountability calculation.

(6)(a) If participation in the state-required assessment would jeopardize a student's physical, mental, or emotional well-being, a school or district shall submit a request for medical exemption, which shall be subject to the approval of the Department of Education and which describes the medical condition that warrants exempting a student from the assessments.

(b) An identified disability or handicapping condition alone shall not be considered sufficient reason for granting a medical exemption to state-required assessment and accountability requirements.

(c) A student with an approved medical exemption [or extraordinary circumstance] shall be excluded from state-required assessments and state and federal accountability calculations.

(7) If the student moves out of state or to a private school before state-required assessments can be completed in the school or district's announced testing window, the student shall be excluded from accountability calculations.

Section 10. Required Participation in the National Assessment of Educational Progress (NAEP) and State-Required Field Testing.

(1) If a school is selected by the U.S. Department of Education or its designated contractors to participate in NAEP testing, the school shall participate fully.

(2) If a school is selected by the Department of Education to participate in field testing for state assessment purposes, the school shall participate fully.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

JASON E. GLASS, Ed.D., Commissioner

LU YOUNG, ED.D., Chairperson

APPROVED BY AGENCY: April 13, 2021

FILED WITH LRC: April 13, 2021 at 12:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on June 22, 2021, at 10:00 a.m. in the State Board Room, 5th Floor, Kentucky Department of Education, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative

regulation. Written comments shall be accepted until June 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes administrative procedures and guidelines for Kentucky's assessment and accountability program.

(b) The necessity of this administrative regulation: KRS 158.6453(3)(a) and KRS 158.6455(2)(a) require the Kentucky Board of Education to promulgate administrative regulations to create and implement a balanced statewide assessment and accountability program that measures the achievement of students, schools, and districts; complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor; and ensures accountability.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides administrative procedures and guidelines for the state assessment and accountability system for Kentucky public schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific details and guidance to ensure consistent implementation of the state assessment and accountability system.

(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: After receiving feedback from a recent federal audit on Title 1 programs, it is necessary to remove extraordinary circumstance as an option for exempting students from testing and only allowing medical exemptions to exempt students from testing.

(b) The necessity of the amendment to this administrative regulation: The amendment provides specific improvements to procedures and guidelines for the state assessment and accountability program that measures the achievement of students, schools and districts, complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor, and ensures accountability as required by KRS 158.6453 and KRS 158.6455.

(c) How the amendment conforms to the content of the authorizing statute: This amendment provides specific details and guidance regarding implementation of the state assessment and accountability system in Kentucky public schools.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides specific procedures and guidance to ensure consistent implementation of accountability in Kentucky schools and districts.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky and supporting staff in the Kentucky Department of Education.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The amendment will impact schools and districts and the Kentucky Department of Education by providing the administrative procedures and guidance necessary to ensure consistent application of accountability by schools and districts as required by KRS 158.6453.

(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 Kentucky Department of Education, schools and districts shall apply consistently the specific

procedures and guidance in the state assessment and accountability system. Minimal action required by schools and districts as a result of the amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The schools and districts will consistently apply procedures and guidance in the assessment and accountability system.

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

(a) Initially: Additional costs are not anticipated.

(b) On a continuing basis: Additional costs are not anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Additional costs are not anticipated. State and federal funds to the extent any additional costs are incurred.

(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 will be necessary.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. ESEA section 1111(b)(2)(B)(vii), KRS 158.6453; KRS 158.6455

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Regulation does not generate revenue or establish fees.

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Medicaid Services  
Division of Policy and Operations  
(Amendment)**

**907 KAR 1:038. Hearing Program coverage provisions and requirements.**

RELATES TO: KRS 205.520, 205.622, 205.8451(9), 334.010(4), (9), 334A.020(5), 334A.030, 42 C.F.R. 400.203, [441-30], [447-53], 457.310, 42 U.S.C. 1396a, b, d, 1396r-6

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid Program provisions and requirements regarding the coverage of audiology services and hearing instruments.

Section 1. Definitions. (1) "Audiologist" is defined by KRS 334A.020(5).

(2) "CPT code" means a code used for reporting procedures and services performed by medical practitioners and published annually by the American Medical Association in Current Procedural Terminology.

(3) "Department" means the Department for Medicaid Services or its designee.

(4) "Enrollee" means a recipient who is enrolled with a managed care organization.

(5) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(6) "Healthcare Common Procedure Coding System" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or items.

(7) "Hearing instrument" is defined by KRS 334.010(4).

(8) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

(9) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(10) "Recipient" is defined by KRS 205.8451(9).

(11) "Specialist in hearing instruments" is defined by KRS 334.010(9).

Section 2. General Requirements. (1)(a) For the department to reimburse for a service or item, the service or item shall:

1. Be provided:

a. To a recipient;

(i) Under the age of twenty-one (21) years, including the month in which the recipient becomes twenty-one (21); or

(ii) For evaluation and testing services, not limited by age, by an audiologist, only if the recipient has received a referral from a physician; and

b. By a provider who is:

(i) Enrolled in the Medicaid Program pursuant to 907 KAR 1:672;

(ii) Except as provided by paragraph (b) of this subsection, currently participating in the Medicaid Program pursuant to 907 KAR 1:671; and

(iii) Authorized to provide the service in accordance with this administrative regulation;

2. Be covered in accordance with this administrative regulation;

3. Be medically necessary; and

4. Have a CPT code or HCPCS code that is listed on the most current Department for Medicaid Services Hearing Program Fee Schedule, posted on the department website at: <https://chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>.

(b) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(2)(a) If a procedure is part of a comprehensive service, the department shall:

1. Not reimburse separately for the procedure; and

2. Reimburse one (1) payment representing reimbursement for the entire comprehensive service.

(b) A provider shall not bill the department multiple procedures or procedural codes if one (1) CPT code or HCPCS code is available to appropriately identify the comprehensive service provided.

(3) A provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(4)(a) If a provider receives any duplicate payment or overpayment from the department, regardless of reason, the provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(c) Nonduplication of payments and third-party liability shall be in accordance with 907 KAR 1:005.

(d) A provider shall comply with KRS 205.622.

(5)(a) An in-state audiologist shall:

1. Maintain a current, unrevoked, and unsuspended license in accordance with KRS Chapter 334A;

2. Before initially enrolling in the Kentucky Medicaid Program, submit proof of the license referenced in subparagraph 1\_ of this paragraph to the department; and

3. Annually submit proof of the license referenced in subparagraph 1\_ of this paragraph to the department.

(b) An out-of-state audiologist shall:

1. Maintain a current, unrevoked, and unsuspended license to practice audiology in the state in which the audiologist is licensed;

2. Before initially enrolling in the Kentucky Medicaid Program, submit proof of the license referenced in subparagraph 1\_ of this paragraph to the department;

3. Annually submit proof of the license referenced in subparagraph 1\_ of this paragraph to the department;

4. Maintain a Certificate of Clinical Competence issued to the audiologist by the American Speech-Language-Hearing Association; and

5. Before enrolling in the Kentucky Medicaid Program, submit proof of having a Certificate of Clinical Competence issued to the audiologist by the American Speech-Language-Hearing Association.

(c) If an audiologist fails to comply with paragraph (a) or (b) of this subsection, as applicable based on if the audiologist is in-state or out-of-state, the:

1. Audiologist shall be ineligible to be a Kentucky Medicaid Program provider; and

2. Department shall not reimburse for any service or item provided by the audiologist effective with the date the audiologist fails or failed to comply.

(6)(a) An in-state specialist in hearing instruments shall:

1. Maintain a current, unrevoked, and unsuspended license issued by the Kentucky Licensing Board for Specialists in Hearing Instruments;

2. Before initially enrolling in the Kentucky Medicaid Program, submit proof of the license referenced in subparagraph 1\_ of this paragraph to the department;

3. Annually submit proof of the license referenced in subparagraph 1\_ of this paragraph to the department;

4. Maintain a Certificate of Clinical Competence issued to the specialist in hearing instruments by the American Speech-Language-Hearing Association; and

5. Before enrolling in the Kentucky Medicaid Program, submit proof of having a Certificate of Clinical Competence issued to the specialist in hearing instruments by the American Speech-

Language-Hearing Association.

(b) An out-of-state specialist in hearing instruments shall:

1. Maintain a current, unrevoked, and unsuspended license issued by the licensing board with jurisdiction over specialists in hearing instruments in the state in which the license is held;

2. Before initially enrolling in the Kentucky Medicaid Program, submit proof of the license referenced in subparagraph 1. of this paragraph to the department;

3. Annually submit proof of the license referenced in subparagraph 1. of this paragraph to the department;

4. Maintain a Certificate of Clinical Competence issued to the specialist in hearing instruments by the American Speech-Language-Hearing Association; and

5. Before enrolling in the Kentucky Medicaid Program, submit proof of having a Certificate of Clinical Competence issued to the specialist in hearing instruments by the American Speech-Language-Hearing Association.

(c) If a specialist in hearing instruments fails to comply with paragraph (a) or (b) of this subsection, as applicable based on if the specialist in hearing instruments is in-state or out-of-state, the:

1. Specialist in hearing instruments shall be ineligible to be a Kentucky Medicaid Program provider; and

2. Department shall not reimburse for any service or item provided by the specialist in hearing instruments effective with the date the specialist in hearing instruments fails or failed to comply.

Section 3. Audiology Services. (1) Audiology service coverage shall be limited to one (1) complete hearing evaluation per calendar year.

(2) Unless a recipient's health care provider demonstrates, and the department agrees, that an additional hearing instrument evaluation is medically necessary, a hearing instrument evaluation shall:

(a) Include three (3) follow-up visits, which shall be:

1. Within the six (6) month period immediately following the fitting of a hearing instrument; and

2. Related to the proper fit and adjustment of the hearing instrument; and

(b) Include one (1) additional follow-up visit, which shall be:

1. At least six (6) months following the fitting of the hearing instrument; and

2. Related to the proper fit and adjustment of the hearing instrument.

(3)(a) A referral by a physician to an audiologist shall be required for an audiology service.

(b) The department shall not cover an audiology service if a referral from a physician to the audiologist was not made.

(c) An office visit with a physician shall not be required prior to the referral to the audiologist for the audiology service.

Section 4. Hearing Instrument Coverage. Hearing instrument benefit coverage shall:

(1) If the benefit is a hearing instrument model, be for a hearing instrument model that is:

(a) Recommended by an audiologist licensed pursuant to KRS 334A.030; and

(b) Available through a Medicaid-participating specialist in hearing instruments; and

(2) Except as provided by Section 5(3) of this administrative regulation, not exceed \$800 per ear every thirty-six (36) months.

Section 5. Replacement of a Hearing Instrument. (1) The department shall reimburse for the replacement of a hearing instrument if:

(a) A loss of the hearing instrument necessitates replacement;

(b) Extensive damage has occurred necessitating replacement; or

(c) A medical condition necessitates the replacement of the previously prescribed hearing instrument in order to accommodate a change in hearing loss.

(2) If replacement of a hearing instrument is necessary within twelve (12) months of the original fitting, the replacement hearing instrument shall be fitted upon the signed and dated

recommendation from an audiologist.

(3) If replacement of a hearing instrument becomes necessary beyond twelve (12) months from the original fitting:

(a) The recipient shall be examined by a physician with a referral to an audiologist; and

(b) The recipient's hearing loss shall be re-evaluated by an audiologist.

Section 6. Noncovered services. The department shall not reimburse for:

(1) A routine screening of an individual or group of individuals for identification of a hearing problem;

(2) Hearing therapy except as covered through the six (6) month adjustment counseling following the fitting of a hearing instrument;

(3) Lip reading instructions except as covered through the six (6) month adjustment counseling following the fitting of a hearing instrument;

(4) A service for which the recipient has no obligation to pay and for which no other person has a legal obligation to provide or to make payment;

(5) A telephone call;

(6) A service associated with investigational research; or

(7) A replacement of a hearing instrument for the purpose of incorporating a recent improvement or innovation unless the replacement results in appreciable improvement in the recipient's hearing ability as determined by an audiologist.

Section 7. Equipment. (1) Equipment used in the performance of a test shall meet the current standards and specifications established by the American National Standards Institute.

(2)(a) A provider shall ensure that any audiometer used by the provider or provider's staff shall:

1. Be checked at least once per year to ensure proper functioning; and

2. Function properly.

(b) A provider shall:

1. Maintain proof of calibration and any repair, if any repair occurs; and

2. Make the proof of calibration and repair, if any repair occurs, available for departmental review upon the department's request.

Section 8. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 9. Appeal Rights. An appeal of a negative action regarding a Medicaid recipient who is:

(1) Enrolled with a managed care organization shall be in accordance with 907 KAR 17:010; or

(2) Not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.[

~~Section 10. Incorporation by Reference. (1) The "Department for Medicaid Services Hearing Program Fee Schedule", December 2013, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. or online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.]~~

LISA D. LEE, Commissioner

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: April 12, 2021

FILED WITH LRC: April 13, 2021 at 12:12 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held

on June 28, 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 June 21, 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 June 30, 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: Krista Quarles, Policy Advisor, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

#### REGULATORY IMPACT ANALYSIS And Tiering Statement

Contact Persons: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky Medicaid Hearing Program's service and coverage provisions and requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Kentucky Medicaid Hearing Program's service and coverage provisions and requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing Kentucky Medicaid Hearing Program's service and coverage provisions and requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing Kentucky Medicaid Hearing Program's service and coverage provisions and requirements.

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

(a) How the amendment will change this existing administrative regulation: The amendment to the administrative regulation will more clearly allow for a recipient to receive testing services from an audiologist. This administrative regulation is also clarified to state that an in-office visit to a physician is not necessary for a referral to an audiologist to occur. Finally, the incorporation by reference section is deleted from this administrative regulation.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to better accommodate modern audiology practice and ensure testing and evaluation for recipients older than twenty-one (21) years of age.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by ensuring that audiology services are provided with the Medicaid Program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by ensuring that audiology services are appropriately delivered within the Medicaid Program.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation:

There are approximately 177 audiologists enrolled with the Medicaid program.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Regulated entities will be required to take no new actions. However, adult hearing testing and referral requirements have been clarified.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Additional adult hearing testing may be provided, and some referral practices have been clarified.

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

(a) Initially: DMS does not anticipate additional costs on an initial basis as a result of this amendment.

(b) On a continuing basis: DMS does not anticipate additional costs on a continuing basis as a result of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching state funds appropriated in the biennium 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: Neither an increase in fees nor funding will be necessary to implement the amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither imposes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is applied in that individuals older than twenty-one (21) are only eligible for certain audiology testing and evaluation services.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396d(r)(4), 42 U.S.C. 1396a(a)(30)(A), 42 C.F.R. 441.56, and 45 C.F.R. 147.126.

(2) State compliance standards. KRS 194A.050(1) states, "The secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs."

KRS 205.520(3) states: "... it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

(3) Minimum or uniform standards contained in the federal mandate. EPDST hearing coverage must include at least testing and diagnosis and treatment for hearing defects, including hearing aids. Hearing services must also be, "provided—

(i) at intervals which meet reasonable standards of medical practice, as determined by the State after consultation with recognized medical organizations involved in child health care, and

(ii) at such other intervals, indicated as medically necessary, to determine the existence of a suspected illness or condition."

Additionally, state Medicaid programs are required to take measures to monitor that services are appropriate. States are required to establish a plan for review of the appropriateness and quality of care and services furnished to Medicaid recipients by appropriate health care professionals. The plan helps protect against overutilization or unnecessary care and to assure that reimbursement is consistent with efficiency, economy and quality of care.

42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to:

"... provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services. ..."

45 C.F.R. 147.126 prohibits the application of annual dollar limits on essential health benefits. Medicaid program benefits are included in the scope of essential health benefits.

(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. The requirements are not stricter than federal requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be affected by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 441.56; KRS 205.520.

(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 will generate no revenue for DMS.

(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 will generate no revenue for DMS.

(c) How much will it cost to administer this program for the first year? DMS does not anticipate additional costs in administering this program in the first year.

(d) How much will it cost to administer this program for subsequent years? DMS does not anticipate additional costs in administering this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Community Based Services

##### Division of Protection and Permanency

##### (Amendment)

**922 KAR 5:020. Batterer [Domestic violence batterer] intervention provider certification standards.**

RELATES TO: KRS Chapter 13B, 202A.011(12)(d), 202A.400, 209.030, Chapter 209A, 222.005, 309.080-309.089, 309.130-309.1399, Chapters 311, 319, 335.080, 335.100, 335.300-335.399, 335.500-335.599, 403.715-403.785, 421.570, Chapters 456, 506, 507, 507A, 508, 509, 510, 511.020-511.040, 511.085, 512.020, Chapters 513, 515, 517.050, Chapter 529, 530.020, 530.060, 530.064, 530.065, 530.070, 531.030, 531.040, 531.300-531.370, 620.030, and 45 C.F.R. Part 46

STATUTORY AUTHORITY: KRS 194A.050(1), 403.7505

NECESSITY, FUNCTION, AND CONFORMITY: 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. KRS 403.7505

requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing certification standards for mental health professionals providing court-ordered treatment services for domestic and dating violence and abuse batterers. This administrative regulation establishes certification requirements, standards for services, and imposes reporting requirements for a domestic and dating violence and abuse batterer intervention provider.

Section 1. Definitions. (1) "Appellant" means an applicant or a provider who requests:

(a) An informal resolution meeting in accordance with Section 13 of this administrative regulation; or

(b) An administrative hearing in accordance with Section 14 of this administrative regulation.

(2) "Applicant" means an individual applying for certification as a domestic and dating violence and abuse batterer intervention provider.

(3) "Assessment" means an evaluation of a batterer in accordance with Section 9(1) of this administrative regulation.

(4) "Associate provider" means an individual certified by the cabinet to provide domestic and dating violence and abuse batterer intervention services in accordance with Section 4(1) or 5(2) [(3)] of this administrative regulation, only under the direct supervision of an autonomous provider.

(5) "Autonomous provider" means a professional certified by the cabinet in accordance with Section 4(2) or (4) of this administrative regulation for unsupervised clinical practice in a domestic and dating violence and abuse batterer intervention program.

(6) "Batterer" means an individual who:

(a) Has been charged with or convicted of a criminal offense related to domestic or dating violence and abuse;

(b) Is a respondent in a protective order issued by a court pursuant to KRS 403.740, 403.750(1), 456.030, or 508.155(4); or

(c) Is a substantiated perpetrator in a child abuse or neglect investigation with domestic or dating violence and abuse allegations and has been referred by the department [Has been named a domestic violence perpetrator in a substantiation made by the Department for Community Based Services].

(7) "Cabinet" means the Cabinet for Health and Family Services or its designee.

(8) "Client" means a batterer who has been admitted to a program.

(9) "Court" means a district, family, or circuit court of the Commonwealth of Kentucky.

(10) "Court-ordered" means subject to an order entered by a district, family, or circuit court judge for a batterer to be assessed by a provider to determine the batterer's eligibility for admission to a program or to participate in a program.

(11) "Dating violence and abuse" is defined by KRS 456.010(2).

(12) "Department" means the Department for Community Based Services or its designee.

(13)[(12)] "Domestic violence and abuse" is defined by KRS 403.720(1).

(14)[(13)] "Domestic violence shelter" means a program meeting the standards of 922 KAR 5:040.

(15)[(14)] "Intervention" means individual or group counseling and education based upon a core curriculum that focuses on cessation of domestic and dating violence and abuse.

(16)[(15)] "Program" means the services provided in accordance with Sections 5 through 12 of this administrative regulation to batterers who have been referred by a court for assessment or intervention related to domestic and dating violence and abuse.

(17)[(16)] "Provider" means an associate provider or an autonomous provider.

(18)[(17)] "Sanction" means a compulsory or restrictive action, such as:

(a) A prohibition, requirement, limitation, or other condition affecting the freedom of a person;

(b) Withholding of relief;



- (c) Imposition of a penalty or fine;
- (d) Destruction, seizure, or withholding of property;
- (e) Assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees; or
- (f) Revocation or suspension of a license.

(19) [(18)] "Screening" means the action taken by a provider to determine a batterer's eligibility for admission to the program.

(20) "Victim" means a person of any age who is experiencing or has experienced domestic violence and abuse or dating violence and abuse.

(21) [(19)] "Victim advocate" is defined by KRS 421.570.

Section 2. Certification Procedures. (1) An individual may apply to be certified as an associate provider or an autonomous provider by submitting a DVPR-001, Application for Batterer Intervention Provider Certification, to the department.

(2) If an applicant is not subject to denial or revocation for a reason established in Section 3 of this administrative regulation, the department shall certify the applicant as an:

- (a) Associate provider, if the applicant meets the qualifications specified in Section 4(1) of this administrative regulation; or
- (b) Autonomous provider, if the applicant meets the qualifications specified in Section 4(2) of this administrative regulation.

(3)(a) No later than sixty (60) days after receiving an application or receiving additional documentation, the department shall notify an applicant in writing if:

- 1. Certification is granted or denied; or
- 2. The department is retaining the application in accordance with Section 3(2) of this administrative regulation.

(b) The notice in accordance with paragraph (a) of this subsection shall:

- 1. Specify the effective date of certification, if applicable;
- 2. Specify the basis of the denial of the application, if applicable;
- 3. Specify additional documentation that is required if the department retains the application in accordance with Section 3(2) of this administrative regulation; and
- 4. Inform the applicant of the right to appeal a denial in accordance with the:

a. Informal resolution process established in Section 13 of this administrative regulation; and

b. Administrative hearing process established in Section 14 of this administrative regulation.

(4) Certification as a provider shall be effective for two (2) years.

(5)(a) Unless a provider's certification has been revoked in accordance with Section 3 of this administrative regulation, the department shall renew the certification of a provider upon request.

(b) Completion of sixteen (16) [twelve (12) clock] hours of continuing education related to domestic and dating violence and abuse, pursuant to Section 6(9) of this administrative regulation, shall be required for certification renewal.

(c) The department shall perform a random audit on five (5) percent of the certification renewals to monitor provider compliance with paragraph (b) [(a)] of this subsection.

(6) The department may solicit references from individuals outside of the department regarding the certification of providers.

### Section 3. Denial or Revocation of Certification.

(1) The department shall deny certification to an applicant if:

- (a) The applicant's DVPR-001 is incomplete;
- (b) The documentation of qualifications is insufficient to demonstrate that the applicant meets the applicable requirements established in Section 4 of this administrative regulation;
- (c) The department cannot verify the authenticity of the documentation of qualifications submitted in the application; or
- (d) The core curriculum submitted fails to meet the requirements established [specified] in Section 10 of this administrative regulation.

(2) If the department denies certification in accordance with subsection (1)(a) of this section, the department may retain the application and permit the applicant to submit additional

documentation in accordance with a notice provided pursuant to Section 2(3)(b)3. [(3)] of this administrative regulation.

(3) The department shall deny certification to an applicant and shall revoke the certification of a provider any time after the effective date of certification upon the department's [its] determination that the applicant or provider:

(a) Within the past ten (10) years, has been convicted of, pled guilty to, or completed the service of a sentence imposed to:

- 1. Criminal homicide pursuant to KRS Chapter 507;
- 2. Assault or a related offense pursuant to KRS Chapter 508;
- 3. Kidnapping or a related offense pursuant to KRS Chapter 509;
- 4. A sexual offense pursuant to KRS Chapter 510;
- 5. Burglary or a related offense pursuant to KRS 511.020 through 511.040;
- 6. Domestic violence shelter trespass pursuant to KRS 511.085;

7. Criminal damage to property pursuant to KRS 512.020;

8[7]. Robbery pursuant to KRS Chapter 515;

9[8]. Falsifying business records as defined in KRS 517.050 if the conviction was in relation to the applicant's clinical practice;

10[9]. Incest as defined in KRS 530.020;

11[40]. Endangering the welfare of a minor as defined in KRS 530.060;

12[44]. Unlawful transaction with a minor as defined in KRS 530.064, 530.065, or 530.070;

13[42]. Sexual exploitation of a minor pursuant to KRS 531.300 to 531.370;

14[43]. Criminal attempt, as defined in KRS 506.010, to commit an offense identified in this paragraph;

15[44]. Distribution of obscene materials involving a minor pursuant to KRS 531.030 or 531.040;

16 [or

45]. Prostitution or related offense [Promoting prostitution] pursuant to KRS Chapter 529[.040];

17[46]. Arson as defined in KRS Chapter 513; or

18[47]. Fetal homicide as defined in KRS Chapter 507A;

(b) Has been the subject of a domestic or dating violence and abuse protective order pursuant to KRS 403.740 or an interpersonal protective order pursuant to KRS 456.060 within the five (5) years prior to the date of the application or any time after the effective date of certification;

(c) Has experienced substance use disorder [had an alcohol or other drug abuse problem] as defined in KRS 222.005(12) [222.005(3)] within the two (2) years prior to the date of the application, or engages in alcohol or drug abuse [as defined in KRS 222.005(3)] any time after the effective date of certification; or

(d) Is subject to a current court order restraining or enjoining the applicant from providing a service authorized by licensure or certification; or

(e) Has been convicted of an offense described in KRS Chapter 529 within the five (5) years prior to the date of the application or anytime after being certified].

(4) Depending on the severity or date of the infraction, the department may deny an application or revoke the certification of a provider who:

(a) Has had a sanction applied against or a revocation of a professional license or certification held by the applicant or provider at any time in the two (2) years prior to the date of an application or any time after being certified;

(b) Currently has a sanction applied against a professional license or certification;

(c) Has provided domestic and dating violence and abuse batterer assessment or intervention services in violation of Section 5[(1) or (2) or (3)] of this administrative regulation;

(d) Has failed to implement a corrective action plan in accordance with Section 12(6) or (7) of this administrative regulation;

(e) Has failed to follow the curriculum submitted in the application or submitted and approved in accordance with Section 10(11) of this administrative regulation;

(f) Has failed to meet a requirement established in Sections 2 through 11 of this administrative regulation;

(g) Has provided information that the department:

1. Is unable to verify; or
2. Has determined to be incorrect; or

(h) Has failed to meet the data submission requirements established ~~[as specified]~~ in Section 6(10) of this administrative regulation.

(5) The department shall revoke the certification of a provider that fails to meet the continuing education requirement established ~~[specified]~~ in Section 6(9) of this administrative regulation.

(6)(a) If a provider's certification ~~[certifications]~~ is revoked, the department shall notify a provider in writing.

(b) A notice in accordance with paragraph (a) of this section shall:

1. Specify the effective date that certification shall be revoked;
2. Specify the basis of the determination to revoke a certification; and
3. Inform the provider of the right to appeal the revocation in accordance with the:

a. Informal resolution process established in Section 13 of this administrative regulation; and

b. Administrative hearing process established in Section 14 of this administrative regulation.

(7) A provider whose certification is revoked in accordance with subsection (3)(b) ~~[or (e)]~~ of this section shall be ineligible for certification until the fifth anniversary of the effective date of the revocation.

(8) A provider whose certification is revoked in accordance with subsection (3)(c) of this section shall be ineligible for certification until the second anniversary of the effective date of the revocation.

(9) The department shall renew the certification of a provider whose certification has been revoked in accordance with Section 6(9) of this administrative regulation upon the department's receipt of documentation that the provider has met the requirement of Section 2(5) of this administrative regulation.

Section 4. Qualifications of Certified Providers. (1) The qualifications of an associate provider shall be:

(a) A bachelor's degree from an accredited university or college;

(b) Completion of twenty-four (24) ~~[clock]~~ hours of specialty training in domestic and dating violence and abuse including:

1. Characteristics and dynamics of domestic and dating violence and abuse;

2. Clinical profiling of ~~[domestic violence]~~ batterers;

3. Risk assessment and lethality of ~~[domestic violence]~~ batterers;

4. Intervention of batterers;

5. Effective services for victims and child witnesses of domestic and dating violence and abuse;

6. Understanding intersections and barriers to services for vulnerable populations;

7. Safety planning and harm reduction for victims; ~~[and]~~

8~~[7]~~. Criminal sanctions for domestic and dating violence and abuse and legal remedies for victims;

9. Mandatory reporting of suspected abuse, neglect, or dependency; and

10. Reporting and educational requirements established in KRS Chapter 209A;

(c) Two (2) years of full-time post bachelor degree work experience totaling at least 4,000 hours that shall include general clinical experience or direct case experience related to domestic and dating violence and abuse;

(d) A written agreement to receive supervision, which shall include:

1. Case discussion;

2. Review of reading assignments;

3. Skill building; or

4. Review of an audio or video recording of assessment and intervention performed by the associate provider; and

(e) Written recommendations for certification from two (2) victim advocates, at least one (1) of whom works in an agency separate from the applicant.

(2) The qualifications of an autonomous provider shall be:

(a) A Master's degree from an accredited university or college;

(b) Possession of a certificate or license to practice under the laws of the Commonwealth of Kentucky in one (1) of the following disciplines:

1. Psychology in accordance with KRS Chapter 319;

2. Social work in accordance with KRS 335.080 or 335.100;

3. Medicine in accordance with KRS Chapter 311 if board eligible in psychiatry and neurology;

4. Psychiatric nursing in accordance with KRS 202A.011(12)(d);

5. Marriage and family therapy in accordance with KRS 335.300 to 335.399;

6. Professional counseling in accordance with KRS 335.500 to 335.599;

7. Art therapy in accordance with KRS 309.130 to 309.1399; or

8. Alcohol and drug counseling in accordance with KRS 309.080 to 309.089;

(c) 150 hours of clinical experience providing domestic and dating violence and abuse services under the direct supervision of an autonomous provider who is licensed or certified in accordance with paragraph (b) of this subsection of which 120 hours of the time shall have been with batterers and thirty (30) hours with victims;

(d) Documentation certifying completion of a three (3) hour training program in clinical supervision that has been approved by a professional licensing board referenced in paragraph (b) of this subsection;

(e) Completion of the training required by ~~[specified in]~~ subsection (1)(b) of this section;

(f)~~[(e)]~~ A written recommendation for certification from the autonomous provider who provided the supervision required by paragraph (c) of this subsection; and

(g)~~[(f)]~~ Written recommendations for certification from two (2) victim advocates, at least one (1) of whom works in an agency separate from the applicant.

(3) The cabinet shall grant certification as a [an associate] provider to an applicant from another state:

(a) Meeting or exceeding the standards of subsection (1) or (2) of this section;

(b) Holding a current certificate or license from another state; ~~[and]~~

(c) Being in good standing with the other state's certifying agency; and

(d) Complying with the training and application requirements of subsection (1)(b) of this section.

(4)~~[- The cabinet shall grant certification as an autonomous provider to an applicant:~~

(a) ~~Meeting or exceeding the standards of subsection (2) of this section;~~

(b) ~~Holding a current certificate from another state; and~~

(c) ~~Being in good standing with the other state's certifying agency.~~

(5)~~[- The cabinet shall waive the requirements of subsection (2) of this section, if an associate provider applies for certification as an autonomous provider:~~

(a) After two (2) years' experience and a minimum of 4,000 hours working in a batterer intervention program; and

(b) Upon recommendation of the autonomous provider supervising the associate provider.

Section 5. Scope of Practice and Supervision Requirements.

(1) All providers shall perform and document conflict of interest checks prior to providing any service to a victim and ensure compliance with KRS 209A.070.

(2) Under the supervision of an autonomous provider, an associate provider may:

(a) Screen, assess, plan, and provide batterer intervention;

(b) Consult with a court, prosecutor, law enforcement official, mental health provider, and others regarding the assessment of and intervention with a client; or

(c) Contact a victim of a client in accordance with Section 7 of this administrative regulation.

(3)~~[(2)]~~ An associate provider who provides a service in accordance with subsection (2)~~[(1)]~~ of this section shall participate

in at least one (1) hour per week of clinical supervision pursuant to the written agreement established in Section 4(1)(d) of this administrative regulation.

(4)(3) An autonomous provider may provide screening, assessment, intervention, and consultation independently and supervise an associate provider if an autonomous provider has:

(a) Participated in a three (3) hour training program in clinical supervision that has been approved by a professional licensing board specified in Section 4(2)(b) of this administrative regulation, or by the cabinet; and

(b) Practiced batterer intervention for a period of at least one (1) year.

(5)(4) A certified autonomous provider who supervises an associate provider:

(a) Shall:

1. Provide the supervision required by subsection (2) of this section; and

2. Assure that an associate provider performs a service in accordance with Sections 4, 5(2)(4), 6, 7, 8, 9, 10, 11, and 12(7) of this administrative regulation; and

(b) Shall not supervise more than six (6) associate providers concurrently.

Section 6. General Service Standards. (1) A court-ordered service shall be based on the following premises:

(a) Domestic and dating violence and abuse constitutes a health hazard to a victim who may experience short and long-term effects from the abuse;[-]

(b) Immediate and long-term cessation of the domestic and dating violence and abuse is the priority purpose for batterer intervention;[-]

(c) Domestic and dating violence and abuse in any form are [is] criminal behaviors; [behavior;-]

(d) Batterer intervention shall be designed to enhance and promote the safety of a victim including a spouse, [a] live-in partner, [a] child, or other family member;[-]

(e) A victim is not responsible for the violent behavior of a batterer and a provider shall not promote the concept of mutual responsibility in explaining domestic and dating violence and abuse;[-]

(f) The batterer is accountable for domestic and dating violence and abuse, which is the product of individual choice and learned traits. The batterer's psychopathology, substance abuse, other disorder, or cultural background is not an explanatory cause of domestic and dating violence and abuse, but can influence the batterer's behavior; and[-]

(g) Cooperation and service coordination between the criminal justice system, the department, a victim's advocate, a domestic violence shelter, and a chemical dependency or mental health professional may be required to assure effective treatment and the safety of a victim or a potential victim.

(2) A provider shall give each [batterer and] client a written document that explains the complaint process of the program.

(3) A provider shall:

(a) Treat all clients [a batterer, a client, or victim] with respect and dignity at all times; and

(b) Not discriminate against any client [a batterer, a client, or a victim] based on race, ethnicity, gender, age, religion, or disability.

(4)(a) A batterer, a client, or a victim shall have the right to complain verbally or in writing to the:

1. Provider;
2. Referring court; or
3. Cabinet.

(b) A provider shall not take adverse action against a batterer, a client, or a victim who makes a complaint.

(5) A provider shall:

(a) Comply with 45 C.F.R. Part 46, and any applicable state institutional review board pertaining to research with a human subject; and

(b) Protect the privacy of a batterer or a client who gives consent to participate in provider sponsored research.

(6) A provider shall:

(a) Provide a clean and comfortable facility that [which] shall be

handicap accessible [~~to the handicapped~~]; and

(b) Meet the requirements of 815 KAR 10:060, relating to standards of fire safety.

(7) The provider shall comply with federal and state law applicable to the confidentiality of a client record.

(8) The provider shall establish an individual record for each client [batterer] who receives a court-ordered service. The record shall:

(a) Document each service provided to the client [batterer]; and

(b) Demonstrate that the services meet the requirements of Sections 6 through 11 of this administrative regulation.

(9) A provider shall accrue a minimum of sixteen (16) [twelve (12)-clock] hours of continuing education related to domestic and dating violence and abuse during the two (2) year period for renewal.

(10) Providers certified pursuant to Section 2 of this administrative regulation shall collect and submit information to the department [~~or its designee~~] in accordance with KRS 403.7505.

Section 7. Contact with a Victim. (1) In the provider's professional opinion, if contacting a domestic or dating violence and abuse victim would not increase the risk of harm to the victim or others, a provider may attempt to contact the victim and shall:

(a) Offer the victim an opportunity to participate in the assessment of the batterer by disclosing information about the batterer and the circumstances of the domestic or dating violence and abuse;

(b) Assure the victim the source of the information will not be revealed to the batterer;

(c) Inform the victim that disclosure of child abuse, neglect, or dependency or vulnerable adult abuse, neglect, or exploitation is required to be reported;

(d) Provide the victim information about the program, its possible benefits, the limitations of the program's intervention services, and the degree to which the batterer's participation may result in increased safety for the victim; and

(e)[(d)] Make reasonable efforts to refer a victim to a domestic violence shelter, victim advocate, or another program designated to provide specialized victim services.

(2) A provider shall document each contact with a victim.

(3) A provider shall not contact a victim in the presence of a batterer.

(4) If a victim does not consent to participate, withdraws consent to participate, or refuses to participate or provide information about a batterer or a client, a provider shall not attempt to coerce or persuade the victim to participate.

(5) If a provider does not contact a victim, the provider shall document the reasons for this decision in the client record.

Section 8. Screening Procedures. (1) A provider shall establish:

(a) Eligibility criteria for participation in a program that [which]:

1. Requires that the[a] batterer sign an authorization to disclose to a victim the batterer's failure to participate in or discharge from the program;

2. May include a batterer's admission of responsibility for a domestic or dating violence and abuse related offense; and

3. Shall not be based solely on the [batterer's] ability to pay for services;

(b) A procedure to accept a referral from a court following a charge of a domestic or dating violence and abuse related offense [~~or~~] as a condition of a protective order issued pursuant to KRS 403.740, 403.750(1), or 508.155(4);

(c) A procedure to accept a referral from the department; and

(d)[(e)] A procedure for notifying the referring court or department[-] if a batterer is ineligible for the program. The notice shall:

1. Specify the reason a batterer is determined to be ineligible in accordance with the eligibility criteria established by the provider pursuant to paragraph (a) of this subsection;

2. Specify each referral made in accordance with Section 9(3) and (4) of this administrative regulation, if any;

3. Be made no later than five (5) days after the determination is

made;

4. Recommend a service more likely to benefit the batterer, in the provider's professional opinion; and

5. Recommend that the court notify a victim pursuant to KRS 403.7505(3)(e) that the batterer is ineligible for the program.

(2) A provider shall inform a batterer of the following information prior to the batterer receiving an assessment or intervention:

(a) The requirement for confidentiality of information and the limit on confidentiality including:

1. The duty of a provider to warn and protect an intended victim of a threat to harm, as required by KRS 202A.400;

2. The requirement to report abuse in accordance with KRS 209.030 and 620.030; and

3. The fact that information disclosed to the provider or to another client may be used against the batterer in a civil or criminal proceeding;

(b) The requirement of a court order, a statute, or an administrative regulation that [which] imposes a duty upon the provider to disclose information or make a report pertaining to the batterer or the client to:

1. A court;

2. A prosecutor;

3. A probation or parole officer;

4. A law enforcement agent,

5. The victim; or

6. Another person or organization that may be involved in the assessment of the batterer or the intervention of the client;

(c) The information provided in accordance with paragraph (b) of this subsection, which shall include:

1. The name of the person, if known, and the title of the agency or organization to whom information shall be disclosed, or to whom a report shall be made;

2. The basis of the duty to disclose information or to make a report; and

3. The condition under which information shall be disclosed or a report made;

(d) The batterer's responsibility to pay for an assessment or intervention in accordance with KRS 403.7505(3)(g), the cost to the batterer, and the provider's policy regarding failure to pay;

(e) The expected length of intervention and the procedure for voluntary and involuntary discharge from the program;

(f) An explanation of the provisions in Section 6 of this administrative regulation;

(g) A description of the assessment and intervention that shall [will] be provided to the batterer including the requirements for participation;

(h) Notification that, at the discretion of the court, failure to comply with the program may result in a citation for contempt of court; and

(i) An explanation of the procedures for a victim to participate in the program in accordance with Sections 7 and 10(13) of this administrative regulation.

Section 9. Assessment and Admission Procedures. (1)(a) If [if] a batterer is determined to be eligible for a batterer intervention program based on eligibility criteria established in Section 8(1)(a) of this administrative regulation, the provider shall perform an assessment of the batterer.

(b) The assessment conducted in accordance with paragraph (a) of this subsection shall include consideration of the batterer's:

1. History of abusive behavior, including degree of harm and type of violent conduct, that may include information provided by a victim, referral source, or other involved professional;

2. Criminal history;

3. Risk of harm to self and others;

4. Medical history;

5. History of a mental disorder;

6. Current mental status;

7. History or presence of a substance abuse disorder;

8. Characteristics and ability to benefit from the approved program curriculum; and

9. Relevant public records, including a police report and other

information about the batterer.

(2) If requirements of Section 7 of this administrative regulation are met, a provider may interview a victim and consider information provided by a victim in the assessment.

(3) If, based on the assessment required by subsection (1) of this section, the provider determines that a batterer is unlikely to benefit from the program, the provider shall document the reasons for the determinations and refer the batterer to a service that [which] is more likely to benefit the batterer in the provider's professional opinion.

(4) A provider may require a batterer to participate in mental health or substance use disorder [abuse] treatment as a prerequisite for admission to or completion of the domestic and dating violence and abuse program.

(5) A provider shall notify the referring court or department whether the batterer is admitted to the program or is referred to another program or service:

(a) No later than five (5) days after making the assessment required by subsection (1) of this section; and

(b) Within seventy-two (72) hours, if the provider chooses not to admit a batterer to a program based on the batterer's lethality or another factor related to the safety of the victim.

(6) A batterer shall be admitted to a program if the batterer:

(a) Meets the eligibility criteria pursuant to Section 8(1)(a) of this administrative regulation;

(b) Signs a written consent for intervention;

(c) Signs a written agreement to comply with the program requirements; and

(d) Signs a written authorization for a provider to disclose information to a party identified in Section 8(2)(b) of this administrative regulation.

Section 10. Intervention Procedures.

(1) A provider shall make individual or group intervention services available to a client at least once weekly.

(2) If a provider offers a group intervention program, the program shall segregate based on gender identity and client safety [male and female batterers] into separate groups.

(3) A group intervention shall include:

(a) Between two (2) and twelve (12) clients, unless two (2) providers are present; and

(b) No more than twenty (20) [fifteen (15)] clients if two (2) providers are present.

(4) A group intervention session shall require a client to attend for ninety (90) minutes or longer.

(5) A client shall participate in the program for at least thirty (30) [twenty-eight (28)] weeks.

(6) A person not referred by a court may participate in a group intervention provided for court-referred clients.

(7) A provider shall establish and follow a core curriculum for group participation that includes:

(a) The definition and dynamics of domestic and dating violence, including physical, sexual, psychological, and environmental abuse;

(b) The immediate and long-term effects of domestic and dating violence and abuse on victims and those who witness it, including children, and Adverse Childhood Experiences [Exploration of the effect of domestic violence on a victim and a witness to domestic violence];

(c) Discussion of civil and criminal law related to domestic and dating violence and abuse;

(d) [Description of the cycle of violence and other dynamics of domestic violence];

(e) Instruction about personal responsibility for domestic and dating violence and abuse;

(f) [(f)] Confrontation of the client's use of power, control, and coercion in an intimate relationship;

(g) [(g)] Confrontation of rigid sex role stereotyping;

(h) [(h)] Challenge of the client's pattern of aggression in a conflict with a victim;

(i) [(i)] Exploration of the actual and perceived role of alcohol and drug abuse in the domestic and dating violence and abuse;

(j) [(j)] Exploration of a constructive and nonviolent method for

resolving conflict in a relationship;

(i) Exploration of life experiences and belief systems that have fostered choices for violent behavior;

(k) Safety planning and knowledge of domestic and dating violence and abuse resources;

(l)[(k)] Parenting after violence, including education on pediatric abusive head trauma [shaken-baby syndrome];

(m)[(l)] Development of a relapse prevention technique; and

(n)[(m)] Promotion of aftercare services and the development of an aftercare plan[, if indicated].

(8) At the discretion of the provider's professional opinion, a provider may offer individual intervention to a client if the client would:

(a) Not benefit from a group intervention; or

(b) Be disruptive to a group setting.

(9) If a client participates in individual intervention, the:

(a) Curriculum content of the individual intervention shall contain the core curriculum in accordance with subsection (7) of this section; [and]

(b) Provider shall document a minimum of thirty-two (32) [fourteen (14)], one (1) hour intervention sessions; and

(c) Provider shall document why individual intervention was preferred.

(10)[(a)] If group intervention is provided to a female client the core curriculum required by subsection (7) of this section shall:

1. Be Amended as specified in subsection (11) of this section; and

2. Include:

a. The definition and forms of domestic violence, including physical, sexual, psychological, and environmental abuse;

b. Exploration of the effect of violence on victims and witnesses to domestic violence;

c. Discussion of civil and criminal law related to domestic violence;

d. Instruction about personal responsibility for violence;

e. Confrontation of the client's use of power, control, and coercion in an intimate relationship;

f. Challenge of the client's pattern of aggression in a conflict with a victim;

g. Exploration of the actual and perceived role of alcohol and drug abuse in domestic violence;

h. Exploration of a constructive and nonviolent method for resolving conflict in a relationship;

i. Exploration of life experiences and belief systems that have fostered choices for violence behavior;

j. Parenting after violence, including education on shaken baby syndrome;

k. Safety planning and knowledge of domestic violence resources; and

l. Development of an aftercare plan.

(b)] A provider shall document factors, other than the referral source, that [which] make a [female] client eligible for a program based on gender identity.

(11)(a) The department may approve an amendment to a provider's core curriculum[, if the provider submits to the department:

1. A written request for approval of an amended core curriculum;

2. An explanation of the purpose for the amendment; and

3. The proposed amended core curriculum.

(b) The department shall notify the provider in writing if an amended curriculum is approved or disapproved no later than thirty (30) days after the date that the department receives the request.

(c) The notice provided in accordance with paragraph (b) of this subsection shall:

1. Specify the effective date of the approval, if granted;

2. Specify which of the requirements of subsection (7) [or (10)] of this section that the amended curriculum does not meet, if it is disapproved; and

3. Acknowledge the right to dispute a disapproval in accordance with Sections 13 and 14 of this administrative regulation.

(12) If a client of a program makes a threat of physical violence

against a clearly identified or reasonably identifiable person, including a victim, or an actual threat of a specific violent act [towards a victim], a provider shall comply with the warning requirements of KRS 202A.400.

(13) If a client is discharged from a program, a provider shall notify a victim in accordance with Section 7 of this administrative regulation.

(14) A provider shall not offer or provide marital counseling or family therapy to an existing or former client or a victim:

(a) Unless the client:

1. Has successfully completed the program; and

2. Has not demonstrated violence in the [his] relationship with a victim for at least six (6) months; and

(b) If:

1. There is a foreseeable risk of harm to the victim which may result from the marital services; or

2. The provider believes that the victim may agree to participate because of coercion or threat from the client.

Section 11. Involuntary Discharge from a Program. (1) A provider shall involuntarily discharge a client who:

(a) Fails to attend more than three (3) scheduled appointments;

(b) Fails to actively participate in services or to complete assignments;

(c) Violates a provision of a court order; or

(d) After admission to the program, perpetrates domestic or dating violence and abuse or other behavior that [which], in the provider's professional judgment, is associated with increased risk of harm to the victim.

(2) A provider may involuntarily discharge a client who fails to pay for assessment or intervention:

(a) As agreed; or

(b) As ordered by a court.

(3)(a) A provider shall notify the referring court or department in writing upon the provider's determination that a client shall be discharged in accordance with subsection (1) or (2) of this section.

(b) The notice provided in accordance with paragraph (a) of this subsection shall:

1. Specify the reason for the discharge; and

2.a. Be made no later than five (5) days after the determination; or

b. Be made no [No] later than seventy-two (72) hours if the determination is made in accordance with subsection (1)(d) of this section.

(4) If the discharge is pursuant to subsection (1)(d) of this section, a provider shall:

(a) Immediately attempt to notify the victim in accordance with Section 10(13) of this administrative regulation; and

(b) Document each effort to notify the victim.

(5) A provider may transfer a client [batterer] to another certified provider, if:

(a) The batterer requests;

(b) The reason for the client's [batterer's] request is verifiable;

(c) The batterer is in good standing in the sending program;

(d) The receiving provider accepts the client [batterer] into the receiving program; and

(e) Communication between the sending and receiving providers is documented and includes a mutually agreed upon intervention plan for the batterer.

(6) If a client [batterer] is transferred in accordance with subsection (5) of this section, victim notification shall be made pursuant to Section 7 of this administrative regulation.

Section 12. Monitoring.

(1) The cabinet shall investigate a signed written or verbal complaint that [which] alleges that a:

(a) Provider has failed to adhere to the requirements in Section 2 through 11 of this administrative regulation; or

(b) Provider's practice may endanger a client or victim.

(2) The cabinet may conduct periodic provider reviews to:

(a) Determine if a provider is in compliance with the requirements established in the requirements in Sections 2 through

11 of this administrative regulation; and

(b) Evaluate overall quality of services provided.

(3) A cabinet's review or an investigation of a provider shall consist of one (1) or more of the following:

(a) An interview with a certified provider or other employee of the agency;

(b) A review of administrative records;

(c) A review of client records;

(d) Off-site monitoring by cabinet staff using data submitted in accordance with Section 6(10) of this administrative regulation;

(e) Observation of an assessment or intervention, unless a batterer or client objects to being observed;

(f) Interviews with one (1) or more of the following:

1. A batterer or client who consents to an interview;

2. A victim who consents to an interview;

3. A judge or other personnel of the referring court or agency;

4. A probation or parole officer;

5. A case worker for the cabinet; or

6. Personnel from any other agency who:

a. May make a referral for court-ordered [court-order] domestic and dating violence and abuse batterer intervention services;

b. Interacts with a provider; or

c. Has knowledge about the provider's practice;

(g) Physical inspection of a provider's facility; or

(h) The review of other materials necessary to determine compliance with Sections 2 through 11 of this administrative regulation and KRS 403.7505.

(4) The cabinet shall refer an allegation with any indication that a provider may have violated a requirement of a professional licensure or certification board to a board or entity that [which] has jurisdiction over [to regulate] the provider.

(5) Based on the information obtained in accordance with subsection (1), (2), or (3) of this section, the cabinet may determine that a program:

(a) Does or does not meet the requirements of Sections 2 through 11 of this administrative regulation; and

(b) Is endangering a client or a victim.

(6)(a) If the cabinet determines that a certified provider has failed to meet the requirements of Sections 2 through 11 of this administrative regulation or is endangering a client or a victim, the cabinet shall notify the provider in writing of its determination.

(b) Based upon findings of an investigation or provider review, the cabinet may:

1. Require the provider to submit a corrective action plan;

2. Impose a corrective action plan upon the provider; or

3. Revoke a provider's certification in accordance with Section 3(3) or (4) of this administrative regulation.

(7) If the cabinet determines that the associate provider has failed to meet a requirement specified in Section 5(3)(4)(b) of this administrative regulation, the:

(a) Cabinet shall notify an autonomous provider who supervises an associate provider; and

(b) Autonomous provider shall be responsible to assure that corrective action is taken.

(8) A review or investigation conducted by the cabinet shall include precautions to avoid risk or harm to a client or a domestic and dating violence and abuse victim.

### Section 13. Informal Resolution of Disputes Prior to Hearing.

(1) An applicant or provider may request an informal resolution meeting if the applicant or provider wishes to appeal:

(a) The denial of an application;

(b) The revocation of certification;

(c) A determination made in accordance with Section 12(5) of this administrative regulation; or

(d) A determination, which is specified in a notice, provided in accordance with Section 10(11)(b) of this administrative regulation.

(2) A request for an informal resolution meeting shall:

(a) Identify the disputed determination or action;

(b) State the basis on which the department's action is believed to be unwarranted or erroneous;

(c) Summarize the appellant's position;

(d) Provide the name, address, and telephone number of each

individual who is expected to attend an informal resolution meeting on the appellant's behalf, if a meeting is held; and

(e) Include documentary evidence that the appellant wishes the department to consider in relation to the dispute.

(3) A request for an informal resolution meeting shall not be considered a request for an administrative hearing.

(4) The department shall, within thirty (30) days of receipt of a request made in accordance with subsection (1) of this section, notify the appellant in writing of the following:

(a) The time and place at which the informal resolution meeting shall be held;

(b) The name and title of the department's representative who is expected to attend the meeting;

(c) The provisions of subsections (3) and (9) of this section; and

(d) The provisions of Section 14(1) of this administrative regulation.

(5) The informal resolution meeting shall be scheduled for a date no later than sixty (60) days after receipt of a request submitted in accordance with subsection (1) of this section.

(6) Prior to an informal resolution meeting, the department may rescind the disputed action or determination based on the contents of the request.

(7) The department shall cancel an informal resolution meeting if:

(a) It rescinds the disputed action or determination in accordance with subsection (6) of this section;

(b) It informs the appellant of the decision to rescind the disputed determination or action at least three (3) business days prior to the scheduled date of the meeting; and

(c) The appellant agrees to cancellation of the meeting.

(8) The department shall document the actions taken in accordance with subsection (7) of this section.

(9) If an informal resolution meeting is held, the department shall notify the appellant in writing no later than thirty (30) days after the meeting if it shall rescind, modify, or enforce the disputed action, and the facts upon which its decision is based.

(10) An appellant may request an administrative hearing in accordance with Section 14(1) of this administrative regulation at any time during the informal resolution process established in this section.

Section 14. Administrative Hearing Process. (1) A completed DPP-154 [DVPR-002], Protection and Permanency Service Appeal Request, incorporated in 922 KAR 1:320, [Form] requesting an administrative hearing shall be received by the department no later than thirty (30) calendar days after the date of notice of a determination or a resolution decision, whichever is later. The request shall be sent to the Batterer [Batter] Intervention Program Administrator, Department for Community Based Services, Division of Protection and Permanency [Violence Prevention Resources], 275 East Main Street, Frankfort, Kentucky 40621.

(2) An administrative hearing shall be conducted by a hearing officer who is knowledgeable of cabinet policy. The secretary of the cabinet[, in accordance with KRS 13B.030,] shall appoint the hearing officer pursuant to KRS 13B.030.

(3) The department shall forward to the hearing officer an administrative record, which shall include:

(a) A copy of the notice of action taken;

(b) A copy of the request for an informal resolution meeting, if applicable;

(c) The documentation required by Section 13(8) of this administrative regulation if applicable;

(d) A copy of the notice provided by the department in accordance with Section 13(9) of this administrative regulation; and

(e) Documentary evidence provided by the appellant to the department.

(4) The hearing officer shall provide notice of a hearing in accordance with KRS 13B.050.

(5) A prehearing conference may be held at least seven (7) calendar days in advance of the hearing date. Conduct of the prehearing conference shall comply with KRS 13B.070. Each party shall disclose the evidence that the party intends to introduce at

the hearing, including documentary evidence and identification of witnesses.

(6) A request for a hearing shall be considered to be abandoned, if the appellant does not appear at the hearing on the scheduled date and the hearing has not been previously rescheduled. A hearing request shall be withdrawn only under the following circumstances:

(a) The hearing officer receives a written statement from the appellant stating that the request is withdrawn; or

(b) The appellant states on the record at the hearing that the request is withdrawn.

(7) Documentary evidence to be used at the hearing shall be made available in accordance with KRS 13B.090.

(8) The hearing officer shall conduct the hearing in accordance with KRS 13B.080.

(9) The hearing officer shall consider the facts as presented at the hearing, including supplementary material, if requested, and prepare a recommendation in accordance with KRS 13B.110.

(10) The hearing officer's recommendation shall be submitted to the secretary of the cabinet and to the department. The department and the appellant shall have fifteen (15) calendar days within which to file with the secretary exceptions to the hearing officer's recommendation in accordance with KRS 13B.110(4). The secretary shall make the final decision of the cabinet pursuant to KRS 13B.120, supported by findings of fact and conclusions of law.

(11) In the correspondence transmitting the decision, clear reference shall be made to the availability of judicial review pursuant to KRS 13B.140 and 13B.150.

(12) The department shall maintain an official record of the hearing in compliance with KRS 13B.130.

Section 15. Incorporation by Reference. (1) ~~The following material is incorporated by reference:~~

~~(a) "DVPR-001, Application for Batterer Intervention Provider Certification", 04/2021, is incorporated by reference[edition September 2008; and~~

~~(b) "DVPR-002, Service Appeal Form", edition September 2008].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 E. Main Street, [400 Fair Oaks Lane], Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dcbs/Pages/default.aspx>.

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: March 26, 2021

FILED WITH LRC: April 12, 2021 at 8:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD:

A public hearing on this administrative regulation shall, if requested, be held on June 28, 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 June 21, 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 June 30, 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: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A,

Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email [CHFSregs@ky.gov](mailto:CHFSregs@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons: Laura Begin and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for batterer intervention programs approved and designated by the cabinet.

(b) The necessity of this administrative regulation: KRS 403.7505 authorizes the cabinet to establish standards for mental health professionals providing court-mandated treatment services and intervention services for domestic violence offenders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorized statutes by establishing the standards for certification of batterer intervention providers and standards for services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the certification and provision of batterer intervention services in a manner that is consistent with state requirements.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation provides clarification for the credentials necessary for certification to provide batterer intervention services and makes technical corrections necessary for updating the administrative regulation in accordance with KRS Chapter 13A. The material incorporated by reference is also updated through this amendment.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to provide clarification for the credentials and qualifications for the certification of batterer intervention providers, and makes technical corrections. This amendment is also necessary to keep the administrative regulation from expiring pursuant to KRS 13A.3102 and 3104.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by providing clarification of client eligibility, qualifications of service providers, and makes technical corrections and updates required by statute.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its refinement of qualifications for the certification of batterer intervention service providers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact the 254 current, active, and certified batterer intervention service providers in Kentucky. In calendar year 2019, there were 2,972 participants who received batterer intervention services for a total of 124,866 hours of services provided.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no new action required on the part of regulated entities.

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

result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will not increase any accrued benefits to regulated entities, but provides clarification on credentials required.

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

(a) Initially: The amendment to this administrative regulation will be implemented with no allocated funds. This amendment creates no new costs.

(b) On a continuing basis: The administrative regulation has no associated allocation of funding. No costs are associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no allocated funds for the implementation and enforcement of this amendment. Providers bill for services. The Kentucky Coalition Against Domestic Violence uses allocated state general fund dollars for program administration.

(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 requires no increase in fees or funding.

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

(9) TIERING: Is tiering applied? The administrative regulation does not apply tiering because the qualifications are the same for any provider applicant.

a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for this administrative regulation.

2. State compliance standards. KRS 194A.050(1), 403.7505

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Community Based Services, and domestic violence shelters will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 403.7505.

(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.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year? The administration of this administrative regulation is paid for by state general funds appropriated to domestic violence shelters.

(d) How much will it cost to administer this program for subsequent years? The amendment incurs no additional cost for subsequent years.

Note: If specific dollar estimates cannot be determined, provide



NEW ADMINISTRATIVE REGULATIONS

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

**BOARDS AND COMMISSIONS**  
**Kentucky Board of Medical Licensure**  
**(New Administrative Regulation)**

**201 KAR 9:290. Interpretation and application of KRS 311.901(1) and 311.903(4).**

RELATES TO: KRS 311.901(1) and KRS 311.903(4)

STATUTORY AUTHORITY: KRS 311.901(1) and KRS 311.903(4)

NECESSITY, FUNCTION & CONFORMITY: KRS 311.901(1) and KRS 311.903(4) require that the Kentucky Board of Medical Licensure promulgate administrative regulations relating to procedures for eligibility and credentialing, procedures for license renewal and reinstatement, procedures for complaints and disciplinary actions, a code of ethical standards, standards of practice, objectives of athletic training, procedures for name and contact information changes, procedures of licensure renewal and reinstatement of active duty military individuals, procedures for documentation standards, requirements for foreign-trained athletic trainers, a formulary of legend medications that may be obtained, transported, provided, and administered when providing athletic training services, and requirements for invasive procedures. This administrative regulation establishes the procedures for eligibility and credentialing of US-trained and foreign-trained athletic trainers, procedures for license renewal and reinstatement including for active duty military individuals, procedures for complaints and disciplinary actions, a code of ethical standards, standards of practice, objectives of athletic training, procedures for name and contact information changes, procedures for documentation standards, a formulary of legend medications that may be obtained, transported, provided, and administered when providing athletic training services, and requirements for invasive procedures.

Section 1. Definitions. (1) "Athletic injury" means: (a) An injury or condition, excluding medical conditions such as internal infections, internal injuries, fractures, and spinal cord injuries except in an acute situation sustained by an athlete that affects the individual's participation or performance in sports, games, or recreation; or

(b) An injury or condition that is within the scope of practice of an athletic trainer identified by a physician licensed under KRS Chapter 311, a physical therapist licensed under KRS Chapter 327, an occupational therapist licensed under KRS Chapter 319A, or a chiropractor licensed under KRS Chapter 312 that is likely to benefit from athletic training services that have been approved by a physician supervising the athletic trainer;

(2) "BLS" means basic life support.

(3) "Board" means the Kentucky Board of Medical Licensure.

(4) "BOC" means National Athletic Trainers Association Board of Certification, Inc.

(5) "CAATE" means the Commission on Accreditation of Athletic Training Education.

(6) "Dry needling" is also known as "intramuscular manual therapy" and means the insertion of a dry solid filiform needle, without medication, into a trigger point with the goal of releasing or inactivating the trigger points for the treatment of myofascial or musculoskeletal pain or soft tissue dysfunction.

(7) "IM" means intramuscular.

(8) "IV" means intravenous.

(9) "Legend drug" or "legend medication" means any drug, except for Schedule II, III, IV, or V drugs as defined in the Controlled Substances Act, 21 U.S.C. secs. 801 et seq., approved by the U.S. Food and Drug Administration that can be dispensed to the public only with a prescription from a medical doctor or other licensed practitioner.

(10) "NATA" means the National Athletic Trainers Association.

(11) "OTC" means an over-the-counter medication and is any medicine sold directly to a consumer without a requirement for a prescription from a healthcare professional.

(12) "SubQ" means subcutaneous.

(13) "Supervising physician" means a medical or osteopathic physician licensed by the Board.

(14) "Supervision" means advising, consenting to, or directing the activities of an athletic trainer through written or oral orders by a physician licensed by the Board, including pre-existing written protocols.

Section 2. Eligibility and Credentialing for US-trained and Foreign-Trained Athletic Trainers. In order to be eligible for licensure as an athletic trainer in the Commonwealth of Kentucky, regardless of whether trained in the United States or abroad, an applicant shall satisfy the requirements established in KRS 311.905.

Section 3. Renewal and Reinstatement. The procedures for renewal and reinstatement are those established in KRS 311.905 and 201 KAR 9:305 and 9:307.

Section 4. Procedures for complaints and disciplinary actions. All grievances, complaints and disciplinary proceedings against an athletic trainer shall be conducted in accordance with the provisions of KRS 311.591, 311.592, 311.593; 311.599 and 311.911; KRS Chapter 13B; and any related administrative regulations promulgated under KRS Chapter 311 which apply to physicians shall also apply to athletic trainers.

Section 5. Ethical Standards. An athletic trainer licensed to practice in the Commonwealth of Kentucky shall conform to the National Athletic Trainers' Association's Code of Ethics (March 2018).

Section 6. Standards of Practice. The standards of practice of an athletic trainer licensed to practice in the Commonwealth of Kentucky shall conform to BOC Standards of Professional Practice (October 2017), unless otherwise excluded by Kentucky statute or administrative regulation including those under 201 KAR Chapter 9.

Section 7. Objectives of Athletic Training. An athletic trainer licensed to practice in the Commonwealth of Kentucky shall practice with the intent of preventing, recognizing, evaluating, managing, disposing, treating, reconditioning, or rehabilitating athletic injuries.

Section 8. Name and Contact Information Changes.

(1) Any person licensed to practice as an athletic trainer in the Commonwealth of Kentucky shall report, in writing, to the Board:

(a) His or her full and official name, maiden name, and any aliases;

(b) The primary address(es) at which he or she maintains an office or practices athletic training and may be served correspondence from the Board;

(c) The electronic email address(es) at which he or she may receive correspondence from the Board; and

(d) His or her supervising physician(s).

(2) If unknown at the time of initial licensure, any new licensee shall make the report required in subsection (1) of this section within thirty (30) days after commencing the practice of athletic training within this state.

(3) Every athletic trainer who, after notifying the Board of the information required in subsections (1) and (2) of this section, moves, changes, or obtains a new name, address, electronic

address, or supervising physician, shall notify the Board, in writing, within ten (10) business days thereof.

Section 9. Documentation Standards. An athletic trainer licensed to practice in the Commonwealth of Kentucky shall maintain an appropriate and reasonable medical record of patients receiving athletic training services, which may include:

- (1) Record of the athletic trainer's evaluation of the patient;
- (2) Inclusion of pertinent medical history;
- (3) Record of oral orders from a referring or supervising physician;
- (4) A description of services provided by the athletic trainer;
- (5) A plan of care including referral to other medical providers;
- (6) Record of follow up care and/or ongoing treatment; and
- (7) Documentation of significant changes in patient status, if any.

Section 10. Formulary of Legend Medications which may be Obtained, Transported, Provided and Administered when Providing Athletic Training Services.

(1) An athletic trainer licensed to practice in the Commonwealth of Kentucky may, in coordination with a supervising physician, obtain, transport, provide, and administer the following legend drugs:

- (a) Albuterol for administration via meter dose inhaler;
  - (b) Albuterol Nebule for administration via small volume nebulizer or oxygen-driven nebulizer prepackaged;
  - (c) Atrovent Nebule for administration via small volume nebulizer or oxygen-driven duonebulizer prepackaged;
  - (d) Oxygen;
  - (e) Nitroglycerin for administration via spray or tab;
  - (f) Epinephrine 1:1000 for administration via IM or Epi-Pen for treatment of anaphylaxis;
  - (g) The following fluids for IV administration:
    1. Normal Saline; and
    2. Lactated Ringers;
  - (h) Naloxone for IM or nasal administration;
  - (i) Glucagon for IM administration in the event of a diabetic emergency;
  - (j) D50-Dextrose 50% and D25- Dextrose 25% for IV administration in the event of a diabetic emergency;
  - (k) Flu Vaccine to any person nine (9) years of age or older;
  - (l) Lidocaine (1% or 2%) for administration via injection, with or without Epinephrine;
  - (m) Bupivacaine (.5%) for administration via injection, with or without Epinephrine;
  - (n) Lidocaine Topical; and
  - (o) Dermabond tissue adhesive.
- (2) An athletic trainer licensed to practice in the Commonwealth of Kentucky may, in coordination with a supervising physician, obtain, transport, provide, and administer OTC medications in accordance with the manufacturer's recommendations or upon order of a supervising physician.

(3) Unless there is a risk of death, physical disability, or impairment to the athlete, an athletic trainer licensed to practice in the Commonwealth of Kentucky shall not administer a legend drug or an OTC medication to a person under the age of eighteen (18) years without express parental or guardian consent and physician oversight.

Section 11. Invasive Procedures.

(1) An athletic trainer licensed to practice in the Commonwealth of Kentucky may, in coordination with a supervising physician, perform the following invasive procedures:

- (a) Rectal thermometry;
- (b) IM, IV or SubQ medication administration injections;
- (c) Airway adjuncts, if in conformity with BLS protocols and instruments;
- (d) Dry needling, if:
  1. The athletic trainer has completed at least fifty-four (54) classroom hours of BOC-approved dry needling training, which includes instruction in the clinical application of dry needling;
  2. The procedure is ordered by a supervising physician; and

3. The treatment is administered in a designated room or facility separate from a gymnasium, locker room, sports field or sideline;

- (e) Phlebotomy;
- (f) Capillary finger sticks for purpose of testing blood glucose levels;

(g) Repair or closure of superficial lacerations involving only skin or subcutaneous tissues, if performed in a designated room or facility separate from a gymnasium, locker room, sports field or sideline; and

- (h) Draining of blisters.
- (2) Unless there is a risk of death, physical disability, or impairment to the athlete, an athletic trainer licensed to practice in the Commonwealth of Kentucky shall not perform an invasive procedure on a person under the age of eighteen (18) years without express parental or guardian consent and physician oversight.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) The "National Athletic Trainers' Association's Code of Ethics", March 2018; and
- (b) BOC Standards of Professional Practice, October 2017.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, Monday through Friday, 8:00 a.m. to 4:30 p.m.

SANDRA R. SHUFFETT, President

APPROVED BY AGENCY: March 26, 2021

FILED WITH LRC: March 26, 2021 at 3:14 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2021, at 9:30 a.m., at the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leanne K. Diakov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes practice objectives for KY-licensed athletic trainers; practice, documentation and ethical standards for KY-licensed athletic trainers; procedures for name and contact information changes of KY-licensed licensed athletic trainers; invasive procedures that may be performed by KY-licensed athletic trainers; and formulary of legend medications which may be obtained, transported, provided and administered by KY-licensed athletic trainers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth practice objectives for KY-licensed athletic trainers; practice, documentation and ethical standards for KY-licensed athletic trainers; procedures for name and contact information changes of KY-licensed licensed athletic trainers; invasive procedures that may be performed by KY-licensed athletic trainers; and formulary of legend medications which may be

obtained, transported, provided and administered by KY-licensed athletic trainers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish practice objectives for KY-licensed athletic trainers; practice, documentation and ethical standards for KY-licensed athletic trainers; procedures for name and contact information changes of KY-licensed licensed athletic trainers; invasive procedures that may be performed by KY-licensed athletic trainers; and formulary of legend medications which may be obtained, transported, provided and administered by KY-licensed athletic trainers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish practice objectives for KY-licensed athletic trainers; practice, documentation and ethical standards for KY-licensed athletic trainers; procedures for name and contact information changes of KY-licensed licensed athletic trainers; invasive procedures that may be performed by KY-licensed athletic trainers; and formulary of legend medications which may be obtained, transported, provided and administered by KY-licensed athletic trainers.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment will affect all athletic trainers licensed to practice in the Commonwealth of Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Persons licensed to practice as athletic trainers in the Commonwealth of Kentucky will be required to conform to the defined practice objectives and practice, documentation and ethical standards; will be required to follow procedures for name and contact information changes; will be able to perform the delineated invasive procedures; and will be able to obtain, transport, provide and administer the delineated legend medications.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Licensed athletic trainers are not expected to incur any additional costs in order to comply with the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensed athletic trainers will be held to consistent and uniform standards and procedures.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate

in this administrative regulation because the administrative regulation applies equally to all licensees regulated by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Medical Licensure will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311.901(1), KRS 311.903(4), KRS 311.565(1)(a) and (b)

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

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### BOARDS AND COMMISSIONS

##### Board of Licensure for Professional Art Therapists (New Administrative Regulation)

#### 201 KAR 34:070. Inactive status.

RELATES TO: KRS 309.1315(17)

STATUTORY AUTHORITY: KRS 309.1315(1), (17)

NECESSITY FUNCTION AND CONFORMITY: KRS 309.1315(1) requires the board to promulgate administrative regulations necessary to carry out the provisions of KRS 309.130 to 309.1399. KRS 335.1315(17) requires the board to establish conditions for inactive status and return to active status for license holders. This administrative regulation establishes the conditions for inactive status and return to active status for license holders.

Section 1. Request for Inactive Status. (1) A licensee may request that the licensee's license be placed on inactive licensure status by submitting to the board a written request for the licensee's license to be placed on inactive status.

(2) Upon the board granting the request for inactive status, the licensee shall be relieved of the licensee's obligation to pay the license renewal fee established in 201 KAR 34:020 for the licensee's license level.

Section 2. Inactive Status. (1) While on inactive status, the licensee shall meet the requirements for continuing education as established in 201 KAR 34:030.

(2) The licensee may remain on inactive status for two (2) years, unless an extension of time is granted under Section 3.

(3) The two (2) year period of inactive status shall begin when the Board grants the request for inactive status.

Section 3. Extension of Inactive Status. (1) A licensee whose license is on inactive status may request one extension, not to exceed two (2) years, of the inactive-license status for an undue hardship or an extenuating circumstance such as a prolonged illness, loss of a job, or an inability to competently engage in the practice of

professional art therapy.

(2) The licensee shall submit to the board:

(a) A written request to continue the license on inactive status;

(b) An explanation of the undue hardship or extenuating circumstance; and

(c) A copy of continuing education certificates of completion or attendance, awarded to the licensee during the period of inactive status, to show proof of continuing education requirements for renewal as established in 201 KAR 34:030.

(3) The extension request shall be received by the board no sooner than ninety (90) days and no later than sixty (60) days before the end of the two (2) year period of inactive status.

Section 4. License Expiration. If the licensee does not submit a request for extension of the inactive-license status or the licensee fails to reactivate the licensee's license before the license expiration date, the license shall expire.

Section 5. Return to Active-License Status. (1) At any time within the two (2) year period of being granted inactive-licensure status, a licensee may request the licensee's license be returned to active status by submitting to the board:

(a) A written request to the board to return the licensee's license to active status;

(b) Payment of the current license renewal fee as set forth in 201 KAR 34:020; and

(c) A copy of continuing education certificates of completion or attendance, awarded to the licensee during the period of inactive status, to show proof of continuing education requirements for renewal as established in 201 KAR 34:030.

(2) If the licensee returns to active status, the licensee's renewal date shall be the date of return to active status.

Section 6. Renewal of Expired License. Following expiration of a license under Section 4 of this administrative regulation, a licensee who desires to practice professional art therapy in Kentucky shall:

(1) File with the board the appropriate application for licensure under 201 KAR 34:024;

(2) Pay the initial fees for application and licensure under 201 KAR 34:020; and

(3) Meet current requirements for initial licensure, as established by statute and administrative regulation.

Section 7. This administration regulation does not apply to a licensed professional art therapist or a licensed professional art therapist associate, who under KRS 309.1335(4), enters into retirement status or wishes to resume practice after a period of retirement.

JUDITH MAGDER, LPAT, Chair

APPROVED BY AGENCY: April 13, 2021

FILED WITH LRC: April 14, 2021 at 12:29 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held at 10:00 AM on June 23, 2021, at 500 Mero Street, 206NW, 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 June 23, 2021, this hearing will be done by video teleconference. Members of the public wishing to attend may utilize the following link: Zoom Link to Join from PC, Mac, Linux, iOS or

Android: <https://us02web.zoom.us/j/81525944122?pwd=bDR3K1p0N1FXOW5FeTFld2gwckNLUT09>, Password: 439126, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 639497, 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 June 30, 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: Shan Dutta, Attorney for the Board of Licensure for Professional Art Therapists, 500 Mero Street, 218NC, Frankfort, Kentucky 40601, phone (502) 782-0766, fax (502) 564-4818, email [sdutta@ky.gov](mailto:sdutta@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shan Dutta

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the conditions for inactive status and return to active status for license holders.

(b) The necessity of this administrative regulation: The administrative regulation is necessary under KRS 309.1315(17), which requires the Board to establish the conditions for inactive status and return to active status for license holders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 309.1315(17) requires the Board to establish conditions for inactive status and return to active status for license holders. This administrative regulation conforms to the content of KRS 309.1315(17) by establishing the conditions for inactive status and return to active status for license holders.

(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 establishing the conditions for inactive status and return to active status for license holders.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect persons licensed by the Kentucky Board of Licensure for Professional Art Therapists. As of November 18, 2020, there are 122 active Licensed Professional Art Therapists and 54 Licensed Professional Art Therapists 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 go on inactive status and return to active status, the license holder will be required to comply with 201 KAR 34:070. This will include: submitting a written request to be placed on inactive status and meeting the requirements for continuing education while on inactive status; making a written request for an extension within a certain time period if the licensee wants to extend the time period of the inactive status due to undue hardship or certain extenuating circumstances, with proof of completion of continuing education; making a written request to return to active status, with payment of the current license renewal fee and proof of completion of continuing education; in the event a license expires because a licensee fails to submit an extension request or a license reactivation request, a licensee who desires to practice professional art therapy shall file an application for licensure, pay the fees for application and licensure, and meet current requirements for licensure."

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: In complying

with this administrative regulation, there is no additional cost.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, licensees will be able to go into inactive status rather than surrendering their license.

(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 licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: 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 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? The Kentucky Board of Licensure for Professional Art 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 309.1315(1), (17)

(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

#### TRANSPORTATION CABINET Department of Vehicle Regulation Division of Driver Licensing (New Administrative Regulation)

#### 601 KAR 2:233. Kentucky Ignition Interlock Program; participants and device providers.

RELATES TO: KRS Chapter 45A, 186.010, 186.050, 186.180, 186.480, 186.531, 186.560, 186.570, 189A.005, 189A.010,

189A.040, 189A.045, 189A.070, 189A.085, 189A.090, 189A.103, 189A.105, 189A.107, 189A.200, 189A.220, 189A.240, 189A.250, 189A.340, 189A.345, 189A.350, 189A.370, 189A.380, 189A.400, 205.712, 18 U.S.C. 2721

STATUTORY AUTHORITY: KRS 189A.350

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189A.350 requires the Transportation Cabinet to promulgate administrative regulations to carry out provisions regarding the implementation of the Commonwealth's ignition interlock program for motor vehicle drivers who violate KRS 189A.010 or 189A.090. This administrative regulation establishes the duties and responsibilities of ignition interlock device providers wishing to enter into an agreement with the Commonwealth of Kentucky and the Transportation Cabinet for the administration and implementation of the ignition interlock device program and further establishes requirements for certifying ignition interlock devices under this program. This administrative regulation also establishes the requirements for an applicant with a violation of KRS 189A.010 or 189A.090 to obtain an ignition interlock device and license and has the potential benefit of shortening a suspension period if a participant does not have a device violation.

Section 1. Definitions. (1) "Applicant" means a person applying for an ignition interlock license.

(2) "Cabinet" is defined by KRS 189A.005(2).

(3) "Calibration" means the process that ensures an accurate alcohol concentration reading is being obtained on the ignition interlock device.

(4) "Certification" means the approval process required by the Commonwealth of Kentucky for ignition interlock devices and device providers prior to operating within the state.

(5) "Compliance-based review" means the review by the Transportation Cabinet of:

(a) The length of time that a person's license to operate a motor vehicle or motorcycle is suspended as established in KRS 189A.070; and

(b) That participant's compliance with the requirements established in KRS 189A.340.

(6) "Compliance period" means the length of time that a person's license to operate a motor vehicle or motorcycle is suspended as established in KRS 189A.070, 189A.340, and this administrative regulation.

(7) "Department" means the Department of Vehicle Regulation in the Kentucky Transportation Cabinet.

(8) "Ignition interlock certificate of installation" or "certificate of installation" is defined by KRS 189A.005(4).

(9) "Ignition interlock device" or "device" is defined by KRS 189A.005(3).

(10) "Ignition interlock device provider" or "device provider" is defined by KRS 189A.005(5).

(11) "Ignition interlock incentive period" or "incentive period" means the period of time as established by KRS 189A.340(4)(b)2 during which an ignition interlock provider certifies that no violations have occurred and is prior to the date by which the cabinet removes the ignition interlock restriction from a person's license.

(12) "Ignition interlock license" is defined by KRS 189A.005(6).

(13) "KIIP" means Kentucky Ignition Interlock Program.

(14) "License" is defined by KRS 189A.005(7).

(15) "Lockout" means a condition in which the device will not accept a breath test causing the ignition interlock device to prevent a motor vehicle's engine from starting.

(16) "Manufacturer" means an entity responsible for the design, development, production, and repair of the ignition interlock device.

(17) "Medical accommodation" means that a device has been adjusted to detect the breath alcohol level of participants who have a medically documented condition of diminished lung capacity requiring a reduced air sample.

(18) "Month" means calendar month.

(19) "Motor vehicle" is defined by KRS 186.010(4) and includes "motorcycle," which is defined by KRS 186.010(15).

(20) "NHTSA" means the National Highway Traffic Safety

Administration.

(21) "Participant" means a person who has applied and been approved to participate in KIIP.

(22) "Provider representative" means a device provider employee who provides oversight of the provider's ignition interlock operations within the Commonwealth of Kentucky.

(23) "Retesting" means an additional opportunity to provide a breath sample.

(24) "RFQ" means a request for qualifications pursuant to KRS Chapter 45A.

(25) "Service call" means an on-site remote service of an ignition interlock device, outside of a fixed facility, including for example:

- (a) Diagnostic trouble shooting;
- (b) Repair or replacement of a malfunctioning device; or
- (c) Removal of a device from an inoperable vehicle.

(26) "Service facility" means the physical location contracted by the ignition interlock device provider where the service provider's technicians install, calibrate, or remove ignition interlock devices.

(27) "Service facility inspection" means the process for determining that a service facility and the service facility's technicians are qualified and approved to provide ignition interlock services within the Commonwealth of Kentucky.

(28) "Service provider" means an entity that has contracted with an ignition interlock device provider to provide mechanical services related to an ignition interlock device at a service facility.

(28) "Tampering" means acting with the intent to render the ignition interlock device defective as established by KRS 189A.340 and 189A.345.

(30) "Technician" means a service provider employee or contractor who installs, calibrates, and removes ignition interlock devices within the Commonwealth of Kentucky.

Section 2. Ignition Interlock License. (1) The requirements established in this administrative regulation shall not be applied retroactively.

(2)(a) Anyone seeking an ignition interlock license pursuant to KRS Chapter 189A shall apply to the cabinet using the Kentucky Ignition Interlock Program Application, TC 94-175.

(b) At the time of application, the applicant shall present proof of insurance and valid vehicle registration.

(c) Upon approving an applicant for participation in the Kentucky Ignition Interlock Program, the cabinet shall notify the applicant in writing that the applicant has been approved to participate in KIIP.

(3)(a)1. The cabinet shall determine if an applicant is eligible for reduced payments pursuant to this administrative regulation, KRS 189A.340, and KRS 189A.350. An applicant found eligible for reduced payments shall pay a proportionate amount of the fees based upon the federal poverty guidelines, as established in KRS 189A.340.

2. A device and service provider shall accept the fees determined by the cabinet, as established in paragraph (a) of this subsection, and paid by an applicant or participant as payment in full pursuant to KRS 189A.340(7).

3. The applicant or participant shall remit the fees directly to the device provider as established in KRS 189A.340(7) and the RFQ.

4. A device provider shall not prohibit the pre-payment of fees for the device and services.

5. The device provider may pursue collection of amounts in arrears, not in excess of any indigency calculations, and recovery of the devices, if applicable. Collection and recovery shall be through separate legal action.

(b)1. An applicant requesting reduced payment shall file concurrently with the Kentucky Ignition Interlock Program Application, TC 94-175, a completed Kentucky Ignition Interlock Program Affordability Application, TC 94-188. An applicant filing a Kentucky Ignition Interlock Program Affordability Application, TC 94-188, shall submit federal tax returns, paychecks, W-2's, or 1099's as part of his or her application.

2. The reduced payment rate shall not extend past the

maximum suspension pursuant to KRS 189A.070.

3. The applicant or participant's reduced payment eligibility shall be determined annually.

4. The applicant may re-submit the Kentucky Ignition Interlock Program Affordability Application, TC 94-188, for recalculation by the cabinet.

(4) A pre-existing out-of-state or in-state suspension for the offenses listed in KRS 186.560, 186.570, or 205.712 shall result in the applicant's ineligibility to obtain an ignition interlock license.

(5) An applicant seeking a medical accommodation due to diminished lung capacity shall submit with the Kentucky Ignition Interlock Program Application, TC 94-175, a completed Breath Alcohol Ignition Interlock Physician Statement, TC 94-176.

(6) The cabinet shall issue to the applicant, notice of his or her eligibility or ineligibility for an ignition interlock license based on if:

(a) His or her current driving history record conforms to the eligibility requirements established in KRS Chapter 189A; and

(b) He or she is not ineligible pursuant to KRS 186.560, 186.570, or 205.712.

(7) The cabinet shall issue an ignition interlock license after device installation for the period established pursuant to KRS Chapter 189A.

(8) An applicant eligible for device installation shall select and contact a certified device provider of his or her choice from the list maintained on the cabinet's Web site at <https://drive.ky.gov/driver-licensing/Pages/Ignition-Interlock-Program.aspx#certified-ignition-interlock-providers>.

(9) A technician designated by the device provider shall install a certified ignition interlock device on the applicant's vehicle upon receipt of the letter of eligibility issued by the cabinet.

(10) An applicant approved by the cabinet to participate in KIIP based on the criteria established in this section and determined by the cabinet to be eligible for an ignition interlock device based on the criteria established in this section shall be required to install an ignition interlock device on at least one (1) primary motor vehicle registered and titled in his or her name or another's motor vehicle with express notarized, written consent of the owner authorizing installation of the device.

(11) An applicant or participant may have devices installed on multiple motor vehicles.

(12)(a) An applicant approved by the cabinet to participate in KIIP pursuant to subsection (10) and this administrative regulation shall pay the applicable fee for installation of the ignition interlock device.

(b) Upon an applicant's payment of the applicable fee for installation and subject to any requirements established in KRS 189A.090, 189A.107, 189A.200, 189A.340(8), and 189A.345, the service provider's technician shall install the device and issue to the applicant an Ignition Interlock Certificate of Installation, TC 94-194.

(13) Before an ignition interlock license is issued, an approved applicant to participate in KIIP, as established in this section of this administrative regulation, and eligible for an ignition interlock license pursuant to this section of this administrative regulation and KRS Chapter 189A shall:

(a) Present the Ignition Interlock Certificate of Installation, TC 94-194, to a department regional field office electronically, via USPS, or in person; and

(b) Pay the reinstatement fee pursuant to KRS 186.531(9). The license shall display an ignition interlock device restriction.

(14) Upon issuance of an ignition interlock license, a participant shall begin to receive day-for-day credit toward the license suspension period pursuant to KRS 189A.070 and the ignition interlock license incentive period pursuant to KRS 189A.340.

(15) After ten (10) days' written notice to the participant, the device provider shall notify the cabinet of nonpayment of fees on an account that is in arrears for thirty (30) days or more.

(16) Subject to recalculation of day-for-day credit, as established in Section 9 of this administrative regulation, a participant may voluntarily have the device removed and reinstalled onto a different motor vehicle pursuant to subsection (12) of this section and upon payment of the appropriate fees to



the device provider.

(17) A participant shall have the device removed by an approved service provider and technician designated by the device provider upon completion of the ignition interlock incentive period established by KRS 189A.070.

(18)(a) Upon removal of the device, the service provider shall retain for their records and provide to the cabinet and the participant a Certificate of Removal for Ignition Interlock Device, TC 94-178. The Certificate of Removal for Ignition Interlock Device, TC 94-178, shall be submitted to the cabinet within twenty-four (24) hours electronically or no later than seventy-two (72) hours by mail or fax.

(b) Upon notice that the device has been removed pursuant to subsection (17) of this section or upon expiration of the maximum duration of the participant's suspension under KRS 189A.070, the cabinet shall update the participant's driver history record authorizing the regional field offices to issue the participant a new license without the ignition interlock restriction.

(19) A participant not participating in the KIIP and with a license suspension period exceeding twelve (12) months shall be subject to retesting requirements prior to the issuance of a new license pursuant to KRS 186.480.

(20)(a) Unless the person is under eighteen (18) years of age, the Transportation Cabinet shall, pursuant to KRS 189A.070, suspend the driving privileges of a person convicted of an offense established in KRS 189A.010.

(b) As established by KRS 189A.070(1)(b), a person who is under eighteen (18) years of age whose license is suspended pursuant to KRS 189A.070(1)(b) shall be eligible for an ignition interlock license pursuant to KRS Chapter 189A, but that person shall not be eligible for any incentive period.

Section 3. General Requirements for Ignition Interlock Device Providers. (1) The cabinet shall certify ignition interlock device providers for two (2) years utilizing the provisions of KRS Chapter 45A and the terms of the RFQ. Application for new applicants and continuing certification renewals shall open on October 1 in the year prior to expiration.

(2) Ignition interlock device providers certified pursuant to this administrative regulation shall obtain re-certification in compliance with this administrative regulation prior to providing devices or services.

(3) An ignition interlock device provider seeking certification to provide devices or services within the Commonwealth shall comply with the requirements of solicitation issued by the cabinet as established in subsection (1) of this section. Non-compliance shall result in a denial of certification.

(4) An ignition interlock device provider may subcontract with a person, firm, LLC, or corporation to provide a device or services if that device is specifically included in the original certification request and is specifically certified by the cabinet pursuant to KRS 189A.350.

(5) An ignition interlock device provider shall provide a representative who shall be assigned to work specifically with the KIIP pursuant to the terms of the RFQ.

(6) An ignition interlock device provider or service provider shall provide information and training for the operation and maintenance of the device to the participant and other individuals operating a vehicle equipped with a device.

(7)(a) A device shall only be removed by the device provider or a service provider contracted with the device provider except if:

1. An agreement is in place between device providers; or

2. The purpose of replacing a participant's device due to the initial device provider's insolvency or business interruption.

(b) In the case of a device provider's insolvency or business interruption, the original device provider shall bear the costs associated with the removal of the existing device and installation of the new device.

(8)(a) A device provider shall notify the cabinet within fifteen (15) days of a suspension, revocation, or disciplinary action taken against the device provider by a jurisdiction within or outside the Commonwealth. This notification shall include the reason for the disciplinary action and other information as the Kentucky

Transportation Cabinet may, pursuant to this administrative regulation, reasonably request. This requirement applies regardless of the existence of an appeal.

(b) Notice shall include a copy of the official correspondence or pleading establishing the reason for the pending action and shall be provided to the cabinet regardless of the existence of an appeal. Pursuant to this administrative regulation and KRS Chapter 189A, the cabinet may request other information at any time and the provider shall provide the information if it is reasonably available.

(9) The records required by Section 4(3)(g) of this administrative regulation shall be retained by an ignition interlock device provider for at least five (5) years from the date the device is removed from the participant's vehicle. The records shall be disposed of in a manner compliant with relevant privacy laws and Section 4(3)(g) of this administrative regulation.

Section 4. Certification of Ignition Interlock Devices, Device Providers, and Service Providers. (1) The Transportation Cabinet shall issue an RFQ to device providers in order to certify providers eligible to provide ignition interlock services and commodities required for the implementation and maintenance of the state's ignition interlock program.

(2) An ignition interlock device provider requesting certification of an ignition interlock device shall submit:

(a) An affidavit that the ignition interlock device complies with specifications and certification requirements established in the RFQ;

(b) Documentation for each model from either an ISO 17025 accredited, independent testing laboratory or the NHTSA testing laboratory that the ignition interlock device meets or exceeds NHTSA model specifications; and

(c) Documentation that each ignition interlock device installed shall be equipped with a functional camera that documents the date, time, and photograph of all persons providing breath samples to the ignition interlock device.

(3) An ignition interlock device provider requesting certification pursuant to subsection (1) of this section shall:

(a) Submit:

1. Evidence that demonstrates successful experience in the development and maintenance of an ignition interlock service program, such as, for example, a resume, evaluation, or letter of recommendation; and

2. A list of jurisdictions served by the device provider;

(b) Provide a description of the training required, including its frequency, for persons employed by, contracted with, or permitted by the device provider to install, calibrate, remove, and provide continuing support for participants and the devices;

(c) Provide a plan that includes a location map describing the areas and locations of the device provider's proposed fixed installation and service facilities. The plan shall include at least one (1) fixed facility in each of the twelve (12) highway districts;

(d) Agree to the random or designated selection process to require coverage in underserved areas as established in the RFQ;

(e) Agree to initial service facility inspections, continuing random inspections, and annual inspections of each service facility by the cabinet or its designee. The device provider shall also agree to provide notice to the cabinet or its designee of the opening of new service facilities to permit the inspection of the facility within thirty (30) days of opening;

(f) Comply with all local business license and zoning regulations, and with all federal, state, and local health, fire, and building code requirements. The official valid business license and tax document shall be posted in a conspicuous place at the service facility immediately upon receipt, if applicable;

(g) Provide a plan for the receipt, maintenance, and destruction or return of participant's records consistent with court rules and the confidential maintenance of participant's records as required by the Driver's Privacy Protection Act, 18 U.S.C. 2721 and other applicable statutes;

(h) Provide proof of insurance covering the liability related to the manufacture, operation, installation, service, calibration, and removal of the devices with policy limits as established in the RFQ.

The device provider's liability insurance shall be expressly considered primary in the policy;

(i) Designate a device provider representative authorized to speak on behalf of and bind the device provider and designated to work with the cabinet, the courts, and other agencies in the administration of the ignition interlock program;

(j) Maintain a toll-free twenty-four (24) hour emergency phone service that shall be used by participants to request assistance in the event of operational problems related to the device and that shall include technical assistance and aid in obtaining a roadside service call if needed;

(k) Demonstrate the ability to maintain sufficient, secure computer hardware and software compatible with the cabinet and court requirements to record, compile, and transmit data and information requested by the cabinet and the Administrative Office of the Courts;

(l) Agree to provide expert or other required testimony in any administrative, civil, or criminal proceedings pursuant to this administrative regulation and KRS Chapters 186 and 189A;

(m) Provide a complete list of any contractual fees that the participant may be required or requested to pay; and

(n) Adhere to the device settings as stated in the RFQ.

(4) A device provider shall, pursuant to KRS 189A.350(4)(f), notify the cabinet within seven (7) days of servicing an ignition interlock device of discovery of a participant's failure, if applicable, to comply with KRS 189A.340(4)(b)2. or 189A.345.

(5) Each device provider shall give the cabinet access to independently review the interlock user's activity including images.

(6) Pursuant to KRS 189A.070 or 189A.340, a device provider shall send the cabinet notification that the participant has been violation-free for the required compliance period as established in KRS 189A.340.

(a) For a participant who has incurred a first DUI offense within a ten (10) year period, the device provider shall send the cabinet notification that the participant has been violation-free within the first ninety (90) consecutive days of the required compliance period.

(b) For a participant who has incurred any subsequent DUI offenses within a ten (10) year period, the provider shall send the cabinet notification that the participant has been violation-free within the first one hundred twenty (120) consecutive days of the required compliance period.

(c) The compliance period shall begin either ninety (90) days prior to the conclusion of the identified incentive period if a participant has incurred a first DUI offense within a ten (10) year period or one hundred twenty (120) days prior to conclusion of the identified incentive period if a participant has incurred any subsequent DUI offenses within a ten (10) year period.

(d)(i) Violations of the ninety (90) or one hundred twenty (120) consecutive day requirement shall be as established in KRS 189A.340(4)(b)2.b.

(ii) Violations that constitute a misdemeanor offense shall be established in KRS 189A.345.

(7) Consistent with and pursuant to the process established in the RFQ, a device provider shall provide either an interlock code or bypass capability to automobile mechanics, thereby causing the interlock device to be disabled during vehicle repair and maintenance.

(8) A device provider shall indemnify and hold harmless any unit of the Commonwealth or local government or Commonwealth or local government employees, public officers, or agents from all claims, demands, or actions as a result of damages or injury to persons or property, including death, that arise directly or indirectly out of the installation, omission, failure of installation, servicing, calibrating, or removal of an ignition interlock device. If the device provider's report of ignition interlock activities contains a verified error, the cabinet, department, or cabinet or department employees or agents shall be indemnified relevant to the error.

Section 5. Installation, Operation, Calibration, and Removal of Devices. (1) An ignition interlock device shall be installed by or under the direction and supervision of a device provider in conformance with procedures of the device provider.

(2) Prior to installing the device, the provider shall obtain and retain copies from the participant of:

(a) Photo identification;

(b) The vehicle registration or title containing the VIN of the motor vehicle designated as primary by the participant and the name or names of the operators of the motor vehicle; and

(c) Consent of the participant or registered owner to install the device.

(3)(a) The device shall be inspected or calibrated by a technician designated by the device provider within thirty (30) days of installation and every sixty (60) days thereafter.

(b) A participant shall have the option to service the device at thirty (30) day intervals following the initial calibration.

(4) A service provider and technician shall use the calibration units approved by NHTSA, incorporated by reference, that is available on the list of Conforming Products List of Calibrating Units for Breath Alcohol Testers at <http://www.transportation.gov/odapc/conforming-product-list-calibrating-units-breath-alcohol-testers>.

(5) An ignition interlock device provider shall ensure that technicians installing the device:

(a) Inspect, calibrate, or replace devices with a newly calibrated device at each inspection as required;

(b) Retrieve data from ignition interlock device data logs for the previous period and send the information to the appropriate authority, as established in KRS 189A.350(4)(f), within seven (7) days of discovery;

(c) Record the odometer reading at installation and at service appointments;

(d) Inspect devices and wiring for signs of tampering, record suspected violations, and transmit violation reports pursuant to this administrative regulation; and

(e) Conform to other calibration requirements established by the device provider.

(6) If a participant fails to have the device inspected or recalibrated as required by subsection (3)(a) of this section, the ignition interlock device shall be programmed to enter into a lockout condition, at which time the vehicle shall be required to be returned to the service provider.

(7) The participant shall be responsible for costs related to a service call unless the ignition interlock device failed through no fault of the participant, in which case the device provider shall be responsible for the applicable costs.

(8) Within ninety-six (96) hours of receipt of written notice issued by the cabinet directing removal of the device, a device provider shall, pursuant to this administrative regulation, notify the participant that he or she shall return the vehicle with the installed device for removal.

(9) If an ignition interlock device is removed for any reason, components of the motor vehicle altered by the installation of the device shall be restored to pre-installed conditions.

(10) The cabinet shall:

(a) Maintain a rotating list of certified ignition interlock device providers and approved facilities available at <https://drive.ky.gov/driver-licensing/Pages/Ignition-Interlock-Program.aspx#certified-ignition-interlock-providers>;

(b) Maintain a Kentucky Ignition Interlock Application, TC 94-175;

(c) Make available a uniform Ignition Interlock Certificate of Installation, TC 94-194, to be printed and distributed by device providers to their approved service providers and technicians documenting successful ignition interlock device installation;

(d) Issue an ignition interlock license to participants upon receipt of a completed Ignition Interlock Certificate of Installation, TC 94-194, and in compliance with the requirements of this administrative regulation. The license shall have an in-force status and indicate that it is an ignition interlock license by displaying a restriction code for an ignition interlock device;

(e) Make available a uniform Certificate of Removal for Ignition Interlock Device, TC 94-178, to be printed and distributed by device providers to their approved service providers and technicians documenting successful ignition interlock device removal; and



(f) As established in Section 2(18)(b) of this administrative regulation, remove the restriction code on the participant's driving record following receipt and review of the Certificate of Removal for Ignition Interlock Device, TC 94-178.

Section 6. Device Provider Suspension, Revocation, Voluntary Service Provider Closure, or Financial Insolvency.

(1) The cabinet shall indefinitely suspend or revoke certification of an ignition interlock device provider or individual service provider contracted by the device provider if:

(a) A device in use by that device provider and previously certified by the cabinet is discontinued by the manufacturer or device provider;

(b) The device provider's liability insurance is terminated or cancelled;

(c) The device provider makes materially false or inaccurate information relating to a device's performance standards;

(d) There are defects in design, materials, or workmanship causing repeated failures of a device;

(e) A device provider fails to fully correct an identified service facility deficiency within thirty (30) days after having been notified by the cabinet or its designee to do so;

(f) A service provider impedes, interrupts, disrupts, or negatively impacts an investigation or inspection conducted by the cabinet or its designee involving customer service issues, motor vehicle damage, or a complaint brought by a third party;

(g) A public safety or client confidentiality issue with an ignition interlock device provider, service facility, or technician is identified;

(h) A device provider becomes insolvent or files for bankruptcy;

(i) The device provider requests a voluntary withdrawal; or

(j) The provider fails to comply with the requirements established in the RFQ used to apply for certification.

(2)(a) The device provider shall be given at least thirty (30) days written notice of the existence of one (1) or more of the conditions established in subsection (1) of this section by letter from the Office of Highway Safety, served by certified mail, and an opportunity to respond to the allegations or correct the deficiencies within that period.

(b) The Office of Highway Safety shall consider the device provider's response or lack of response if deciding to suspend for a period of time or completely revoke the certification of the device provider.

(c) The device provider may appeal the decision of the Office of Highway Safety. An appeal shall be made and conducted pursuant to the provisions of KRS Chapter 13B.

(3) A device provider subject to suspension or revocation shall be responsible for and bear the costs associated with:

(a) Providing notice to participants; and

(b) The removal of currently installed devices and the installation of a new device by a device provider in good standing.

(4) A device provider subject to suspension or revocation shall continue to provide services for currently installed devices for a time calculated by the cabinet and based on the remaining ignition interlock period, but no longer than ninety (90) days.

(5) A device provider subject to suspension or revocation shall continue to provide services for currently installed devices. There shall not be a new ignition interlock device installation during the period of suspension.

(6)(a) A device provider that terminates certification or goes out of business shall comply with the requirements established in subsection (3) of this section and shall continue to provide services in accordance with this administrative regulation for currently installed devices for ninety (90) days from the date of the device provider's notification to the cabinet that the device provider will be terminating ignition interlock services.

(b) A provider who terminates certification or goes out of business shall submit plans for transferring existing participants to other device providers to ensure continuity of service.

(c) A transfer plan shall be submitted to the cabinet for review by the Office of Highway Safety within thirty (30) days of the initial notification of intent to cease operations in the Commonwealth.

(d) The device provider shall be solely responsible for notifying participants with currently installed devices serviced by the device

provider, and shall be solely responsible for charges related to removal and installation of a device by a new device provider.

Section 7. Surrender of Motor Vehicle License Plates. (1) A defendant who does not have an ignition interlock license pursuant to KRS 189A.340, a hardship license under KRS 189A.410, or an exception under KRS 189A.085 shall surrender his or her license plate or plates pursuant to KRS 189A.085.

(2) Upon receipt of a request for a vehicle registration inventory from a court, the cabinet shall:

(a) Conduct a search of the automated vehicle information system;

(b) Identify motor vehicles owned or jointly owned by the person named on the request; and

(c) Return the results of the search to the court by noon Eastern time, the next working day after the request is received, if the request is received by noon Eastern time. A request received after noon Eastern time shall be returned to the court by the close of business the second working day after the request is received.

(3) Upon receipt of a court order impounding a license plate pursuant to KRS 189A.085, the cabinet shall suspend the motor vehicle registration. The cabinet shall not suspend the registration of any motor vehicle pursuant to KRS 189A.085 unless a court order has been received.

(4) The court shall return each confiscated license plate to the cabinet. The cabinet shall bear the responsibility for reasonable postage or shipping costs for the return of confiscated license plate.

(5) After the motor vehicle license plate suspension period has expired, the county clerk shall reissue a motor vehicle license plate and registration receipt upon the request of the vehicle owner.

(a) If the registration period of the suspended license plate has not expired, the new registration shall be issued pursuant to KRS 186.180(2).

(b) If the suspended license plate has expired, the registration shall be issued as a renewal registration pursuant to KRS 186.050.

Section 8. Suspensions and Compliance Periods. As established in KRS 189A.070 and this administrative regulation, the incentive and compliance-based review periods that correspond with the license suspension period shall be established in the table in this section.

| DUI Offense               | DUI Suspension | Ignition Interlock Incentive Period                                 | Compliance-Based Review             |
|---------------------------|----------------|---|-------------------------------------|
| 1st Offense               | 6 month        | 4 month or until the participant meets the compliance-based review  | 90 consecutive days violation free  |
| 2nd Offense               | 18 month       | 12 month or until the participant meets the compliance-based review | 120 consecutive days violation free |
| 3rd Offense               | 36 month       | 18 month or until the participant meets the compliance-based review | 120 consecutive days violation free |
| 4th Offense or Subsequent | 60 month       | 30 month or until the participant meets the compliance-based review | 120 consecutive days violation free |

Section 9. Monitoring. (1) The Division of Driver Licensing shall monitor the reports provided by the device provider for violations as established in KRS 189A.340(4)(b)2.b, KRS 189A.345, and in Section 4(6)(d) of this administrative regulation.

(2) Based on the date provided on the KIIP participation approval letter indicating the beginning of the compliance period, device providers shall, pursuant to Section 4(4) of this administrative regulation and KRS 189A.350(4)(f), notify the cabinet of any violations under KRS 189A.340(4)(b)2.b. within

seven (7) days of discovery of the occurrence of that violation.

(3) If the Division of Driver Licensing observes a violation, the division shall note the violation on the driving record and the time credited to the compliance period shall be voided.

(4) Any appeal stemming from these determinations shall be administered pursuant to Section 10 of this administrative regulation.

(5) If an ignition interlock device provider is notified or discovers evidence or information that a participant or others have committed an offense in violation of KRS 189A.345, the ignition interlock device provider shall provide notice of the alleged violation and any corresponding information related to the alleged offense to the cabinet and law enforcement within seven (7) days of discovery of the occurrence pursuant to KRS 189A.350(4)(f). The device provider shall:

(a) Notify the cabinet of the name of the participant or other offender and the location where the alleged offense occurred;

(b) Notify law enforcement in the county where the offense is alleged to have occurred; and

(c) Provide all evidence to the law enforcement in the county where the offense is alleged to have occurred, including, for example, documents, photographs, alcohol test results, witness names, and any other information related to the alleged offense.

(6) If the cabinet discovers evidence or information that a participant or others have committed an offense in violation of KRS 189A.345, the cabinet shall:

(a) Notify law enforcement in the county where the offense is alleged to have occurred; and

(b) Provide all evidence to the law enforcement in the county where the offense is alleged to have occurred, including, for example, documents, photographs, alcohol test results, witness names, and any other information related to the alleged offense.

(7) Once the participant has complied with the Ignition Interlock Incentive Period, the device provider shall, pursuant KRS 189A.340(4)(b)2.a., issue a final report to the cabinet that verifies that the participant has satisfied the compliance requirements of the Ignition Interlock Incentive Period. Once the cabinet has made a determination regarding the final report pursuant to Section 2(18) and Section 5(10) of this administrative regulation, the cabinet shall issue a removal letter to the participant stating that the ignition interlock device may be removed.

(8) A participant shall receive day-for-day credit for days that the person held a valid ignition interlock license or while receiving alcohol or substance abuse treatment in a licensed, inpatient residential facility pursuant to KRS 189A.340(5) and 908 KAR 1:310.

(9) A participant shall not receive day-for-day credit for days that the person utilizes the employer exemption pursuant to KRS 189A.340(6).

(a) A participant seeking to utilize the employer exemption pursuant to KRS 189A.340(6) shall submit a notarized Kentucky Ignition Interlock Program Employer Work Exemption Application, TC 94-190.

(b) A participant that has applied for the employer exemption pursuant to KRS 189A.340(6) shall be granted the exemption by the cabinet if the applicant tenders a completed and notarized Kentucky Ignition Interlock Program Employer Work Exemption Application, TC 94-190, in satisfaction of KRS 189A.340(6)(a) and (b).

Section 10. Appeals. (1) An appeal of any action taken by the Transportation Cabinet pursuant to KRS 189A.340 shall be conducted pursuant to KRS 189A.370.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Ignition Interlock Program Application," TC 94-175, September 2020;

(b) "Breath Alcohol Ignition Interlock Physician Statement," TC 94-176, July 2020;

(c) "Certificate of Removal for Ignition Interlock Device," TC 94-178, September 2020;

(d) "Kentucky Ignition Interlock Program Affordability

Application," TC 94-188, September 2020;

(e) "Kentucky Ignition Interlock Program Employer Work Exemption Application," TC 94-190, September 2020;

(f) "Ignition Interlock Certificate of Installation," TC 94-194, April 2021;

(g) "Certified Ignition Interlock Providers" by the Kentucky Transportation Cabinet, Division of Driver Licensing, is available electronically at <https://drive.ky.gov/driver-licensing/Pages/Ignition-Interlock-Program.aspx#certified-ignition-interlock-providers>;

(h) "Conforming Products List of Calibrating Units for Breath Alcohol Testers" by the National Highway Traffic Safety Administration, revised October 22, 2012, available at <http://www.transportation.gov/odapc/conforming-product-list-calibrating-units-breath-alcohol-testers>; and

(i) "Model Guideline for State Ignition Interlock Programs" by the National Highway Traffic Safety Administration, revised November 2013, available at [nhtsa.gov/staticfiles/nti/pdf/811859.pdf](https://www.nhtsa.gov/staticfiles/nti/pdf/811859.pdf).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. through 4:30 p.m. This material is also available at Transportation Cabinet Regional Field Offices, on the cabinet's Web site at <http://drive.ky.gov>, and on the cabinet's Administrative Regulations Filings Web site at <https://transportation.ky.gov/LegalServices/Pages/Filings.aspx>.

JIM GRAY, Secretary

MATT COLE, Acting Commissioner

JON JOHNSON, Staff Attorney Manager/Assistant General Counsel

APPROVED BY AGENCY: April 5, 2021

FILED WITH LRC: April 12, 2021 at 12:14 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 AM on June 28, 2021, at the Transportation Cabinet, Transportation Cabinet Building, 200 Mero Street, Frankfort, Kentucky 40622. In the event the declaration of a State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by June 28, 2021, this hearing will be done by video teleconference. Members of the public wishing to attend may utilize the following link: Join from PC, Mac, Linux, iOS or Android: <https://bluejeans.com/521346165/2876?src=calendarLink&flow=join> meeting, Or Telephone: +1.408.419.1715 (United States (San Jose)), +1.408.915.6290 (United States (San Jose)), Meeting ID: 521 346 165, Participant Passcode: 2876. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on June 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jon Johnson, Staff Attorney Manager/Assistant General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238, email [jon.johnson@ky.gov](mailto:jon.johnson@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jon Johnson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the administration and implementation of the ignition interlock program.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 189A.350.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes forms, creates a uniform certificate of installation for ignition interlock devices, certifies the devices approved for use in the Commonwealth, and creates an ignition interlock license to be issued upon application approval.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish the regulatory requirements of KRS 189A.350.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation addresses the shift of the administration of this program from the judicial branch to the Transportation Cabinet.

(b) The necessity of the amendment to this administrative regulation: KRS 189A.350 requires that the Transportation Cabinet to promulgate administration regulations in order to administer this program.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 189A.350 that requires the cabinet to implement the ignition interlock program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify provisions in the current administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect: companies desiring to provide ignition interlock devices and services within Kentucky; motor vehicle drivers who violate KRS 189A.010 (defendants); the cabinet's Division of Drivers Licensing within the Department of Vehicle Regulation; the cabinet's Office of Highway Safety within the Department of Highways; circuit clerks, and the Administrative Office of the Courts.

(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: Companies desiring to provide ignition interlock devices and services will apply to the cabinet for device certification and authorization; defendants will apply for both the ignition interlock device and authorization to operate with an ignition interlock license pursuant to court order or conviction pursuant to KRS Chapter 189A; divisions within the department will approve and process the application forms; and ignition interlock licenses will be issued by the appropriate authority.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Defendants will pay a DUI service fee assessed by the court in the amount of \$50.

(c) As a result of compliance, what benefits will accrue to the entities: If eligible pursuant to KRS Chapter 186, participants will be approved to drive with an ignition interlock license, pursue the benefits of reduced license suspension time, and obtain immediate driving privileges; businesses desiring to provide ignition interlock devices and services will be granted certification for devices and authority to provide services.

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

(a) Initially: Inspections, mailing of documents and staff time necessary to begin processing applications is estimated at \$525,000.

(b) On a continuing basis: In an amount not to exceed the actual cost to the cabinet for issuing the ignition interlock license to the participant.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Initially, FHWA-Hazard Elimination Fund; funds collected pursuant to KRS 189A.350.

(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: While the intent is not for the state to incur costs, an increase in funding will like be needed to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative fees created herein are pursuant to statute to off-set any costs to KYTC.

(9) TIERING: Is tiering applied? No tiering is required for device providers. All device providers meeting or exceeding the qualifications will be treated the same. Tiering for applicants in this program is pursuant to statute.

#### 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? KYTC Department of Vehicle Regulation, Division of Driver Licensing, Office of Highway Safety; circuit clerks, Administrative Office of the Courts, county attorneys, law enforcement.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 189A.350.

(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. For local government, costs should be minimal as the process is administratively driven and the regulatory actions will be performed within the context of DUI prosecutions.

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

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

(c) How much will it cost to administer this program for the first year? Up to approximately \$525,000.

(d) How much will it cost to administer this program for subsequent years? In an amount not to exceed the actual cost to the cabinet for issuing the ignition interlock license to the participant.

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

Revenues (+/-): No revenues will be generated by this program.

Expenditures (+/-): Additional programming to the driver licensing system will need to be implemented. The cost is unknown.

Other Explanation: The cabinet is unsure precisely how many defendants will move for eligibility under this program and whether efficiencies can be achieved if they do.

#### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (Repealer)

**701 KAR 5:081. Repeal of 701 KAR 5:080. Application for approval of alternative school-based decision-making model.**

RELATES TO: KRS 160.345

STATUTORY AUTHORITY: KRS 13A.100, KRS 156.070, KRS 160.345

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.345 establishes a statutory administrative structure for school-based decision making (SBDM) councils but allows for schools to apply for exemption from the statutory model through application to the Kentucky Board of Education (KBE). This administrative regulation

repeals 701 KAR 5:080, Application for approval of alternative SBDM model, because the required application that must be submitted to the KBE to receive an exemption from the statutory administrative structure for school councils and have an alternative SBDM model approved is being incorporated into 701 KAR 5:100, as amended. Repeal of 701 KAR 5:080 eliminates redundancy and streamlines the regulation of SBDM councils by centralizing processes and mandates.

Section 1. 701 KAR 5:080, Application for approval of alternative school-based decision making model, is hereby repealed.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

JASON E. GLASS, ED.D., Commissioner

LU YOUNG, Chairperson

APPROVED BY AGENCY: April 13, 2021

FILED WITH LRC: April 13, 2021 at 3:52 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on June 22, 2021, at 10:00 a.m. in the State Board Room, 5<sup>th</sup> Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 2021.

CONTACT PERSON: Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5<sup>th</sup> Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email [regcomments@education.ky.gov](mailto:regcomments@education.ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 701 KAR 5:080, Application for approval of alternative SBDM model, because the required application that must be submitted to the KBE to receive an exemption from the statutory administrative structure for school councils and have an alternative SBDM model approved is being incorporated into 701 KAR 5:100, as amended.

(b) The necessity of this administrative regulation: The repeal of 701 KAR 5:080 is necessary to eliminate redundancy and streamline the regulation of SBDM councils by centralizing processes and mandates.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 160.345 establishes a statutory administrative structure for school-based decision making (SBDM) councils but allows for schools to apply for exemption from the statutory model through application to the Kentucky Board of Education (KBE). This administrative regulation repeals 701 KAR 5:080, Application for approval of alternative SBDM model, because the required application that must be submitted to the KBE to receive an exemption from the statutory administrative structure for school councils and have an alternative SBDM model approved is being incorporated into 701 KAR 5:100, as amended.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of 701 KAR 5:080 is necessary to eliminate redundancy and streamline the regulation of SBDM councils by centralizing processes and mandates.

(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 statute: 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 repeal of 701 KAR 5:080 is not expected to affect any regulated entity because the required application that must be submitted to the KBE to receive an exemption from the statutory administrative structure for school councils and have an alternative SBDM model approved is being incorporated into 701 KAR 5:100, as amended.

(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 repeal of 701 KAR 5:080 is not expected to affect any regulated entity because the required application that must be submitted to the KBE to receive an exemption from the statutory administrative structure for school councils and have an alternative SBDM model approved is being incorporated into 701 KAR 5:100, as amended.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is associated with the repeal of 701 KAR 5:080.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities are expected to accrue incidental benefits as the repeal of 701 KAR 5:080 will eliminate redundancy and streamline the regulation of SBDM councils by centralizing processes and mandates.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding will not be necessary to implement the repeal of 701 KAR 5:080.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not appropriate in this administrative regulation because the repeal of 701 KAR 5:080 applies equally to all regulated entities.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The repeal of 701 KAR 5:080 is not expected to affect any units, parts, or divisions of state or local government because the required application that must be submitted to the KBE to receive an exemption from the statutory administrative structure for school councils and have an alternative SBDM model approved is being incorporated into 701 KAR 5:100, as amended.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.100, KRS 156.070, KRS 160.345

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No effect on expenditures and revenues is estimated due to the repeal of 701 KAR 5:080.

(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 the first year due to the repeal of 701 KAR 5:080.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated in subsequent years due to the repeal of 701 KAR 5:080.

(c) How much will it cost to administer this program for the first year? No cost is associated with the repeal of 701 KAR 5:080.

(d) How much will it cost to administer this program for subsequent years? No cost is associated with the repeal of 701 KAR 5:080.

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

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

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Fiscal Management**  
**(New Administrative Regulation)**

**907 KAR 3:060. Ambulance provider assessment program.**

RELATES TO: KRS 45.229, 142.301, 142.318, 142.343, 142.359, 194A.030(2), 205.5601, 205.5602, 205.5603, 42 Part C.F.R. 413, 42 U.S.C. 1396a

STATUTORY AUTHORITY: KRS 194A.050(1), 205.520(3), 205.560(1), 205.5602(2)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented, by federal law to qualify for federal funds. KRS 205.5602(2) requires the department to promulgate an administrative regulation to implement the Ambulance Provider Assessment Program, KRS 205.5601 and 205.5603. This administrative regulation establishes the requirements for implementing the Ambulance Provider Assessment Program for ground ambulance providers.

Section 1. Definitions. (1) "Assessment" is defined by KRS 205.5602(1)(b).

(2) "Department" is defined by KRS 205.5602(1)(e).

(3) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(4) "Ground ambulance provider" is defined by KRS 205.5602(1)(a).

(5) "Medicaid" is defined by KRS 142.301(14).

(6) "MMIS" means the Medicaid Management Information System or its successor program.

(7) "Program year" means the calendar year during which supplemental payments and tax assessments are made.

Section 2. Ambulance Provider Assessment Program. (1) Prior to the program year, the department shall calculate for eligible ground ambulance providers an interim uniform add-on amount for:

(a) Emergent transports that the ground ambulance provider is eligible to receive as a supplemental payment for the program year for Medicaid fee-for-service transports; and

(b) Non-emergent transports that the ground ambulance provider is eligible to receive as a supplemental payment for the program year for Medicaid managed care transports.

(2) On an annual basis, the department shall calculate a lump sum monthly interim supplemental payment for each eligible ground ambulance provider by:

(a) Utilizing the uniform add-on amounts referenced in subsection (1)(a) and (1)(b) of this section;

(b) Utilizing MMIS fee-for-service data, MMIS managed care encounter data, and ground ambulance survey data to calculate the transport volume; and

(c) Reducing the payment volume by a five (5) percent reserve in order to avoid overpayment to ambulance providers.

(3) For each month in a program year, the department shall make a monthly Medicaid:

(a) Fee-for-service interim payment to each qualifying ground ambulance provider in accordance with the methodology established by KRS 205.5602; and

(b) Managed care interim payment to each qualifying ground ambulance provider in accordance with the methodology established by KRS 205.5602.

(4) Payment of the monthly Medicaid managed care interim payment shall be made by distribution to each Medicaid managed care organization through a monthly supplemental capitation payment.

(5) The department shall submit to each Medicaid managed care organization a listing of the monthly Medicaid managed care supplemental payments that the Medicaid managed care organization shall make to each eligible ground ambulance providers.

(6) Each Medicaid managed care organization shall remit to each ground ambulance provider as directed by the department the monthly Medicaid managed care supplemental payment within ten (10) business days of receipt of the monthly supplemental payment.

(7) On an annual basis, the department shall calculate the monthly tax assessment for each ground ambulance provider in accordance with KRS 142.318 and KRS 205.5602.

(8) If a ground ambulance provider tax assessment is not received in a timely manner, the requirements of this subsection shall be met.

(a) The department may deny or withhold future monthly supplemental payments until the assessment is submitted.

(b) The department shall refer a provider to Kentucky Board of Emergency Medical Services for potential action related to licensure.

(c) Additional penalties and interest may be assessed in accordance with KRS 142.343 and KRS 142.359.

Section 3. Annual Reconciliation. (1) On an annual basis following the program year, the department shall make final reconciled payments to ground ambulance providers based on:

(a) A review of the interim emergent and non-emergent transport add-ons from Section 2(1)(a) and (b) of this administrative regulation;

(b) Any interim add-ons that may be adjusted to account for differences between:

1. Expected utilization known at the time of the interim add-ons; and

2. Actual utilization following the program year; and

(c) Final add-ons that shall be applied to actual transport utilization, based on MMIS data, to determine the final supplemental payment amount owed to each provider.

(2) Interim payments shall be subtracted from the final supplemental payment owed.

(a) A positive balance shall be paid to the provider.

(b) A negative balance shall be paid to the department.

Section 4. Reporting Requirements. (1) By April 1 of each program year, a ground ambulance provider shall submit a completed revenue survey. An extension may be granted on a temporary and case-by-case basis, not to exceed thirty (30) days, following a written request detailing the exigent circumstances that

prevented timely filing of the completed revenue survey.

(2) If a complete revenue survey is not received in a timely manner the department may deny or withhold future monthly supplemental payments until a complete survey is submitted.

(3) A ground ambulance provider, licensed in Kentucky, operating outside of the state of Kentucky shall report only revenues for transports originating in Kentucky on the revenue survey.

Section 5. Access to Supporting Records. Pursuant to 907 KAR 1:672, Section 2(6)(b), a ground ambulance provider shall maintain and make available, upon request of the department or any other auditing or investigating entity, any records and data necessary to justify and document:

(1) Revenue survey amounts, submitted in accordance with Section 4, of this administrative regulation;

(2) Resolution of a supplemental payment that the ground ambulance provider suspects is in error; or

(3) Quality metrics necessary for program reporting to the Centers for Medicare and Medicaid Services.

Section 6. Appeal Rights. An appeal of a department decision regarding final reconciled payments shall be in accordance with 907 KAR 1:671.

Section 7. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

LISA D. LEE, Commissioner

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: April 12, 2021

FILED WITH LRC: April 13, 2021 at 12:12 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 28, 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 June 21, 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 June 30, 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: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services (DMS) ambulance provider assessment program. This administrative regulation serves to implement HB 8 from the 2020 Regular Session of the Kentucky General Assembly. Specifically,

DMS is required to calculate annual assessment amounts, make monthly payments for Medicaid fee-for-service ambulance transports, and an annual reconciling payment. The administrative regulation also requires DMS to distribute supplemental payments to qualifying ambulance providers by means of a monthly supplemental capitation payment to managed care organizations (MCOs). The MCOs then forward the payments to the qualifying ambulance providers. The MCOs are required to remit the payment within 5 days, and failure to forward the entire payment within 5 days will result in the department assessing penalties. The administrative regulation also establishes requirements relating to the ambulance assessments, and establishes departmental actions when a payment is not received in a timely manner.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's reimbursement provisions and penalty provisions for the ambulance assessment program required by 2020 HB 8.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation implements the provisions of 2020 HB 8.

(d) How this administrative regulation currently assists or shall assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing a statutorily required ambulance assessment program.

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

(a) How the amendment shall 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 shall 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 government affected by this administrative regulation: There are approximately 180 licensed ground ambulance providers in Kentucky who will report revenue and participate in the ambulance provider assessment program.

(4) Provide an analysis of how the entities identified in question (3) shall 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) shall have to take to comply with this administrative regulation or amendment. Participating ambulance providers will submit required assessments and comply with reporting requirements to enable the department to calculate each monthly assessment.

(b) In complying with this administrative regulation or amendment, how much shall it cost each of the entities identified in question (3): Costs will vary by ambulance provider and reporting period for the payment of assessments, the supplemental payments disbursed will likely exceed the amount of assessments.

(c) As a result of compliance, what benefits shall accrue to the entities identified in question (3): Ambulance providers will benefit from enhanced rates available as part of this provider assessment program submitted as supplemental payments via the MCOs and as FFS reimbursement from DMS.

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

(a) Initially: DMS anticipates no additional costs to the department to implement this administrative regulation beyond the appropriation contained in 2020 HB 8.

(b) On a continuing basis: DMS anticipates no additional costs to the department 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 sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching

funds.

(7) Provide an assessment of whether an increase in fees or funding shall be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding shall be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering was not applied in this administrative regulation as it applies equally to all regulated entities.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(30)

2. State compliance standards. KRS 205.520(3) states, "to qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Medicaid reimbursement for services is required to be consistent with efficiency, economy, and quality of care and be sufficient to attract enough providers to assure access to services. 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The policy is not stricter or different than the federal standard.

#### 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 Medicaid Services (DMS) will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(2), 205.5602(2)(a), and 42 U.S.C. 1396a(a)(30).

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 shall this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS anticipates that this administrative regulation will be revenue neutral to the department in the first year.

(b) How much revenue shall this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS anticipates that this administrative regulation will be revenue neutral to the department in subsequent years.

(c) How much shall it cost to administer this program for the first year? The costs associated with this program will be met by the appropriations contained in 2020 HB 8 in the first year of operation.

(d) How much shall it cost to administer this program for subsequent years? The costs associated with this program will be met by the appropriations to the department contained in 2020 HB 8 in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

##### 922 KAR 2:300. Emergency child care approval.

RELATES TO: KRS 199.011(3), (4), 199.894, 199.895, 199.896(2), 42 U.S.C. 5122, 42 U.S.C. 9858c(c)(2)(U)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2), 45 C.F.R. 98.16

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations to establish license fees and standards for a child-care center. 45 C.F.R. 98.16(aa) requires a state to demonstrate how it will address the needs of children during a state of emergency. This administrative regulation establishes approval standards and requirements for emergency child care.

Section 1. Definitions. (1) "Applicant" means an individual or entity applying to become an Emergency Child Care (ECC) program.

(2) "Cabinet" is defined by KRS 199.011(3) and 199.894(1).

(3) "Child" is defined by KRS 199.011(4).

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

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

(6) "Emergency Child Care" or "ECC" means a child-care program temporarily established as a result of a localized emergency or declared state of emergency.

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

(8) "Infant" means a child who is less than twelve (12) months of age.

(9) "Premises" means the building and contiguous property in which emergency child care is provided.

Section 2. Application. (1) A child-care center, family child-care home, or new applicant may apply to be an approved ECC.

(2) An applicant to be approved as an ECC shall submit to the cabinet a completed OIG-DRCC-07, Emergency Child Care Application.

(3) The application shall include:

(a) A cleaning and safety plan;

(b) An evacuation plan for use in the event of a fire, natural disaster, or other threatening situation that may pose a health or safety hazard for a child in care in accordance with KRS 199.895 and 42 U.S.C. 9858c(c)(2)(U);

(c) A staffing plan that demonstrates enough staff to adequately supervise the expected number of children;



- (d) Guidance and discipline process;
  - (e) A medication policy; and
  - (f) Background check verification for staff.
- (4) Approval as an ECC shall not exceed ninety (90) days with the exception permitted by Section 5(6)(b) of this administrative regulation.

Section 3. On-Site Visit for Approval. (1) For ECC approval of a currently licensed or certified child-care program, an on-site visit shall not be required if:

- (a) The child-care program shall continue to operate with the same capacity and age groupings; and
  - (b) A cabinet surveyor has inspected the facility at least once in the preceding twelve (12) months.
- (2) For all other applicants, a visit by a cabinet surveyor shall be conducted as soon as possible after the receipt of the application. A visit shall occur prior to approval.

Section 4. New Site or Alternative Location Approval. If the child-care program requires a new or an alternative location for its premises:

- (1) The Kentucky Fire Marshal shall review the new location or alternative location to ensure that safety codes are met prior to opening;
- The square footage per child requirement shall meet the requirements of 922 KAR 2:100 or 2:120, respectively for a family child-care home or center;
- (3) The new location or alternative location shall have access to clean drinking water, restrooms, and sinks for handwashing; and
  - (4) Basic equipment shall meet the needs for the ages of children in care.

Section 5. Approval of Application. (1) Upon receipt of a complete, signed OIG-DRCC-07, the cabinet shall conduct an on-site visit in order to determine if the applicant meets the requirements established by this administrative regulation, except as permitted by Section 3(1) of this administrative regulation.

- (2) A child-care program that is currently licensed or certified shall be provided ten (10) business days in which they may operate while pending approval of ECC designation.
- (3) The cabinet shall approve applications to be an ECC based on the need throughout the state or the community experiencing the emergency.
- (4) A child-care program that is currently licensed or certified through the Commonwealth of Kentucky shall be given first consideration for approval.
- (5) If the licensed or certified child-care program, or new applicant, is approved as an ECC, the cabinet shall issue emergency approval to the applicant.
- (6)(a) Except as provided by paragraph (b) of this subsection, ECC approval shall expire after ninety (90) days or at the end of the localized emergency or declared state of emergency, whichever is less.
- (b) ECC approval may be renewed at the discretion of the cabinet based on the duration of the emergency situation. The cabinet may conduct a renewal site visit.

Section 6. Suspension or Closure of Emergency Child-Care Programs. (1) During the hours of operation, the cabinet shall have the discretion to visit an approved ECC to ensure the health and safety of children and to provide support and resources for the program.

- (2)(a) An ECC that was not previously licensed or certified shall surrender the ECC approval and close within thirty (30) days after the expiration of the approval or the end of the localized emergency or declared state of emergency pursuant to Section 5(6)(a) of this administrative regulation if not renewed by the cabinet pursuant to Section 5(6)(b) of this administrative regulation; and
- (b) An ECC shall operate in compliance during the time period established in paragraph (a) of this subsection.
- (3) The cabinet may suspend approval to operate as an ECC by issuing an emergency order if:

- (a) The provider interferes with the cabinet's ability to perform an official duty pursuant to Section 5(6) or 6(1) of this administrative regulation;
- (b) The cabinet, a representative from another agency with regulatory authority, or a parent or guardian is denied access during operating hours to:
  - 1. A child;
  - 2. The ECC; or
  - 3. ECC staff or volunteers; or
- (c) 1. A provider, director, staff, volunteer, or any person with supervisory or disciplinary control over, or unsupervised contact with, a child in care fails to meet the requirements of this administrative regulation; and
- 2. The regulatory violation poses an immediate threat to the health, safety, or welfare of the children in care.
- (4) Pursuant to subsection (3) of this section, an emergency order shall:
  - (a) Be served on an approved ECC in person; and
  - (b) Specify the regulatory violation that caused the suspension.
- (5) Upon suspension, the cabinet or its designee and the ECC shall make reasonable efforts to:
  - (a) Notify a parent or guardian of each child of the program's suspension; and
  - (b) Refer a parent or guardian for assistance in locating an alternate child care arrangement.

Section 7. General Requirements. (1) An ECC shall:

- (a) Be responsible for operating the child-care program in compliance with:
  - 1. This administrative regulation;
  - 2. The health and safety requirements established in 922 KAR 2:100 for a family child-care home or 922 KAR 2:120 for a child-care center, unless directed otherwise by the cabinet; and
  - 3. 922 KAR 2:280; and
- (b) Protect and assure the health, safety, and comfort of each child.
- (2) ECC staff shall be:
  - (a) Instructed by the program director, if applicable, regarding requirements for operation; and
  - (b) Provided with a copy of this administrative regulation, 922 KAR 2:100 or 922 KAR 2:120, and 922 KAR 2:280.
- (3) The director of a child-care center approved as an ECC shall meet the requirements of 922 KAR 2:090, Section 10.
- (4) If a provider, director, staff, volunteer, or any person with supervisory or disciplinary control over, or unsupervised contact with, a child in care, is named as the alleged perpetrator in a child abuse or neglect report accepted by the cabinet in accordance with 922 KAR 1:330, the individual shall be removed from direct contact with all children in care:
  - (a) For the duration of the assessment or investigation; and
  - (b) Pending completion of the administrative appeal process for a cabinet substantiation of child abuse or neglect in accordance with 922 KAR 1:320 or 922 KAR 1:480.
- (5) An ECC caring for an infant shall have basic equipment needed for infant care including a crib that is up to code and diaper changing area.
- (6) The cabinet may mandate child-care provider training specific to a regional or statewide emergency declaration in order to give specific information regarding the state of emergency. All child-care staff working in an ECC shall be required to complete this training when mandated.
- (7) ECC staff and volunteers shall not work more than twelve (12) hours during a twenty-four (24) hour time period.
- (8) Daily attendance records shall be required in an approved ECC. Documentation shall show when children are moved from one (1) group of care to another.
- (9) An ECC shall maintain a written record for each child attending the child-care program that contains:
  - (a) Identifying information about the child, which includes, at a minimum, the child's name, address, and date of birth;
  - (b) Contact information to enable staff to contact the child's:
    - 1. Parent or guardian at their home or place of employment;
    - 2. Family physician; and



3. Preferred hospital;
- (c) The name of each person who is designated in writing to pick up the child;
- (d) The child's general health status and medical history including, if applicable:
  1. Allergies; and
  2. Restrictions on the child's participation in activities or in the child's diet with specific instructions from the child's parent, guardian, or health professional;
- (e) The name and phone number of each person to be contacted in an emergency involving or impacting the child; and
- (f) Authorization by the parent or guardian for staff to seek emergency medical care for the child in the parent or guardian's absence.
- (10) An ECC shall have at least one (1) staff person on duty and present at all times children are in the facility certified by a cabinet-approved training agency in:
  - (a) Cardiopulmonary resuscitation (CPR); and
  - (b) First aid.
- (11) An ECC may be required to prioritize the enrollment of the children of emergency responders, essential employees, or other groups designated by the cabinet, depending on the nature and gravity of the emergency.

Section 8. Authority During a Statewide Emergency. (1) During a statewide emergency, the Governor or the secretary of the cabinet shall have the ability to issue a statewide mandate for approved ECCs.

(2) If the emergency is limited to a region or a specific city, the mayor or county judge executive of the affected area or areas may also issue a demand for localized approved ECCs.

(3) An individual program experiencing an emergency shall contact the cabinet.

(4) An ECC shall be supervised by the cabinet.

(5) The Division of Child Care shall collaborate with the Division of Regulated Child Care, the Department for Public Health, and the Kentucky Fire Marshal to approve an ECC.

(6) An ECC shall continue to follow the guidelines of the Child Care and Development Block Grant (CCDBG) federal funding source during the emergency.

Section 9. Incorporation by Reference. (1) "OIG-DRCC-07, Emergency Child Care Application", 04/21, 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. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dcbs/Pages/default.aspx>.

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: March 26, 2021

FILED WITH LRC: April 12, 2021 at 8:16 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 28, 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 June 21, 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 June 30, 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: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, [CHFSregs@ky.gov](mailto:CHFSregs@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Laura Begin and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements and process for a child-care program or new applicant to obtain emergency child-care approval in the case of a localized emergency or declared state of emergency in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth the requirements of 45 C.F.R. 98.16(aa), which requires the cabinet to demonstrate how it will address the needs of children during a state of emergency and to develop a statewide disaster plan. In November of 2019, the Administration for Children and Families conducted a compliance visit with Kentucky and found Kentucky's Division of Child Care to be in non-compliance with this standard.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing criteria and standards for child-care providers to obtain Emergency Child Care (ECC) approval in a localized emergency or statewide state of emergency.

(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 federal law and state statute by establishing criteria and requirements for child care programs to obtain Emergency Child Care (ECC) during a localized emergency or statewide 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, required for compliance with federal law.

(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: As of February 16, 2021, there were 1,746 licensed child-care providers and 220 certified family child-care home providers. These entities as well as new applicants will be able to apply for ECC approval pursuant to this administrative regulation, if needed due to an emergency. The administrative regulation states that a child-care program that is currently licensed or certified through the Commonwealth of Kentucky shall be given first consideration for approval.

(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: Existing or new applicant child-care programs will need to complete the OIG-DRCC-07 form, Emergency Child Care Application, and undergo reviews and approvals specified in this administrative regulation prior to being approved to operate in an emergency.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in

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question (3): There is no cost or fee associated with this amendment, as providing child care is essential during a localized or statewide emergency.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Child-care programs who obtain Emergency Child Care approval will be allowed to operate under the circumstances of a localized or statewide emergency.

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

(a) Initially: There are no costs associated.

(b) On a continuing basis: There are no costs associated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Child Care and Development Block Grant federal funding provides child care 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: An increase in fees or funding is not necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements and process for obtaining Emergency Child Care approval are the same for all entities.

counties, fire departments, or school districts) for subsequent years? No costs are associated.

(c) How much will it cost to administer this program for the first year? No costs are associated with this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98.16(aa)

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

3. Minimum or uniform standards contained in the federal mandate. State agencies will address the needs of children, including the need for safe child care, before, during and after a state of emergency declared by the Governor or a major disaster or emergency (as defined by section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5122) through a Statewide Child Care Disaster Plan.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation will not impose stricter requirements than the federal rule, 45 C.F.R. 98.16(aa).

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services, Division of Child Care; the Office of the Inspector General, Division of Regulated Child Care; the Kentucky Department for Public Health; and the Kentucky Fire Marshal will all be involved in the emergency approval of these facilities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.896(2), 45 C.F.R. 98.16(aa)(1).

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities,

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE**  
**Minutes of April 13, 2021**

**Call to Order and Roll Call**

The April meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, April 13, 2021 at 1 p.m. In Room 149 of the Capitol Annex. Representative Hale, Co-Chair, called the meeting to order, the roll call was taken. The minutes from the March 2021 meeting were approved.

**Present were:**

**Members:** Senators Julie Raque Adams, Stephen West, and David Yates. Representatives Randy Bridges, Deanna Frazier, David Hale, and Marylou Marzian.

**LRC Staff:** Sarah Amburgey, Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Carrie Nichols, and Christy Young.

**Guests:** Richard Dobson, Bethany Adkins Rice, Department of Revenue; Nicole Bease, Margaret Hazlette, Jay Miller, Board of Social Work; Joe Bilby, Jason Glass, Hannah Mann, Clint Quarles, Department of Agriculture; Melissa Duff, Division of Air Quality; Amy Barker, Brandon Lynch, Department of Corrections, Sam Flynn, Robin Maples, Chuck Stribling, Department of Workplace Standards; Abigail Gall, DJ Wasson, Department of Insurance; Laura Begin, Jason Dunn, Sarah Vanover, Department for Community Based Services.

**The Administrative Regulation Review Subcommittee met on Tuesday, April 13, 2021, and submits this report:**

**The following Emergency Administrative Regulation was reviewed pursuant to Senate Bill 2, Section 4, from the 2021 Regular Session of the General Assembly:**

**Cabinet for Health and Family Services: Department for Community Based Services: Division of Child Care: Day Care**

922 KAR 2:415E. Enhanced requirements for certified and licensed child care and limited duration child care programs as a result of a declared state of emergency. Laura Begin, regulation coordinator, and Dr. Sarah Vanover, director, Division of Childcare, represented the department.

A motion was made and seconded to approve the following amendment: to amend Section 4(3) to allow groups to be combined at opening and closing due to staffing limitations if the combining of groups was documented to allow for thorough contact tracing, if necessary. Without objection, and with agreement of the agency, the amendment was approved.

**Administrative Regulations Reviewed by this Subcommittee:**

**FINANCE AND ADMINISTRATION CABINET: Department of Revenue: General Administration**

103 KAR 1:160. Mandatory electronic filing and payment requirements. Richard Dobson, executive director, Sales and Excise Tax, and Bethany Rice, executive director, Office of Legal Services, represented the department.

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, 3, 4, 6, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 7 to change the effective date to October 1, 2021. Without objection, and with agreement of the agency, the amendments were approved.

**Sales and Use Tax; Service and Professional Occupations**

103 KAR 26:100. Industrial laundry and linen supply services.

A motion was made and seconded to approve the following amendments: to amend 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.

**BOARDS AND COMMISSIONS: Board of Social Work**

201 KAR 23:150. Complaint procedure, disciplinary action, and reconsideration. Nicole Bease, counsel; Margaret Hazlette, interim executive director; and Dr. Jay Miller, chair, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 3 through 7 and 11 through 14 to comply

with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 1 to add definitions for "board", "charge", "complaint committee", "formal complaint", "initiating complaint", "order", and "respondent"; (3) to add Section 2 pertaining to Complaint Committee composition; and (4) to add Sections 8 through 10 establishing provisions pertaining to the formal response, composition of the hearing panel, and administrative disciplinary fine. Without objection, and with agreement of the agency, the amendments were approved.

**DEPARTMENT OF AGRICULTURE: Regulation and Inspection; Motor Fuel**

302 KAR 79:011. Motor fuel quality testing and inspection program. Jason Glass, director, Regulation and Inspection; Hannah Mann, administrative specialist III; and Clint Quarles, counsel, represented the department.

In response to a question by Co-Chair West, Mr. Quarles stated that 302 KAR 79:011 and 79:012 represented two (2) different pools of funding, resulting in the appearance of discrepancies in financial information between the two (2) administrative regulations. In fact, the data was correct.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 3 and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 9(7) to clarify the department's requirement for licensee notification of analytical laboratory results. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 79:012. Motor fuel quality standards and specifications.

A motion was made and seconded to approve the following amendment: to amend Section 1(5)(d)2. to correct the ethanol percentage range. Without objection, and with agreement of the agency, the amendment was approved.

**ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division for Air Quality: Existing Source Standards**

401 KAR 61:036. Emission guidelines and compliance times for municipal solid waste (MSW) landfills. Melissa Duff, director, represented the division.

In response to a question by Co-Chair West, Ms. Duff stated that this administrative regulation was not more stringent than federal requirements.

**JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary**

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501 KAR 6:070. Kentucky Correctional Institution for Women. Amy Barker, assistant general counsel, and Brandon Lynch, program administrator, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

### **LABOR CABINET: Department of Workplace Standards: Occupational Safety and Health**

803 KAR 2:019. Receiving and unloading bulk hazardous liquids. Sam Flynn, general counsel; Robin Maples, occupational safety and health standards specialist; and Chuck Stribling, federal – state coordinator, represented the department.

In response to questions by Co-Chair West, Mr. Stribling stated that these administrative regulations were being amended to avoid sunseting and the department believed that these administrative regulations complied with House Bill 475 from the 2021 Regular Session of the General Assembly.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:021. Identification, classification and regulation of potential occupational carcinogens.

803 KAR 2:050. Scope.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:080. Advance notice of inspections.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:090. Complaint inspections.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:096. Repeal of 803 KAR 002:095 and 803 KAR 002:430.

803 KAR 2:100. Imminent danger.

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:115. Penalties.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:120. Citations.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:240. Time for filing discrimination complaint.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to make technical changes.

Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:309. General environmental controls.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:314. Machinery and machine guarding.

A motion was made and seconded to approve the following amendments: to amend Section 1 to make technical changes. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:401. General interpretations.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:405. Fire protection and prevention.

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:408. Tools – hand and power.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:409. Welding and cutting.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:410. Electrical.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:413. Helicopters, hoists, elevators, and conveyers.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:414. Motor vehicles, mechanized equipment, and marine operations.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:415. Excavations.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:416. Concrete and masonry work.

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:417. Steel erection.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:420. Blasting and use of explosives.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:424. Diving.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:600. Occupational safety and health standards for agriculture.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**PUBLIC PROTECTION CABINET: Department of Insurance: Administration**

806 KAR 2:060. Complaints. Abigail Gall, regulation coordinator, and DJ Wasson, deputy commissioner, represented the department.

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 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Insurance Contract**

806 KAR 14:005. Rate and form filing procedures for life insurers, life settlement providers, and life settlement brokers.

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.

806 KAR 14:007. Rate and form filing for health insurers.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 4, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 14:090. Grouping for preferential treatment prohibited.

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.

806 KAR 14:110. Dividend plans; filing, participation.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Life Insurance and Annuity Contracts**

806 KAR 15:060. Universal life insurance.

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, 4, 5, 7, and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 15:070. Annuity nonforfeiture.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph 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.

**Credit Life Insurance and Credit Health Insurance**

806 KAR 19:050. Combined health and dismemberment restrictions.

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.

806 KAR 19:060. Joint lives.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Motor Vehicle Repairs (No fault)**

806 KAR 39:050. Self-Insurance.

In response to a question by Co-Chair Hale, Ms. Wasson stated that self-insurance allowed for funds to be set aside on a regular basis to provide for a pool from which remuneration would be made, rather than associating with a traditional insurance company.

In response to a question by Co-Chair Hale, Ms. Wasson stated that self-insurance provisions were for corporations, not individuals.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; Sections 1, 2, 4 through 8, 11, 13, and 14; and material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Healthcare Malpractice**

806 KAR 40:020. Charitable health care provider registration.

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 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**CABINET FOR HEALTH AND FAMILY SERVICES: Department for Community Based Services: Supplemental Nutrition Assistance Program**

921 KAR 3:025 & E. Technical requirements. Laura Begin, regulation coordinator; Jason Dunn, director, Division of Family Support; and Dr. Sarah Vanover, director, Division of Childcare, represented the department.

In response to questions by Co-Chair West, Ms. Begin stated that the department's agency amendment reinstated the language to establish that a noncustodial parent with outstanding child support due, shall not be eligible to participate in SNAP. Exceptions were established, including if children under the age of eighteen (18)

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resided with the noncustodial parent and exceptions related to incarceration.

Co-Chairs West and Hale thanked the department for compromising with the subcommittee.

In response to questions by Co-Chair Hale, Ms. Begin stated that the department believed that Senate Bill 65 from the 2021 Regular Session of the General Assembly would have the effect of nullifying, effective June 2021, the department's 2020 amendment to this administrative regulation. This amendment was filed in January and would remain in place. This amendment complied with Senate Bill 65's prohibition against a substantially similar administrative regulation being filed because this amendment reinstated the SNAP prohibition for noncustodial parents with outstanding child support due.

Senator Yates thanked the department for proposing an amendment that would protect children residing with a noncustodial parent with outstanding child support due.

A motion was made and seconded to approve the following amendments to this emergency and ordinary administrative regulation: to amend Section 3 to insert language specifying that a noncustodial parent of a child under the age of eighteen (18) shall not be eligible to participate in SNAP if delinquent in payment of court-ordered support, except in certain circumstances, such as: (1) enrollment in a drug treatment program; (2) participation in an employment training program; (3) qualification under good cause for nonpayment; (4) having a child in the individual's household who is under the age of eighteen (18); (5) having a person in the individual's household who is pregnant or three (3) months post-partum; and (6)(a) being within twelve (12) months of incarceration for a period of thirty (30) days or more; and (b) cooperating with the department of Income Support, Child Support Enforcement. Without objection, and with agreement of the agency, the amendments were approved.

921 KAR 3:035. Certification process.

The following amendments were approved by the subcommittee at the January 13, 2021 meeting: to amend Section 8 and material incorporated by reference to make technical corrections.

A motion was made and seconded to approve the following amendment: to amend Section 5(4) to reinsert the following language, previously designated for deletion: “, delinquency in payment of court-ordered child support through the Department of Income Support, Child Support Enforcement Program in accordance with 921 KAR 3:025, Section 3(11).” Without objection, and with agreement of the agency, the amendment was approved.

**OTHER BUSINESS:** Senator Yates made a motion, seconded by Senator Raque Adams, that Senator West be nominated for Senate Co-Chair. Senator West accepted the nomination. Senator Yates made a motion, seconded by Senator Raque Adams, to end Senate Co-Chair nominations. Senator West was endorsed by acclamation as Senate Co-Chair of the subcommittee.

Representative Frazier made a motion, seconded by Representative Marzian, that Representative Hale be nominated for House Co-Chair. Representative Hale accepted the nomination. Representative Bridges made a motion, seconded by Representative Marzian to end House Co-Chair nominations. Representative Hale was endorsed by acclamation as House Co-Chair of the subcommittee.

**The following administrative regulations were deferred or removed from the April 13, 2021, subcommittee agenda:**

**GENERAL GOVERNMENT CABINET: Kentucky Infrastructure Authority**

200 KAR 17:100. Guidelines for Broadband Deployment Account.

**BOARDS AND COMMISSIONS: Board of Pharmacy**

201 KAR 2:380. Board authorized protocols.

**Board of Licensure of Marriage and Family Therapists**

201 KAR 32:030. Fees.

201 KAR 32:035. Supervision of marriage and family therapy associates.

201 KAR 32:060. Continuing education requirements.

**TRANSPORTATION CABINET: Department of Vehicle Regulation: Administration**

601 KAR 2:231. Repeal of 601 KAR 002:030.

**PUBLIC PROTECTION CABINET: Department of Workers' Claims**

803 KAR 25:091. Workers' compensation hospital fee schedule.

803 KAR 25:092. Workers' compensation pharmacy fee schedule.

803 KAR 25:170. Filing of claims information with the Office of Workers' Claims.

803 KAR 25:175. Filing of insurance coverage and notice of policy change or termination.

803 KAR 25:185. Procedure for e-mail notification of cancellation or removal of location of specific workers' compensation coverage.

**Department of Insurance: Agents, Consultants, Solicitors, and Adjustors**

806 KAR 9:025. Licensing process.

**Trade Practices and Frauds**

806 KAR 12:120. Suitability in annuity transactions.

**Insurance Contracts**

806 KAR 14:121. Minimum standards for the readability and intelligibility of insurance contracts.

**Life Insurance and Annuity Contracts**

806 KAR 15:050. Reporting and general requirements for settlement providers and brokers.

**CABINET FOR HEALTH AND FAMILY SERVICES: Office of the Inspector General: Certificate of Need**

900 KAR 6:030. Certificate of need expenditure minimums.

900 KAR 6:055. Certificate of need forms.

900 KAR 6:060. Timetable for submission of certificate of need applications.

900 KAR 6:065. Certificate of need application process.

900 KAR 6:080. Certificate of need emergency circumstances.

900 KAR 6:090. Certificate of need filing, hearing, and show cause hearing.

900 KAR 6:095. Certificate of need administrative escalations.

900 KAR 6:100. Certificate of need standards for implementation and biennial review.

900 KAR 6:105. Certificate of need advisory opinions.

900 KAR 6:110. Certificate of need notification requirements.

900 KAR 6:115. Certificate of need requirements for critical access hospitals, swing beds, and continuing care retirement communities.

**Department for Public Health: Communicable Diseases**

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

**Department for Public Health: Radon**

902 KAR 95:040. Radon Contractor Registration Program.

**Department for Community Based Services: Child Welfare**

922 KAR 1:490E. Background checks for foster and adoptive parents and relative and fictive kin.

**The subcommittee adjourned at 1:45 p.m. The next meeting of this subcommittee is tentatively scheduled for May 11, 2021, at 1 p.m.**

**OTHER COMMITTEE REPORTS**

**COMPILER'S NOTE:** In accordance with KRS 13A.290(10), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

NONE



## CUMULATIVE SUPPLEMENT

Unless otherwise noted, information contained in these indexes relates only to administrative regulations printed in this, the 47<sup>th</sup> year of the *Administrative Register of Kentucky*, from July 2020 through June 2021.

### Locator Index - Effective Dates

K - 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

K - 16

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

K - 31

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this *Register* year.

### Technical Amendment Index

K - 32

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

K - 33

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: Pursuant to KRS 13A.190, emergency regulations expire after 270 days (or 270 days plus the number of days an accompanying ordinary is extended) or upon replacement by an ordinary regulation, whichever occurs first. This index reflects the KRS Chapter 13A-established expiration dates; however, expiration dates may be impacted by 2021 Regular Session legislation, including: [House Joint Resolution 77](#); KRS Chapter 39A, as amended by [Senate Bill 1](#); and by KRS Chapters 13A and 214, as amended by [Senate Bill 2](#).

| Regulation Number   | 46 Ky.R. Page No. | Effective Date | Regulation Number | 46 Ky.R. Page No. | Effective Date |
|---------------------|-------------------|----------------|-------------------|-------------------|----------------|
| 201 KAR 035:075E    | 47 Ky.R. 1893     | 3-5-2021       | 201 KAR 035:080E  | 47 Ky.R. 1895     | 3-5-2021       |
| 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      | Withdrawn         |                   | 4-12-2021      |
| 601 KAR 002:233E    | 47 Ky.R. 2335     | 4-12-2021      | 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      |
| Expired             |                   | 2-6-2021       | 802 KAR 001:010E  | 47 Ky.R. 684      | 9-2-2020       |
| Replaced            | 1382              | 4-6-2021       | 802 KAR 002:010E  | 47 Ky.R. 687      | 9-2-2020       |
| Replaced            | 1384              | 4-6-2021       | 802 KAR 003:010E  | 47 Ky.R. 691      | 9-2-2020       |
| Replaced            | 1386              | 4-6-2021       | 803 KAR 002:180E  | 47 Ky.R. 1897     | 3-10-2021      |
| 803 KAR 002:320E    | 47 Ky.R. 1527     | 1-13-2021      | 803 KAR 025:089E  | 47 Ky.R. 264      | 7-1-2020       |
| Replaced            | 1217              | 3-2-2021       | 810 KAR 002:001E  | 47 Ky.R. 1900     | 2-25-2021      |
| 810 KAR 003:001E    | 47 Ky.R. 1903     | 2-25-2021      | 810 KAR 004:001E  | 47 Ky.R. 1905     | 2-25-2021      |
| 810 KAR 005:001E    | 47 Ky.R. 1908     | 2-25-2021      | 810 KAR 006:001E  | 47 Ky.R. 1912     | 2-25-2021      |
| 810 KAR 006:010E    | 47 Ky.R. 1916     | 2-25-2021      | 810 KAR 006:030E  | 47 Ky.R. 1919     | 2-25-2021      |
| 810 KAR 002:090E    | 46 Ky.R. 2779     | 3-20-2020      | Replaced          | 47 Ky.R. 319      | 8-25-2020      |
| 811 KAR 001:251E(r) | 47 Ky.R. 1923     | 2-25-2021      | 820 KAR 001:050E  | 47 Ky.R. 10       | 5-22-2020      |
| Replaced            | 1219              | 3-2-2021       | 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      | Replaced          | 878               | 2-4-2021       |
| 902 KAR 004:140E    | 47 Ky.R. 21       | 5-19-2020      | Expired           |                   | 2-13-2021      |
| 902 KAR 004:150E    | 47 Ky.R. 1925     | 3-5-2021       | 902 KAR 008:160E  | 47 Ky.R. 268      | 7-10-2020      |
| Replaced            | 421               | 2-4-2021       | 902 KAR 008:170E  | 47 Ky.R. 272      | 7-10-2020      |
| Replaced            | 1394              | 2-4-2021       | 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      |
| 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 002:095E    | 47 Ky.R. 172      | 1-29-2021      |                   |                   |                |
| 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      |                   |                   |                |
| Replaced            |                   | 4-6-2021       |                   |                   |                |
| 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       |                   |                   |                |
| 200 KAR 002:006E    | 47 Ky.R. 1730     | 1-29-2021      |                   |                   |                |
| 201 KAR 002:410E    | 47 Ky.R. 1343     | 11-23-2020     |                   |                   |                |
| As Amended          | 1871              | 2-22-2021      |                   |                   |                |
| 200 KAR 008:505E    | 47 Ky.R. 1735     | 1-27-2021      |                   |                   |                |
| 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     |                   |                   |                |
| 201 KAR 035:010E    | 47 Ky.R. 1872     | 3-5-2021       |                   |                   |                |
| 201 KAR 035:020E    | 47 Ky.R. 1874     | 3-5-2021       |                   |                   |                |
| 201 KAR 035:025E    | 47 Ky.R. 1878     | 3-5-2021       |                   |                   |                |
| 201 KAR 035:040E    | 47 Ky.R. 1880     | 3-5-2021       |                   |                   |                |
| 201 KAR 035:050E    | 47 Ky.R. 1884     | 3-5-2021       |                   |                   |                |
| 201 KAR 035:055E    | 47 Ky.R. 1886     | 3-5-2021       |                   |                   |                |
| 201 KAR 035:070E    | 47 Ky.R. 1889     | 3-5-2021       |                   |                   |                |

# LOCATOR INDEX - EFFECTIVE DATES

| Regulation<br>Number                       | 46 Ky.R.<br>Page No. | Effective<br>Date | Regulation<br>Number | 46 Ky.R.<br>Page No. | Effective<br>Date |
|--|----------------------|-------------------|----------------------|----------------------|-------------------|
| Expired                                    |                      | 12-16-2020        | Amended              | 47 Ky.R. 105         |                   |
| 902 KAR 030:210E                           | 47 Ky.R. 1926        | 3-5-2021          | As Amended           | 704                  | 11-18-2020        |
| 907 KAR 001:604E                           | 46 Ky.R. 2593        | 3-13-2020         | 012 KAR 004:075      | 47 Ky.R. 224         |                   |
| Withdrawn                                  |                      | 11-19-2020        | As Amended           | 934                  | 11-18-2020        |
| 907 KAR 003:300E                           | 46 Ky.R. 2782        | 3-19-2020         | 012 KAR 004:080      |                      |                   |
| Replaced                                   | 47 Ky.R. 546         | 12-1-2020         | Amended              | 47 Ky.R. 106         |                   |
| 907 KAR 010:840E                           | 46 Ky.R. 1787        | 10-30-2019        | Am Comments          | 734                  |                   |
| Replaced                                   | 2456                 | 6-2-2020          | As Amended           | 934                  | 11-18-2020        |
| 907 KAR 015:070E                           | 47 Ky.R. 915         | 10-13-2020        | 012 KAR 004:091      | 47 Ky.R. 225         | 11-18-2020        |
| 907 KAR 015:080E                           | 47 Ky.R. 922         | 10-13-2020        | 012 KAR 004:100      |                      |                   |
| 921 KAR 002:015E                           | 46 Ky.R. 2216        | 12-27-2019        | Amended              | 47 Ky.R. 108         | 11-18-2020        |
| Replaced                                   | 47 Ky.R. 84          | 7-29-2020         | 012 KAR 004:110      |                      |                   |
| 921 KAR 003:025E                           | 46 Ky.R. 2784        | 4-15-2020         | Amended              | 47 Ky.R. 110         | 11-18-2020        |
| Replaced                                   | 47 Ky.R. 977         | 10-12-2020        | 012 KAR 004:130      |                      |                   |
| Resubmitted                                | 1535                 | 1-15-2021         | Amended              | 47 Ky.R. 114         |                   |
| As Amended                                 | 2342                 |                   | As Amended           | 935                  | 11-18-2020        |
| 921 KAR 003:035E                           | 47 Ky.R. 510         | 7-29-2020         | 012 KAR 004:140      |                      |                   |
| Withdrawn                                  |                      | 2-1-2021          | Amended              | 47 Ky.R. 116         |                   |
| 921 KAR 004:116E                           | 47 Ky.R. 22          | 5-28-2020         | As Amended           | 936                  | 11-18-2020        |
| Replaced                                   | 215                  | 10-22-2020        | 012 KAR 004:170      |                      |                   |
| 922 KAR 001:450E                           | 47 Ky.R. 279         | 7-10-2020         | Amended              | 47 Ky.R. 118         |                   |
| Replaced                                   | 466                  | 2-4-2021          | As Amended           | 937                  | 11-18-2020        |
| 922 KAR 001:490E                           | 47 Ky.R. 1737        | 2-8-2021          | 012 KAR 005:010      |                      |                   |
| Am Comments                                | 2344                 |                   | Amended              | 47 Ky.R. 740         |                   |
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| 922 KAR 001:490E                           | 46 Ky.R. 2875        | 5-12-2020         | Amended              | 47 Ky.R. 741         |                   |
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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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| 141.310         | 103 KAR 001:160  | 158.102     | 704 KAR 008:100  |
| 141.315         | 103 KAR 001:160  | 158.135     | 702 KAR 003:270E |
| 141.330         | 103 KAR 001:160  | 158.140     | 704 KAR 003:305  |
| 141.335         | 103 KAR 001:160  | 158.142     | 704 KAR 003:305  |
| 142.115         | 103 KAR 001:160  | 158.160     | 902 KAR 002:220  |
| 142.301         | 907 KAR 003:060  | 158.240     | 702 KAR 007:125E |
| 142.318         | 907 KAR 003:060  | 158.4410    | 702 KAR 001:180  |
| 142.343         | 907 KAR 003:060  | 158.4412    | 702 KAR 001:180  |
| 142.359         | 907 KAR 003:060  | 158.442     | 702 KAR 001:180  |
| 142.400         | 103 KAR 001:160  | 158.443     | 702 KAR 001:180  |
| 142.402         | 103 KAR 001:160  | 158.444     | 702 KAR 001:180  |
| 143.020         | 807 KAR 005:056  | 158.645     | 703 KAR 005:225  |
| 150.010         | 301 KAR 002:221  |             | 703 KAR 005:270  |
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| 150.025         | 301 KAR 002:221  |             | 704 KAR 008:090  |
| 150.305         | 301 KAR 002:221  |             | 704 KAR 008:100  |
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| 150.330         | 301 KAR 002:221  | 158.6451    | 703 KAR 005:070  |
| 150.340         | 301 KAR 002:221  |             | 703 KAR 005:225  |
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| 150.460         | 301 KAR 001:400  |             | 703 KAR 005:270  |
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| 150.990         | 301 KAR 001:400  |             | 704 KAR 008:090  |
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| 151             | 922 KAR 002:120  | 158.6453    | 703 KAR 005:070  |
| 156.035         | 702 KAR 003:270E |             | 703 KAR 005:225  |
| 156.060         | 704 KAR 008:100  |             | 703 KAR 005:240  |
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|                 | 704 KAR 008:100  | 158.6455    | 703 KAR 005:070  |
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| 156.095         | 704 KAR 003:035  |             | 703 KAR 005:240  |
| 156.101         | 704 KAR 003:325  |             | 703 KAR 005:270  |
| 156.160         | 702 KAR 001:180  |             | 703 KAR 005:280  |
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|                 | 704 KAR 008:100  | 159.140     | 702 KAR 007:125E |
| 157.320         | 702 KAR 003:270E |             | 922 KAR 001:330  |
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| 157.350         | 702 KAR 007:125E | 160.1591    | 701 KAR 008:020  |
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| 157.360         | 702 KAR 003:270E | 160.1593    | 701 KAR 008:020  |
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| 157.370         | 702 KAR 003:270E | 160.1595    | 701 KAR 008:020  |
| 157.390         | 702 KAR 003:060  | 160.1596    | 701 KAR 008:020  |
|                 | 702 KAR 003:270E | 160.1597    | 701 KAR 008:020  |
| 157.395         | 702 KAR 003:060  | 160.1598    | 701 KAR 008:020  |
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| 160.470           | 702 KAR 003:270E | 189.540     | 702 KAR 005:080  |
| 160.476           | 702 KAR 003:270E | 189A.005    | 601 KAR 002:232  |
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| 160.615           | 103 KAR 001:160  | 189A.010    | 601 KAR 001:113  |
| 161.011           | 702 KAR 005:080  |             | 601 KAR 002:232  |
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| 161.048           | 016 KAR 009:010  |             | 601 KAR 002:233  |
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| 161.200           | 702 KAR 007:125E |             | 601 KAR 002:233  |
| 161.210           | 702 KAR 003:060  |             | 601 KAR 002:233E |
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| 164.505           | 017 KAR 001:040  |             | 601 KAR 002:233E |
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| 164.512           | 017 KAR 001:040  |             | 601 KAR 002:233  |
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| 215.520         | 902 KAR 002:020  |                   | 902 KAR 045:180 |
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| 217.085           | 902 KAR 045:110 |             | 401 KAR 063:002  |
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| 217.155           | 902 KAR 045:110 |             | 401 KAR 061:036  |
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| 335.325         | 201 KAR 032:110  | 342.039         | 803 KAR 025:170  |
| 335.330         | 201 KAR 032:030  | 342.260         | 803 KAR 025:185  |
|                 | 201 KAR 032:035  | 342.267         | 803 KAR 025:240  |
| 335.332         | 201 KAR 032:035  | 342.315         | 803 KAR 025:091  |
| 335.340         | 201 KAR 032:030  | 342.340         | 803 KAR 025:021  |
|                 | 201 KAR 032:060  |                 | 803 KAR 025:175  |
| 335.342         | 201 KAR 032:030  |                 | 803 KAR 025:185  |
| 335.380         | 201 KAR 032:110  | 342.342         | 803 KAR 025:021  |
| 335.399         | 201 KAR 032:110  | 342.345         | 803 KAR 025:021  |
| 335.500         | 902 KAR 020:160  | 342.347         | 803 KAR 025:021  |
|                 | 902 KAR 020:440  | 342.900-342.912 | 803 KAR 025:220  |
| 335.500-335.599 | 922 KAR 005:020  | 342.990         | 803 KAR 025:015  |
| 335.625         | 201 KAR 038:070  | 362             | 202 KAR 007:601  |
| 335.640         | 201 KAR 038:070  | 363.900-363.908 | 302 KAR 079:011  |
| 335.650         | 201 KAR 038:070  |                 | 302 KAR 079:012  |
| 338             | 803 KAR 002:021  | 365             | 202 KAR 007:601  |
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|                 | 803 KAR 002:314  | 365.390         | 103 KAR 001:160  |
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|                 | 803 KAR 002:413  | 387.010         | 910 KAR 002:060  |
| 338.015         | 803 KAR 002:096  | 387.510         | 910 KAR 002:060  |
|                 | 803 KAR 002:180E | 387.760         | 910 KAR 002:060  |
|                 | 803 KAR 002:180  | 400.203         | 907 KAR 001:038  |
|                 | 803 KAR 002:320  |                 | 907 KAR 003:005  |
|                 | 803 KAR 002:417  |                 | 907 KAR 003:010  |
| 338.021         | 803 KAR 002:050  | 403.707         | 201 KAR 020:411  |
| 338.031         | 803 KAR 002:320  | 403.715-403.785 | 922 KAR 005:020  |
| 338.051         | 803 KAR 002:010  | 413.75          | 907 KAR 003:005  |
|                 | 803 KAR 002:019  | 415.174         | 907 KAR 003:005  |
|                 | 803 KAR 002:309  | 415.184         | 907 KAR 003:005  |
|                 | 803 KAR 002:401  | 421.500-421.575 | 201 KAR 020:411  |
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|                 | 803 KAR 002:410  | 424.110-424.150 | 902 KAR 008:170  |
|                 | 803 KAR 002:414  | 431.17          | 907 KAR 003:005  |
|                 | 803 KAR 002:415  | 431.600         | 922 KAR 001:330  |
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|                 | 803 KAR 002:420  | 431.600-431.660 | 201 KAR 020:411  |
|                 | 803 KAR 002:424  | 438.2           | 907 KAR 003:005  |
|                 | 803 KAR 002:600  |                 | 907 KAR 003:010  |
| 338.061         | 803 KAR 002:019  | 439             | 501 KAR 006:070  |
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|                 | 803 KAR 002:405  | 439.3401        | 902 KAR 020:440  |
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| 441.200-441.208 | 907 KAR 003:005 | 7 C.F.R.    | 902 KAR 050:010  |
| 441.250-441.259 | 907 KAR 003:005 |             | 902 KAR 050:032  |
| 446.010         | 103 KAR 001:160 |             | 902 KAR 050:031  |
| 447.10          | 907 KAR 003:010 |             | 902 KAR 050:050  |
| 447.200-447.205 | 907 KAR 003:010 |             | 921 KAR 003:010  |
| 447.26          | 907 KAR 003:005 |             | 921 KAR 003:020  |
| 447.325         | 907 KAR 003:010 |             | 921 KAR 003:025  |
| 455.410         | 907 KAR 003:005 |             | 921 KAR 003:030  |
| 456             | 922 KAR 005:020 |             | 921 KAR 003:035  |
| 457.310         | 907 KAR 001:038 |             | 921 KAR 003:045  |
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| 508             | 922 KAR 005:020 | 16 C.F.R.   | 806 KAR 012:180  |
| 508.125         | 922 KAR 001:330 |             | 302 KAR 079:011  |
| 509             | 922 KAR 005:020 |             | 302 KAR 079:012  |
| 510             | 922 KAR 005:020 | 21 C.F.R.   | 922 KAR 002:120  |
| 511.020-511.040 | 922 KAR 005:020 |             | 201 KAR 002:061  |
| 511.085         | 922 KAR 005:020 |             | 302 KAR 060:010  |
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| 523.100         | 902 KAR 100:012 |             | 900 KAR 010:111  |
| 527.070         | 922 KAR 002:120 | 29 C.F.R.   | 900 KAR 010:120  |
| 529             | 922 KAR 005:020 |             | 803 KAR 002:021  |
| 529.010         | 922 KAR 001:330 |             | 803 KAR 002:180E |
| 530.020         | 922 KAR 005:020 |             | 803 KAR 002:180  |
| 530.060         | 922 KAR 005:020 |             | 803 KAR 002:309  |
| 530.064         | 922 KAR 005:020 |             | 803 KAR 002:314  |
| 530.065         | 922 KAR 005:020 |             | 803 KAR 002:320  |
| 530.070         | 922 KAR 005:020 |             | 803 KAR 002:401  |
| 531.030         | 922 KAR 005:020 |             | 803 KAR 002:405  |
| 531.040         | 922 KAR 005:020 |             | 803 KAR 002:408  |
| 531.300-531.370 | 922 KAR 005:020 |             | 803 KAR 002:409  |
| 532.045         | 922 KAR 001:330 |             | 803 KAR 002:410  |
| 532.060         | 601 KAR 001:113 |             | 803 KAR 002:413  |
| 600.010         | 922 KAR 001:330 |             | 803 KAR 002:414  |
| 600.020         | 922 KAR 001:330 |             | 803 KAR 002:415  |
|                 | 922 KAR 001:490 |             | 803 KAR 002:416  |
|                 | 922 KAR 001:520 |             | 803 KAR 002:417  |
| 605.090         | 922 KAR 001:330 |             | 803 KAR 002:420  |
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| 605.120         | 922 KAR 001:490 |             | 803 KAR 002:600  |
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| 605.130         | 922 KAR 001:330 |             | 902 KAR 030:210E |
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| 620.020         | 201 KAR 009:360 | 42 C.F.R.   | 401 KAR 063:002  |
|                 | 922 KAR 001:500 |             | 900 KAR 006:115  |
|                 | 922 KAR 001:520 |             | 900 KAR 010:111  |
|                 | 922 KAR 001:580 |             | 900 KAR 010:120  |
| 620.030         | 908 KAR 001:400 |             | 902 KAR 020:160  |
|                 | 922 KAR 002:120 |             | 902 KAR 020:440  |
|                 | 922 KAR 005:020 |             | 907 KAR 001:038  |
| 620.045         | 922 KAR 001:580 |             | 907 KAR 001:604  |
| 620.050         | 922 KAR 001:450 |             | 907 KAR 003:005  |
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| 620.070         | 922 KAR 001:330 |             | 907 KAR 015:080  |
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|             | 902 KAR 020:160  |             | 806 KAR 012:180  |
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|             | 902 KAR 030:210E |             | 921 KAR 003:020  |
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|             | 907 KAR 003:005  | 38 U.S.C.   | 017 KAR 004:040  |
|             | 907 KAR 003:060  |             | 921 KAR 003:010  |
|             | 907 KAR 003:250  |             | 921 KAR 003:020  |
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|             | 921 KAR 004:116  | 42 U.S.C.   | 201 KAR 002:410E |
|             | 922 KAR 001:490  |             | 202 KAR 007:540  |
|             | 922 KAR 001:500  |             | 401 KAR 039:060  |
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|             | 922 KAR 002:410E |             | 401 KAR 061:036  |
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| 57 C.F.R.   | 601 KAR 002:231  |             | 902 KAR 020:440  |
| 7 U.S.C.    | 302 KAR 050:021  |             | 907 KAR 001:038  |
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| 12 U.S.C.   | 201 KAR 030:040  |             | 922 KAR 001:520  |
|             | 201 KAR 030:190  |             | 922 KAR 001:540  |
|             | 806 KAR 012:180  |             | 922 KAR 002:120  |
| 15 U.S.C.   | 811 KAR 002:120  |             | 922 KAR 002:300  |
| 18 U.S.C.   | 601 KAR 002:232  |             | 922 KAR 006:010  |
|             | 601 KAR 002:233  | 45 U.S.C.   | 921 KAR 003:010  |
|             | 601 KAR 002:233E | 52 U.S.C.   | 921 KAR 003:030  |
|             | 806 KAR 003:170  |             |                  |
| 20 U.S.C.   | 013 KAR 001:020  |             |                  |
|             | 702 KAR 007:065  |             |                  |
|             | 703 KAR 005:225  |             |                  |
|             | 703 KAR 005:270  |             |                  |
|             | 703 KAR 005:280  |             |                  |
|             | 900 KAR 010:115  |             |                  |
|             | 902 KAR 020:160  |             |                  |
|             | 902 KAR 030:210E |             |                  |
|             | 902 KAR 030:210  |             |                  |
|             | 921 KAR 003:025  |             |                  |
|             | 922 KAR 001:500  |             |                  |
|             | 922 KAR 002:120  |             |                  |
| 21 U.S.C.   | 201 KAR 020:065  |             |                  |
|             | 902 KAR 045:160  |             |                  |
|             | 907 KAR 015:070E |             |                  |
|             | 907 KAR 015:080  |             |                  |
| 23 U.S.C.   | 202 KAR 007:540  |             |                  |
| 25 U.S.C.   | 900 KAR 010:111  |             |                  |
| 26 U.S.C.   | 101 KAR 002:095  |             |                  |
|             | 105 KAR 001:149  |             |                  |
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|             | 806 KAR 012:150  |             |                  |
|             | 806 KAR 012:180  |             |                  |
|             | 900 KAR 010:120  |             |                  |
|             | 900 KAR 010:125  |             |                  |
|             | 900 KAR 010:130  |             |                  |
| 29 U.S.C.   | 806 KAR 012:120  |             |                  |
|             | 806 KAR 012:150  |             |                  |

## 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 007:015   | 04-07-2021        | Remain As Is                            |
| 201 KAR 009:307   | 03-26-2021        | Remain As Is                            |
| 201 KAR 039:040   | 02-01-2021        | Remain As Is                            |
| 201 KAR 034:025   | 04-15-2021        | Remain As Is                            |
| 201 KAR 034:040   | 04-15-2021        | 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                            |
| 302 KAR 021:001   | 02-11-2021        | Remain As Is                            |
| 302 KAR 021:020   | 02-11-2021        | Remain As Is                            |
| 302 KAR 021:030   | 02-11-2021        | Remain As Is                            |
| 302 KAR 040:010   | 02-11-2021        | Remain As Is                            |
| 302 KAR 021:050   | 02-11-2021        | Remain As Is                            |
| 302 KAR 021:060   | 02-11-2021        | Remain As Is                            |
| 302 KAR 021:070   | 02-11-2021        | Remain As Is                            |
| 302 KAR 021:080   | 02-11-2021        | Remain As Is                            |
| 501 KAR 006:130   | 04-27-2021        | To be amended, filing deadline 10-27-22 |
| 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 |
| 806 KAR 030:020   | 02-11-2021        | Remain As Is                            |
| 806 KAR 037:010   | 02-11-2021        | Remain As Is                            |
| 806 KAR 039:070   | 02-11-2021        | To be amended, filing deadline 08-11-22 |
| 901 KAR 005:025   | 03-31-2021        | Remain As Is                            |
| 910 KAR 001:190   | 12-11-2020        | To be amended, filing deadline 06-11-22 |
| 921 KAR 002:035   | 04-02-2021        | Remain As Is                            |
| 922 KAR 001:130   | 09-04-2020        | Remain As Is                            |
| 922 KAR 001:450   | 10-02-2020        | Remain As Is                            |

## TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments made during the 47<sup>th</sup> year of the *Administrative Register of Kentucky*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published to show the technical corrections in the *Register*. NOTE: Technical amendments may be available online for a short period of time before finalized versions of the technically amended regulations are available. To view regulations on the Legislative Research Commission Web site go to <https://apps.legislature.ky.gov/law/kar/titles.htm>.

‡ - 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).

| Regulation<br>Number |   | Date<br>Corrected | Regulation<br>Number | Date<br>Corrected |
|----------------------|---|-------------------|----------------------|-------------------|
| 201 KAR 006:020      |   | 11-09-2020        |                      |                   |
| 201 KAR 006:040      |   | 11-09-2020        |                      |                   |
| 201 KAR 006:050      |   | 11-09-2020        |                      |                   |
| 201 KAR 006:070      |   | 11-09-2020        |                      |                   |
| 201 KAR 010:080      | † | 03-24-2021        |                      |                   |
| 201 KAR 012:082      | † | 03-24-2021        |                      |                   |
| 201 KAR 017:011      |   | 10-16-2020        |                      |                   |
| 201 KAR 017:012      |   | 10-16-2020        |                      |                   |
| 201 KAR 017:030      |   | 10-16-2020        |                      |                   |
| 201 KAR 017:032      |   | 10-16-2020        |                      |                   |
| 201 KAR 017:034      |   | 10-16-2020        |                      |                   |
| 201 KAR 017:036      |   | 10-16-2020        |                      |                   |
| 201 KAR 028:060      |   | 10-16-2020        |                      |                   |
| 201 KAR 028:170      |   | 10-16-2020        |                      |                   |
| 201 KAR 028:200      |   | 10-16-2020        |                      |                   |
| 201 KAR 044:090      |   | 10-16-2020        |                      |                   |
| 201 KAR 044:100      |   | 10-16-2020        |                      |                   |
| 201 KAR 044:120      |   | 10-16-2020        |                      |                   |
| 201 KAR 045:110      |   | 10-16-2020        |                      |                   |
| 201 KAR 045:120      |   | 10-16-2020        |                      |                   |
| 201 KAR 045:150      |   | 10-16-2020        |                      |                   |
| 201 KAR 045:170      |   | 10-16-2020        |                      |                   |
| 201 KAR 045:180      |   | 10-16-2020        |                      |                   |
| 201 KAR 047:010      |   | 10-16-2000        |                      |                   |
| 202 KAR 007:020      | † | 03-24-2021        |                      |                   |
| 702 KAR 003:270E     | ‡ | 09-23-2020        |                      |                   |
| 702 KAR 007:125E     | ‡ | 09-23-2020        |                      |                   |
| 815 KAR 002:020      |   | 05-29-2020        |                      |                   |
| 815 KAR 004:025      |   | 05-29-2020        |                      |                   |
| 815 KAR 007:070      |   | 05-29-2020        |                      |                   |
| 815 KAR 007:125      |   | 07-17-2020        |                      |                   |
| 815 KAR 008:010      |   | 05-29-2020        |                      |                   |
| 815 KAR 010:060      |   | 05-29-2020        |                      |                   |
| 815 KAR 015:025      |   | 05-29-2020        |                      |                   |
| 815 KAR 025:020      |   | 05-29-2020        |                      |                   |
| 815 KAR 030:060      |   | 05-29-2020        |                      |                   |
| 902 KAR 050:160      | ‡ | 12-03-2020        |                      |                   |
| 907 KAR 017:020      |   | 01-25-2021        |                      |                   |
| 908 KAR 001:370      |   | 10-28-2020        |                      |                   |
| 921 KAR 001:380      |   | 11-02-2020        |                      |                   |



## SUBJECT INDEX

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