

# ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, May 14, 2021.

## MEETING NOTICES

The **Administrative Regulation Review Subcommittee** is tentatively scheduled to meet on June 8, 2021, at 10:00 a.m. in room 149 Capitol Annex. **ARRS Tentative Agenda - 2519** [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. in room 129 Capitol Annex

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The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2018 Edition of the  
**KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.**

**HOW TO CITE:** Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Register Year number and Page number. Example: 47<sup>th</sup> Year of the Kentucky Register, page 318 (short form: 47 Ky.R. 318).

**KENTUCKY ADMINISTRATIVE REGULATIONS** are codified according to the following system and are to be cited by Title, Chapter and Regulation number, as follows:

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

**ADMINISTRATIVE REGISTER OF KENTUCKY**

(ISSN 0096-1493)

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The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, 700 Capitol Avenue, Room 300, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: \$120 (plus 6% Kentucky sales tax) per year for 12 issues, beginning in July and ending with the June issue of the subsequent year. Periodical postage paid at Frankfort, Kentucky.

POSTMASTER: Send address changes to Administrative Register of Kentucky, 700 Capitol Avenue, Room 64, State Capitol, Frankfort, Kentucky 40601.

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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.



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



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

**FINANCE AND ADMINISTRATION CABINET**

**Department of Revenue**

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

103 KAR 026:131. Landscaping Services. (Deferred from May)

**BOARDS AND COMMISSIONS**

**Board of Pharmacy**

201 KAR 002:040. Registration of pharmacist interns.  
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201 KAR 002:390. Requirements for third-party logistics providers.

**Board of Nursing**

201 KAR 020:506. Nurse licensure compact.

**Board of Examiners of Psychology**

201 KAR 026:115. Definition of psychological testing.  
201 KAR 026:121. Scope of practice and dual licensure.  
201 KAR 026:125. Health service provider designation.  
201 KAR 026:130. Grievances and administrative complaints.  
201 KAR 026:155. Licensed psychologist: application procedures and temporary license.  
201 KAR 026:171. Requirements for clinical supervision.  
201 KAR 026:180. Requirements for granting licensures a psychologist by reciprocity.  
201 KAR 026:185. Requirements for granting licensure as a psychologist to an applicant licensed in another state.  
201 KAR 026:190. Requirements for supervised professional experience.  
201 KAR 026:200. Education requirements.  
201 KAR 026:230. Examination and applications.  
201 KAR 026:250. Employment of a psychological associate, a temporarily licensed psychological associate, or a temporarily licensed psychologist.  
201 KAR 026:280. Licensed psychological associate: application procedures and temporary license.  
201 KAR 026:290. Licensed psychological practitioner: application procedures.  
201 KAR 026:301. Repeal of 201 KAR 026:300.  
201 KAR 026:310. Telehealth and telepsychology.

**Board of Alcohol and Drug Counselors**

201 KAR 035:010E. Definitions for 201 KAR Chapter 035. ("E" expires 11-30-2021) (Filed with Ordinary) (Amended After Comments)  
201 KAR 035:020E. Fees. ("E" expires 11-30-2021) (Filed with Ordinary) (Amended After Comments)  
201 KAR 035:025E. Examinations. ("E" expires 11-30-2021) (Filed with Ordinary) (Amended After Comments)  
201 KAR 035:040E. Continuing education requirements. ("E" expires 11-30-2021) (Filed with Ordinary) (Amended After Comments)  
201 KAR 035:050E. Curriculum of study. ("E" expires 11-30-2021) (Filed with Ordinary) (Amended After Comments)  
201 KAR 035:055E. Temporary registration or certification. ("E" expires 11-30-2021) (Not Amended After Comments)  
201 KAR 035:070E. Supervision experience. ("E" expires 11-30-2021) (Filed with Ordinary) (Amended After Comments)  
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) (Amended After Comments)  
201 KAR 035:080E. Voluntary inactive and retired status. ("E" expires 11-30-2021) (Filed with Ordinary) (Amended After Comments)

**ENERGY AND ENVIRONMENT CABINET**

**Department for Environmental Protection**

**Hazardous Waste**

401 KAR 039:060. General Requirements.

**TRANSPORTATION CABINET**

**Department of Vehicle Regulation**

**Motor Carriers**

601 KAR 001:005. Safety administrative regulation.

**Administration**

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

## VOLUME 47, NUMBER 12– JUNE 2, 2021

601 KAR 002:233E. Kentucky Ignition Interlock Program; participants and device providers. ("E" expires 01-07-2022) (Filed with Ordinary)

### LABOR CABINET

#### Department of Workers' Claims

803 KAR 025:015. Issuance of citations and procedure in workers' compensation enforcement hearings.

803 KAR 025:021. Individual self-insurers.

803 KAR 025:190. Utilization review – Medical Bill Audit – Medical Director – Appeal of Utilization Review Decisions.

803 KAR 025:220. Guaranty funds.

#### Horse Racing Commission

##### General

810 KAR 002:001E. Definitions for 810 KAR Chapter 002. ("E" expires 11-22-2021) (Filed with Ordinary) (Not Amended After Comments)

##### Licensing

810 KAR 003:001E. Definitions for 810 KAR Chapter 003. ("E" expires 11-22-2021) (Filed with Ordinary) (Not Amended After Comments)

### PUBLIC PROTECTION CABINET

#### Horse Racing Commission

##### Flat and Steeplechase Racing

810 KAR 004:001E. Definitions for 810 KAR Chapter 004. ("E" expires 11-22-2021) (Filed with Ordinary) (Not Amended After Comments)

##### Standardbred Racing

810 KAR 005:001E. Definitions for 810 KAR Chapter 005. ("E" expires 11-22-2021) (Filed with Ordinary) (Not Amended After Comments)

810 KAR 005:080. Kentucky Proud Series.

##### Pari-Mutuel Wagering

810 KAR 006:001E. Definitions for 810 KAR Chapter 006. ("E" expires 11-22-2021) (Filed with Ordinary) (Not Amended After Comments)

810 KAR 006:010E. Exotic wagering. ("E" expires 11-22-2021) (Filed with Ordinary) (Not Amended After Comments)

810 KAR 006:030E. Pari-Mutuel wagering. ("E" expires 11-22-2021) (Filed with Ordinary) (Not Amended After Comments)

##### Medication Guidelines

810 KAR 008:010. Medication; testing procedures; prohibited practices.

810 KAR 008:020. Drug, medication, and substance classification schedule.

810 KAR 008:025. Drug, medication, and substance withdrawal guidelines.

810 KAR 008:030. Disciplinary measures and penalties.

810 KAR 008:040. Out-of-competition testing.

##### Harness Racing

811 KAR 001:251E. Repeal of 811 KAR 001:250. ("E" expires 11-22-2021) (Not Amended After Comments)

### CABINET FOR HEALTH AND FAMILY SERVICES

#### Office of Health Data and Analytics

##### Kentucky Health Benefit Exchange

900 KAR 010:111. Definitions for 900 KAR Chapter 010.

900 KAR 010:115. Exchange participation requirements and certification of qualified health plans and qualified stand-alone dental plans.

900 KAR 010:120. KHBE eligibility and enrollment in a qualified health plan, SHOP, and SHOP formal resolution process.

900 KAR 010:125. KHBE Consumer Assistance Program, kynector certification, and individual agent participation with the KHBE.

900 KAR 010:130. Appeals of eligibility for KHBE participation and insurance affordability programs.

#### Department for Public Health

##### Communicable Diseases

902 KAR 002:211E. Covering the face in response to declared national or state public health emergency. (Emergency Amended After Comments)

##### Maternal and Child Health

902 KAR 004:150. Enhanced HANDS services in response to declared national or state public health emergency. (Filed with Emergency)

##### Kentucky Early Intervention System

902 KAR 030:210. Enhanced early intervention services in response to declared national or state public health emergency. (Filed with Emergency)

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

##### Substance Abuse

908 KAR 001:390. Voluntary Employer Substance Use Program (VESUP).

### 3. REGULATIONS REMOVED FROM JUNE'S AGENDA

#### KENTUCKY INFRASTRUCTURE AUTHORITY

~~200 KAR 017:100. Guidelines for Broadband Deployment Account. (Comments Received, SOC ext., due 05-14-2021) (Withdrawn by agency; 05-14-2021)~~

## VOLUME 47, NUMBER 12– JUNE 2, 2021

### Board of Licensure of Marriage and Family Therapists

- 201 KAR 032:030. Fees. (Amended After Comments) (Deferred from June)
- 201 KAR 032:035. Supervision of marriage and family therapy associates. (Not Amended After Comments) (Deferred from June)
- 201 KAR 032:060. Continuing education requirements. (Amended After Comments) (Deferred from June)

### Board of Alcohol and Drug Counselors

- 201 KAR 035:010. Definitions for 201 KAR Chapter 035. (Filed with Emergency) (Comments Received, SOC due 6-15-2021)
- 201 KAR 035:020. Fees. (Filed with Emergency) (Comments Received, SOC due 6-15-2021)
- 201 KAR 035:025. Examinations. (Filed with Emergency) (Comments Received, SOC due 6-15-2021)
- 201 KAR 035:040. Continuing education requirements. (Filed with Emergency) (Comments Received, SOC due 6-15-2021)
- 201 KAR 035:050. Curriculum of study. (Filed with Emergency) (Comments Received, SOC due 6-15-2021)
- 201 KAR 035:055. Temporary registration or certification. (Filed with Emergency) (Comments Received, SOC due 6-15-2021)
- 201 KAR 035:070. Supervision experience. (Filed with Emergency) (Comments Received, SOC due 6-15-2021)
- 201 KAR 035:075. Substitution for work experience for an applicant for certification as an alcohol and drug counselor. (Filed with Emergency) (Comments Received, SOC due 6-15-2021)
- 201 KAR 035:080. Voluntary inactive and retired status. (Filed with Emergency) (Comments Received, SOC due 6-15-2021)

### LABOR CABINET

#### Department of Workplace Standards

##### Occupational Safety and Health

- ~~803 KAR 002:180E. Recordkeeping, reporting, and statistics. ("E" expires 12-05-2021) (Filed with Ordinary) (Deferred from May)~~  
(Withdrawn by agency, 05-13-2021)
- ~~803 KAR 002:180. Recordkeeping, reporting, and statistics. (Filed with Emergency)~~ (Withdrawn by agency, 05-13-2021)

#### Department of Workers' Claims

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

### 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)

#### Horse Racing Commission

##### General

- 810 KAR 002:001. Definitions for 810 KAR Chapter 002. (Filed with Emergency) (Comments Received; SOC due 06-15-2021)

##### Licensing

- 810 KAR 003:001. Definitions for 810 KAR Chapter 003. (Filed with Emergency) (Comments Received; SOC due 06-15-2021)

##### Flat and Steeplechase Racing

- 810 KAR 004:001. Definitions for 810 KAR Chapter 004. (Filed with Emergency) (Comments Received; SOC due 06-15-2021)

##### Standardbred Racing

- 810 KAR 005:001. Definitions for 810 KAR Chapter 005. (Filed with Emergency) (Comments Received; SOC due 06-15-2021)

##### Pari-Mutuel Wagering

- 810 KAR 006:001. Definitions for 810 KAR Chapter 006. (Filed with Emergency) (Comments Received; SOC due 06-15-2021)
- 810 KAR 006:010. Exotic wagering. (Filed with Emergency) (Comments Received; SOC due 06-15-2021)
- 810 KAR 006:020. Calculation of payouts and distribution of pools. (Comments Received; SOC due 06-15-2021)
- 810 KAR 006:030. Pari-Mutuel wagering. (Filed with Emergency) (Comments Received; SOC due 06-15-2021)

### CABINET FOR HEALTH AND FAMILY SERVICES

#### Department for Medicaid Services

##### Payment and Services

- 907 KAR 003:005. Coverage of physicians' services. (Comments Received, SOC ext., due 06-15-2021)
- 907 KAR 003:010. Reimbursement for physicians' services. (Comments Received, SOC ext., due 06-15-2021)

#### Department for Community Based Services

##### Child Welfare

- 922 KAR 001:490. Background checks for foster and adoptive parents and relative and fictive kin caregivers. (Filed with Emergency) (Comments Received, SOC ext., due 06-15-2021)

**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**

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 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 regulation is deferred or found deficient, an ordinary regulation shall be considered in effect upon adjournment of the appropriate jurisdictional committee or 90 days after being referred by LRC, whichever occurs first.

REPRINT

**902 KAR 2:415 Emergency as amended by the Administrative Regulation Review Subcommittee, was inadvertently omitted from the May 2021 Administrative Register of Kentucky. Instead, another regulation was printed twice. This reprint contains the full text of the emergency administrative regulation.**

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

**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.**

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

**For prior version see:** [47 Ky.R. page 1928](#)

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

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) and KRS 199.8982(1)(f) authorize the Cabinet for Health and Family Services to promulgate administrative regulations and standards for child care centers and family child care homes. KRS 214.020 requires the cabinet to take such action as deemed efficient in preventing the introduction or spread of infectious or contagious disease within the state. This administrative regulation establishes additional health and safety standards for certified family child care homes, licensed child care centers, and limited duration child care programs due to the COVID-19 pandemic and declared state of emergency to prevent the spread of disease in child caring homes and facilities. The Children's Bureau identified the requirement of fingerprint-based checks of national crime information databases as an administrative condition that may be modified pursuant to federal authority given that a state conduct all available name-based criminal background checks for applicants during the public health emergency and conduct fingerprint-based checks as soon as it is safe to do so.

Section 1. Definitions. (1) "Child" is defined by KRS 199.011(4).

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

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

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

(5) "Director" means an individual:

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

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

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

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

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

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

(2) When a child care provider reopens:

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

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

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

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

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

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

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

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

Section 4. Social Distancing Requirements for Child Care Programs. (1) A child care center shall meet the maximum group size requirements established in 922 KAR 2:120.

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

(3) Each child shall remain in the same group throughout the day without interacting with another group, except that:

(a) Sibling groups may be combined if they are the only children in the facility; and

(b) Groups may be combined at opening and close in accordance with 922 KAR 2:120 due to staffing limitations if the combining of groups is documented so as to allow for thorough contact tracing, if necessary.

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

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

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

(b) Shall be stable;

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

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

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

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

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

(a) Facility staff;

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

- (c) Local health department personnel;
- (d) A necessary utility worker;
- (e) A professional providing medical or therapeutic services for children with special needs;
- (f) A child enrolled in the facility;
- (g) A parent or legal guardian of a child enrolled in the program; and
- (h) A family member who lives in the home of a family child care home.
- (7) A child care provider shall:
  - (a) Reduce the number of staff each classroom of children interacts with each day;
  - (b) Create a schedule in which the same staff work with the same children each day as able;
  - (c) Stagger playground time between classroom groups so as to separate one (1) group of children from another;
  - (d) Allow school-age children to exceed the limitation on electronic viewing and listening devices established in 922 KAR 2:120 in order to complete assigned nontraditional instruction;
  - (e) Utilize a centralized drop-off and pick-up location to eliminate unnecessary traffic of parents and guardians to the classrooms;
  - (f) Require parents and guardians to exercise social distancing of no less than six (6) feet during drop-off and pick-up;
  - (g) Modify traffic flow to minimize contact between children and staff to the greatest extent possible; and
  - (h) If providing transportation, reference the Kentucky Department of Education's pupil transportation guidance for the 2020-2021 school year and provide transportation consistent with that guidance.
- (8) A child care provider may:
  - (a) Use virtual classroom observations for practicum students;
  - (b) Use virtual tours for prospective families, with permission of the families whose children may appear in the video; and
  - (c) Offer tours to potential clients after regular operating hours if no children are in the facility during the tour and the provider ensures all affected areas are cleaned after the conclusion of the tour.
- (9) A child care provider shall not:
  - (a) Provide access to visitors or students conducting classroom observations, except as necessary to complete a final observation required for a Child Development Associate credential;
  - (b) Hold center-wide family events;
  - (c) Permit field trips;
  - (d) Allow high-contact sports on the playground;
  - (e) Utilize family style dining at this time. Staff members shall prepare plates and pass them out to individual children; and
  - (f) Permit staff to congregate in common areas and shall require they observe social distancing policies whenever possible.

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

- (1) Conduct business practices by telephone or internet;
- (2) Use digital documents instead of paper documents;
- (3) Communicate with parents and vendors by telephone and digital communication;
- (4) Utilize digital billing and invoices; and
- (5) Discourage employees from sharing phones, computers, and office supplies if duplicate materials are available.

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

- (a) Utilize the cleaning and sanitizing procedures outlined in the cabinet-approved orientation training that is required by 922 KAR 2:090 and 922 KAR 2:100;
  - (b) Create and post a cleaning and sanitizing plan specific to the individual child care center or family child care home and outline the additional cleaning and sanitizing requirements from the Centers for Disease Control and Prevention for child care during a pandemic;
  - (c) Eliminate "lost and found" bins; and
  - (d) Prohibit the use of communal water fountains.
- (2) Toys children have placed in their mouths or that have

been contaminated by other bodily fluids shall be set aside in a separate container for soiled toys until the toys are cleaned and sanitized by a person wearing gloves.

- (3) Machine washable toys shall not be used.
- (4) Groups of infants and toddlers shall not use shared toys unless the toys are cleaned and sanitized before being shared between children.
- (5) Bedding (blankets, sheets, pillows, sleeping bags) shall be:
  - (a) Able to be washed;
  - (b) Separated and stored in individual labeled bins without touching another child's bedding; and
  - (c) Washed, at least at the end of each week.
- (6) Children and staff shall:
  - (a) Meet the handwashing requirements established in 922 KAR 2:100, Section 13(4) and (5), in a certified family child care home and 922 KAR 2:120, Section 3(4) and (5), in a licensed child care center, respectively; and
  - (b) Wash their hands with liquid soap and warm running water or utilize hand sanitizer or hand-sanitizing wipes prior to center or home departure.
- (7) The child care center or family child care home shall provide liquid soap, hand-sanitizer (as appropriate), handwashing programs, tissues, and wastebaskets in convenient locations.

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

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

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

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

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

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

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

Section 8. Personal Protective Equipment (PPE) Requirements.

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

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

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

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

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

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

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

(c) A child who is between three (3) years of age and first grade may wear a face mask if the provider and the parent or guardian complete the DCC-415, Child Care Face Mask Permission Form, to be kept on site at the facility.

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

(e) A face mask lanyard shall be prohibited for all children who are three (3) years of age through kindergarten due to increased risk of suffocation and strangulation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 11. Safety and Background Check Requirements. (1) Staff with expired tuberculosis skin tests and newly hired staff shall be given an extension through the end of the public health emergency to be tested for tuberculosis.

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

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

(4) Staff with a completed fingerprint-based background check via the Kentucky National Background Check Program shall return

to the classroom and may be left alone with children in accordance with 922 KAR 2:280.

(5) New staff shall:

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

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

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

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

Section 12. Incorporation by Reference. (1) DCC-415, "Child Care Face Mask Permission Form", 3/2021, 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/dcbcs/Pages/default.aspx922>

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).

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**  
**605 KAR 1:215E**

This emergency administrative regulation is being promulgated to prevent a loss of state funds as a result of the imminent change imposed by state statute, namely HB 249. HB 249, Section 15, effective June 28, 2021, amends KRS 190.030 to eliminate statutory fees for licenses issued to motor vehicle dealers and other entities. These licenses are administered and enforced by the Kentucky Motor Vehicle Commission ("Commission"). Among other things, KRS 190.030, as amended by HB 249, requires the Commission to promulgate administrative regulations to establish license fees for the licenses administered by the Commission. This statutory change required new regulations and new fees. The Commission has been diligently working on these regulatory provisions since the passage of HB 249. This emergency amendment will establish the new fee structure for applicants until the ordinary regulations are approved. An ordinary administrative regulation is not sufficient, because of the imminent effective date of Section 15 of HB 249. This emergency administrative regulation will be replaced by an identical ordinary administrative regulation.

ANDY BESHEAR, Governor  
DOUG DOTSON, Chair

**TRANSPORTATION CABINET**  
**Motor Vehicle Commission**  
**(New Emergency Administrative Regulation)**

**605 KAR 1:215E. Licensing fees.**

EFFECTIVE: May 12, 2021

RELATES TO: KRS 190.030

STATUTORY AUTHORITY: KRS 190.030; 190.073

NECESSITY, FUNCTION AND CONFORMITY: KRS 190.030(6)(a) requires the Motor Vehicle Commission to promulgate administrative regulations in accordance with KRS Chapter 13A to establish fees for licenses issued by the Motor Vehicle Commission. This administrative regulation establishes the fees associated with acquiring and renewing licenses.

Section 1. Licensing Fees. The license fee for a calendar year, or part thereof, shall be as follows:

- (1) For new motor vehicle dealers, \$200 for each office or branch or agent thereof, plus \$200 for a supplemental license for each used car lot not immediately adjacent to the office or to a branch;
- (2) For used motor vehicle dealers, \$200 for each office or branch or agent thereof;
- (3) For motor vehicle leasing dealers, \$200 for each office or branch or agent thereof;
- (4) For restricted motor vehicle dealers, \$200 for each office or branch or agent thereof;
- (5) For motorcycle dealers, \$200 for each office, branch, or agent thereof;
- (6) For motor vehicle manufacturers, \$200; and for each factory branch in this state, \$200;
- (7) For distributors, motor vehicle auction dealers or wholesalers, \$200;
- (8) For motor vehicle or recreational vehicle salespersons, forty dollars (\$40), to be paid by the licensed dealer for every salesperson the dealer employs;
- (9) For factory representatives, or distributor branch representatives, \$200;
- (10) For automotive mobility dealers, \$200;
- (11) For nonprofit motor vehicle dealers, \$200;
- (12) For nonprofit motor vehicle dealer salespersons, a license

fee shall not be imposed;

(13) For recreational vehicle manufacturers or distributors, \$200; and

(14) For new recreational vehicle dealers, \$200.

Section 2. Renewal and Renewal Fees. (1) Pursuant to KRS 190.030(5) all licenses expire December 31 of the calendar year for which they are granted. Licenses in good standing and which have no outstanding fines or charges owed to the Commission may be renewed by the licensee for the next calendar year by submitting a renewal application and the appropriate fee to the Motor Vehicle Commission prior to December 31. Licenses that have outstanding fines or charges owed to the Commission, have been revoked, suspended, or are not in good standing may not be renewed.

(2) The fee for a license renewal shall be the fee set forth in Section 1 for the applicable license type being renewed.

(3) A license may not be renewed for a new calendar year if events described KRS 190.030(7)(a) (change of location) or 605 KAR 1:070 (change of ownership) have occurred which have not been approved by the Commission. In such case, the licensee must submit a new application reflecting the changes in order to obtain a license for the new calendar year.

DOUG DOTSON, Chairman

APPROVED BY AGENCY: May 7, 2021

FILED WITH LRC: May 12, 2021 at 3:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 23, 2021 at 9 a.m. local time at the Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601. In the event the declaration of a State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020- 243 are not rescinded by June 23, 2021, this hearing will be done by video teleconference. Members of the public wishing to attend may utilize the following link: <https://us02web.zoom.us/j/82520305441>, or by telephone at 19292056099, your meeting I.D. to join in is 825 2030 5441. 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: Suzanne Baskett, Executive Staff Advisor, Kentucky Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 227-8082, email [Suzanne.Baskett@ky.gov](mailto:Suzanne.Baskett@ky.gov).

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Suzanne Baskett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees for licenses issued by the Kentucky Motor Vehicle Commission.

(b) The necessity of this administrative regulation: KRS 190.030(6)(a) requires the Motor Vehicle Commission to

promulgate administrative regulations in accordance with KRS Chapter 13A to establish license fees for licenses issued by the Motor Vehicle Commission.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes the fees associated with the licenses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation establishes the fees to be charged to applicants and renewing licensee for the licenses required to do business as motor vehicle dealers, manufacturers, distributors and salespeople in Kentucky.

(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:

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

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

(d) How the amendment will assist in the effect of administration of the statutes:

(3) List the types and numbers of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all individuals or businesses who wish to become licensed dealers, manufacturers, distributors and salespeople in Kentucky. The number of such entities is unknown.

(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 establishes the fees for licenses issued by the Motor Vehicle Commission and the entities identified in question (3) will have to submit the required fees in order to obtain the applicable license.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities that comply with the regulation will be allowed to operate as motor vehicle dealers, manufacturers, distributors or salespeople in Kentucky.

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

(a) Initially: No known costs.

(b) On a continuing basis: There are on-going costs related to administration of the licensing of dealers and enforcement of the regulations. These costs will vary depending on the issues related to each individual dealer.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: KRS 190.030 authorizes the increase in fees and the Commission does not anticipate a need for any additional or increased funding related to administration of this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. It increases fees consistent with the statutory authority.

(9) TIERING: Is tiering applied? No, tiering is not applied because the regulation maintains the license categories established by the original statutory language and licensees affected by this regulation are treated the same.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be

impacted by this administrative regulation? Motor Vehicle Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 190.030.

(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? Revenue to be generated is unknown because the commission cannot determine how many businesses will apply for the applicable licenses.

(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? Revenue to be generated is unknown because the commission cannot determine how many businesses will apply for the applicable licenses.

(c) How much will it cost to administer this program for the first year? The cost of administering this program in the first year is unknown as it will depend upon the number of applicants and the issues which arise with regard to applicants and licensees.

(d) How much will it cost to administer this program for the subsequent years? The cost of administering this program in the subsequent years is unknown as it will depend upon the number of applicants and the issues which arise with regard to applicants and licensees.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### STATEMENT OF EMERGENCY 787 KAR 1:360E

This emergency administrative regulation is promulgated pursuant to KRS 13A.190(1)(a)(1) and in response and pursuant to 2021 Senate Bill ("SB") 7 (R.S.), to meet the statutory requirements therein related to state waivers of unemployment insurance waivers. The Kentucky General Assembly provided, via-2021 Senate Bill 7, the Labor Cabinet Secretary the authority to waive overpayments of unemployment insurance benefits upon the request of overpayment recipients if the recipient can demonstrate certain criteria. SB 7 was delivered to the Governor on March 11, 2021 and signed into law on March 12, 2021. As SB 7 carries an emergency clause, it became effective upon the Governor's signature. It is necessary to promulgate this emergency regulation in order to carry out the requirements provided in SB 7. An ordinary administrative regulation is not sufficient because the effective date of the ordinary regulation would not be coordinated with the effective date of SB 7. This emergency regulation will be replaced by an ordinary administrative regulation, which is being filed contemporaneously with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor

LARRY L. ROBERTS, Secretary

BUDDY HOSKINSON, Executive Director

#### LABOR CABINET Office of Unemployment Insurance (New Emergency Administrative Regulation)

#### 787 KAR 1:360E. Overpayment waivers.

EFFECTIVE: May 4, 2021

RELATES TO: 2021 SB 7, Section 2.

STATUTORY AUTHORITY: KRS 341.115(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of KRS Chapter 341. For unemployment insurance claims between January 27, 2020 and December 31, 2020, 2021 SB 7, Section 2 allows the Secretary to waive overpayments of unemployment insurance benefits if the secretary, upon an alleged overpayment recipient's waiver request, the secretary finds the overpayment was made (a) without fault on the part of the recipient, and (b) recovery of would be contrary to equity and good conscience. This emergency regulation establishes definitions and procedures for waiving overpayments pursuant to KRS Chapter 341 and 2021 SB 7, Section 2.

Section 1. Definitions. (1) "Benefits" means benefits as defined in KRS 341.020(4).

(2) "Financial hardship" means an individual or that individual's immediate family has experienced at least a fifty (50) percent reduction in gross earned income or loss of employment.

(3) "Office" means the Office of Unemployment Insurance within the Kentucky Labor Cabinet.

(4) "Office error" means:

- (a) Errors in computing the benefit rate;
- (b) Incorrect weekly payment due to a failure to consider a deductible amount that was properly reported by a claimant;
- (c) Payment beyond the expiration of the benefit year;
- (d) Payment in excess of the maximum benefit amount;
- (e) Payment under an incorrect program;
- (f) Retroactive notice of nonmonetary determinations, except that a determination that the claimant has committed fraud shall not be considered office error;
- (g) Monetary redeterminations;
- (h) Payment during a period of disqualification;
- (i) Payment to a wrong claimant; or
- (j) Erroneous payments resulting from human error in the data entry process.

(5) "Secretary" means the Secretary of the Kentucky Labor Cabinet.

Section 2. Waiver Request. An individual shall make a request for waiver of a determined overpayment within thirty (30) days of the Secretary's mailing of the notification that the individual has been overpaid unemployment insurance benefits.

Section 3. Waivers. Upon receipt of an overpayment recipient's request for an overpayment waiver, the secretary shall issue a waiver of the alleged overpayment if he or she determines the following:

- (1) The overpayment was made without fault on the part of the recipient; and
- (2) Recovery would be contrary to equity and good conscience.

Section 4. No Fault Determination. For purpose of Section 3(1) of this administrative regulation, the secretary shall make a determination that the alleged overpayment was made without fault on the part of the recipient when the overpayment of benefits resulted from the following:

- (1) "Office error" as defined in Section 1 and 787 KAR 1:190, Section 1; or
- (2) Auto-payment of benefits.

Section 5. Equity and Good Conscience Determination. For purposes of Section 3(2) of this administrative regulation, the secretary shall make a finding that a recovery of an alleged overpayment is contrary to equity and good conscience when an individual demonstrates any of the following:

- (1) Recovery would cause financial hardship to the person from whom it is sought. An individual demonstrates financial hardship where he or she can show that, as a result of the recovery, he or she is unable to meet daily living expenses, including expenses for food, clothing, rent, utilities, insurance, job or job search-related transportation expenses, and medical

expenses.

(2) The alleged overpayment recipient can show, regardless of his or her financial circumstances, that due to the notice that such payment would be made or because of the incorrect payment either he or she has relinquished a valuable right or changed positions for the worse. This can be shown where the recipient has made substantial necessary purchases related to daily living expenses, expended substantial necessary funds on daily living expenses, or failed to seek other benefits in reliance upon the receipt of benefits.

(3) Recovery could be unconscionable, unjust, or unfair under the circumstances.

BUDDY HOSKINSON, Executive Director

LARRY L. ROBERTS, Secretary

APPROVED BY AGENCY: May 3, 2021

FILED WITH LRC: May 4, 2021 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2021 at 2:00 (ET). This hearing will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph 8(b) (R.S. 2020) and the continuing state of emergency due to the novel coronavirus pandemic. Public access to the meeting will be available at <https://us02web.zoom.us/j/87517187721?pwd=MVFRCSt3dEJ2dF RVaEdyS0ZCa2Z3QT09>, password 882792 or by telephone at (713) 353-0212 or (888) 822-7517 (toll free), conference code 278497. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 2021. Send notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email [buddy.hoskinson@ky.gov](mailto:buddy.hoskinson@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Buddy Hoskinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the procedures for waiving unemployment insurance claims overpayments.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out 2021 SB 7, Section 2.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary promulgate administrative regulation necessary or suitable for the proper administration of KRS Chapter 341.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides definitions and procedures for waiving unemployment insurance claims overpayments pursuant to KRS Chapter 341 and 2021 SB 7, Section 2.

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

(a) How this amendment will change this existing administrative regulation:

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This emergency administrative regulation affects unemployment insurance benefit recipients in the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the unemployment insurance benefit recipients to comply with this emergency administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This emergency regulation allows the Labor Cabinet Secretary to waive overpayments of unemployment insurance benefits.

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

(a) Initially: \$194,560

(b) On a continuing basis: \$93,600

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this emergency administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. All unemployment insurance benefit overpayment recipients are treated equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This emergency administrative regulation impacts the Office of Unemployment Insurance within the Kentucky Labor Cabinet.

(2) Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. 2021 Senate Bill 7 (R.S.), Section 2.

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

(a) How much revenue will the 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 the 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.

(c) How much will it cost to administer this program for subsequent years? \$93,600.

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

Revenues (+/-): Unknown

Expenditures (+/-): Unknown

Other explanations: This amendment does not impose any additional expenditures to employers.

#### STATEMENT OF EMERGENCY 803 KAR 2:181E

This emergency administrative regulation is promulgated to meet an imminent threat to public health, safety, or welfare, to prevent a loss of federal funds, and ensure compliance with federal mandates. Kentucky operates a State Plan approved by the Occupational Safety and Health Administration (OSHA) that provides employee occupational safety and health (OSH) protections. OSHA approves, monitors, and provides funding to Kentucky. The Administrative Regulation Review Subcommittee, at its May 11, 2021 meeting, requested the Department of Workplace Standards refile 803 KAR 2:180E as a new regulation to meet the requirement established in Senate Bill 65 of the 2021 General Session. This emergency regulation fulfills the subcommittee's request. It is necessary to promulgate this emergency regulation to meet the requirements established in Public Law 91-596 84 STAT. 1590, 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i), which all require the Kentucky OSH Program to be as effective as OSHA. This emergency administrative regulation ensures Kentucky's compliance with the federal mandates, maintains Kentucky's primacy, and retains federal funding. This emergency administrative regulation will be replaced by an ordinary administrative regulation, which is being filed simultaneously with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor

LARRY ROBERTS, Secretary

KIMBERLEE C. PERRY, Commissioner

#### LABOR CABINET Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training (New Emergency Administrative Regulation)

#### 803 KAR 2:181E. Recordkeeping and reporting occupational injuries and illnesses.

EFFECTIVE: May 13, 2021

RELATES TO: KRS 338.015(1), (2), 338.121(3), 338.161, 29 C.F.R. Part 1904

STATUTORY AUTHORITY: KRS 338.061, 338.161

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.161(1) requires the Department of Workplace Standards to promulgate administrative regulations for the collection, compilation, and analysis of occupational safety and health statistics. 29 C.F.R. Part 1904 authorizes requirements for the recording and reporting of occupational illnesses and injuries. This emergency administrative regulation establishes recordkeeping and reporting requirements for employers pursuant to KRS Chapter 338.

Section 1. Definitions. (1) "Amputation" means an injury in which a portion of the body including bone tissue is removed.

(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) "Hospitalization" means formal admission to a hospital or clinic for care or treatment.

(6) "Loss of eye" means the physical removal of an eye from the socket.(7) "Occupational Safety and Health Act" or "OSHA" means KRS Chapter 338.

(8) "Secretary of Labor" means the Secretary of the United

States Department of Labor or the Secretary of the Labor Cabinet.

(9) "Section 11(c) of the Act" means KRS 338.121(3).

(10) "Work-related" means "work-related" or "work-relatedness" as established in 29 C.F.R. 1904.

Section 2. Except as modified by the definitions in Section 1 and the requirements in Sections 3 and 4 of this emergency administrative regulation, an employer shall comply with 29 C.F.R. Part 1904, Recording and Reporting Occupational Injuries and Illnesses, published by the Office of the Federal Register, National Archives and Records Administration.

Section 3. Reporting Fatalities, Amputations, Hospitalizations, or Loss of Eye. (1) The reporting requirements established in this section shall apply in lieu of 29 C.F.R. 1904.39.

(2) An employer shall orally report to the Kentucky Labor Cabinet, Department of Workplace Standards, Division of Occupational Safety and Health Compliance, at (502) 564-3070, the death of an employee as a result of a work-related incident, including death resulting from a heart attack.

(3) The report required pursuant to subsection (2) of this section shall be made within eight (8) hours from when the death is reported to the employer, the employer's agent, or another employee.

(4) An employer shall orally report to the Kentucky Labor Cabinet, Department of Workplace Standards, Division of Occupational Safety and Health Compliance, at (502) 564-3070, any of the following that occurs as a result of a work-related incident:

(a) Amputation suffered by an employee;

(b) Employee's loss of an eye; or

(c) Hospitalization of an employee, including hospitalization resulting from a heart attack.

(5) The report required pursuant to subsection (4) of this section shall be made within seventy-two (72) hours from when the amputation, loss of an eye, or hospitalization is reported to the employer, the employer's agent, or another employee.

Section 4. If the employer cannot speak with someone in the Frankfort office, the employer shall make the report required pursuant to Section 3 of this emergency administrative regulation to the OSHA toll-free, central telephone number, 1-800-321-OSHA (1-800-321-6742).

KIMBERLEE PERRY, Commissioner

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: May 13, 2021

FILED WITH LRC: May 13, 2021 at 3:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this emergency administrative regulation shall be held on June 21, 2021 at 10:00 a.m. (ET). The hearing will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at <https://us02web.zoom.us/j/85224369475?pwd=MGUwWUJPTBGNHJsZlV2cnZWbVM1UT09>, passcode 205965; or by telephone at (713) 353-0212, or (888) 822-7517 toll free, conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 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: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, Telephone: (502)

564-4107, Facsimile: (502) 564-4769, Email: Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this emergency administrative regulation defines terms. Section 2 requires employers to comply with the requirements of 29 C.F.R. Part 1904 except as modified by the definitions in Section 1 and requirements of Sections 3 and 4 of this emergency administrative regulation. Sections 3 and 4 establish the reporting criteria for an employee death, amputation, in-patient hospitalization, or loss of eye. This emergency administrative regulation retains other provisions of the prior regulation that have been effective since August 7, 2006.

(b) The necessity of this administrative regulation: The Administrative Regulation Review Subcommittee, at its May 11, 2021 meeting, requested the Department of Workplace Standards refile 803 KAR 2:180E as a new regulation to meet the requirement established in Senate Bill 65 of the 2021 General Session. This emergency regulation fulfills the subcommittee's request. This emergency administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i) which all require the Kentucky OSH Program to be as effective as OSHA.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.161(1) requires the Department of Workplace Standards to promulgate administrative regulations for the collection, compilation, and analysis of occupational safety and health statistics.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i) which all require the Kentucky OSH Program to be as effective as OSHA. This emergency administrative regulation ensures the state is as effective as the federal requirement.

(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: This emergency administrative regulation affects employers in the Commonwealth engaged in all activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in

question (3): There is no additional cost to the OSH Program to implement this emergency administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

This emergency administrative regulation promotes employee safety and health throughout Kentucky and ensures the state program as effective as the federal program.

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

(a) Initially: There is no cost to the OSH Program to implement this emergency administrative regulation.

(b) On a continuing basis: There are no new costs associated with this emergency administrative regulation.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this emergency administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18(c)(2), 29 U.S.C. 667

2. State compliance standards. The Kentucky OSH Program is mandated to be at least as effective as OSHA. This emergency administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i).

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated to be at least as effective as OSHA. This emergency administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This emergency administrative regulation differs from the federal requirement and allows employers greater reporting flexibility.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This emergency administrative regulation allows employers greater reporting flexibility.

#### 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 emergency administrative regulation affects any unit, part, or division of local government covered by KRS 338.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.061, Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29

C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), 29 C.F.R. 1956.10(i)

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

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

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This emergency administrative regulation does not impose any additional expenditures to employers.

#### STATEMENT OF EMERGENCY 803 KAR 2:182E

This emergency administrative regulation is promulgated to meet an imminent threat to public health, safety, or welfare, to prevent a loss of federal funds, and ensure compliance with federal mandates. Further, this emergency administrative regulation is necessary to prevent a conflict with the provisions of 803 KAR 2:180 Recordkeeping, reporting, and statistics. Kentucky operates a State Plan approved by the Occupational Safety and Health Administration (OSHA) that provides employee occupational safety and health (OSH) protections. OSHA approves, monitors, and provides funding to Kentucky. The Administrative Regulation Review Subcommittee, at its May 11, 2021 meeting, requested the Department of Workplace Standards refile 803 KAR 2:180E Recordkeeping, reporting, and statistics as a new regulation to meet the requirement established in Senate Bill 65 of the 2021 General Session. To fulfill the subcommittee's request, the department withdrew 803 KAR 2:180E as well as the amendment to 803 KAR 2:180 and simultaneously filed 803 KAR 2:181E and 803 KAR 2:181, both titled Recordkeeping and reporting occupational injuries and illnesses. This emergency administrative regulation repeals 803 KAR 2:180 Recordkeeping, reporting, statistics to avoid a regulatory conflict that is created in the absence of this emergency administrative regulation. This emergency administrative regulation will not be replaced by an ordinary administrative regulation because this emergency administrative regulation terminates 803 KAR 2:180.

ANDY BESHEAR, Governor

LARRY ROBERTS, Secretary

KIMBERLEE C. PERRY, Commissioner

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

#### 803 KAR 2:182E. Repeal of 803 KAR 2:180.

EFFECTIVE: May 13, 2021

RELATES TO: KRS 338.015

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.161(1) requires the Department of Workplace Standards to promulgate administrative regulations for the collection, compilation, and analysis of occupational safety and health statistics. 29 C.F.R. Part 1904 authorizes requirements for the recording and reporting of occupational illnesses and injuries. This administrative regulation establishes recordkeeping and reporting requirements for employers pursuant to KRS Chapter 338. This emergency administrative regulation repeals 803 KAR 2:180.

Section 1. 803 KAR 2:180, Recordkeeping, reporting, and statistics, is hereby repealed.

KIMBERLEE PERRY, Commissioner  
LARRY ROBERTS, Secretary

APPROVED BY AGENCY: May 13, 2021

FILED WITH LRC: May 13, 2021 at 3:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this emergency administrative regulation shall be held on June 21, 2021 at 10:00 a.m. (ET). The hearing will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at <https://us02web.zoom.us/j/85224369475?pwd=MGUwWUJPTBZBNHJsZkV2cnZwVm1UT09>, passcode 205965; or by telephone at (713) 353-0212; or (888) 822-7517 toll free, conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 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: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency administrative regulation repeals 803 KAR 2:180, the substance of which is now governed by 803 KAR 2:181E and the concurrently filed 803 KAR 2:181.

(b) The necessity of this administrative regulation: This emergency administrative regulation is necessary to avoid a regulatory conflict that is created in the absence of this emergency administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.161(1) requires the Department of Workplace Standards to promulgate administrative regulations for the collection, compilation, and analysis of occupational safety and health statistics.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation is necessary to prevent duplication and conflict with 803 KAR 2:181E which establishes the requirements for recordkeeping and reporting occupational injuries and illnesses.

(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: This emergency administrative regulation affects employers in the Commonwealth engaged in all activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This emergency administrative regulation prevents duplication and conflict with 803 KAR 2:181E which establishes the requirements for recordkeeping and reporting occupational injuries and illnesses.

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

(a) Initially: There is no cost to the OSH Program to implement this emergency administrative regulation.

(b) On a continuing basis: There are no new costs associated with this emergency administrative regulation.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this emergency administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i).

2. State compliance standards. This emergency administrative regulation prevents duplication and conflict with 803 KAR 2:181E, which establishes the requirements for recordkeeping and reporting occupational injuries and illnesses.

3. Minimum or uniform standards contained in the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i).

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not

applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.061, Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), 29 C.F.R. 1956.10(i)

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

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

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This emergency administrative regulation does not impose any additional expenditures to employers.

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.

PERSONNEL CABINET

(Emergency As Amended at ARRS, May 11, 2021)

101 KAR 2:095E. Classified service general requirements.

As Amended at ARRS version effective: May 11, 2021

Prior version: [47 Ky.R. page 1727](#)

RELATES TO: KRS 18A.030(2), 18A.110, 26 U.S.C. 501(c)(3)  
STATUTORY AUTHORITY: KRS 18A.030, 18A.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 requires the Secretary of Personnel to promulgate comprehensive administrative regulations for the classified service. This administrative regulation establishes requirements for the classified service and governs the maintenance of employee and other records and reports in the cabinet and other conditions of employment.

Section 1. Definitions. (1) "Charitable federation" means a legally constituted grouping, made up of or supporting at least ten (10) health and human welfare organizations, all of which:

(a) Qualify as exempt voluntary charitable organizations pursuant to 26 U.S.C. 501(c)(3); and

(b) Have a substantial Kentucky presence.

(2) "Designated nonprofit agency" means an organization with proof of tax-exempt status pursuant to 26 U.S.C. 501(c)(3) written in on a pledge card by a state employee as a choice to receive contributions.

(3) "State employee" means a person, including an elected public official, who is employed by a department, board, agency, or branch of state government, except one ~~[(1)]~~ relating to a state college or university.

(4) "Substantial Kentucky presence" means a facility, staffed by professionals or volunteers, available to provide its services and open at least fifteen (15) hours a week and with a regional or statewide presence that meets the requirements of Section 2(2) of this administrative regulation.

Section 2. Requirements for the Kentucky Employees Charitable Campaign. (1) General Purpose. The purpose of the Kentucky Employees Charitable Campaign shall be to:

(a) Provide an opportunity for employees to contribute to eligible Kentucky organizations through the state's payroll deduction process;

(b) Ensure accountability for participants in regard to the funds raised;

(c) Encourage the involvement of state employees as responsible citizens;

(d) Give recognition to state employee volunteers; and

(e) Minimize workplace disruption and administrative costs to Kentucky taxpayers by allowing only one (1) statewide payroll deduction charitable solicitation per year.

(2) An organization shall be considered to have a substantial Kentucky presence if the requirements established in this subsection are met.

(a) Services shall be available to state employees in the local community.

(b) Services shall directly benefit human beings whether children, youth, adults, the aged, the ill and infirm, or the mentally or physically disabled.

(c) Services shall consist of:

1. Care, research, education, or prevention in the fields of human health or social adjustment and rehabilitation;

2. Relief for victims of natural disasters and other emergencies;

3. Assistance to those who are impoverished and in need of

food, shelter, clothing, and basic human welfare services.

(3) The secretary shall approve a charitable organization for participation in the campaign if the charitable organization demonstrates:

(a) Proof of tax exempt status pursuant to 26 U.S.C. 501(c)(3);

(b) Proof of current registration and compliance with the reporting requirements of the Secretary of State and the Office of the Attorney General;

(c) Proof of financial responsibility, including:

1. Adoption of a detailed annual budget;

2. Use of generally accepted accounting principles and procedures;

3. The board of directors' approval for deviations from the approved budget; and

4. An annual financial audit;

(d) Proof of direction by an active volunteer board of directors, which shall meet regularly and whose members shall serve without compensation;

(e) A written nondiscrimination policy;

(f) Public disclosure of fundraising administrative costs with a statement demonstrating that, if fund and administrative expenses are in excess of twenty-five (25) percent of total support and revenue, actual expenses for those purposes are reasonable under all the circumstances in its case; and

(g) Publication of an annual report available to the general public, which includes a full description of the organization's Kentucky activities including fundraising activities.

(4) A charitable federation may apply on behalf of all ~~its~~ **[their]** member organizations if both the federation and all federation members meet the criteria established in subsection (3) of this section.

(5) Authority of the Secretary of Personnel.

(a) The Secretary of Personnel shall have the full authority over the procedures and policies relating to the operation of the Kentucky Employees Charitable Campaign.

(b) The secretary shall designate a group of state employees to compose the Kentucky Employees Charitable Campaign Committee to make recommendations on related matters.

(c) The committee shall be composed of a cross-section of state employees, involving the large cabinets and small agencies.

(d) The chair of the committee shall be appointed by the secretary.

(6) Functions of the committee. The committee shall make recommendations on ~~[the following]~~:

(a) ~~The~~ designation of a campaign administrator ~~who shall:~~

1. ~~[The campaign administrator shall]~~ Serve for a minimum period of two (2) years; ~~and:~~

2. ~~[The campaign administrator shall]~~ Be charged to manage and administer the charitable fund campaign for the Commonwealth, subject to the direction and control of the Secretary of Personnel. The campaign administrator shall have statewide workplace campaign experience and have the necessary staff and volunteer support to administer the Kentucky Employees Charitable Campaign;

(b) ~~The~~ establishment of minimum amount, based on cost effectiveness, that an employee may authorize to be deducted for each approved charitable federation;

(c) The format of the brochure, pledge card, or other promotional materials for the annual campaign;

(d) The dates and duration of the campaign;

(e) The annual campaign budget submitted by the campaign administrator; and

(f) The costs of the campaign, which shall be:

1. Detailed in the budget; and

2. Borne by each recipient organization proportionally.

(7) Charitable federations to apply for statewide campaign.

(a) A federation desiring inclusion shall apply by February 15 of

each year.

(b) A federation that has previously participated in the campaign shall update its application with a letter and a copy of the most recent year's audit.

(c) A charitable organization that has previously participated in the campaign shall be eligible if it fulfills all conditions of eligibility.

(8) The campaign administrator. The campaign administrator shall:

(a) Provide staffing to manage and administer the annual campaign, which includes preparing drafts of campaign materials for consideration by the Secretary of Personnel;

(b) Serve as the central accounting point for both campaign cash and for payroll deductions received from the Personnel Cabinet including:

1. The preparation and submission of an annual campaign budget. Costs of the campaign shall be divided among recipient organizations; and

2. A separate account maintained for managing the income and expenses of the campaign;

(c) Distribute campaign funds received from the Personnel Cabinet to participating organizations in accordance with agreed upon time periods. This shall include distribution of funds to designated nonprofit agencies;

(d) Provide an end-of-campaign report to the Secretary of Personnel and to participating organizations; and

(e) Annually furnish a financial statement prepared by a certified public accountant.

Section 3. Attendance; Hours of Work. (1) The number of hours a full-time employee shall be required to work shall be thirty-seven and one-half (37 1/2) hours per week or forty (40) hours per week, unless specified otherwise by the appointing authority or the statutes.

(2) The normal work day shall be from:

(a) 8 a.m. to 4:30 p.m., local time, Monday through Friday, for a thirty-seven and one-half (37 1/2) hour work schedule; or

(b) 8 a.m. to 5 p.m., local time, Monday through Friday, for a forty (40) hour work schedule.

(3) An appointing authority may require an employee to work hours and days other than regular days and hours, including an overtime or inclement weather schedule if it is in the best interest of the agency.

(4) An employee who works for an agency that requires more than one (1) shift or seven (7) days a week operation may be reassigned from one (1) shift to another or from one (1) post to another or alternate days off by the agency to meet staffing requirements or to maintain security or provide essential services of the agency.

(5) An employee shall give reasonable notice in advance of absence from an official [a] work station or alternate work station.

Section 4. Official Work Station, Alternate Work Station, and Temporary Assignment. (1) Each employee shall be assigned an official [a] work station and may be assigned one (1) or more additional alternate work stations by the appointing authority.

(2) An official [A] work station or alternate work station may be changed to better meet the needs of the agency.

(3) An employee may be temporarily assigned to a different official work station or alternate work station in a different county. The assignment shall be to the same job classification.

(a) If an employee is temporarily assigned to a different official work station or alternate work station in a different county, the assignment shall not last more than sixty (60) calendar days.

(b) Temporary assignment may be renewed with prior approval of the Secretary of Personnel.

(c) A temporarily reassigned employee shall be reimbursed for travel expenses in accordance with 200 KAR 2:006, and the appointing authority shall notify the employee in writing prior to the effective date of the action.

(4) An appointing authority may assign an employee to work in a different site within the county of employment within the same job classification.

Section 5. Dual Employment. An employee holding a full-time position covered under KRS Chapter 18A shall not hold another KRS Chapter 18A position except upon recommendation of the appointing authority and the written approval of the secretary.

Section 6. Notice of Resignation and Retirement. (1) An employee who decides to terminate his or her service shall submit a written resignation or notice of retirement to the appointing authority.

(2) A resignation or notice of retirement shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's notice shall be attached to the separation personnel action and placed in the personnel files maintained by the agency and the Personnel Cabinet.

(3) Failure of an employee to give fourteen (14) calendar days' notice may result in forfeiture of accrued annual leave, based on:

(a) If the fourteen (14) day deadline was:

1. Practicable under the circumstances;

2. Appropriate for the situation; and

3. Complied with; or

(b) If the appointing authority and the employee have agreed that the employee shall retain the leave.

(4) The effective date of a separation shall be the next calendar day following the last work day unless the employee has been approved for the use of annual, compensatory, or sick leave prior to termination.

Section 7. Records and Reports. (1) An appointing authority shall provide a request to the Personnel Cabinet for a personnel action or status change.

(a) The Secretary of the Personnel Cabinet shall determine which personnel actions warrant a Personnel Action Notification to the employee, in accordance with KRS 18A.020 and 18A.095.

(b) The secretary shall provide a Personnel Action Notification to the appointing authority.

(c) The appointing authority shall provide a copy of a Personnel Action Notification to the employee affected by the action.

(2) The secretary shall maintain a leave record showing for each employee:

(a) Annual leave earned, used and unused;

(b) Sick leave earned, used and unused;

(c) Compensatory leave earned, used and unused; and

(d) Special leave or other leave with or without pay.

Section 8. Telecommuting. (1) Telecommuting shall be a work arrangement in which a selected state employee is allowed to perform the normal duties and responsibilities of his or her position through the use of computer or telecommunications at home or another place apart from the employee's usual official work station or alternate work station.

(2) An appointing authority may establish a telecommuting program for all or any part of the agency.

(3) Eligibility and selection for participation in a telecommuting program shall be the decision of the agency, with no implied or specific right to participation being granted to an employee.

(4) The telecommuter's conditions of employment shall remain the same as for a nontelecommuting employee.

(a) Employee salary, benefits, and employer-sponsored insurance coverage shall not change as a result of telecommuting.

(b) The telecommuter shall be responsible for the security and confidentiality of data, as well as the protection of state-provided equipment, used and accessed during telecommuting.

(c) The telecommuter shall agree to maintain a clean, safe workplace.

(d) An on-site visit by the employer for monitoring of safety issues shall not require advance notice by the employer.

Section 9. Workplace Violence Policy. (1) Workplace violence shall be prohibited and shall include:

(a) The attempted, threatened, or actual conduct of a person who endangers or is likely to endanger the health and safety of state employees or the general public; or

(b) A threatening statement, harassment, or behavior that gives a state employee or member of the general public reasonable cause to believe that his or her health or safety is at risk.

(2) Examples of prohibited workplace violence shall include:

(a) Threats of harm;

(b) Brandishing or displaying a weapon or an object that looks like a weapon in a manner that would present a safety risk to a state employee or a member of the general public or threatens or intimidates them;

(c) Intimidating, threatening, or directing abusive language toward another person, either verbally, in writing or by gesture;

(d) Stalking;

(e) Striking, slapping, or otherwise physically attacking another person; or

(f) Disobeying or failing to follow the reasonable directive of a supervisor to take action or cease actions that create a risk to the health or safety of a state employee or the public or threatens or intimidates them.

(3) Violation of this section shall constitute grounds for disciplinary action and referral for criminal prosecution.

Section 10. Issuance of Pay to State Employees. (1) Pay shall be issued to state employees on the 15th and 30th day of each month.

(2) If the regularly scheduled pay date falls on a weekend, state employees shall be issued pay on the preceding Friday.

(3) If the regularly scheduled pay date falls on a state holiday, as defined in KRS 18A.190, pay shall be issued on the workday preceding the holiday.

Section 11. Incorporation by Reference. (1) "Personnel Action Notification", PAN, August 2011, is incorporated by reference.

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

CONTACT PERSON: Rosemary Holbrook, Assistant General Counsel, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email RosemaryG.Holbrook@ky.gov.

**BOARDS AND COMMISSIONS**  
**Board of Alcohol and Drug Counselors**  
**(Emergency Amended After Comments)**

**201 KAR 35:010E. Definitions for 201 KAR Chapter 35.**

**Amended After Comments version effective:** May 13, 2021

**Prior version:** 47 Ky.R. page 1872

RELATES TO: KRS 309.080, 309.0805, 309.081, 309.0813, 309.084, 309.085, 309.086, 309.087, 309.089, 2021 Ky. Acts ch. , sec. 1 (Senate Bill 166), 2021 Ky. Acts ch. , sec. 2 (Senate Bill 166)

STATUTORY AUTHORITY: KRS 309.0813(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813 requires the Kentucky Board of Alcohol and Drug Counselors to promulgate administrative regulations for the administration and enforcement of KRS 309.080 to 309.089, and establishing requirements for alcohol and drug counselors, certified clinical supervisors, and peer support specialists. This administrative regulation establishes definitions of terms used by the board in administrative regulations pertaining to the administration and enforcement of KRS 309.080 to 309.089, credentialing of alcohol and drug counselors, certified clinical supervisors, and peer support specialists, and the designation of certified alcohol and drug counselor degreed.

Section 1. (1) "Academic course" means a course that is offered by a postsecondary institution accredited by a recognized

accreditation agency and that is:

(a) An alcohol and drug counseling course, designated by title or content; or

(b) An academic course, relevant to alcohol and drug counseling.

(2) "Applicant" means an individual who has applied for temporary registration, registration, temporary certification, certification, or licensure in accordance with KRS 309.084 or a credential holder renewing a[his] credential[application] in accordance with KRS 309.085.

(3) "Approved" means recognized by the Kentucky Board of Alcohol and Drug Counselors.

(4) "Board" is defined by KRS 309.080(1).

(5) "Certified alcohol and drug counselor associate I" is defined by KRS 309.080(2).

(6) "Certified alcohol and drug counselor associate II" is defined by KRS 309.080(3).

(7) "Certified alcohol and drug counselor" is defined by KRS 309.080(4).

(8) "Certified alcohol and drug counselor degreed" means a certified alcohol and drug counselor possessing a baccalaureate degree.

(9) "Certified clinical supervisor" is defined by KRS 309.080(5).

(10)(8) "Chair" means the chairperson or vice-chairperson of the board.

(11)(9)(7) "Charge" means a specific allegation contained in a formal complaint, as established in subsection (14)(12) of this section, issued by the board alleging a violation of a specified provision of KRS Chapter 309, the administrative regulations promulgated thereunder, or another state or federal statute or regulation.

(12)(10)(8) "Classroom hour" means an academic hour from an accredited institution or continuing education hour.

(13)(11)(9) "Client" means an individual, family, or group who directly receives services from an alcohol and drug counselor or peer support specialist; a corporate entity or other organization if the contract is to provide an alcohol and drug counselor or peer support specialist service of benefit directly to the corporate entity or organization; or a legal guardian who is responsible for making decisions relative to the provision of services for a minor or legally incompetent adult.

(14)(12)(10) "Clinical supervision" means a disciplined, tutorial process wherein principles are transformed into practical skills, with four (4) overlapping foci: administrative, evaluative, clinical, and supportive.

(15)(13)(11) "Clinical supervisor" means a certified alcohol and drug counselor who has at least two (2) years of post-certification[postcredential] experience and has attended the board-sponsored supervision training who provides supervision and whose credential is currently in good standing with the board, or a licensed clinical alcohol and drug counselor who has at least twelve (12) months of post-licensure experience or has attended the board-sponsored supervision training who provides supervision and whose credential is currently in good standing with the board.

(16)(14)(12) "Complaint" means a written allegation of misconduct by a credentialed individual or another person, alleging a violation of:

(a) KRS Chapter 309;

(b) Administrative regulations promulgated in accordance with KRS Chapter 309;

(c) Another state or federal statute or regulation; or

(d) A combination of paragraphs (a), (b), or (c) of this subsection.

(17)(15)(13) "Complaint screening committee" means a committee that reviews complaints, investigates reports, participates in informal proceedings to resolve a formal complaint, and consists of up to three (3)[two-(2)] board members appointed by the chair[-] and

(b) If appointed, the executive director of the Division of Occupations and Professions, or another staff person, to be a non-voting member who is available to the committee for assistance[.]

**(18)(146)(144)** "Continuing education hour" means fifty (50) clock minutes of participating in a continuing education experience.

**(19)(147)(145)** "Credential holder" means a person who has a credential issued by the board pursuant to KRS 309.080 to 309.089 [is defined by KRS 309.080(3)].

**(20)(148)(146)** "Disciplinary action" means to:

(a) Revoke, suspend, place on probation, or restrict the credential holder; and

(b) Publicly reprimand, publicly admonish, or fine.

**(21)(149)(147)** "Education[Educational] program" means an organized learning experience:

(a) Planned and evaluated to meet behavioral objectives; and

(b) Presented in one (1) session or in a series.

**(22)(20)(148)** "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of reaching a resolution[dispensation] of a matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

**(23)(21)(149)** "Investigator" means an individual designated by the board to assist the board in the investigation of a complaint or an investigator employed by [the Attorney General or] the board.

**(24) "Licensed alcohol and drug counselor" is defined by KRS 309.080(7).**

**(25)(22)(20)** "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(6)(4).

**(26)(23)(21)** "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(7)(5).

**(27)(24)(22)** "Licensee" is defined by KRS 309.080(8)(6).

**(28)(25)(23)** "Provider" means an organization approved by the Kentucky Board of Alcohol and Drug Counselors for providing continuing education programs.

**(29)(26)(24)** "Registered alcohol and drug peer support specialist" is defined by KRS 309.080(10)(8).

**(30)(27)(25)** "Registrant" is defined by KRS 309.080(11)(9).

**(31)(28)(26)** "Relevant" means having content applicable to the practice of alcohol and drug counseling in accordance with the requirements of 201 KAR 35:040, Section 3(2).

**(32)(29)(27)** "Work experience" means the hours spent performing the services, tasks, and reports necessary for providing counseling, intervention, or support services to a person with a substance use disorder or that person's significant others.

APPROVED BY AGENCY: May 12, 2021

FILED WITH LRC: May 13, 2021 at 8:00 a.m.

CONTACT PERSON: Kevin R. Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, 237CW, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-4818, email KevinR.Winstead@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines the terms used in 201 KAR Chapter 35.

(b) The necessity of this administrative regulation: This regulation is necessary to define the terms used in 201 KAR Chapter 35.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute, KRS 309.0813(1) requires the board to promulgate regulations pursuant to KRS Chapter 13A for the administration and enforcement of KRS 309.080 to 309.089. KRS 309.0813(2), (4), (5), and (12) further require the board to establish requirements regarding standards of practice, continuing education, examinations, the process to obtain a credential, and to establish certain fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will provide a definition for terms used in 201 KAR Chapter 35.

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

(a) How the amendment will change this existing administrative

regulation: The amendment will change the existing administrative regulation by: (1) adding temporary registration and temporary certification to the definition of "applicant"; (2) making pronouns gender neutral; (3) clarifying that a credential holder renews a credential not an application; (4) adding definitions for certified alcohol and drug counselor associate I and II; (5) updating statutory location for certified alcohol and drug counselor; (6) changing definition for "clinical supervisor" to reflect changes in statutory requirements, specifically, defining a clinical supervisor as a certified alcohol and drug counselor who has two (2) years of post-certification experience and has attended the board-sponsored training or a licensed clinical alcohol and drug counselor who has at least twelve (12) months of post-licensure experience or has attended the board-sponsored supervision training; (7) deleting reference to the executive director of the Division of Occupations and Professions as a non-voting member of the complaint screening committee; (8) updating definition of credential holder to mean a person who has a credential issued by the board pursuant to KRS 309.080 to 309.089; (9) removing the Attorney General from the definition of "investigator." The Emergency Amended After Comments version will also change this existing administrative regulation by adding definitions for "Certified clinical supervisor", "Licensed alcohol and drug counselor", and "Certified alcohol and drug counselor degreed".

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to have clear definitions for terms used in the board's regulations. Further, the Emergency Amended After Comments version will also add references to the "certified clinical supervisor" and "licensed alcohol and drug counselor" credentials created by 2021 Ky. Acts ch. \_\_ (Senate Bill 166).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute. The authorizing statute, KRS 209.0813(1), requires the board to promulgate regulations pursuant to KRS Chapter 13A for the administration and enforcement of KRS 309.080 to 309.089. KRS 309.0813(2), (4), (5), and (12) further require the board to establish requirements regarding standards of practice, continuing education, examinations, the process to obtain a credential, and to establish certain fees.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by providing clear definitions for terms used in the board's regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. Future applicants and persons credentialed by the board will be affected by this administrative regulation. As of February 1, 2021 there were 513 licensed clinical alcohol and drug counselors, 21 licensed clinical alcohol and drug counselor associates, 458 certified alcohol and drug counselors, 930 temporary certified alcohol and drug counselors, 95 temporary registered alcohol and drug peer support specialists, and 15 registered alcohol and drug peer support specialists.

(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: There are no actions needed to be taken for compliance of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: Applicants and credential holders benefit by having the definitions of terms used within the regulations to clarify the regulations and put the licensee on clear notice.

(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 operations are funded by fees paid by credential holders 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 or funding will be required to implement the changes made by this regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied as this regulation does not distinguish between similarly situated individuals on the basis of any factor.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Alcohol and Drug Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.0813(1), (2), (4), (5), (6), and (12). 2021 Ky. Acts ch. \_\_ (Senate Bill 166), which was effective as of March 1, 2021, creates the "certified clinical supervisor" and "licensed alcohol and drug counselor" credentials and establishes requirements for those credentials.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

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

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

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

#### BOARDS AND COMMISSIONS Board of Alcohol and Drug Counselors (Emergency Amended After Comments)

#### 201 KAR 35:020E. Fees.

Amended After Comments version effective: May 13, 2021

Prior version: 47 Ky.R. page 1874

RELATES TO: KRS 309.083, 309.0831, 309.0832, 309.0833, 309.084, 309.0841, 309.0842, 309.085(1)(a), 2021 Ky. Acts ch.

#### sec. 1 (Senate Bill 166), 2021 Ky. Acts ch. \_\_, sec. 2 (Senate Bill 166)

STATUTORY AUTHORITY: KRS 309.0813(1), (4), (5), (12), 309.085(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(1) requires the Kentucky Board of Alcohol and Drug Counselors to promulgate administrative regulations for the administration and enforcement of KRS 309.080 to 309.089. KRS 309.0813(4) requires the board to promulgate an administrative regulation governing the administration and grading of the written examination, which applicants shall be required to successfully complete. KRS 309.0813(12) requires the board to promulgate administrative regulations establishing initial registration, certification, and licensure fees and renewal fees. This administrative regulation establishes those fees and prohibits the use of the credential titles by those whose credentials are canceled.

Section 1. Application Fees. (1) The application fee for board review of an application for a licensed clinical alcohol and drug counselor, licensed clinical alcohol and drug counselor associate, licensed alcohol and drug counselor, certified alcohol and drug counselor degreed, certified alcohol and drug counselor, certified alcohol and drug counselor associate II, certified alcohol and drug counselor associate I, or registered alcohol and drug peer support specialist, KBADC Form 1, shall be fifty (50) dollars. The application fee for a certified clinical supervisor, KBADC Form 23, shall be fifty (50) dollars.

(2) The application fee shall be nonrefundable.

(3) An application shall lapse one (1) year from the date it is filed with the board office.

(4)[(a)] If an approved applicant applies one (1) or more times after the original application lapses, the applicant shall comply with the requirements of this subsection.

(a)[4-] The applicant shall successfully complete the examination required by the board within one (1) year[two (2) years] from the date the original application is filed.

(b)[2-] If the applicant does not successfully complete the examination within the time period required by subparagraph (a)[4-] of this paragraph, the applicant shall update and refile the application prior to sitting for the examination again.

(b) The fee for refiling the application form shall be twenty (20) dollars.

Section 2. Comprehensive Examination Fees. (1) An applicant for registration as an alcohol and drug peer support specialist shall pay an examination fee of \$150. The fee for retaking the comprehensive examination for registration shall be \$150.

(2) An applicant for certification, and an applicant for licensed alcohol and drug counselor, shall pay an examination fee of \$200. The fee for retaking the comprehensive examination for certification shall be \$200.

(3) An applicant for clinical licensure shall pay an examination fee of \$200. The fee for retaking the comprehensive examination for licensure shall be \$200.

(4) An applicant for certified clinical supervisor shall pay an examination fee of \$200. The fee for retaking the comprehensive examination for licensure shall be \$200.

Section 3. Credentialing Fees. (1)[(a)] The registration fee for an alcohol and drug peer support specialist shall be \$100.

(2)[(b)] The [certification] fee for a certified alcohol and drug counselor and licensed alcohol and drug counselor shall be \$200.

(3)[(c)] The licensure fee for a licensed clinical alcohol and drug counselor or licensed clinical alcohol and drug counselor associate shall be \$300.

(4) The certification fee for a certified clinical supervisor shall be \$200.

(2) If the applicant successfully completes all requirements for registration, certification, or licensure, the fee established in subsection (1) of this section shall cover credentialing for the initial three (3) year period.

Section 4. Renewal Fees and Penalties. (1)(a) A registration, certificate, or license not renewed within ninety (90) days after the holder's renewal date shall be deemed cancelled in accordance with KRS 309.085(2).

(b) A person holding a cancelled registration shall not use the title "registered alcohol and drug peer support specialist" or hold himself or herself out as a registered alcohol and drug peer support specialist or engage in the practice of alcohol and drug peer support services.

(c) A person holding a canceled certificate shall not:

1. Use[use] the title "certified alcohol and drug counselor," [or] hold himself or herself out as a certified alcohol and drug counselor, or engage in the practice of alcohol and drug counseling.

2. Use the title temporary certified alcohol and drug counselor, hold himself or herself out as a temporary alcohol and drug counselor, or engage in the practice of alcohol and drug counseling.

3. Use the title "licensed alcohol and drug counselor", hold himself or herself out as a licensed alcohol and drug counselor, or engage in the practice of alcohol and drug counseling.

4.[3.] Use the title "certified alcohol and drug counselor associate I," or hold himself or herself out as a certified alcohol and drug counselor associate I, or engage in the practice of alcohol and drug counseling.

5.[4.] Use the title "certified alcohol and drug counselor associate II," or hold himself or herself out as a certified alcohol and drug counselor associate II, or engage in the practice of alcohol and drug counseling.

6. Use the title "certified clinical supervisor", hold himself or herself out as a certified clinical supervisor, or otherwise represent themselves as a certified clinical supervisor.

(d) A person holding a canceled license shall not use the title "licensed clinical alcohol and drug counselor" or hold himself or herself out as a licensed clinical alcohol and drug counselor or engage in the practice of alcohol and drug counseling.

(e) A person holding a canceled license as a licensed clinical alcohol and drug counselor associate shall not use the title "licensed clinical alcohol and drug counselor associate" or hold himself or herself out as a licensed clinical alcohol and drug counselor associate or engage in the practice of alcohol and drug counseling.

**(f) The certified clinical supervisor status of a person holding a canceled certified alcohol and drug counselor, licensed alcohol and drug counselor, or licensed clinical alcohol and drug counselor credential shall be revoked at the time of cancelation of the certified alcohol and drug counselor, licensed alcohol and drug counselor, or licensed clinical alcohol and drug counselor credential.**

(2) The fees and penalties established in this subsection shall be paid in connection with registration, certification, or licensure renewals.

(a) The renewal fee for registration as a temporary registered alcohol and drug peer support specialist shall be fifty (50) dollars for a two (2) year period, and shall accompany the Application for Renewal, KBADC Form 16.

(b) The late renewal fee, including penalty, for the ninety (90) day grace period shall be \$100 for registration as a temporary registered alcohol and drug peer support specialist for a two (2) year period.

(c)[(a)] The renewal fee for registration as a registered alcohol and drug peer support specialist shall be \$100 for a three (3) year period, and shall accompany the Application for Renewal, KBADC Form 16.

(d)[(b)] The late renewal fee, including penalty, for the ninety (90) day grace period shall be \$150 for registration as a registered alcohol and drug peer support specialist for a three (3) year period.

(e)[(c)] The renewal fee for certification as a certified alcohol and drug counselor associate I, a certified alcohol and drug counselor associate II, or a temporary certified alcohol and drug counselor shall be \$100 for a two (2) year period, and shall accompany the Application for Renewal.

**(f) The late renewal fee, including penalty, for the ninety (90) day grace period shall be \$150 for certification as a certified alcohol and drug counselor associate I, a certified alcohol and drug counselor associate II, or a temporary certified alcohol and drug counselor for a two (2) year period.**

(g) The renewal fee for certification as a certified alcohol and drug counselor shall be \$200 for a three (3) year period, and shall accompany the Form 16 Application for Renewal.

(h)[(d)] The late renewal fee, including penalty, for the ninety (90) day grace period shall be \$250 for certification as a certified alcohol and drug counselor for a three (3) year period.

**(i) The renewal fee for licensure as a licensed alcohol and drug counselor shall be \$200 for a three (3) year period, and shall accompany the Form 16, Application for Renewal.**

**(j) The late renewal fee, including penalty, for the ninety (90) day grace period shall be \$250 for licensure as a licensed alcohol and drug counselor for a three (3) year period.**

(k)[(f)] The renewal fee for licensure shall be \$300 for a three (3) year period, and shall accompany the Application for Renewal.

(l)[(g)] The late renewal fee for the ninety (90) day grace period, as well as licensure for a three (3) year period, shall be a:

1. \$300 fee; and
2. Penalty fee of fifty (50) dollars.

**3. The renewal fee for certification as a certified clinical supervisor shall be \$200 for a three (3) year period, and shall accompany the Form 16, Application for Renewal.**

**4. The late renewal fee, including penalty, for the ninety (90) day grace period shall be \$250 for certification as a certified clinical supervisor for a three (3) year period.**

Section 5. Reinstatement of a Canceled Registration, Certificate, or Licensure. (1) A canceled registration may be reinstated within one (1) year of the anniversary date of issue of renewal by:

- (a) Submitting a completed Application for Reinstatement;
- (b) Proof of completion of continuing education in accordance with 201 KAR 35:040[and of ten (10) hours of continuing education during the one (1) year period]; and
- (c) Payment of a \$200 reinstatement fee for registration for a three (3) year period.

(2) A canceled **credential[certificate] of a licensed alcohol and drug counselor, certified alcohol and drug counselor, certified drug and alcohol counselor associate II, certified alcohol and drug counselor associate I** may be reinstated within one (1) year of the anniversary date of issue of renewal by:

- (a) Submitting a completed Application for Reinstatement;
- (b) Proof of completion of continuing education in accordance with 201 KAR 35:040 [and of twenty (20) hours of continuing education during the one (1) year period]; and
- (c) Payment of a \$300 reinstatement fee, for certification for a three (3) year period.

(3) A canceled license may be reinstated within one (1) year of the anniversary date of issue of renewal by:

- (a) Submitting a completed Application for Reinstatement;
- (b) Proof of completion of continuing education in accordance with 201 KAR 35:040[and of twenty (20) hours of continuing education during the one (1) year period]; and
- (c) Payment for licensure for a three (3) year period, which shall be a:

1. \$300 fee; and
2. Penalty fee of \$100.

**(4) A canceled credential of a certified clinical supervisor may be reinstated within one (1) year of the anniversary date of issue of renewal by:**

- (a) Submitting a completed Application for Reinstatement;**
- (b) Proof of completion of continuing education in accordance with 201 KAR 35:040; and**
- (c) Payment of a \$100 reinstatement fee, for certification for a three (3) year period.**

Section 6. Duplicate Credential Fee[and ID Card Fees]. [(1)] The fee for a duplicate credential shall be twenty (20) dollars.[]

(2) The fee for a duplicate ID card shall be ten (10) dollars.]

Section 7. Inactive Status Fees. (1) The enrollment fee for voluntarily placing a registration, certificate, or license in inactive status in accordance with 201 KAR 35:080 shall be fifty (50) dollars.

(2) The annual renewal fee for a registration, certificate, or license enrolled in inactive status shall be twenty-five (25) dollars based on the renewal date.

(3)(a) The fee for reactivation of a registration shall be \$100 for a three (3) year period commencing on the date the board approves the application for reactivation.

(b) The fee for reactivation of a registration as a registered temporary registered alcohol and drug peer support specialist, certificate as a temporary certified alcohol and drug counselor, certificate as a certified alcohol and drug counselor associate I, and certificate as a certified alcohol and drug counselor associate II shall be fifty (50) dollars for a two (2) year period commencing on the date the board approves the application for reactivation.

(c) The fee for reactivation of a certificate as a licensed alcohol and drug counselor or certified alcohol and drug counselor shall be \$200 for a three (3) year period commencing on the date the board approves the application for reactivation.

(d)[(e)] The fee for reactivation of a license shall be \$300 for a three (3) year period commencing on the date the board approves the application for reactivation.

(e) The fee for reactivation of a certificate as a certified clinical supervisor that was held at the time the primary credential went into inactive or retired status is included in the fee for reactivation of the primary credential.

Section 8. Continuing Education Fees. (1) For purposes of this administrative regulation, a continuing education sponsor shall be an individual or entity that provides a program of continuing education to credential holders that has been reviewed and approved by the board to meet the continuing education requirements set forth in 201 KAR 35:040.

(2) Approvals may consist of a single workshop or a program of courses and shall be effective for one (1) year from the date of approval.

(3) The fee for approval of an application for a single program provider shall be fifty (50) dollars.

(4) The fee for approval of an application for a continuing education sponsor providing a program of courses shall be \$250.

(5) Continuing education sponsors who have received approval for their program of courses may apply for renewal of the approval in accordance with 201 KAR 35:040 and shall pay an annual renewal fee of \$150.

(6)(a) The fee for review of an application for a substantial change in curriculum of an approved program shall be fifty (50) dollars.

(b) A substantial change shall be considered as the addition of a workshop or course to a pre-approved program, or changes to the content of a pre-approved workshop or program which is in excess of twenty (20) percent.

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

(a) "KBADC Form 1, Application", May[March] 2021[June 2015];

(b) "KBADC Form 16, Application for Renewal", March 2021[June 2015]; and

(c) "KBADC Form 17, Application for Reinstatement", March 2021[June 2015].

(d) "KBADC Form 23, Application for Certified Clinical Supervisor", May 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 500 Mero St, 2 SC 32[944-Leawood Drive], Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m. The board's Web site address is: <https://adc.ky.gov>.

APPROVED BY AGENCY: May 12, 2021

FILED WITH LRC: May 13, 2021 at 8:00 a.m.

CONTACT PERSON: Kevin R. Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, 237CW, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-4818, email [KevinR.Winstead@ky.gov](mailto:KevinR.Winstead@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application, comprehensive examination, credential, renewal, penalty, reinstatement, duplicate credential, inactive status, and continuing education fees, and prohibits the use of the credential titles by those whose credentials are canceled.

(b) The necessity of this administrative regulation: The necessity of this regulation is to advise the public, credential holders, and applicants of fees to be assessed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as KRS 309.0813(12), the authorizing statute, gives the board the ability to promulgate regulations regarding the establishment of fees, and KRS 309.0813(1) requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.080 to 309.089.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of the statutes by establishing the fees to be assessed for the application, comprehensive examination, credential, renewal, penalty, reinstatement, duplicate credential, inactive status, and continuing education, and prohibits the use of the credential titles by those whose credentials are canceled.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by: (1) adding an application fee of fifty (50) dollars for a certified alcohol and drug counselor associate I and II; (2) decreasing the time to complete the examination required by the board from two (2) years to one (1) year; (3) deleting, as duplicative of other regulations, the fee for refiling the application form; (4) deleting a provision allowing credentialing fees for one credential to cover credentialing fees for other credentials obtained within three (3) years; (5) prohibiting the use of the titles temporary alcohol and drug counselor, certified alcohol and drug counselor associate I, and certified alcohol and drug counselor associate II for credential holders whose certification has canceled; (6) setting the renewal fee for a temporary registered alcohol and drug peer support specialist at fifty (50) dollars for a two (2) year period and the late renewal fee at \$100; (7) setting the renewal fee for a temporary certified alcohol and drug counselor, certified alcohol and drug counselor associate I, and certified alcohol and drug counselor associate II at \$100 for a two (2) year period; (7) setting the late renewal fee for a temporary certified alcohol and drug counselor, certified alcohol and drug counselor associate I, and certified alcohol and drug counselor associate II at \$150; (8) removing requirement from this regulation that credential holders complete ten (10) hours of continuing education for reinstatement; (9) adding certified alcohol and drug counselor associate I and II to the list of credential holders that may reinstate a canceled certificate; (10) removing requirement of twenty (20) hours of continuing education during a one (1) year period for reinstatement; (11) removing the requirement of twenty (20) hours of continuing education during the one (1) year period of cancellation to reinstate a license; (12) deleting the option for a duplicate ID Card; (13) deleting the fee for a duplicate ID card; (13) establishing the fee for reactivation of a registered temporary alcohol and drug peer support specialist, temporary certified alcohol and drug counselor, certified alcohol and drug counselor associate I, certified alcohol and drug counselor associate II credentials at fifty (50) dollars; (14) updating the board's address; and (15) adding the board's Web site address. The Emergency

Amended After Comments version will also add references to the new "certified clinical supervisor" and "licensed alcohol and drug counselor" credentials created by 2021 Ky. Acts ch. \_\_ (Senate Bill 166), and to the new "certified alcohol and drug counselor degreed" designation, to the provisions regarding application fees, comprehensive examination fees, credentialing fees, set fees for certified clinical supervisor, renewal fees and penalties, prohibition of use of titles for canceled credentials, reinstatement, and inactive status fees. Further, the Emergency Amended After Comments version will create a new application form for the certified clinical supervisor credential, and amend the existing application form to include the other new credentials. 201 KAR 35:020.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to establish fees for credential holders and other services provided by the board.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute, KRS 309.0813(12), which gives the board the ability to promulgate regulations regarding the establishment of fees, and KRS 309.0813(1) requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.080 to 309.089.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by establishing the fees to be assessed for the application, credential, renewal, penalty, reinstatement, duplicate credential, and inactive status for the alcohol and drug counselor associate I and II, the licensed alcohol and drug counselor, and the certified clinical supervisor.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. Future applicants and persons credentialed by the board will be affected by this administrative regulation. As of February 1, 2021 there were 513 licensed clinical alcohol and drug counselors, 21 licensed clinical alcohol and drug counselor associates, 458 certified alcohol and drug counselors, 930 temporary certified alcohol and drug counselors, 95 temporary registered alcohol and drug peer support specialists, and 15 registered alcohol and drug peer support specialists.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Applicants and credential holders shall pay a fee associated with the credential or services sought, and shall stop using the credential title by if their credential is canceled

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This amendment to the administrative regulation establishes new fees for the newly created credentials of alcohol and drug counselor associate I and II, licensed alcohol and drug counselor, and certified clinical supervisor.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, applicants and credential holders will know the fees associated with their credential and services provided.

(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 operations are funded by fees paid by credential holders 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: The regulation establishes: an application fee of fifty (50) dollars for certified alcohol and drug counselor associate I and II; a renewal fee of fifty (50) dollars for a temporary registered alcohol and drug peer support specialist; a late renewal fee of \$100 for registration as a temporary registered alcohol and drug peer support specialist; a renewal fee of \$100 for certification as a certified alcohol and drug counselor associate I, a certified alcohol and drug counselor associate II, and a temporary certified alcohol and drug counselor; a late renewal fee of \$150 for a temporary certified alcohol and drug counselor, a certified alcohol and drug counselor associate I, and a certified alcohol and drug counselor associate II; a reinstatement fee of \$300 for a certified alcohol and drug counselor, certified drug and alcohol counselor associate II, and certified alcohol and drug counselor associate I; and a reactivation fee of fifty (50) dollars for a temporary certified alcohol and drug counselor, certificate as a certified alcohol and drug counselor associate I, and certificate as a certified alcohol and drug counselor associate II. The Emergency Amended After Comments version establishes the following fees for the licensed alcohol and drug counselor and certified clinical supervisor credentials: application fee of \$50; examination fee of \$200; credentialing fee of \$200; renewal fee of \$200; late renewal fee of \$250; reinstatement fee of \$100 for certified clinical supervisor; reinstatement fee of \$300 for licensed alcohol and drug counselor; and reactivation fee of \$200 for licensed alcohol and drug counselor.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation established directly or indirectly the following fees: an application fee of fifty (50) dollars for certified alcohol and drug counselor associate I and II; a renewal fee of fifty (50) dollars for a temporary registered alcohol and drug peer support specialist; a late renewal fee of \$100 for registration as a temporary registered alcohol and drug peer support specialist; a renewal fee of \$100 for certification as a certified alcohol and drug counselor associate I, a certified alcohol and drug counselor associate II, and a temporary certified alcohol and drug counselor; a late renewal fee of \$150 for a temporary certified alcohol and drug counselor, a certified alcohol and drug counselor associate I, and a certified alcohol and drug counselor associate II; a reinstatement fee of \$300 for a certified alcohol and drug counselor, certified drug and alcohol counselor associate II, and certified alcohol and drug counselor associate I; and a reactivation fee of fifty (50) dollars for a temporary certified alcohol and drug counselor, certificate as a certified alcohol and drug counselor associate I, and certificate as a certified alcohol and drug counselor associate II. The Emergency Amended After Comments version establishes the following fees for the licensed alcohol and drug counselor and certified clinical supervisor credentials: application fee of \$50; examination fee of \$200; credentialing fee of \$200; renewal fee of \$200; late renewal fee of \$250; reinstatement fee of \$100 for certified clinical supervisor; reinstatement fee of \$300 for licensed alcohol and drug counselor; and reactivation fee of \$200 for licensed alcohol and drug counselor.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply to all credential holders.

#### 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 Alcohol and Drug Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.0813(1), (12), 309.083, 309.0831, 309.0832, 309.0833(1)(a), 309.084, 309.0841, 309.0842, and 309.085. 2021 Ky. Acts ch. \_\_ (Senate Bill 166), which was effective as of March 1, 2021, creates the "certified clinical supervisor" and "licensed alcohol and drug counselor" credentials, and requires applicants for those credentials to pass a written examination that has been approved by the International Certification and Reciprocity

Consortium.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The board is unable to determine how much revenue this administrative regulation will generate for state or local government for the first year. The amendments to this administrative regulation: set an application fee of fifty (50) dollars for a certified alcohol and drug counselor associate I and II; set the renewal fee for a temporary registered alcohol and drug peer support specialist at fifty (50) dollars for a two (2) year period and the late renewal fee at \$100; set the renewal fee for a temporary certified alcohol and drug counselor, certified alcohol and drug counselor associate I, and certified alcohol and drug counselor associate II at \$100 for a two (2) year period; set the late renewal fee for a temporary certified alcohol and drug counselor, certified alcohol and drug counselor associate I, and certified alcohol and drug counselor associate II at \$150; delete the fee for a duplicate ID card; and establish the fee for reactivation of a registered temporary alcohol and drug peer support specialist, temporary certified alcohol and drug counselor, certified alcohol and drug counselor associate I, and certified alcohol and drug counselor associate II at \$100 for a two (2) year period; set the late renewal fee for a temporary certified alcohol and drug counselor, certified alcohol and drug counselor associate I, and certified alcohol and drug counselor associate II credentials at fifty (50) dollars. The Emergency Amended After Comments version establishes the following fees for the licensed alcohol and drug counselor and certified clinical supervisor credentials: application fee of \$50; examination fee of \$200; credentialing fee of \$200; renewal fee of \$200; late renewal fee of \$250; reinstatement fee of \$100 for certified clinical supervisor; reinstatement fee of \$300 for licensed alcohol and drug counselor; and reactivation fee of \$200 for licensed alcohol and drug counselor.

(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 board is unable to determine how much revenue this administrative regulation will generate for state or local government on an ongoing basis. The amendments to this administrative regulation: set an application fee of fifty (50) dollars for a certified alcohol and drug counselor associate I and II; set the renewal fee for a temporary registered alcohol and drug peer support specialist at fifty (50) dollars for a two (2) year period and the late renewal fee at \$100; set the renewal fee for a temporary certified alcohol and drug counselor, certified alcohol and drug counselor associate I, and certified alcohol and drug counselor associate II at \$100 for a two (2) year period; set the late renewal fee for a temporary certified alcohol and drug counselor, certified alcohol and drug counselor associate I, and certified alcohol and drug counselor associate II at \$150; delete the fee for a duplicate ID card; and establish the fee for reactivation of a registered temporary alcohol and drug peer support specialist, temporary certified alcohol and drug counselor, certified alcohol and drug counselor associate I, and certified alcohol and drug counselor associate II credentials at fifty (50) dollars. The Emergency Amended After Comments version establishes the following fees for the licensed alcohol and drug counselor and certified clinical supervisor credentials: application fee of \$50; examination fee of \$200; credentialing fee of \$200; renewal fee of \$200; late renewal fee of \$250; reinstatement fee of \$100 for certified clinical supervisor; reinstatement fee of \$300 for licensed alcohol and drug counselor; and reactivation fee 200 for licensed alcohol and drug counselor.

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

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

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

regulation.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

**BOARDS AND COMMISSIONS**  
**Board of Alcohol and Drug Counselors**  
**(Emergency Amended After Comments)**

**201 KAR 35:025E. Examinations.**

**Amended After Comments version effective: May 13, 2021**

**Prior version: 47 Ky.R. page 1878**

RELATES TO: KRS 309.083(5), 309.0831(5), 309.0832(4), 309.0833, **2021 Ky. Acts ch. , sec. 1 (Senate Bill 166), 2021 Ky. Acts ch. , sec. 2 (Senate Bill 166)**

STATUTORY AUTHORITY: KRS 309.0813(1), (4), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(4) requires the board to promulgate an administrative regulation governing the administration and grading of the written examination, which applicants are required to successfully complete. This administrative regulation establishes those examination requirements **for alcohol and drug peer support specialists, certified alcohol and drug counselors, licensed alcohol and drug counselors, licensed clinical alcohol and drug counselors, licensed clinical alcohol and drug counselor associates, and certified clinical supervisors.**

Section 1. Comprehensive Examination. (1) An applicant for registration as an alcohol and drug peer support specialist shall take the comprehensive examination offered by the International Certification and Reciprocity Consortium.

(2) An applicant for certification **as a certified alcohol and drug counselor** shall take the comprehensive examination offered by the International Certification and Reciprocity Consortium.

**(3) An applicant for licensure as a licensed alcohol and drug counselor shall take the comprehensive examination offered by the International Certification and Reciprocity Consortium.**

**(4) [(3)] An applicant for licensure as a licensed clinical alcohol and drug counselor and licensed clinical alcohol and drug counselor associate shall take the comprehensive examination offered by the International Certification and Reciprocity Consortium.**

**(5) An applicant for certification as a certified clinical supervisor shall take the comprehensive examination offered by the International Certification and Reciprocity Consortium.**

Section 2. Remediation Plan. (1) If an applicant fails the examination, the applicant shall:

(a) Not retake the examination within ninety (90) days of the failed examination date;

(b) Submit a KBADC Form 19, Re-Examination Application; and

(c) Submit the examination fee for the respective examination listed in 201 KAR 35:020, Section 2.

(2) If the applicant fails the examination twice or more, the applicant shall submit a remediation plan after each failed examination:

(a) To address the deficiencies cited in the examination results; and

(b) Cosigned by the board-approved supervisor.

(3) Upon completion of the remediation plan approved by the board, the applicant may request permission to retake the examination by filing a KBADC Form 19, Re-Examination Application, and submitting the examination fee for the respective examination listed in 201 KAR 35:020, Section 2.

Section 3. Incorporation by Reference. (1) "KBADC Form 19, Re-Examination Application", December 2015, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 500 Mero St, 2 SC 32[944 Leawood Drive], Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m. The board's Web site address is: <https://adc.ky.gov>.

APPROVED BY AGENCY: May 12, 2021

FILED WITH LRC: May 13, 2021 at 8:00 a.m.

CONTACT PERSON: Kevin R. Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, 237CW, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-4818, email [KevinR.Winstead@ky.gov](mailto:KevinR.Winstead@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the comprehensive examination requirement for each applicant and the process that an applicant must satisfy if the applicant fails the examination.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the procedure for the examination and the process that an applicant must satisfy if the applicant fails the examination.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the establishment of examinations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the comprehensive examination requirement for each applicant and the process that an applicant must satisfy if the applicant fails the examination.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by clarifying that applicants for certification as a certified alcohol and drug counselor are required to take an examination and no other applicants for certification. The amendment also updates the board's address. The Emergency Amended After Comments version will also add references to the new "certified clinical supervisor" and "licensed alcohol and drug counselor" credentials to the provisions regarding comprehensive examinations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because two new credentials for certification were created by the General Assembly that does not require an applicant to take a comprehensive examination. This amendment clarifies that only applicants for certification as a certified alcohol and drug counselor are required to take a comprehensive examination. Further, the Emergency Amended After Comments version will also add references to the new "certified clinical supervisor" and "licensed alcohol and drug counselor" credentials created by 2021 Ky. Acts ch. \_\_ (Senate Bill 166) to the provisions regarding comprehensive examinations.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute, KRS 309.0813(4). The authorizing statute gives the board the ability to promulgate regulations regarding the establishment of examinations.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by clarifying that only applicants for certification as a certified alcohol and drug counselor are required to take an examination.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. Future applicants and persons credentialed by the board will be affected by this

administrative regulation. As of February 1, 2021 there were 513 licensed clinical alcohol and drug counselors, 21 licensed clinical alcohol and drug counselor associates, 458 certified alcohol and drug counselors, 930 temporary certified alcohol and drug counselors, 95 temporary registered alcohol and drug peer support specialists, and 15 registered alcohol and drug peer support specialists.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: An applicant for certification as a certified alcohol and drug counselor, certified clinical supervisor, and licensed alcohol and drug counselor must take the comprehensive examination offered by the International Certification and Reciprocity Consortium.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: An applicant for certification as a certified alcohol and drug counselor, certified clinical supervisor, and licensed alcohol and drug counselor must pay a fee to take the comprehensive examination offered by the International Certification and Reciprocity Consortium.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, an applicant has the opportunity to successfully pass the required examination.

(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 operations are funded by fees paid by credential holders 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: There will be no increase in fees or funding to implement the 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 new fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Alcohol and Drug Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.0813(1) (effective March 1, 2021) requires the board to promulgate administrative regulations pursuant to KRS Chapter 13A for the administration and enforcement of KRS 309.080 to 309.089. KRS 309.0813(4) (effective March 1, 2021) requires the board to approve the examination required of applicants for licensure or certification as alcohol and drug counselors and applicants for registration as alcohol and drug peer support specialists, and promulgate administrative regulations pursuant to KRS Chapter 13A for the administration and grading of the examination. KRS 309.0813(5) (effective March 1, 2021) requires the board to promulgate administrative regulations pursuant to KRS Chapter 13A to define the process to register with the board as a registered alcohol and drug peer support specialist, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor associate, or licensed clinical alcohol and drug counselor. 2021 Ky. Acts ch. \_\_ (Senate Bill 166), which was

effective as of March 1, 2021, creates the "certified clinical supervisor" and "licensed alcohol and drug counselor" credentials, and requires applicants for those credentials to pass a written examination that has been approved by the International Certification and Reciprocity Consortium.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

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

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

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

Revenues (+/-): Neutral  
Expenditures (+/-): Neutral  
Other Explanation: None

**BOARDS AND COMMISSIONS**  
**Board of Alcohol and Drug Counselors**  
**(Emergency Amended After Comments)**

**201 KAR 35:040E. Continuing education requirements.**

**Amended After Comments version effective:** May 13, 2021  
**Prior version:** 47 Ky.R. page 1880

RELATES TO: KRS 309.085(1)(b), 2021 Ky. Acts ch. , sec. 1 (Senate Bill 166), 2021 Ky. Acts ch. , sec. 2 (Senate Bill 166)

STATUTORY AUTHORITY: KRS 309.0813(2), 309.085(1)(b)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(2) and 309.085(1)(b) authorize the Board of Alcohol and Drug Counselors to promulgate administrative regulations establishing continuing education requirements. This administrative regulation establishes the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses for persons credentialed by the board.

Section 1. Basic Continuing Education Requirements. (1)(a) A minimum of ten (10) continuing education hours each year shall be accrued by each person holding a registration as an alcohol and drug peer support specialist.

(b) A minimum of thirty (30) continuing education hours, including at least six (6) continuing education hours in ethics, each year shall be accrued by each person holding a certificate as a certified alcohol and drug counselor associate I and a certified alcohol and drug counselor associate II.

(c) A minimum of sixty (60) continuing education hours shall be accrued by each person holding a credential[certificate] as a licensed alcohol and drug counselor or certified alcohol and drug counselor during the three (3) year certification period for renewal with at least three (3) continuing education hours in ethics.

(d)[(e)] A minimum of sixty (60) continuing education hours shall be accrued by each person holding a license as a licensed

clinical alcohol and drug counselor during the three (3) year licensure period for renewal with at least three (3) continuing education hours in ethics.

(e)[(d)] A minimum of twenty (20) continuing education hours each year shall be accrued by each person holding a license as a licensed clinical alcohol and drug counselor associate. A licensed clinical alcohol and drug counselor associate shall obtain at least three (3) continuing education hours in ethics during the renewal cycle.

(2) A minimum of nine (9) continuing education hours shall be accrued by each person holding a certificate as a certified clinical supervisor during the three (3) year licensure period for renewal, at least three (3) hours of which shall be the board sponsored clinical supervision training. These hours can be included in the continuing education hours required for the certified alcohol and drug counselor, licensed alcohol and drug counselor, or licensed clinical alcohol and drug counselor credential held by the certified clinical supervisor.

(3)[(2)] All continuing education hours shall be relevant to the field of alcohol and drug counseling.

(4)[(3)] A credential holder shall determine prior to attending a specific continuing education program that the program:

- (a) Has been approved by the board; or
- (b) Is offered or sponsored by an organization approved by the board to provide continuing education programs.

(5)[(4)] If the specific continuing education program is not preapproved as established in subsection (3) of this section, the credential[certificate] holder may apply for board approval by providing the information required by Section 4 of this administrative regulation.

(6)[(5)] A person credentialed by the board[credential holder] shall complete a minimum of six (6) hours of continuing education in suicide assessment, treatment, and management as required by KRS 210.366. The suicide assessment, treatment, and management continuing education course shall be approved by the board, be provided by an entity identified in Section 2(4)(b) of this administrative regulation, or be approved by one (1) of the following boards:

- (a) Kentucky Board of Social Work;
- (b) Kentucky Board of Licensure of Marriage and Family Therapists;
- (c) Kentucky Board of Licensed Professional Counselors;
- (d) Kentucky Board of Licensure for Pastoral Counselors;
- (e) Kentucky Board of Examiners of Psychology; or
- (f) Kentucky Board of Licensure for Occupational Therapy.

Section 2. Methods of Acquiring Continuing Education Hours.  
(1) Continuing education hours applicable to the renewal of the credential shall be directly related to the professional growth and development of a credential holder.

(2) Continuing education hours may be earned by:  
(a) Attending a continuing education program that has prior approval by the board;  
(b) The completion of appropriate academic coursework; or  
(c) Other alternative methods approved by the board in accordance with subsection (6) of this section.

(3) At least fifty (50) percent of the required continuing education hours for a credential holder shall be earned through live synchronous or[-] face-to-face[-] continuing education presentations.

(4) Attendance at continuing education programs automatically approved by the board.

(a) A program relevant to the practice of alcohol and drug counseling that is provided, approved, or sponsored by any of the providers listed in paragraph (b) of this subsection shall be:

- 1. Approved without further review; and
- 2. Exempt from the program fee established in 201 KAR 35:020, Section 8.

(b) The provisions of this subsection shall apply to the following providers:

- 1. The National Association of Addiction Professionals (NAADAC) and its member boards;

2. The International Certification and Reciprocity Consortium (ICRC);

3. The Kentucky Cabinet for Health and Family Services, Division of Mental Health and Substance Abuse and its subcontractors;

4. Community Mental Health Centers;

5. The Kentucky School of Alcohol and Drug Studies;

6[5]. An Addiction Technology Transfer Center (ATTC);

7[6]. State or United States Regional Addiction Training Institute;

8[7]. Clinical Applications of the Principles on Treatment of Addictions and Substance Abuse (CAPTASA); or

9[8]. National Conference on Addiction Disorders (NCAD).

(5)(a) Academic coursework. An academic course, as defined in 201 KAR 35:010, Section 1(1), shall not require board review or approval.

(b) A general education course, or elective designated to meet academic degree requirements, shall be acceptable for continuing education credit if it is relevant to the practice of alcohol and drug counseling.

(c) Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equaling fifteen (15) continuing education hours.

(6) Alternative methods for obtaining continuing education hours; programs requiring board review and approval. The following activities shall be reviewed by the board to determine whether or not the activity complies with the requirements of Section 3(2) of this administrative regulation:

(a)1. A program, including a home study course and in-service training provided by an organization or education institution not listed in subsection (4)(b) of this section; or

2. A program or academic course presented by the credential holder, who shall earn two (2) continuing education hours for each contact hour of instruction, unless it is repeated instruction of the same course; or

(b) A relevant publication in a professionally recognized or juried publication authored by the credential holder, who shall earn continuing hours as follows:

1. Five (5) continuing education hours for each published abstract or book review in a refereed journal;

2. Ten (10) continuing education hours for each book chapter or monograph;

3. Fifteen (15) continuing education hours for each published article in a refereed journal; and

4. Twenty (20) continuing education hours for each published book.

Section 3. Procedures for Preapproval of Continuing Education Programs. (1) An applicant seeking to obtain approval of a continuing education program prior to its offering shall apply to the board at least thirty (30) days in advance of the commencement of the program, and shall provide the information required in Section 4 of this administrative regulation.

(2) A continuing education activity shall be qualified for approval if the activity:

(a) Is an organized program of learning;

(b) Pertains to subject matter relating to alcohol and drug counseling;

(c) Enhances the professional competence of the credential holder by:

1. Refreshing knowledge and skills; or

2. Educating on a new topic or subject; and

(d) Is conducted by a competent instructor, as documented by appropriate academic training, professional licensure or certification, or professionally recognized experience.

(3)(a) The board may monitor or review a continuing education program approved by the board, in accordance with this section.

(b) Upon evidence of significant variation in the program presented from the program approved, the board shall withdraw approval of the hours granted to the program.

Section 4. Subsequent Approval of Continuing Education Programs. (1) A course that has not been preapproved by the

board may be used for continuing education if approval is subsequently secured from the board.

(2) The following information shall be submitted for board review of a program:

(a) A published course or seminar description;

(b) The name and qualifications of the instructor;

(c) A copy of the program agenda indicating hours of education;

(d) Number of continuing education hours requested;

(e) Official certificate of completion or college transcript from the sponsoring agency or college; and

(f) Continuing Education Program Application for continuing education credits approval.

Section 5. Application for Approved Sponsor. (1) A company, individual, or association that wishes to be designated as an approved sponsor of continuing education shall complete a Continuing Education Sponsor Application, and pay the provider fee established in 201 KAR 35:020, Section 8.

(2) An approved sponsor of continuing education shall be allowed to advertise the program as preapproved to meet the continuing education requirements for credential renewal.

(3)(a) Approval shall be for one (1) year from date of approval unless substantial course changes occur.

(b) For purposes of this section, a substantial course change shall be a change in the curriculum in excess of twenty (20) percent.

Section 6. Responsibilities and Reporting Requirements of Credential Holder; Audit.

(1)(a) During the renewal period, the board shall review at least fifteen (15) percent of all credential holders' documentation supporting the completion of the appropriate number of continuing education hours through a random audit process.

(b) Copies of supporting documentation submitted to the board shall be shredded and shall not be returned to the certificate holder upon completion of the audit process.

(c) Verification of continuing education hours shall not otherwise be reported to the board.

(2) A credential holder shall:

(a) Be responsible for obtaining the required continuing education hours;

(b) Identify personal continuing education needs and seek activities that meets those needs;

(c) Seek ways to integrate new knowledge, skills, and activities;

(d) Select approved activities by which to earn continuing education hours;

(e) Submit to the board, if applicable, a request for approval for continuing education activities not approved as established in Section 3 of this administrative regulation;

(f) Document attendance, participation in, and successful completion of continuing education activity; and

(g) Maintain records of continuing education hours for five (5) years from the date of the offering of the continuing education activity.

(3) The following items may be used to document continuing education activity:

(a) Transcript;

(b) Certificate;

(c) Affidavit signed by the instructor;

(d) Receipt for the fee paid to the sponsor; or

(e) Written summary of experiences that are not formally or officially documented otherwise.

(4) Failure to comply with this administrative regulation shall constitute a violation of KRS 309.085(1)(b) and shall result in board:

(a) Refusal to renew credential;

(b) Suspension of credential; or

(c) Revocation of credential.

Section 7. Carryover of Continuing Education Hours Prohibited. Continuing education hours earned in excess of those

required pursuant to Section 1 of this administrative regulation shall not be carried forward.

Section 8. Waiver or Extensions of Continuing Education. (1) On application, the board may grant a waiver of the continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:

- (a) Medical disability or serious injury of the credential holder;
  - (b) Serious illness of the credential holder or of an immediate family member; or
  - (c) Death or serious injury of an immediate family member.
- (2) A written request for waiver or extension of time involving medical disability or illness shall be:
- (a) Submitted by the credential[certificate] holder; and
  - (b) Accompanied by a verifying document signed by a licensed physician or an advanced practice registered nurse.
- (3) A waiver of or extension of time within which to fulfill the minimum continuing education requirements shall not exceed one (1) year.
- (4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the credential holder shall reapply for the waiver or extension.

Section 9. Continuing Education Requirements for Reinstatement or Reactivation of a Credential. (1) A person requesting reinstatement of credentialing[certification] as a licensed alcohol and drug counselor or certified alcohol and drug counselor or licensure shall:

(a) Submit evidence of receiving sixty (60) hours of continuing education within the three (3) year period immediately preceding the date that reinstatement is requested; or

(b) Obtain thirty (30)[sixty (60)] hours of continuing education within six (6) months of reinstatement of certification as a certified alcohol and drug counselor or licensure.

**(2) A person requesting reinstatement of certification as a certified clinical supervisor shall attend three (3) hours of board sponsored clinical supervision training within one (1) year immediately preceding the date that reactivation is requested.**

**(3)[(2)]** Failure to obtain thirty (30)[sixty (60)] hours within six (6) months shall result in termination of certification or licensure.

**(4)[(3)]** A person requesting reinstatement of certification as a certified alcohol and drug counselor associate I or certified alcohol and drug counselor associate II shall submit evidence of receiving sixty (60) hours of continuing education within the three (3) year period immediately preceding the date that reinstatement is requested.

**(5)[(4)]** A person requesting reinstatement of a registration shall:

(a) Submit evidence of receiving thirty (30) hours of continuing education within the three (3) year period immediately preceding the date that reinstatement is requested; or

(b) Obtain ten (10) hours of continuing education within six (6) months of reinstatement of registration.

**(6)[(4)]** Failure to obtain ten (10) hours within six (6) months shall result in termination of registration.

**(7)[(5)]** A person requesting reactivation of registration, certification, or licensure shall submit evidence of receiving twenty (20) hours of continuing education within one (1) year immediately preceding the date that reactivation is requested. A minimum of ten (10) hours shall be live synchronous or[-] face-to-face continuing education presentations.

**(8)[(6)]** The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 1 of this administrative regulation and shall not be used to comply with the requirements of that section.

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

- (a) "Continuing Education Sponsor Application Form", 2008; and

(b) "Continuing Education Program Application", June 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 500 Mero Street, 2 SC 32, Frankfort, Kentucky, telephone (502) 782-8814, Monday through Friday, 8:30 a.m. to 4:30 p.m. The board's Web site address is: <https://adc.ky.gov>.

APPROVED BY AGENCY: May 12, 2021

FILED WITH LRC: May 13, 2021 at 8:00 a.m.

CONTACT PERSON: Kevin R. Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, 237CW, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-4818, email [KevinR.Winstead@ky.gov](mailto:KevinR.Winstead@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the continuing education requirements for a credential holder.

(b) The necessity of this administrative regulation: KRS 309.0813(2) (effective March 1, 2021) requires the board to promulgate administrative regulations pursuant to KRS Chapter 13A establishing continuing education for credential holders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute, KRS 309.0813(2) (effective March 1, 2021), by establishing continuing education for credential holders.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes by establishing continuing education requirements for credential 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: The amendment will change the existing administrative regulation by: (1) requiring each person holding a certificate as a certified alcohol and drug counselor associate I and a certified alcohol and drug counselor associate II to complete a minimum of thirty (30) continuing education hours, including at least six (6) continuing education hours in ethics each year; (2) allowing live synchronous continuing education presentations to count as in-person trainings; (3) adding Community Mental Health Centers to the list of preapproved continuing education providers; (4) allowing reinstatement of a certification as a certified alcohol and drug counselor or licensure by obtaining thirty (30) hours of continuing education within six (6) months of reinstatement; (5) requiring a person requesting reinstatement of certification as a certified alcohol and drug counselor associate I or II to submit evidence of receiving sixty (60) hours of continuing education within the three (3) year period immediately preceding the date that reinstatement is requested; and (6) adding the board's Web site address. The Emergency Amended After Comments version will also set continuing education requirements for the new "certified clinical supervisor" and "licensed alcohol and drug counselor" credentials.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to establish continuing education requirements for credential holders. The Emergency Amended After Comments version will also set continuing education requirements for the new "certified clinical supervisor" and "licensed alcohol and drug counselor" credentials created by 2021 Ky. Acts ch. \_\_ (Senate Bill 166).

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute, KRS 309.0813(2) (effective March 1, 2021), gives the board the ability to promulgate regulations regarding the continuing education requirement for a credential holder. KRS 309.0841 (effective March 1, 2021) requires a certificate holder as a certified alcohol and drug counselor associate I, during the first

twelve (12) months after initial licensure has been issued, to complete at least thirty (30) additional classroom hours of board-approved curriculum. KRS 309.0841 (effective March 1, 2021) requires a certificate holder as a certified alcohol and drug counselor associate II to have seventy (70) hours of approved classroom hours of board-approved curriculum of which twenty (20) hours shall have been obtained in the previous two (2) years.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in establishing a continuing education requirement for all credential holders.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. Future applicants and persons credentialed by the board will be affected by this administrative regulation. As of February 1, 2021 there were 513 licensed clinical alcohol and drug counselors, 21 licensed clinical alcohol and drug counselor associates, 458 certified alcohol and drug counselors, 930 temporary certified alcohol and drug counselors, 95 temporary registered alcohol and drug peer support specialists, and 15 registered alcohol and drug peer support specialists.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: A credential holder will be required to comply with the continuing education requirement or be subject to possible disciplinary action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The board is unable to determine how much it will cost each entity to comply with this amendment to the administrative regulation. Persons holding newly created credential will be required to obtain continuing education hours. Some programs cost money to attend.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, the credential holders will know the continuing education requirements expected of them by the board.

(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 operations are funded by fees paid by credential holders 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: There are no increases in fees or funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

#### 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 Alcohol and Drug Counselors.

(2) Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. KRS 309.0813(1) (effective March 1, 2021) requires the board to promulgate administrative regulations pursuant to KRS Chapter 13A for the administration and enforcement of KRS 309.080 to 309.089. KRS 309.0813(2) (effective March 1, 2021) requires the board to promulgate administrative regulations establishing continuing education for credential holders. 2021 Ky. Acts ch. \_\_\_ (Senate Bill 166), which was effective as of March 1, 2021, creates the "certified clinical supervisor" and "licensed alcohol and drug counselor" credentials, and requires applicants for those credentials to meet continuing education requirements.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

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

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

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

#### BOARDS AND COMMISSIONS

##### Board of Alcohol and Drug Counselors (Emergency Amended After Comments)

#### 201 KAR 35:050E. Curriculum of study.

Amended After Comments version effective: May 13, 2021

Prior version: 47 Ky.R. page 1884

RELATES TO: KRS 309.083(4), (8), 309.0841, 309.0842, 2021 Ky. Acts ch. \_\_\_, sec. 1 (Senate Bill 166), 2021 Ky. Acts ch. \_\_\_, sec. 2 (Senate Bill 166)

STATUTORY AUTHORITY: KRS 309.0813(1), (5), (6), 309.083(4), 309.0831(4), 309.0832(3), 309.0833(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.083(4), 309.0831(4), 309.0832(3), [and] 309.0833(1), 309.0841, 309.0842 require the Board of Alcohol and Drug Counselors to promulgate administrative regulations establishing curriculum requirements for applicants for a credential. This administrative regulation identifies the areas of study that will satisfy the requirement for persons credentialed by the board.

Section 1. (1) Registration. An applicant seeking registration as an alcohol and drug peer support specialist shall:

(a) Complete the required [forty (40)] [sixty (60)] classroom hours, which shall include:

1. Sixteen (16) hours of interactive training in ethics of which eight (8) hours shall consist of face-to-face training;
2. Three (3) hours of domestic violence training;
3. Two (2) hours of training in the transmission, control, treatment, and prevention of the human immunodeficiency virus;
4. Ten (10) hours of advocacy training;
5. Ten (10) hours of training in mentoring and education; and

6. Ten (10) hours of training in recovery support; and  
(b) File with the board KBADC Form 5, Peer Support Specialist Alcohol/Drug Training Verification Form.

(2) Certification as a certified alcohol and drug counselor associate I.

(a) An applicant seeking certification as a certified alcohol and drug counselor associate I shall comply with the board-approved curriculum in KRS 309.0841; and

(b) File with the board KBADC Form 20, Certified Alcohol and Drug Counselor Associate I, Verification of Board-Approved Training.

(3) Certification as a certified alcohol and drug counselor associate II.

(a) An applicant seeking certification as a certified alcohol and drug counselor associate II shall comply with the board-approved curriculum requirements KRS 309.0842; and

(b) File with the board a KBADC Form 22, Certified Alcohol and Drug Counselor Associate II Verification of Classroom Training.

(4) Certification as an alcohol and drug counselor, or licensure as a licensed alcohol and drug counselor.

(a) An applicant seeking certification as an alcohol and drug counselor shall:

1. Complete 300[270] classroom hours that are specifically related to the knowledge and skills necessary to perform the following alcohol and drug counselor competencies and shall include the following domains:

a. Screening assessment and engagement[Understanding addiction];

b. Treatment planning, collaboration, and referral[Treatment knowledge];

c. Counseling[Application to practice]; and

d. Professional and ethical responsibilities[Professional readiness];

e. Clinical evaluation;

f. Treatment planning;

g. Referral;

h. Service coordination;

i. Counseling;

j. Client, family, and community education;

k. Documentation; and

l. Professional and ethical responsibilities; and

2. File with the board KBADC Form 10, Certified Alcohol and Drug Counselor and Licensed Alcohol and Drug Counselor Verification of Classroom Training.

(b) A minimum of six (6) hours of the total 300[270] hours shall be interactive, face-to-face ethics training relating to counseling.

(c) Two (2) hours of the total 300[270] hours shall be specific to transmission, control, and treatment of the human immunodeficiency virus and other sexually transmitted diseases.

(d) Three (3) hours of the total 300[270] hours shall be specific to domestic violence.

(5)[(3)] Licensure.

(a) An applicant seeking licensure as a licensed clinical alcohol and drug counselor or associate shall:

1. Complete 180 classroom hours of curriculum that are specifically related to the knowledge and skills necessary to perform the following alcohol and drug counselor competencies and shall include the following domains:

a. Screening assessment and engagement[Understanding addiction];

b. Treatment planning, collaboration, and referral[Treatment knowledge];

c. Counseling[Application to practice]; and

d. Professional and ethical responsibilities[Professional readiness];

e. Clinical evaluation;

f. Treatment planning;

g. Referral;

h. Service coordination;

i. Counseling;

j. Client, family, and community education;

k. Documentation; and

l. Professional and ethical responsibilities; and

2. File with the board KBADC Form 11, Verification of Classroom Training.

(b) A minimum of six (6) hours of the total 180 hours shall be interactive, face-to-face ethics training relating to counseling.

(c) Two (2) hours of the total 180 hours shall be specific to transmission, control, and treatment of the human immunodeficiency virus and other sexually transmitted diseases.

(d) Three (3) hours of the total 180 hours shall be specific to domestic violence.

**(6) Certification as a certified clinical supervisor. An applicant seeking certification as a certified clinical supervisor shall:**

**(a) Complete thirty (30) hours of education specific to the International Certification and Reciprocity Consortium clinical supervision domains with a minimum of five (5) hours in each of the following domains:**

**1. Counselor development;**

**2. Professional and ethical standards;**

**3. Program development and quality assurance;**

**4. Assessing counselor competencies and performance; and**

**5. Treatment knowledge; and**

**(b) Applicant shall hold and maintain a certified alcohol and drug counselor, licensed alcohol and drug counselor, or licensed clinical alcohol and drug counselor credential.**

Section 2. (1) Attendance at conferences, workshops, seminars, or in-service training related to addictions shall be acceptable to meet the requirements of Section 1 of this administrative regulation if the board determines that the activity:

(a) Is an organized program of learning;

(b) Covers an area listed in Section 1 of this administrative regulation; and

(c) Is conducted by a competent instructor, as documented by appropriate academic training, professional licensure or certification, or professionally recognized experience.

(2) One (1) semester hour of study from an accredited college or university credit shall equal fifteen (15) classroom hours.

(3) Publication on a subject relevant to addictions therapy may be submitted to the board. Credit shall be granted as established in this subsection.

(a) A chapter in a book shall be equivalent to ten (10) classroom hours.

(b) 1. Authoring or editing a book relevant to addictions therapy shall be given credit equivalent to thirty (30) classroom hours.

2. An applicant shall submit a copy of the title page, table of contents, and bibliography.

(c) 1. Publication in a professional refereed journal shall be equivalent to fifteen (15) classroom hours.

2. An applicant shall submit the journal table of contents and a copy of the article as it appeared in the journal including bibliography.

Section 3. (1) A list of courses the applicant wishes to have considered shall be organized by domains[core—area] as established in Section 1 of this administrative regulation and shall include documentation to verify that the course satisfies the requirements of that section.

(2) Appropriate documentation of the course shall include:

(a) Date;

(b) Title;

(c) Description;

(d) Sponsoring organization;

(e) Presenter and presenter's credentials;

(f) Number of contact hours attended; and

(g) Certificates of attendance or transcript.

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

(a) "KBADC Form 5, Peer Support Specialist Alcohol/Drug Training Verification Form", March 2021[March 2017];

(b) "KBADC Form 10, Certified Alcohol and Drug Counselor

and Licensed Alcohol and Drug Counselor Verification of Classroom Training", ~~May~~March 2021~~[June-2015]~~; and

(c) "KBADC Form 11, Verification of Classroom Training", ~~March 2021~~[June-2015].

(d) "KBADC Form 20, Certified Alcohol and Drug Counselor Associate I, Verification of Board-Approved Training", ~~March 2021~~;

(e) "KBADC Form 21, Certified Alcohol and Drug Counselor Associate I, Verification of Board-Approved Training for First Twelve (12) Months After Initial Certification as Associate I"; ~~March 2021~~;

(f) "KBADC Form 22, Certified Alcohol and Drug Counselor Associate II Verification of Board-Approved Curriculum", ~~March 2021~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 500 Mero St, 2 SC 32~~[911 Leawood Drive]~~, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. The board's Web site address is: <https://adc.ky.gov>.

APPROVED BY AGENCY: May 12, 2021

FILED WITH LRC: May 13, 2021 at 8:00 a.m.

CONTACT PERSON: Kevin R. Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, 237CW, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-4818, email [KevinR.Winstead@ky.gov](mailto:KevinR.Winstead@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the required education for a credential holder.

(b) The necessity of this administrative regulation: The administrative regulation is necessary under: (1) KRS 309.083(4) (effective March 1, 2021), which requires applicants for certification as an alcohol and drug counselor to meet all education requirements of the International Certification and Reciprocity Consortium for the Alcohol and Drug Counselors (ADC); (2) KRS 309.0831(4) (effective March 1, 2021), which requires an applicant for registration as an alcohol and drug peer support specialist to have completed at least forty (40) classroom hours of board-approved curriculum; (3) KRS 309.0832(3) (effective March 1, 2021), which requires an applicant for licensure as a licensed alcohol and drug counselor to meet all education requirements of the International Certification and Reciprocity Consortium for the Advanced Alcohol and Drug Counselor (AADC); (4) KRS 309.0833(1)(b) (effective March 1, 2021), which requires an applicant for licensure as a licensed alcohol and drug counselor associate to meet all education requirements of the International Certification and Reciprocity Consortium for the Advanced Alcohol and Drug Counselor (AADC); (5) KRS 309.0841(1)(c), which requires an applicant for certification as a certified alcohol and drug counselor associate I to have completed forty (40) classroom hours of board-approved curriculum; and (6) KRS 309.0842(3), which requires an applicant for certification as a certified alcohol and drug counselor associate II to have seventy (70) hours of approved classroom hours of board-approved curriculum.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for education for a credential holder.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in establishing the educational requirements of a credential holder.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation in eight (8) ways: (1) clarifying the number of hours from forty (40) to those required as set forth in the administrative regulation for an applicant seeking registration as an alcohol and

drug peer support specialist; (2) requiring applicants for certification as a certified alcohol and drug counselor associate I to comply with the board-approved curriculum requirements of KRS 309.0841; (3) requiring applicants for certification as a certified alcohol and drug counselor associate I to file a Form 19 to verify training; (4) requiring applicants for certification as a certified alcohol and drug counselor associate II to comply with the board-approved curriculum requirements of KRS 309.0842; (5) increasing the number of classroom hours for a certified alcohol and drug counselor from 270 to 300 to conform with the requirements of the International Certification and Reciprocity Consortium; (6) changing the twelve (12) core functions to four (4) domains for certified alcohol and drug counselor, licensed clinical alcohol and drug counselors and associates; (7) adding new forms to the materials incorporated by reference; and (8) adding the board's Web site address. The Emergency Amended After Comments version will also set curriculum of study requirements for the new "certified clinical supervisor" and "licensed alcohol and drug counselor" credentials. For the certified clinical supervisor credential, the applicant shall complete thirty hours of education specific to the International Certification and Reciprocity Consortium clinical supervision domains with a certain number of hours in five specified domains, and shall hold and maintain a certified alcohol and drug counselor, licensed alcohol and drug counselor, or licensed clinical alcohol and drug counselor credential.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to establish a required education for a credential holder with a registration or license issued by the board. The Emergency Amended After Comments version will also set curriculum of study requirements for the new "certified clinical supervisor" and "licensed alcohol and drug counselor" credentials created by 2021 Ky. Acts ch. \_\_\_\_ (Senate Bill 166).

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for education for a credential holder.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in establishing an education requirement for all credential holders.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. Future applicants and persons credentialed by the board will be affected by this administrative regulation. As of February 1, 2021 there were 513 licensed clinical alcohol and drug counselors, 21 licensed clinical alcohol and drug counselor associates, 458 certified alcohol and drug counselors, 930 temporary certified alcohol and drug counselors, 95 temporary registered alcohol and drug peer support specialists, and 15 registered alcohol and drug peer support specialists.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: A credential holder will be required to comply with the education requirement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There are no new cost associated to the amendment related to the amendment of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: The credential holders will know the education requirements expected of them by the board.

(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 operations are funded by fees paid by credential holders 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: There are no increases in fees or funding is required to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no new fees or fee increases associated with the amendments.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

#### 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 Alcohol and Drug Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.0813(1), (5), and (6), 309.083, 309.0831, 309.0832, 309.0833, 309.0841, 309.0842. 2021 Ky. Acts ch. \_\_ (Senate Bill 166), which was effective as of March 1, 2021, creates the "certified clinical supervisor" and "licensed alcohol and drug counselor" credentials, and requires applicants for those credentials to meet education requirements.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

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

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

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

Revenues (+/-): Neutral  
Expenditures (+/-): Neutral  
Other Explanation: None

#### BOARDS AND COMMISSIONS Board of Alcohol and Drug Counselors (Emergency Amended After Comments)

#### 201 KAR 35:070E. Supervision experience.

Amended After Comments version effective: May 13, 2021  
Prior version: 47 Ky.R. page 1889

RELATES TO: KRS 309.0814, 309.083(4), 309.0831, 309.0832, 309.0833, 309.0841, 309.0842, 2021 Ky. Acts ch. \_\_.

#### sec. 1 (Senate Bill 166), 2021 Ky. Acts ch. \_\_, sec. 2 (Senate Bill 166)

STATUTORY AUTHORITY: KRS 309.0813(1), (3), (5), 309.0814(1), 309.083(3), 309.0831(3), 309.0832(10), 309.0833(2), 309.086

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(1) requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.080 to 309.089. KRS 309.0813(3) requires the board to approve or disapprove those persons who shall be credentialed. This administrative regulation establishes the standards for the accumulation of required supervised work experience for licensed alcohol and drug counselors, licensed clinical alcohol and drug counselors, licensed clinical alcohol and drug counselor associates, certified alcohol and drug counselors, certified alcohol and drug counselor associates II, certified alcohol and drug counselor associates I, and registered alcohol and drug peer support specialists.

Section 1. (1)(a) Peer Support Specialist Supervision. Peer support specialist supervision shall continue throughout the period of registration. The supervision shall include the four (4) following domains:

1. Advocacy;
2. Ethical Responsibility;
3. Mentoring and Education; and
4. Recovery and Wellness Support.

(b) A supervisor of a peer support specialist shall complete and submit KBADC Form 8, Peer Support Specialist Verification of Supervision, that documents the twenty-five (25) hours of direct supervision.

(2) Clinical Supervision for Certification and Licensure Applicants. Clinical supervision shall ~~consist of at least 300 hours and shall~~ include a minimum of ten (10) hours in each of the following ~~four (4) domains~~~~twelve (12) core functions~~:

- (a) ~~Screening assessment and engagement~~~~Screening~~;
- (b) ~~Treatment planning, collaboration, and referral~~~~Intake~~;
- (c) ~~Counseling; and~~~~Client orientation~~;
- (d) ~~Professional and ethical responsibilities~~~~Assessment~~;
- (e) ~~Treatment planning~~;
- (f) ~~Counseling~~;
- (g) ~~Case management~~;
- (h) ~~Crisis intervention~~;
- (i) ~~Client education~~;
- (j) ~~Referral~~;
- (k) ~~Reports and recordkeeping; and~~
- (l) ~~Consultation~~.

(3) Clinical supervision shall meet the minimum requirements of the following:

(a) For applicants with a high school diploma or high school equivalency diploma requires 300 hours of clinical supervision with a minimum of ten (10) hours in each domain listed in subsection (2);

(b) For applicants with an associate's degree in a relevant field requires 250 hours of clinical supervision with a minimum of ten (10) hours in each domain;

(c) For applicants with an bachelor's degree in a relevant field requires 200 hours of clinical supervision with a minimum of ten (10) hours in each domain; and

(d) For applicants with an master's degree or higher in a relevant field requires 100 hours of clinical supervision with a minimum of ten (10) hours in each domain.

(4)(a) Clinical supervision may occur in individual or in group settings.

- (b) The methods of clinical supervision include:
1. Face-to-face;
  2. Video conferencing; or
  3. Teleconferencing.;

~~(4) A minimum of 200 hours of clinical supervision shall be conducted face-to-face in an individual or group setting.;~~

(5) Supervision that exceeds two (2) hours in a single day shall be accompanied by a written explanation justifying the length of supervision exceeding two (2) hours.

(6) Clinical supervisors shall complete and submit KBADC Form 13, Verification of Clinical Supervision, which documents the required[300] hours of supervision that has occurred during the work experience, in the Application for Certification as an Alcohol and Drug Counselor, Application for Licensure as a ~~[-Clinical]~~ Alcohol and Drug Counselor~~[-Associate]~~, or Application for Licensure as a Clinical Alcohol and Drug Counselor, which are incorporated by reference in 201 KAR 35:020.

(7)[(6)] For applicants applying for licensure who already possess a certified alcohol and drug counselor credential[If the applicant qualifies for licensure], supervision obtained under KRS 309.083 prior to February 5, 2016 shall be calculated toward the 100[300] hour supervision requirement under KRS 309.0832(3)[(49)] and section (3)(d) of this regulation.

Section 2. Except as provided by Section 1(6) of this administrative regulation, a supervisory arrangement shall have the prior approval of the board, with both supervisor and supervisee submitting a Supervisory Agreement to the board. The supervisor and supervisee shall also submit to the board the description of the supervisory arrangement or a change in the supervisory arrangement at least thirty (30) days prior to the effective date of the arrangement or change unless extenuating circumstances prevent the submission ~~[the thirty (30) day requirement]~~.

Section 3. (1) All supervision requirements shall:

(a) Be met with face-to-face individual or group weekly contact between supervisor and supervisee except as provided in subsection (2) of this section and Sections 13 and 14 of this administrative regulation;

(b) Consist of not less than two (2) hours, two (2) times a month in the practice of alcohol and drug counseling; and

(c) Include additional supervision sessions, as needed.

(2) An alternative format of supervision, including two (2) way interactive video, may be substituted for the supervisory contact, required by subsection (1) of this section, upon specific approval by the board for certain types of circumstances, such as distance, weather, or serious injury or illness of the supervisor or supervisee.

(3) Upon a change of supervisor, a new plan for supervision shall be submitted by the supervisor and supervisee to the board for approval. This plan may require additional hours of supervision than was previously approved by the board.

(4) Upon termination of the supervisor-supervisee relationship, the final report of supervision shall be submitted to the board within thirty (30) days of the termination.

Section 4. (1)(a) A certified alcohol and drug counselor, licensed alcohol and drug counselor, or licensed clinical alcohol drug counselor shall submit a Form 4, Request to Provide Supervision, to become approved by the board to provide supervision.

(b) A certified alcohol and drug counselor or licensed alcohol and drug counselor who has at least two (2) years of post-certification experience, including Alcohol and Drug Counselor credentials transferred through reciprocity, and has attended the board-sponsored supervision training may be approved by the board to provide supervision~~[or licensed clinical alcohol and drug counselor who has been approved by the board as a supervisor shall attend a board approved training session in supervisory practices within twelve (12) months of obtaining approval as a supervisor]~~.

(c) A licensed clinical alcohol and drug counselor who has at least twelve (12) months of post-licensure experience, including Advanced Alcohol and Drug Counselor credentials transferred through reciprocity, or has attended the board-sponsored supervision training.

(2) A board approved supervisor shall obtain a minimum of three (3) board-sponsored continuing education hours in supervision theory or techniques in each three (3) year renewal cycle. The board shall suspend its approval of a supervisor if the supervisor does not complete the required continuing education.

(3) A certified alcohol and drug counselor or licensed clinical alcohol and drug counselor shall not be the supervisor of record for

more than twenty-five (25)~~[twelve (12)]~~ supervisees.

(4) A licensed clinical alcohol and drug counselor associate shall only be supervised by a licensed clinical alcohol and drug counselor.

Section 5. (1) The supervisor shall make all reasonable efforts to be assured that each supervisee's practice is in compliance with this administrative regulation.

(2) The supervisor shall report to the board an apparent violation of KRS 309.086 on the part of the supervisee.

(3) The supervisor shall inform the board immediately of a change in the ability to supervise or in the ability of a supervisee to function in the practice of alcohol and drug counseling in a competent manner.

(4) The supervisor shall control, direct, or limit the supervisee's practice to insure that the supervisee's practice of alcohol and drug counseling is competent.

(5) The supervisor of record shall be responsible for the practice of alcohol and drug counseling or peer support services provided by the supervisee. If the board receives a complaint~~[initiates an investigation]~~ concerning a supervisee, the board shall notify the supervisor of record~~[investigation shall include the supervisor of record]~~.

(6) For each certificate or license holder~~[person]~~ supervised, the supervisor shall maintain a KBADC Form 13, Verification of Clinical Supervision, for each supervisory session that shall include the domain covered, date of session, length of session, and method of supervision~~[type, place, and general content]~~ of the session. For each registrant supervised, the supervisor shall maintain a KBADC Form 8, Peer Support Specialists Verification of Supervision Form, for each supervisory session that shall include the date, length, method, and domain covered during the session. This record shall be maintained for a period of not less than six (6) years after the last date of supervision.

Section 6. (1) The supervisor of record shall submit the Supervisor Log for each supervisee to the board on an annual basis with a KBADC Form 14, Supervision Annual Report or as directed otherwise by the board.

(2) The report shall include:

(a) A description of the frequency, format, and duration of supervision;

(b) An assessment of the functioning of the supervisee, including the strengths and weaknesses; and

(c) Other information which may be relevant to an adequate assessment of the practice of the supervisee.

Section 7. (1) If a supervisee has more than one (1) board-approved supervisor, the supervisors shall be in direct contact with each other at least once every six (6) months, and they shall provide supervisory plans and reports to the board and copies to each other.

(2) A request to have more than two (2) supervisors at one (1) time shall require a written request to the board, which shall include detailed information as to how the supervisors shall communicate and coordinate with each other in providing the required supervision.

Section 8. If the supervisee is a licensed clinical alcohol and drug counselor associate, ~~[or an applicant for a certificate as]~~ a temporary certified alcohol and drug counselor, certified alcohol and drug counselor associate I, or certified alcohol and drug counselor associate II, the supervisor of record shall:

(1) Review all alcohol and drug assessments and treatment plans;

(2) Review progress notes and correspondence on a regular basis to assess the competency of the supervisee to render alcohol and drug services;

(3) Jointly establish with the supervisee a supervisory plan that shall be submitted to the board and approved within thirty (30) days of the beginning of the supervisory relationship. The plan shall:

(a) Be updated and revised, as needed, and submitted to the

board annually;

(b) Include intended format and goals to be accomplished through the supervisory process; and

(c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process;

(4) At least semi-annually, have direct observation of the supervisee's work, which may be accomplished through audiotaping, video camera, videotaping, one (1) way mirror, or as a cotherapist;

(5) Have direct knowledge of the size and complexity of the supervisee's caseload;

(6) Limit and control the caseload, as appropriate, to the supervisee's level of competence;

(7) Have knowledge of the therapeutic modalities and techniques being used by the supervisee;

(8) Have knowledge of the supervisee's physical and emotional well-being if it has a direct bearing on the supervisee's competence to practice; and

(9) Submit a completed KBADC Form 7, Supervision Evaluation, within thirty (30) days of termination of a [peer-support special] supervisory agreement.

Section 9. If the supervisee is a peer support specialist, the supervisor of record shall:

(1) Jointly establish with the supervisee a supervisory plan that shall be submitted to the board and approved within thirty (30) days of the beginning of the supervisory relationship. The plan shall:

(a) Be updated and revised, as needed, and submitted to the board annually;

(b) Include intended format and goals to be accomplished through the supervisory process; and

(c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process;

(2) Review and countersign all peer recovery service plans;

(3) Review peer recovery notes and correspondence on an as-needed basis to assess the competency of the supervisee to render peer recovery services;

(4) At least once every two (2) months, have direct observation of the supervisee's work, which may be accomplished through audiotaping, video camera, videotaping, one (1) way mirror or direct observation;

(5) Have direct knowledge of the size and complexity of the supervisee's caseload;

(6) Limit and control the caseload, as appropriate, to the supervisee's level of competence;

(7) Have knowledge of the methods and techniques being used by the supervisee;

(8) Have knowledge of the supervisee's physical and emotional well-being if it has a direct bearing on the supervisee's competence to practice; and

(9) Submit a completed KBADC Form 9, Supervision Evaluation for Peer Support Specialist, within thirty (30) days of termination of a peer support special supervisory agreement.

Section 10. (1) The supervisee shall:

(a) Keep the supervisor adequately informed at all times of his or her activities and ability to function; and

(b) Seek consultation from the supervisor, as needed, in addition to a regularly-scheduled supervisory session.

(2) The supervisee shall:

(a) Participate with the supervisor in establishing supervisory goals and in completing the regular supervisory reports;

(b) Be jointly responsible with the supervisor for ensuring that a supervisory report or plan has been sent to the board, in accordance with the reporting schedule established in Section 6(1) of this administrative regulation; and

(c) Report to the board an apparent violation on the part of the supervisor.

(3) Except as provided in Section 11 of this administrative regulation, a supervisee shall not continue to practice alcohol and drug counseling or peer support services if:

(a) The conditions for supervision set forth in the supervisory

agreement are not followed;

(b) There is a death or serious illness of the board-approved supervisor that results in the supervisor not being able to provide supervision; or

(c) The supervisory agreement is terminated by the board, the board-approved supervisor, or the supervisee for any reason other than the extenuating circumstances that allow temporary supervision in Section 11 of this administrative regulation.

Section 11. Temporary Supervision. (1) In extenuating circumstances, if a supervisee is without supervision, the supervisee may continue working up to sixty (60) calendar days under the supervision of a qualified mental health provider as defined by KRS 202A.011(12), a certified alcohol and drug counselor, or a licensed clinical alcohol and drug counselor while an appropriate board-approved supervisor is sought and a new supervisory agreement is submitted to the board. Extenuating circumstances include situations such as death or serious illness of the board-approved supervisor, a leave of absence by the supervisor, the termination of the supervisor's employment, or termination of the supervisory agreement except for a violation of KRS 309.080 to 309.089, or 201 KAR Chapter 35.

(2)(a) Within ten (10) days of the establishment of the temporary supervisory arrangement, the supervisee shall notify the board of the extenuating circumstances that have caused the supervisee to require temporary supervision.

(b) The supervisee shall submit, in writing, a plan for resolution of the situation within thirty (30) calendar days of the establishment of the temporary supervisory arrangement.

(c) The written plan shall include:

1. The name of the temporary supervisor;

2. Verification of the credential held by the temporary supervisor;

3. An email address and a postal address for the temporary supervisor and the supervisee; and

4. A telephone number for the temporary supervisor.

(3) The temporary supervisory arrangement shall expire after sixty (60) days of the establishment of the temporary supervisory arrangement.

(4) To avoid the expiration of a temporary supervisory arrangement:

(a) A temporary alcohol and drug counselor shall submit a completed KBADC Form 3, Supervisory Agreement; or

(b) A peer support specialist shall submit a completed KBADC Form 6, Peer Support Specialist Supervisory Agreement.

Section 12. Identification of Provider and Supervisor of Record. The actual deliverer of a service shall be identified to the client, and the client shall be informed of the deliverer's credential and name of supervisor of record. ~~[A billing for a rendered service shall identify which service was performed by the registered alcohol and drug peer support specialist, applicant as a certified alcohol and drug counselor, licensed clinical alcohol and drug counselor associate, or other provider who is supervised by the board approved supervisor of record.]~~

Section 13. Supervision of a Disciplined Credential Holder. (1) The board shall appoint an approved supervisor to supervise a disciplined credential holder for the period of time defined by the board and a member of the board to serve as a liaison between the board and the appointed supervisor.

(2) The disciplined credential holder shall be responsible for paying the fee for supervision.

(3) The supervisor shall have completed the board-sponsored ~~[approved]~~ training course in supervision.

(4) The supervisor shall:

(a) Review the originating complaint, agreed order, or findings of the disciplinary hearing;

(b) Meet with the disciplined credential holder and the board liaison to:

1. Summarize the actions and concerns of the board;

2. Review the goals and expected outcomes of supervision submitted by the board liaison;

3. Develop a specific plan of supervision approved by the board; and

4. Review the reporting requirements that shall be met during the period of supervision;

(c) Meet with the disciplined credential holder at least weekly, on an individual face-to-face basis for a minimum of one (1) hour unless modified by the board;

(d) Submit a quarterly report to the board which reflects progress, problems, and other information relevant to the need for board-mandated supervision;

(e) Make all reasonable efforts to insure that the disciplined credential holder's practice is in compliance with KRS 309.080 to 309.089, and 201 KAR Chapter 35;

(f) Report to the board any apparent violation on the part of the disciplined credential holder;

(g) Immediately report to the board in writing a change in the ability to supervise, or in the ability of the disciplined credential holder to function in the practice of peer recovery support or the practice of alcohol and drug[~~substance use disorders~~] counseling in a competent manner;

(h) Review and countersign assessments, as needed or appropriate;

(i) Review and countersign service or treatment plans, as needed or appropriate;

(j) Have direct observation of the disciplined credential holder's work on an as-needed basis;

(k) Have direct knowledge of the size and complexity of the disciplined credential holder's caseload;

(l) Have knowledge of the therapeutic methods, modalities, or techniques being used by the disciplined credential holder; and

(m) Have knowledge of the disciplined credential holder's physical and emotional well-being if it has a direct bearing on the disciplined credential holder's competence to practice.

(5) The supervisor shall control, direct, or limit the disciplined credential holder's practice to ensure that the disciplined credential holder's practice is competent.

(6) The supervisor shall contact the board liaison with any concern or problem with the disciplined credential holder, his or her practice, or the supervision process.

(7) A final meeting shall be scheduled within thirty (30) days of the end of the established supervision period to summarize the supervision. The meeting shall include the supervisor, disciplined credential holder, and board liaison. A written summary of the supervision shall be submitted by the supervisor to the board two (2) weeks following this meeting with a copy to the board liaison.

~~Section 14. [Graduate Students in Programs Emphasizing Substance Use Disorders Counseling. Graduate-level students in programs that emphasize alcohol and drug counseling who are providing services in health care settings that provide alcohol and drug counseling including independent practice settings shall:~~

~~(1) Be supervised by a licensed clinical alcohol and drug counselor or certified alcohol and drug counselor;~~

~~(2) Be registered for practicum credit on the transcript in his or her course of study;~~

~~(3) Clearly identify their status as unlicensed trainees in the field of alcohol and drug counseling to all clients and payors;~~

~~(4) Give to all clients and payors the name of the supervising licensed clinical alcohol and drug counselor or certified alcohol and drug counselor responsible for the student's work; and~~

~~(5) Not accept employment or placement to perform the same or similar activities following the completion of their university-sanctioned placement, regardless of the job title given, unless the student holds a certificate or license from the board.~~

~~Section 15.] Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "KBADC Form 3, Supervisory Agreement", March 2021[June 2015];~~

~~(b) "KBADC Form 4, Request[ReOquest] to Provide Supervision", May[March] 2021[June 2015];~~

~~(c) "KBADC Form 6, Peer Support Specialist Supervisory Agreement", March 2021[June 2015];~~

~~(d) "KBADC Form 7, Supervision Evaluation", March 2021[June 2015];~~

~~(e) "KBADC Form 8, Peer Support Specialist Verification of Supervision", March 2021[June 2015];~~

~~(f) "KBADC Form 9, Supervision Evaluation for Peer Support Specialist", March 2021[September 2017];~~

~~(g) "KBADC Form 13, Verification of Clinical Supervision", March 2021[June 2015]; and~~

~~(h) "KBADC Form 14, Supervision Annual Report", March 2021[June 2015].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 500 Mero St. 2 SC 32[941 Leewood Drive], Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. The board's Web site address is: <https://adc.ky.gov>.

APPROVED BY AGENCY: May 12, 2021

FILED WITH LRC: May 13, 2021 at 8:00 a.m.

CONTACT PERSON: Kevin R. Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, 237CW, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-4818, email [KevinR.Winstead@ky.gov](mailto:KevinR.Winstead@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure to obtain supervision for registration, certification, and licensure.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the procedure to obtain supervision.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for supervision for registration, certification, and licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in defining the expectations of the board; providing the board with more oversight, and establishing the procedure to obtain supervision.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by: (1) removing the 300-hour requirement for supervision for clinical supervision; (2) deleting the twelve (12) core functions; (3) replacing the twelve (12) core functions with the four (4) domains; (4) clarifying how much supervision is needed based on high level of education obtained; (5) stating that supervision that exceeds two (2) hours in a single day shall be accompanied by a written explanation justifying the length of supervision; (6) clarifying that only applicants who currently possession a certification as a certified alcohol and drug counselor can apply supervision received prior to February 5, 2016 to the required hours of supervision; (7) updating the requirements to become a supervisor to conform with KRS 309.083(3) (effective March 1, 2021), 309.0831(3) (effective March 1, 2021), 309.0842 (effective March 1, 2021), and 309.085 (effective March 1, 2021); (8) increasing the number of supervisees a supervisor may have from twelve (12) to twenty-five (25); (9) requiring that a supervisee's supervisor receive a copy of any complaint filed against a supervisee; (10) adding requirements to the supervision forms; (11) adding the two new credential to the list of those who need supervision; (12) deleting language regarding billing from Section 12; (13) deleting language dealing with graduate students as outside the scope of the board's authority; (14) updating the board's address; and (15) adding the board's Web site address. The Emergency Amended After Comments version will also set supervision requirements for the new "licensed alcohol and drug counselor" credential.

(b) The necessity of the amendment to this administrative

regulation: The amendments are necessary to expand since new credentials have been established in the last legislative session and provide the board with more oversight of the supervision process of an applicant or licensee. The Emergency Amended After Comments version will also set supervision requirements for the new “licensed alcohol and drug counselor” credential created by 2021 Ky. Acts ch. \_\_\_\_ (Senate Bill 166).

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for supervision for registration, certification, and licensure.

(d) How the amendment will assist in the effective administration of the statutes: This regulation will assist in defining the expectations of the board; providing the board with more oversight, and establishing the procedure to obtain supervision.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. Future applicants and persons credentialed by the board will be affected by this administrative regulation. As of February 1, 2021 there were 513 licensed clinical alcohol and drug counselors, 21 licensed clinical alcohol and drug counselor associates, 458 certified alcohol and drug counselors, 930 temporary certified alcohol and drug counselors, 95 temporary registered alcohol and drug peer support specialists, and 15 registered alcohol and drug peer support specialists.

(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 comply with this regulation, supervisees will have to obtain a supervisor and record their hours of supervision. Supervisors will have to apply with the board to become a supervisor.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: In complying with this administrative regulation, some applicants will have to attend training to become a supervisor, this may incur a cost. Most supervisees have to pay their supervisor for supervision.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, the credential holders and applicants will be able to document the supervision received and provide the board with more oversight during the supervision process.

(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 operations are funded by fees paid by credential holders 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: There are no increases in fees or funding required to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no new fees or fee increases associated with the amendments.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

## 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 Alcohol and Drug Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.0813(1), (3), (5). 309.083, 309.0831, 309.0832, 309.0833, 309.0841, 309.0842. 2021 Ky. Acts ch. \_\_\_\_ (Senate Bill 166), which was effective as of March 1, 2021, creates the “licensed alcohol and drug counselor” credentials, and requires applicants for that credential to meet supervision requirements.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

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

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

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

## BOARDS AND COMMISSIONS

### Board of Alcohol and Drug Counselors (Emergency Amended After Comments)

**201 KAR 35:075E. Substitution for work experience for an applicant for certification as an alcohol and drug counselor and licensed alcohol and drug counselor.**

**Amended After Comments version effective: May 13, 2021**

**Prior version see: 47 Ky.R. page 1893**

RELATES TO: KRS 309.083, 309.0831, 309.0832, 309.0833, **2021 Ky. Acts ch. \_\_, sec. 2 (Senate Bill 166)**

STATUTORY AUTHORITY: KRS 309.0813(1), (3), (5), 309.083, 309.0831, 309.0832, 309.0833

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(1) authorizes the board to promulgate administrative regulations for the administration and enforcement of KRS 309.080 to 309.089. KRS 309.083, 309.0831, 309.0832, [and] 309.0833, 309.0841, and 309.0842 establish the standards for the accumulation of the required supervised work experience. This administrative regulation establishes the requirements for substituting education for work experience requirements for an applicant for certification as an alcohol and drug counselor **and licensed alcohol and drug counselor.**

Section 1. Substitution for Work Experience for an Applicant for Certification as an Alcohol and Drug Counselor under KRS 309.083 or a licensed alcohol and drug counselor under 2021 Ky. Acts ch. \_\_, sec. 2. (1) An applicant may substitute, for part

of the work experience, a degree in a related field such as:

- (a) Addictions;
- (b) Counseling;
- (c) Psychology;
- (d) Psychiatric nursing; or
- (e) Social work.

(2) An applicant may request to substitute an educational degree for part of the required work experience by submitting KBADC Form 12, Workplace Experience Substitution Request, to the board along with transcripts from an accredited college or university.

(3) Educational substitution shall be reviewed and approved by the board based upon education relative to the delivery of alcohol and other drug counseling.

(a) A master's degree or higher in a related field, with a specialization in addictions or drug and alcohol counseling, may be substituted for 4,000 hours of work experience.

(b) A master's degree or higher in a related field, without the specialization in paragraph (a) of this subsection, may be substituted for 3,000 hours of work experience.

(c) A bachelor's degree in a related field may be substituted for 2,000 hours of work experience.

(d) A bachelor's degree in an unrelated field shall not qualify for a substitution of hours, and the applicant shall provide proof of 6,000 hours of work experience as established in KRS 309.083(3).

(4) The hours of work experience shall be documented on the candidate's application for certification and shall contain verification by the supervisor.

Section 2. Incorporation by Reference. (1) "KBADC Form 12, Workplace Experience Substitution Request", May[March] 2021[June-2015], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 500 Mero St, 2 SC 32[941 Leawood Drive], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The board's Web site address is: https://adc.ky.gov.

APPROVED BY AGENCY: May 12, 2021

FILED WITH LRC: May 13, 2021 at 8:00 a.m.

CONTACT PERSON: Kevin R. Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, 237CW, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-4818, email KevinR.Winstead@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes what is considered qualified work experience that may be substituted for actual alcohol and drug counseling work experience required to be credentialed by the board.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the work experience required to be credentialed by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for work experience required to be credentialed by the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist an applicant and board to understand the work experience required to be credentialed by the board.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by clarifying that this regulation only applies to applicants for certification as a certified alcohol and drug counselor under KRS 309.083 and no other certificate holders. The

Emergency Amended After Comments version will also apply the workplace experience substitution requirements to the new "licensed alcohol and drug counselor" credential.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify that new credentials created last legislative session do not fall under this regulation. The Emergency Amended After Comments version will also apply the workplace experience substitution requirements to the new "licensed alcohol and drug counselor" credential created by 2021 Ky. Acts ch. \_\_, sec. 2 (Senate Bill 166).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute because the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for work experience required to be credentialed by the board.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by clearly identifying who can substitute work experience.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. Future applicants and persons credentialed by the board will be affected by this administrative regulation. As of February 1, 2021 there were 513 licensed clinical alcohol and drug counselors, 21 licensed clinical alcohol and drug counselor associates, 458 certified alcohol and drug counselors, 930 temporary certified alcohol and drug counselors, 95 temporary registered alcohol and drug peer support specialists, and 15 registered alcohol and drug peer support specialists.

(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: Certified alcohol and drug counselors who want to substitute work place experience will fill out the proper form and submit it to the board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There are no new cost associated to the amendment related to the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: A credential holder has knowledge of the required work experience as set out in the statute for each credential.

(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 operations are funded by fees paid by credential holders 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: There are no increases in fees or funding is required to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no new fees or fee increases associated with the amendments.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

#### 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 Alcohol and Drug Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.0813(1), (3), (5). 309.083, 309.0831, 309.0832, and 309.0833. 2021 Ky. Acts ch. \_\_, Sec. 2 (Senate Bill 166), which was effective as of March 1, 2021, creates the "licensed alcohol and drug counselor" credentials, and requires applicants for that credential to meet workplace experience requirements.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

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

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

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

Revenues (+/-): Neutral  
Expenditures (+/-): Neutral  
Other Explanation: None

**BOARDS AND COMMISSIONS**  
**Board of Alcohol and Drug Counselors**  
**(Emergency Amended After Comments)**

**201 KAR 35:080E. Voluntary inactive and retired status.**

Amended After Comments version effective: May 13, 2021

Prior version: 47 Ky.R. page 1895

RELATES TO: KRS 309.0813(5) and (12), 2021 Ky. Acts ch. \_\_, sec. 1 (Senate Bill 166), 2021 Ky. Acts ch. \_\_, sec. 2 (Senate Bill 166)

STATUTORY AUTHORITY: KRS 309.0813(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(5) requires the board to promulgate administrative regulations to define the process to register with the board as a registered alcohol and drug peer support specialist, certified alcohol and drug counselor associate I, certified alcohol and drug counselor associate II, certified alcohol and drug counselor, licensed alcohol and drug counselor, licensed clinical alcohol and drug counselor associate, or licensed clinical alcohol and drug counselor, and certified clinical supervisor. KRS 309.0813(1) requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.080 to 309.089. This administrative regulation allows credential holders to place their credentials in voluntary inactive status or retired for a period of time if they do not intend to actively practice alcohol and drug counseling or alcohol and drug peer support services in the Commonwealth of Kentucky.

Section 1. Conditions for Application for Voluntary Inactive Status. (1) Voluntary inactive status shall be for the credential holder who is currently not working as a peer support specialist or

an alcohol and drug counselor, yet plans to return to providing peer support services or alcohol and drug counseling.

(2) The Kentucky Board of Alcohol and Drug Counselors shall grant inactive status if one (1) or more of the following conditions apply:

- (a) Medical problems;
- (b) Maternity or paternity;
- (c) Education;
- (d) Military service; or
- (e) Family or personal issues.

Section 2. Instructions for Application for Voluntary Inactive Status. (1) A credential holder, including a temporary credential holder, desiring inactive status shall send a letter of request to the office of the Kentucky Board of Alcohol and Drug Counselors and include the following information:

- (a) Current home address and telephone number;
- (b) Reason for request;
- (c) Final date of employment providing peer support services or in the alcohol and drug counseling [field];
- (d) Final date of supervision;
- (e) Anticipated date of return to employment providing peer support services or in the alcohol and drug counseling [field]; and
- (e) Nonrefundable enrollment fee of fifty (50) dollars as established in 201 KAR 35:020, Section 7.

(2) The request for voluntary inactive status shall be placed on the agenda of the next regularly-scheduled meeting of the Kentucky Board of Alcohol and Drug Counselors for consideration.

(3) The applicant shall be notified of the board's decision no later than two (2) weeks after the board's meeting.

Section 3. Terms and Responsibilities. (1) While on voluntary inactive status, an individual shall continue to receive bulletins, newsletters, and other communications from the Kentucky Board of Alcohol and Drug Counselors.

(2) A counselor on voluntary inactive status shall not practice or use the title or initials of a counselor, or supervisor such as, TCADC, Associate I, Associate II, CADC, LCADCA, ~~or~~ LCADC, or CCS.

(3) A peer support specialist on voluntary inactive status shall not practice or use the initials or title of a registered peer support specialist such as, TRADPSS or RADPSS [RPSS].

(4) Individuals on voluntary inactive status shall not be eligible for reciprocity.

(5) Individuals on voluntary inactive status shall comply with the Kentucky Code of Ethics as established in 201 KAR 35:030.

(6) The voluntarily inactive individual shall notify the Kentucky Board of Alcohol and Drug Counselors prior to returning to work providing peer support services, ~~or~~ in the alcohol and drug counseling, or clinical supervision [field] and pay the reactivation fee established in 201 KAR 35:020, Section 7.

(7) Failure to notify the board prior to returning to employment shall constitute a violation of the Kentucky Board of Alcohol and Drug Counselors Code of Ethics in 201 KAR 35:030, and shall result in referral to the board for investigation, in accordance with the procedures outlined in 201 KAR Chapter 35.

(8) A credential holder may remain on inactive status for two (2) years, unless an extension of time is granted.

(9) The two (2) year period of inactive status shall begin when the board grants the request for inactive status.

(10) A credential holder may request one (1) extension of time of two (2) years by submitting to the board a written request to continue on inactive status and an explanation of the reason for the request.

(11) If the credential holder does not submit a request for extension of the inactive status or fails to reactivate the credential before the end of the inactive status, the credential shall expire.

Section 4. Reactivation. (1) Individuals requesting reactivation of their registration, certification, or licensure status shall send a letter of request to the office of the Kentucky Board of Alcohol and Drug Counselors and shall include the following:

- (a) Current home address;

- (b) Current e-mail address;
- (c) Description of change of circumstances allowing active participation in the field;
- (d) Address of employing agency, if applicable;
- (e) Submission of proof of attendance of continuing education as required by 201 KAR 35:040; and
- (f) Nonrefundable reactivation fee as established in 201 KAR 35:020, Section 7(3).

(2)(a) A request for reactivation shall be considered at the next regularly scheduled meeting of the Kentucky Board of Alcohol and Drug Counselors.

(b) The applicant shall be notified within two (2) weeks of the board's decision.

Section 5. Conditions for Retired Status. (1) Except for an individual issued a temporary registration or certification, a certified alcohol and drug counselor associate I, a certified alcohol and drug counselor associate II, or a license as a clinical alcohol and drug counselor associate, retired status may be granted to a credential holder upon written request to the board.

(2) The board may grant retired status to a credential holder submitting a written request if that individual:

(a) Suffers[is at least sixty-five (65) years old, or suffers] a physical or mental[medical] disability or illness that renders the credential holder unable to provide peer support services or practice alcohol and drug counseling; or[and]

(b) Has retired from providing peer support services or the practice of alcohol and drug counseling in all jurisdictions and is not conducting an active practice in any jurisdiction.

(3) A credential holder granted retired status by the board shall:

(a) Not be required to meet the continuing education requirements under 201 KAR 35:030;

(b) Be relieved of the obligation to pay the renewal and penalty fees under 201 KAR 35:020, Section 4 and the inactive status fees under 201 KAR 35:020, Section 7; and

(c) Use the designation "-R" at the end of the acronym for the appropriate credential such as, RADPSS-R[RPSS-R], CADC-R, LADC-R, LCADC-R, or CCS-R[or LCADC-R].

(4) A credential holder who retires and later seeks reinstatement shall meet applicable current initial registration, certification, or licensure requirements as provided in KRS 309.083 through 309.0833, 201 KAR 35:025, 35:050, and 35:070.

APPROVED BY AGENCY: May 12, 2021

FILED WITH LRC: May 13, 2021 at 8:00 a.m.

CONTACT PERSON: Kevin R. Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, 237CW, Frankfort, Kentucky 40601, phone (502) 782-0562, fax (502) 564-4818, email KevinR.Winstead@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure for a credential holder who voluntarily places oneself on inactive or retired status.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish procedures for the board to be aware of the credential holders who voluntarily place themselves on inactive or retired status.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations to register with the board as a credential holder.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in board having knowledge of credential holders who are not currently practicing.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative

regulation by: (1) allowing temporary credential holders to place their credential on inactive status; (2) requiring peer support specialist who place their credential on voluntary inactive status to state their final date of supervision; (3) add the enrollment fee of fifty (50) dollars to the text of the regulation; (4) notify credential holders that they cannot use their title or an acronym if they are in inactive status; (5) clarifying that registered alcohol and drug support specialist only provide peer support services; (6) setting a time limit of two (2) years to remain on inactive status; (7) establishing that the two (2) year period begins when the board grants the request; (8) allowing a credential holder to request an extension of inactive status; (9) explaining that a credential will expire if a request for extension is not timely filed; (10) allowing credential created last legislative session to apply for retired status; (11) removing the age requirement for retired status; and (12) correcting the RADPSS acronym. The Emergency Amended After Comments version will also apply the voluntary inactive and retired status requirements to the new "certified clinical supervisor" and "licensed alcohol and drug counselor" credentials.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow credentials created last legislative session to go on inactive or retired status. The Emergency Amended After Comments version will also apply the voluntary inactive and retired status requirements to the new "certified clinical supervisor" and "licensed alcohol and drug counselor" credentials created by 2021 Ky. Acts ch. \_\_ (Senate Bill 166).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute as the authorizing statute gives the board the ability to promulgate regulations to register with the board as a credential holder.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist by providing credential holders the ability to go on inactive or retired status and allow the board to track who is not practicing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. Future applicants and persons credentialed by the board will be affected by this administrative regulation. As of February 1, 2021 there were 513 licensed clinical alcohol and drug counselors, 21 licensed clinical alcohol and drug counselor associates, 458 certified alcohol and drug counselors, 930 temporary certified alcohol and drug counselors, 95 temporary registered alcohol and drug peer support specialists, and 15 registered alcohol and drug peer support specialists.

(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: Credential holders desiring to go on inactive or retired status must notify the board. A credential holder must notify the board prior to returning to the practice of alcohol and drug counseling or peer support.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Credential holders pay a fifty (50) dollar fee to go on inactive status.

(c) As a result of compliance, what benefits will accrue to the entities: The credential holders have the liberty to place oneself on inactive status and return to work when desired with approval of the board.

(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 operations are funded by fees paid by credential

holders 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: There are no increases in fees and no increase in funding will be necessary to implement this amendment to the administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes a fee of fifty (50) dollars to go on inactive status.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

#### 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 Alcohol and Drug Counselors.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.0813(1) and (5). 2021 Ky. Acts ch. \_\_\_\_ (Senate Bill 166), which was effective as of March 1, 2021, creates the new "certified clinical supervisor" and "licensed alcohol and drug counselor" credentials.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The board is unable to determine how much, if any, revenue this administrative regulation will generate for state or local government for the first year. The amendments to this administrative regulation establish a fee of fifty (50) dollars to go on inactive status.

(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 board is unable to determine how much, if any, revenue this administrative regulation will generate for state or local government for subsequent years. The amendments to this administrative regulation establish a fee of fifty (50) dollars to go on inactive status.

(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

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Epidemiology (Emergency Amended After Comments)

**902 KAR 2:211E. Covering the Face in Response to Declared National or State Public Health Emergency.**

**Amended After Comments version effective:** April 28, 2021  
**Prior version:** 47 Ky.R. page 1533

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

333.130

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

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

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

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

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

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

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

3. Is driving a vehicle described in subparagraph 1. or 2. of this paragraph while a customer is present; or

(c) Is in an outdoor public space **or venue with 1,000 or more people in attendance**~~[in which the person cannot maintain a physical distance of six (6) feet from all individuals who are not members of the person's household and is not otherwise covered by previously issued guidance].~~

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

- (a)1. Except as provided in subparagraph 2. of this paragraph, a child who is age 5 or younger; or
2. A child who is younger than first grade while in attendance at a child care facility;
- (b) A person with disability, or a physical or mental impairment, that prevents the person from safely wearing a face covering;
- (c) Deaf or hard of hearing and is actively communicating, or the person is actively communicating with a person who is deaf or

hard of hearing, if the individual is able to maintain a safe distance of six (6) feet from all individuals who are not members of that person's household;

(d) Engaged in work that a state or federal regulator has concluded would make wearing a face covering a risk to the employee's health or safety;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. Effective Date. (1) In accordance with KRS 13A.190, this administrative regulation shall remain in effect until:

(a) Expiration of the time period established by KRS 13A.190; or

(b) Withdrawn in accordance with KRS 13A.190(12).

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

Section 5. Reference. Guidance on how to make a face

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

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

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: April 4, 2020

FILED WITH LRC: April 28, 2021 at 1:34 p.m.

CONTACT PERSON: Krista Quarles, 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: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

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

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

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

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

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

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

The Emergency Amended After Comments version was amended to comply with Executive Order 2021-278, changing the requirements for outdoor public spaces or venues. In outdoor public spaces or venues with more than 1,000 people in attendance, faces coverings are required to be worn. In outdoor spaces and venues with fewer than 1,000 people in attendance, wearing a face covering remains recommended for unvaccinated individuals whenever they are within six (6) feet of anyone outside their household.

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

The Emergency Amended After Comments version is needed to make changes in response to a comment received on this administrative regulation, as permitted by KRS 13A.190 and 13A.280, per 2021 Senate Bill 2.

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

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

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

Commonwealth. This administrative regulation also impacts all Kentucky businesses, organizations and governments.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: Citizens of the Commonwealth will be required to wear face coverings in certain places and venues to prevent the spread of COVID-19. A business or other public-facing entity shall not permit an individual on the premises who is not wearing a face covering and who is not subject to any exemption.

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

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

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

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

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

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

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

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

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

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

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

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

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

(d) How much will it cost to administer this program for

subsequent years? This administrative regulation will have no impact on costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Emergency As Amended at ARRS, May 11, 2021)

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

**As Amended version effective:** May 11, 2021

**Prior versions:**

**Emergency Amended After Comments - 47 Ky.R. page 2344**

**Emergency Amendment - 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.]

(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~~]", 05/21/04/21 [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/dcbp/Pages/default.aspx>.

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ORDINARY ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee  
IJC = Interim Joint Committee

COUNCIL ON POSTSECONDARY EDUCATION  
(As Amended at ARRS, May 11, 2021)

13 KAR 1:020. Private college licensing.

RELATES TO: KRS 13B.005-13B.170, 164.020(23), 164.945, 164.946, 164.947, 164.992, 165A.320, 20 U.S.C. 1001 et. seq.

STATUTORY AUTHORITY: KRS 164.020(38), 164.947(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.947(1) requires the Council on Postsecondary Education to promulgate an administrative regulation to establish the procedures for the licensing of colleges as defined in KRS 164.945. KRS 164.947 provides that religious instruction or training shall not be restricted. This administrative regulation establishes the private college licensing requirements and the requirements for religious in-state colleges to apply for an exemption to those licensing requirements.

Section 1. Definitions. (1) "Accredited" means the approval of an accrediting agency.

(2) "Accrediting agency" means a national or regional agency which evaluates colleges and is recognized by the United States Department of Education, the Council on Higher Education Accreditation, or the Council on Postsecondary Education.

(3) "Agent" means any person employed by a college to act as a solicitor, broker, or independent contractor to procure students for the college by solicitation in any form made at any place other than the main campus of the college.

(4) "College" is defined by KRS 164.945(1).

(5) "Degree" is defined by KRS 164.945(2).

(6) "Diploma" is defined by KRS 164.946(3).

(7) "In-state college" means a college that is chartered by, organized within, and has its principal location in Kentucky.

(8) "Net tuition and fees" means the total of tuition and mandatory fee revenue less institutional scholarships and fellowships.

(9) "Operating or soliciting" means having a physical presence within Kentucky and includes:

(a) An instructional or administrative site within Kentucky whether owned, leased, rented, or provided without charge;

(b) Instruction, whether theory or clinical, originating from or delivered within Kentucky utilizing teachers, trainers, counselors, advisors, sponsors, or mentors;

(c) An agent, recruiter, in-state liaison personnel, institution, or business located in Kentucky that advises, promotes, or solicits for enrollment, credit, or award of an educational or occupational credential;

(d) An articulation agreement with a Kentucky licensed college or state-supported institution; or

(e) Advertising, promotional material, or public solicitation in any form that targets Kentucky residents through distribution or advertising in the state.

(10) "Out-of-state college" means a college that is chartered, organized, or has its principal location outside of Kentucky.

(11) "President" means the president of the Council on Postsecondary Education.

(12) "Unearned tuition" means the excess of cumulative collections of tuition and other instructional charges over the cumulative amount of earned tuition and other institutional charges prior to the first date of refund in accordance with the college's refund policy.

(13) "Unrestricted cash" means any cash or cash equivalents held by a college which are available to cover payments to students for any unearned tuition.

Section 2. General Requirements. (1)(a) Except as provided in paragraph (b) of this subsection or subsection (7) of this section,

an in-state or out-of-state college that is operating or soliciting in Kentucky shall be licensed.

(b) If a college is operating or soliciting in Kentucky solely for on-ground instruction at a location outside of Kentucky in which students leave Kentucky to attend, licensure shall not be required.

(2)(a) An out-of-state college shall be licensed separately for each instructional site in Kentucky.

(b) Except as provided in paragraph (c) of this subsection, an out-of-state college that is operating or soliciting using on-line instruction to Kentucky residents shall be considered to have an online campus which shall be licensed separately as an instructional site.

(c) Licensure shall not be required for an out-of-state college if the college:

1. Is only operating and soliciting under Section 1(9)(b) of this administrative regulation solely due to a faculty member residing in Kentucky and providing online instruction to Kentucky students; and

2. Has less than one (1) percent of its faculty members residing in Kentucky.

(3) A college awarding a certificate, diploma, associate degree, baccalaureate degree, master's degree, doctoral degree, or other degree, whether the degree is earned or honorary, shall be licensed. If a college's program is also required to be licensed or approved by another state agency as well as the Council on Postsecondary Education, the president shall attempt to coordinate the licensing function with that agency.

(4) A college shall offer only those programs, courses, and degrees, including honorary degrees, specifically authorized in the license.

(5) If a college ceases offering a licensed program, course, or degree, the college shall notify the president in writing and request that the program, course, or degree be removed from the college's license.

(6) Providing false or misleading information shall be grounds for denial of a license, or suspension or revocation of an existing license.

(7) A religious in-state college may operate or solicit in Kentucky if the college submits to the council an Application for Religious In-State College Letter of Exemption per KRS 164.947(2). The institution shall submit an application each year by the anniversary of its initial submission date. As part of the application, the institution shall verify compliance with the requirements established in this subsection.

(a) The institution shall be nonprofit, owned, maintained, and controlled by a church or religious organization which is exempt from property taxation under the laws of Kentucky.

(b) The name of the institution shall include a religious modifier or the name of a religious patriarch, saint, person, or symbol of the church.

(c) The institution shall offer only educational programs that prepare students for religious vocations as ministers or laypersons in the categories of ministry, counseling, theology, religious education, administration, religious music, religious fine arts, media communications, or social work.

(d) The titles of degrees issued by the institution shall be distinguished from secular degree titles by including a religious modifier that:

1. Immediately precedes, or is included within, any degree title, including an Associate of Arts, Associate of Science, Bachelor of Arts, Bachelor of Science, Master of Arts, Master of Science, Advanced Practice Doctorate, Doctor of Philosophy, or Doctor of Education degree; and

2. Is placed on the title line of the degree, on the transcript, and wherever the title of the degree appears in official school documents or publications.

(e) The duration of all degree programs offered by the

institution shall be consistent with Section 8(8)(b) of this administrative regulation.

(f) The institution shall comply with the truth in advertising requirements established in Section 8(11) of this administrative regulation.

(g)1. The institution shall disclose to each prospective student:

- a. A statement of the purpose of the institution, its educational programs, and curricula;
- b. A description of its physical facilities;
- c. Its status regarding licensure;
- d. Its fee schedule and policies regarding retaining student fees if a student withdraws;
- e. Its refund policy on tuition and other instructional charges; and
- f. A statement regarding the transferability of credits to and from other institutions.

2. The institution shall make the disclosures required by subparagraph 1. of this paragraph in writing at least one (1) week prior to enrollment or collection of any tuition from the prospective student. The required disclosures may be made in the institution's current catalog.

(h) The institution shall not seek to be eligible for state or federal financial aid.

Section 3. Licensure Application Procedures. (1) An application for a license shall be submitted on the form entitled:

(a) Application for Licensure as an In-State, Non-Public Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020, if the applicant is an in-state college; or

(b) Application for Licensure as an Out-of-State Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020, if the applicant is an out-of-state college.

(2) An application shall be accompanied by a copy of the **[following]**:

- (a) College charter;
- (b) College catalog;
- (c) College constitution and bylaws;
- (d) Student enrollment application;
- (e) Student contract or agreement;
- (f)1. Documentation of accreditation, licensure, or approval by appropriate state, federal, and accrediting agencies; and
- 2. Disclosure of any prior loss or denial of:
  - a. Accreditation with the dates and reason for the loss or denial; or
  - b. Licensure or approval by an agency in this state or another state with the dates and reason for the loss or denial; **and**
  - (g) Disclosure of any former names of the college with the dates each former name was used.

Section 4. Site Visits. (1) Within ninety (90) working days of the receipt of a full and complete application for a license, a supplementary application, or Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020, the president may conduct, or may have conducted, a site visit. Personnel conducting the site visit shall possess the expertise appropriate to the type of college to be visited. The purpose of a site visit shall be to make an assessment of a college using the standards for licensure as set forth in Section 8 of this administrative regulation.

(2) The president may conduct, or may have conducted, an announced or unannounced site visit of a licensed college during reasonable business hours to inspect the files, facilities, and equipment as well as conduct interviews to determine the college's compliance with this administrative regulation and KRS 164.945, 164.946, and 164.947.

(3) Failure to provide full access to the college's files, facilities, and equipment or prevention of interviews shall be grounds for denial of a license, or suspension or revocation of an existing license.

(4) Cost of site visits. (a) Costs connected with a site visit and subsequent visits as may be necessary, such as travel, meals, lodging, and consultant honoraria, shall be paid by the college.

(b) The estimated cost of the site visit shall be paid by the

college prior to the site visit.

(c) The final settlement regarding actual expenses incurred shall be paid by the college no later than thirty (30) days after receipt of the invoice.

(d) Failure to pay these costs shall be grounds for denial of a license, or suspension or revocation of an existing license.

Section 5. Action on Licensure Application. (1) Within ninety (90) working days of the completion of the site visit, or within sixty (60) working days of the submission of a complete licensure application if a site visit is not conducted, the president shall do one (1) of the following:

(a) Issue a license for a period of no less than one (1) year, nor more than two (2) years;

(b) Deny the application for a license;

(c) Notify the applicant college of deficiencies which shall be corrected before a license is issued; or

(d) Issue a conditional license in accordance with subsection (3) of this section if the college has:

1. Not met all of the standards for licensure when the application is filed; and

2. Provided a written business plan to the president demonstrating it will meet the standards for licensure within a period not to exceed two (2) years.

(2) If an institution fails to respond in writing to an official notification of deficiency within sixty (60) working days, it shall submit a new application and fee, as required by Section 15 of this administrative regulation, to apply for licensure.

(3) A conditional license shall not exceed a period of two (2) years and shall include the conditions the college shall meet in order for the college to progress toward and eventually meet the standards for licensure, including when the college shall report progress to the president and when the college shall be required to have satisfied all the conditions.

(a) The college's failure to satisfy the conditions within the specified timeframe shall:

1. Result in automatic revocation of the conditional license; or

2. Result in an extension of the conditional license based on a determination by the president that the college is making progress in satisfying the conditions in response to the college's written request for an extension with supporting justification.

(b) If the college satisfies all the conditions with the timeframe specified, the president shall issue a license in accordance with subsection (1)(a) of this section.

Section 6. Supplementary Application Procedures. (1)(a) A Supplementary Application for Change of Name of Institution Pursuant to 13 KAR 1:020 shall be submitted to the council at least ninety (90) days prior to the effective date of a change in the name of a college.

(b) A Supplementary Application for Change of Location of Principal Location of a College or Location of a Licensed Instructional Site in Kentucky Pursuant to 13 KAR 1:020 shall be submitted to the council at least ninety (90) days prior to the effective date of a change in the principal location of a college or the location of a licensed instructional site in Kentucky.

(c) A Supplementary Application for Change of Ownership or Governance Pursuant to 13 KAR 1:020 shall be submitted to the council at least ninety (90) days prior to the effective date of a change in ownership or governance of a college.

(d) An out-of-state college shall submit a Supplementary Application to Operate as an Out-of-State Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020 at least ninety (90) days prior to implementation of a change to offer an additional certificate, diploma, or degree program, major, or other concentration or specialty at an instructional site.

(e) A Supplementary Application to Operate as an In-State Nonpublic Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020 shall be submitted by an in-state college at least ninety (90) days prior to the effective date of:

1. A change to offer an additional certificate, diploma, or degree program, major, or other concentration or specialty at the main campus; or

2. The establishment of an instructional site away from the main campus of an in-state college for the purpose of offering courses for college credit which comprise at least fifty (50) percent of the course requirements for a degree program.

(f) A college shall submit a Supplementary Application for Administrative Site, Recruitment Office, or Advising Center Pursuant to 13 KAR 1:020 at least ninety (90) days prior to the establishment of an administrative site, recruitment office, or advising center in Kentucky, or the change of location of a licensed administrative site, recruitment office, or advising center in Kentucky, if the site, office, or center is not part of a licensed instructional site or proposed instructional site for which the college is seeking licensure.

(g) A college shall submit a Supplementary Application for Notification of Change in Accreditation or Licensure Status Pursuant to 13 KAR 1:020 within thirty (30) days following action by an accrediting agency or another state licensing agency which results in:

1. A college being placed in a probationary status;
2. A college losing accreditation or licensure; or
3. A college being denied accreditation or licensure.

(2) A site visit may be conducted as part of the supplementary application process in accordance with Section 4 of this administrative regulation.

(3) Failure to submit a complete and accurate supplementary application, if required, shall be sufficient cause for denial of a license, or suspension or revocation of an existing license. The president shall notify the college by registered mail, return receipt, of the denial, suspension, or revocation of the college's license.

Section 7. Action on Supplementary Applications. (1) Within sixty (60) working days of the submission of a complete supplementary application if a site visit is not conducted, or within ninety (90) working days of the completion of a site visit, the president shall do one (1) of the following:

(a) Approve the supplementary application and amend the current license without changing the renewal date;

(b) Deny the supplementary application without amendment to the college's license;

(c) Suspend or revoke the college's license;

(d) Notify the applicant college of deficiencies which shall be corrected before the supplementary application is approved and the license is amended; or

(e) Issue a conditional license in accordance with subsection (3) of this section if the college has:

1. Not met all of the standards for licensure when the application is filed; and

2. Provided a written business plan to the president demonstrating it will meet the standards for licensure within a period not to exceed two (2) years.

(2) If an institution fails to respond in writing to an official notification of deficiency within sixty (60) working days, it shall submit a new application to apply for licensure.

(3) A conditional license shall not exceed a period of two (2) years and shall include the conditions the college shall meet in order for the college to progress toward and eventually meet the standards for licensure, including when the college shall report progress to the president and when the college shall be required to have satisfied all the conditions.

(a) The college's failure to satisfy the conditions within the specified timeframe shall:

1. Result in automatic revocation of the conditional license; or
2. Result in an extension of the conditional license based on a determination by the president that the college is making progress in satisfying the conditions in response to the college's written request for an extension with supporting justification.

(b) If the college satisfies all the conditions with the timeframe specified, the president shall amend the current license in accordance with subsection (1)(a) of this section.

Section 8. Standards for Licensure. A college shall meet the requirements and standards established in this section in order to be licensed. (1) Financial requirements. The college shall adhere

to generally accepted accounting practices and present evidence of financial stability, which shall include ~~[including—the following]:~~

(a) Financial statements including:

1. A statement of financial position of unrestricted net assets and liabilities, including foundation and trust agreements;

2. An audit report prepared by an independent certified public accountant for each corporation of the college; and

3. If available, audit reports for the past three (3) years;

(b) The name of a bank or other financial institution used by the college as a reference;

(c) A statement from the Kentucky Higher Education Assistance Authority related to programs administered by that agency and from the U.S. Department of Education related to programs administered by that department that the college is in good standing; and

(d) An annual operating budget for the college.

(2) Agents. A college shall be responsible for the actions of its agents if acting on behalf of the college.

(3) Guarantee of refund of unearned tuition. A college shall guarantee the refund of any unearned tuition held by the college as established in this subsection.

(a) Except as provided in paragraph (d) of this subsection, an in-state college shall:

1. Secure and maintain a surety bond equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year, executed by a surety company qualified and authorized to do business in Kentucky, and made payable to the Council on Postsecondary Education;

2. Maintain an unrestricted cash reserve equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or

3. Provide a letter of credit equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year.

(b) An out-of-state college shall secure and maintain a surety bond:

1. That is:

a. Equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; and

b. At least \$10,000;

2. Executed by a surety company qualified and authorized to do business in Kentucky; and

3. Made payable to the Council on Postsecondary Education.

(c) A college applying for a license for the first time shall estimate the amount of unearned tuition based on projected enrollment and tuition and other instructional charges.

(d) An in-state college licensed continuously by the council for:

1. Five (5) to ten (10) years shall maintain coverage by surety bond, letter of credit, or unrestricted cash reserve for ten (10) percent of its annual total net tuition and fees collected by the college in its most recently completed fiscal year; or

2. Ten (10) years or more shall maintain coverage by surety bond, letter of credit, or unrestricted cash reserve for five (5) percent of its annual total net tuition and fees collected by the college in its most recently completed fiscal year.

(e) A college shall provide a letter from an independent certified public accountant confirming that the college is in compliance with this subsection.

(4) Notice required.

(a) If a surety bond is terminated, a college shall notify the president and the license shall automatically expire with the bond unless a replacement bond is provided without a lapse in bonding.

(b) An in-state college using an unrestricted cash reserve or letter of credit to satisfy the provisions of subsection (3) of this section shall notify the president if the unrestricted cash reserve or letter of credit falls below the required amount, and the college shall obtain a surety bond for the required amount.

(c) A college shall notify the president within ten (10) days of the college receiving written notice from the U.S. Department of Education of placement on heightened cash monitoring status or

calculation of college's financial responsibility composite score at below 1.0. If an in-state college is using unrestricted cash reserve to satisfy subsection (3) of this section, it shall within thirty (30) days of either event:

1. Obtain a surety bond or letter of credit in the required amount until the college is satisfactorily removed from heightened cash monitoring status by the U.S. Department of Education or the college's financial responsibility composite score is 1.0 or higher; or

2. Transfer the unrestricted cash reserve to the Council in the required amount to be held on behalf of the college, which the Council shall return once the college is satisfactorily removed from heightened cash monitoring status by the U.S. Department of Education, the college's financial responsibility composite score is 1.0 or higher, or once all unearned tuition claims have been paid.

(d) Upon notice to the college, the Council may call in a letter of credit upon any valid claim of unearned tuition in the amount of the claim, or for the full amount of the letter if necessary to protect access to those funds. If the full amount of the letter is called, the Council shall return any funds remaining after claims have been paid, either to the bank or the college, as appropriate, after one (1) year from the date of closure of the college.

(e) A college shall notify the president within ten (10) days of the college receiving notice from an accrediting agency or any state or federal agency that the college is the subject of any investigative action or disciplinary matter with the accrediting agency or state or federal agency.

(5) Personnel requirements.

(a) The college shall furnish information regarding the administrative officers, the directors, the owners, and the faculty, as required by the application form.

(b) The chief administrator shall hold at least an earned baccalaureate degree from an accredited or licensed college and shall have sufficient experience to qualify for the position.

(c) Faculty members.

1. For a course or program licensed by the council prior to January 1, 2014:

a. Effective until December 31, 2015, faculty members shall possess academic, scholarly, and teaching qualifications similar to those required for faculty in accredited colleges that offer degrees at comparable levels.

b. Effective beginning on January 1, 2016, faculty members shall meet the requirements established in paragraph (d) of this subsection.

2. For a course or program not licensed by the council prior to January 1, 2014, faculty members shall meet the requirements established in paragraph (d) of this subsection when the course or program is licensed.

(d) Faculty member qualifications.

1. Each degree possessed by a faculty member shall be from an institution accredited by an accrediting agency recognized by the U.S. Department of Education or the Council for Higher Education Accreditation.

2. To teach a certificate or diploma course, a faculty member shall have:

a. A bachelor's degree; or

b. A high school diploma or GED along with one (1) or more of the following:

(i) Completed a training or degree program in the applicable occupational area;

(ii) Demonstrated outstanding professional experience;

(iii) Demonstrated outstanding professional contributions to the discipline being taught; or

(iv) Professional licensure or certification in the field.

3. To teach an associate degree course not designed for transfer to a baccalaureate degree, a faculty member shall hold:

a. A bachelor's degree in the discipline being taught; or

b. An associate's degree in the discipline being taught along with one (1) or more of the following:

(i) Demonstrated outstanding professional experience;

(ii) Demonstrated outstanding professional contributions to the discipline being taught; or

(iii) Professional licensure or certification in the field.

4. To teach a general education course, a faculty member shall hold:

a. A master's degree in the discipline being taught; or

b. A master's degree with a minimum of eighteen (18) graduate semester hours in the discipline being taught.

5. To teach a baccalaureate course or an associate course designed for transfer to a baccalaureate degree, a faculty member shall hold:

a. A master's degree in the discipline being taught;

b. A master's degree with a minimum of eighteen (18) graduate semester hours in the discipline being taught; or

c. A baccalaureate degree in the discipline being taught along with one (1) or more of the following:

(i) Demonstrated outstanding professional experience;

(ii) Demonstrated outstanding professional contributions to the discipline being taught; or

(iii) Professional licensure or certification in the field.

6. To teach a graduate course, a faculty member shall hold:

a. An earned doctorate or terminal degree in the discipline being taught or in a related discipline; or

b. A master's degree in the discipline being taught along with one (1) or more of the following:

(i) Demonstrated outstanding professional experience;

(ii) Demonstrated outstanding professional contributions to the discipline being taught; or

(iii) Professional licensure or certification in the field.

(e) There shall be a sufficient number of full-time faculty to ensure continuity and stability of the educational program.

(f) Teaching loads of faculty members shall be consistent with recognized educational practices, and shall be appropriate to the field, the variety of courses assigned, class size, and other related factors.

(6) Facilities and equipment.

(a) An instructional program shall be conducted in a facility in accordance with the requirements specified on the application form.

(b) Enrollment shall not exceed the design characteristics of the facilities.

(c) A college shall have facilities and equipment that are:

1. Maintained and operated in compliance with the safety and health requirements set forth in local, city, and county ordinances, and federal and state law; and

2. Adequate and appropriate for instruction in classrooms and laboratories consistent with accrediting and licensing requirements.

(7) Library resources. The library shall **[to]** support the programs offered by the college in accordance with this subsection.

(a) A college, through ownership or formal agreements, shall provide and support student and faculty access to adequate library collections, and to other learning and information resources where courses and programs are offered. Library resources shall be appropriate to the degree level offered by the college, and shall be sufficient to support all educational, research, and public service programs.

(b) A college that does not provide its own library facilities, but instead relies on another institution, shall demonstrate that it has permission to utilize the resources of the other institution, by providing a copy of the written agreement to the president with the license application, and prior to the offering of any courses.

(c) A college that is dependent on another college or library for library resources shall make the extent of the dependence and the details of the agreements clear both to the president and to students and faculty.

(d) Library expenditures, expressed as a percentage of the total educational and general budget, shall be consistent with the percentage of library expenditures commonly observed in accredited colleges of similar types.

(e) Library staff shall be qualified as required for accredited colleges of similar types.

(f) Sufficient seating and work space for a reasonable proportion of the faculty and students to be accommodated at one (1) time shall be provided as observed in accredited colleges of similar types.

(g) The library shall provide a safe and secure physical and virtual environment conducive to study and research.

(8) Curriculum. Earned degrees awarded by a college shall be bona fide academic degrees and the courses offered in degree programs shall be of collegiate quality as determined by the president using the criteria established in this section.

(a)1. Except as provided in subparagraph 2. of this paragraph, a course offered in a degree program shall be consistent with a course that is generally transferable for credit among accredited colleges where the program is at a corresponding degree level, or for credit toward the baccalaureate degree if a program is at the associate degree level.

2. A course may be offered that is not transferable based on the uniqueness of a program.

(b) A college shall require a minimum of:

1. Sixty (60) student credit hours for an associate degree;

2. 120 student credit hours for a baccalaureate degree; or

3. Thirty (30) student credit hours for a post-baccalaureate, graduate, or first professional degree.

(c) A minimum of twenty-five (25) percent of the student credit hours required for a degree shall be earned through instruction offered by:

1. The college awarding the degree; or

2. A college that is: a. A party to a joint, cooperative, or consortia agreement; and

b. Either:

(i) Licensed by the Council on Postsecondary Education; or

(ii) A Kentucky state-supported postsecondary education institution.

(d) A majority of the student credit hours required for a graduate degree may be met through a joint, cooperative, or consortia agreement in which the instruction is offered by a college that is:

1. A party to the agreement; and

2. Either:

a. Licensed by the Council on Postsecondary Education; or

b. A Kentucky state-supported postsecondary education institution.

(e) A college shall have a systematic program of curriculum revision in order to maintain the general standards of accredited colleges with similar programs.

(f) A college shall have a program of evaluation that includes a periodic assessment of the changes in student achievement.

(9) General education.

(a) A minimum of fifteen (15) student credit hours for associate degree programs and thirty (30) student credit hours for baccalaureate degree programs shall be earned in general education, including science, mathematics, social and behavioral sciences, and humanities. A college which offers an interdisciplinary general education program, a block-type program, or other unique general education program shall be considered to be in compliance with the general education requirement if the president determines that the program content and distribution are related to the degree and institutional purposes.

(b) A new college, or any existing college which initiates a new associate degree or baccalaureate degree program or major, or other concentration or specialty, after March 5, 2010, shall comply fully from the outset with the general education requirements.

(10) Program supervision and instructional support. Regardless of location, type of program, method of instruction, or other characteristics, an instructional program for which degree credit is awarded shall include:

(a) Adequate supervision by the college; and

(b) Instructional support necessary to maintain the program.

(11) Truth in advertising. A college shall meet the requirements established in this subsection regarding advertising.

(a) Advertisements, announcements, or promotional material of any kind which are distributed in Kentucky shall not contain any statements that are untrue, deceptive, or misleading with respect to the college, its personnel, its services, or the content, accreditation status, or transferability of its courses or degree programs.

(b) Advertisements, announcements, or other materials produced by or on behalf of the college shall not indicate that the

college is "supervised", "recommended", "endorsed", or "accredited" by the Commonwealth of Kentucky, by the Council on Postsecondary Education, or by any other state agency. A statement using the name of the Council on Postsecondary Education, if any, shall be in exactly the following form, based on which statement is applicable to the college:

1. "(Name of College) is licensed by the Kentucky Council on Postsecondary Education."; or

2. "(Name of College) has a religious exemption from the Kentucky Council on Postsecondary Education to operate or solicit in Kentucky."

(12) Recruitment and enrollment procedures. A college shall furnish the following to each student prior to enrollment:

(a) The college's policies on grades, attendance, and conduct;

(b) A description of the instructional program;

(c) A detailed schedule of all charges, rentals, and deposits;

(d) The schedule of refunds of all charges, rentals, and deposits; and

(e) The student enrollment application, contract, or agreement.

(13) Student affairs.

(a) Students admitted to the college shall have completed a state-approved secondary school program or its equivalent unless dually enrolled in high school.

(b) The college shall provide academic counseling by faculty or staff to each student when admitted and throughout the program.

(c) The college shall make assistance and counseling available to each student who completes a technical or vocational program for the purpose of assisting the student with an appropriate job placement or with transfer.

(d) The college shall maintain sufficient records for each student to provide an understanding of his or her background, to record progress through the instructional program, and for reference purposes. By January 1, 2022, the college shall maintain all student records in an electronic format that is searchable and readily transferable consistent with industry standards. For a college not licensed by the Council prior to January 1, 2020, the college shall meet this requirement when the college is licensed.

(e) Administrative officers of the college shall be knowledgeable of the federal and state laws and administrative regulations concerning the disclosure of student information and shall comply with those laws and administrative regulations.

(f) A college shall make provision for the maintenance of student records if the college ceases operations in accordance with KRS 164.020(23). The location of student records shall be approved in advance by the president.

(14) College policies. (a) The college shall maintain records in an orderly manner and make them available for inspection by the president or his or her designated representative.

(b) A catalog shall be published and distributed at least every two (2) years and shall include general information, administrative policies, and academic policies of the college including:

1. General information:

a. Official name and address of the college, name of the chief administrative officers, members of the governing body, and names of principal owners;

b. The college's calendar for the period covered by the catalog including beginning and ending dates of each term or semester, registration and examination dates, legal holidays, and other important dates;

c. Names of faculty, including relevant education and experience; and

d. Full disclosure of the philosophy and purpose of the college;

2. Administrative policies:

a. Admissions policies and procedures, applicable to the various programs, including policies regarding granting of credit for previous education;

b. Policies and procedures regarding student conduct and behavior and the process for dealing with cases which culminate in probation or dismissal;

c. Schedules for all tuition and instructional charges, and refund schedules for the tuition and instructional charges;

d. Statement of financial aid available to students; and

e. Procedures for obtaining transcripts in a timely fashion and

at reasonable cost; and

3. Academic policies, including:

a. Policy on class attendance;

b. Description of grading system;

c. Description of the degree, diploma, certificate, or other programs, including the course requirements and the time normally required to complete each degree, diploma, certificate, or other program; and

d. Full description of the nature and objectives of all degrees offered.

(c) Refund policy on tuition and other instructional charges.

The refund policy shall meet the minimum requirements established in this paragraph.

1. If tuition and other instructional charges are collected in advance of enrollment and the student fails to enroll, the college shall retain not more than \$100, or not more than ten (10) percent of the tuition and other instructional charges for a term or semester, whichever is less.

2.a. Except as provided in clause b. of this subparagraph, tuition and other instructional charges shall be charged by the enrollment period, and the student shall not be obligated for tuition or other instructional charges relating to an enrollment period that had not begun when the student withdrew.

b. The president may approve program tuition for a specific program at a college if a student may only enroll at the beginning of the program sequence and shall remain in phase. If program tuition is approved, the college shall refund tuition and other instructional charges in accordance with its published refund policy that considers both the coursework completed prior to withdrawal and the coursework that remains.

3. If a student withdraws from the college, or if a student fails to attend classes for a period of thirty (30) days during which classes are in session, the college shall officially withdraw the student from the college and shall refund an amount reasonably related to the period for which the student is not enrolled and shall refund 100 percent of all other tuition and other fees collected by the college for subsequent enrollment or registration periods unless the student is enrolled in a program for which program tuition is charged as specified in subparagraph 2. of this paragraph.

a. After completion of fifty (50) percent of the enrollment period, the college shall not be required to make refunds of tuition or other fees for that period.

b. In all other cases, including illness or accident, the college shall make a refund settlement.

c. Refunds shall be made within thirty (30) days after notification of withdrawal has been received by the college.

4. If a college is accredited by an accrediting agency which has a specific refund policy which is more favorable to the student, that policy shall be followed.

5. An out-of-state college shall refund in accordance with this section unless its policy is more favorable to the student, in which case the latter shall be followed.

Section 9. Failure to Apply for a License. (1) If a college which is subject to this administrative regulation fails to apply for a license, the president shall notify the college by registered mail of the requirement to obtain a license.

(2) If a license application is not then received within sixty (60) days of notification by the president, the president shall require the chief administrative officer to appear for a hearing as provided in Section 14 of this administrative regulation.

(3) If the chief administrative officer does not appear for the hearing, the president shall refer the case to the appropriate county attorney for enforcement.

Section 10. Annual Maintenance of a College's License and Renewal of a College's License. (1) A college shall submit an Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020 to the president by April 1 of each year.

(a) In an odd numbered year, the application shall contain the following information:

1. Financial Information:

a. A statement from the Kentucky Higher Education Assistance Authority related to programs administered by that agency and from the United States Department of Education related to programs administered by that department that the college is in good standing;

b. A letter prepared by an independent certified public accountant confirming that the college is in compliance with Section 8(3) of this administrative regulation;

c. Financial statement including assets and liabilities and an audit report prepared by an independent certified public accountant within the last year.

2. Institutional information:

a. Name and address of college;

b. Chief executive officer's name, title, address, phone number, fax number, and email address;

c. Institutional liaison's name, title, address, phone number, fax number, and email address;

d. A current list of the college's agents;

e. Copies of articles of incorporation, charter, constitution, and by-laws if there have been any changes to the documents within the last two (2) years; and

f. A copy of each articulation agreement the college has with a Kentucky licensed college or state-supported institution entered into or changed within the last two (2) years;

3. Accreditation status:

a. If the college is accredited by an accrediting agency, verification of the college's accreditation status and documentation of any notice of disciplinary action, warning, or probation from any state, federal, or accrediting agency within the past two (2) years; or

b. If an in-state college is not accredited by an accrediting agency, a statement indicating its intention to receive accreditation and its timeline for attainment.

4. Tuition for the current enrollment period per credit hour, specifying semester hour, quarter hour, or other basis, and per full-time student;

5. A copy of the college's current catalog;

6. For an in-state college, a list of all licensed instructional sites away from the main campus of the in-state college for the purpose of offering courses for college credit which comprise at least fifty (50) percent of the course requirements for a degree program, including the name and title of the primary contact of the off-campus site, address, phone number, and program or programs by CIP code offered at the site, or course or courses if not offering an entire degree program at the site;

7. Program information:

a. Changes, if any, in program requirements for each program within the last two (2) years including admission requirements, courses required, and the number of credit hours required for the program or major;

b. Results of the most recent program evaluation;

c. Methods used to assess student achievement;

d. Results of the most recent assessment of student achievement; and

e. A list of programs withdrawn within the last two (2) years in which there are no longer students enrolled including program title, degree level, CIP code, and address where the program is no longer being offered;

8. Faculty information: Faculty credentials for each program faculty member employed within the last two (2) years;

9. Facilities information: Verification of compliance with all applicable local, state, and federal safety and fire codes; and

10. Library information regarding the library collection and budget, and lease, contract, or letter of agreement authorizing use of another library collection, if any.

(b) In an even numbered year, the application shall only contain the information required by paragraphs (a)1.b. and d., and (a)2.a., b., and c., of this subsection. An institution shall provide any other information listed in paragraph (a) of this subsection upon request of the council.

(2) The president may conduct, or may have conducted, a site visit as part of the annual maintenance of a license or renewal of a license process in accordance with Section 4 of this administrative

regulation.

(3) Within ninety (90) working days of the submission of a complete and accurate Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020 if a site visit is not conducted, or within ninety (90) working days of the completion of a site visit, the president shall:

- (a) Notify the college of any deficiencies which shall be corrected before the college's license is maintained or renewed;
- (b) Deny maintenance or renewal of the college's license;
- (c) Maintain the college's license without changing the college's license renewal date;
- (d) Renew the college's license to June 30 of the next year; or
- (e) Issue a conditional license in accordance with subsection (4) of this section if the college has:

1. Not met all of the standards for licensure when the application is filed; and

2. Provided a written business plan to the president demonstrating it will meet the standards for licensure within a period not to exceed one (1) year.

(4) A conditional license shall not exceed a period of one (1) year and shall include the conditions the college shall meet in order for the college to progress toward and eventually meet the standards for licensure, including when the college shall report progress to the president and when the college shall be required to have satisfied all the conditions.

(a) The college's failure to satisfy the conditions within the specified timeframe shall:

- 1. Result in automatic revocation of the conditional license; or
- 2. Result in an extension of the conditional license based on a determination by the president that the college is making progress in satisfying the conditions in response to the college's written request for an extension with supporting justification.

(b) If the college satisfies all the conditions with the timeframe specified, the president shall renew the license in accordance with subsection (3)(d) of this section.

(5) A college's failure to submit a complete and accurate Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020 shall be grounds for denial of a license, or suspension or revocation of an existing license, and the president shall notify the college by registered mail, return receipt, of the denial, suspension, or revocation of the college's license.

Section 11. Required Data Submission. (1) A licensed college shall submit student attendance and performance data in an electronic format. The required data fields, the format and method of submission, and the dates for submission shall be in accordance with the Licensure Compliance Reporting Manual.

(2) The president may conduct, or may have conducted, a site visit as part of the data submission process in accordance with Section 4 of this administrative regulation.

(3) A college's failure to submit complete, timely, and accurate data shall be sufficient grounds for denial of a license, or suspension or revocation of an existing license, and the president shall notify the college by registered mail, return receipt, of the denial, suspension, or revocation of the college's license.

Section 12. License Expiration. (1) A license shall automatically expire if the college ceases operating or soliciting.

(2) A college that ceases operating or soliciting shall comply with Section 8(13)(f) of this administrative regulation and KRS 164.020(23).

Section 13. Consumer Complaint Procedure. A person with a complaint or grievance involving misrepresentation against a college licensed under this administrative regulation shall make a reasonable effort to resolve the complaint or grievance directly with the college. If a mutually satisfactory solution cannot be reached, the procedures established in this section shall be followed. (1) A person shall submit a written complaint to the president which contains evidence relevant to the complaint and documentation that a reasonable effort was made to resolve the complaint directly with the college.

(2) The president shall require an institution to file a written

response setting forth the relevant facts concerning the consumer complaint, including a statement on the current status of the complaint, and any resolution of the complaint.

(3) The president shall review the facts as presented and may intervene to bring the matter to a satisfactory conclusion through facilitation, but the facilitation shall not include legal action on behalf of any party.

Section 14. Hearings and Appeals. (1) The president shall, for cause, require the chief administrative officer, or other officers, of a college to appear for a hearing within thirty (30) working days of notice in order to determine the facts if the president has determined that:

(a) There is sufficient cause for a suspension, a revocation of a license, or placement of a college's license in a probationary status, based upon the college's failure to comply with this administrative regulation; or

(b) A college which is subject to this administrative regulation fails to apply for a license.

(2) The officer, or other officers, of the college may be accompanied at the hearing by counsel of their own choosing and at their expense.

(3) Within thirty (30) working days after a hearing is held or if the college fails to appear for the hearing, the president shall reach a determination and shall issue findings, in writing, to the council and to the chief executive officer of the college.

(4) If it is determined that the public interest requires that sanctions be imposed, the president shall:

(a) Impose one (1) of the following sanctions:

1. Place the college's license in a probationary status for a designated period not to exceed one (1) year while deficiencies are being corrected;

2. Suspend the college's license for a period not to exceed one (1) year; or

3. Revoke the college's license; or

(b) Refer the case to other officials for appropriate legal action.

(5) A college which is sanctioned, whether the sanction is probation, suspension of license, or revocation of license, shall comply with the terms of the sanction.

(6) A college may appeal the actions of the president regarding the denial of issuance of a license or license renewal or the imposition of sanctions according to the procedures established in this subsection.

(a) A college shall notify the president of the intent to appeal an action within fourteen (14) days of the receipt of the letter notifying the college of the action taken.

(b) The president shall request that the Office of Administrative Hearings appoint a hearing officer who shall conduct an administrative hearing consistent with the provisions of KRS 13B.005- 13B.170.

(c) The appeal shall be presented in writing no later than sixty (60) days following the receipt of notification of intent to appeal. The appeal shall be considered on the written record alone.

(d) The appeals officer shall review findings of fact, consider testimony, draw conclusions, and formulate a recommendation consistent with the facts and this administrative regulation.

(e) Upon completion, the report of the appeals officer shall be forwarded to the college and to the president of the Council on Postsecondary Education.

(f) Within thirty (30) working days of receiving the report of the appeals officer, the president shall take one (1) of the following actions:

- 1. Issue a license;
- 2. Renew the license;
- 3. Impose one (1) of the sanctions authorized in this section; or
- 4. Refer the case to other officials for appropriate action.

Section 15. License Fees. (1) The president shall assess a fee in accordance with the Kentucky Licensure Fee Schedule.

(2) Failure to pay a fee shall be sufficient grounds for denial of a license, or suspension or revocation of an existing license.

Section 16. Incorporation by Reference. (1) The following

material is incorporated by reference:

- (a) "Application for Licensure as an In-State, Non-Public Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", February 2021 [~~June 2013~~];
  - (b) "Application for Licensure as an Out-of-State Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", February 2021 [~~June 2013~~];
  - (c) "Supplementary Application for Change of Name of Institution Pursuant to 13 KAR 1:020", February 2021 [~~June 2013~~];
  - (d) "Supplementary Application for Change of Location of Principal Location of a College or Location of a Licensed Instructional Site in Kentucky Pursuant to 13 KAR 1:020", February 2021 [~~June 2013~~];
  - (e) "Supplementary Application for Change of Ownership or Governance Pursuant to 13 KAR 1:020", February 2021 [~~June 2013~~];
  - (f) "Supplementary Application to Operate as an Out-of-State Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", February 2021 [~~June 2013~~];
  - (g) "Supplementary Application to Operate as an In-State Nonpublic Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", February 2021 [~~July 2019~~];
  - (h) "Supplementary Application for Administrative Site, Recruitment Office, or Advising Center Pursuant to 13 KAR 1:020", February 2021 [~~June 2013~~];
  - (i) "Supplementary Application for Notification of Change in Accreditation or Licensure Status Pursuant to 13 KAR 1:020", February 2021 [~~June 2013~~];
  - (j) "Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020", [~~June 2013~~];
  - (k) "Licensure Compliance Reporting Manual", September 8, 2009;
  - (l) "Kentucky Licensure Fee Schedule", February 2021 [~~June 2013~~]; and
  - (m) "Application for Religious In-State College Letter of Exemption per KRS 164.947(2)", February 2021 [~~September 2012~~].
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Council on Postsecondary Education, 100 Airport Road, 2nd Floor, [4024 Capital Center Drive, Suite 320,] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Sarah Levy, Executive Director of Postsecondary Licensing, Council on Postsecondary Education, 100 Airport Road, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 892-3034, fax (502) 573-1535, email sarah.levy@ky.gov.

**COUNCIL ON POSTSECONDARY EDUCATION**  
(As Amended at ARRS, May 11, 2021)

**13 KAR 4:010. State Authorization Reciprocity Agreement.**

RELATES TO: KRS 164.020(23), 164.945, 164.946, 164.947, 164.992, 165A.320-165A.450

STATUTORY AUTHORITY: KRS 164.540(3)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.540(3) authorizes the Council on Postsecondary Education to promulgate an administrative regulation to enter into the State Authorization Reciprocity Agreement, which establishes uniform national standards for interstate offerings of postsecondary distance education and authorizes postsecondary educational institutions meeting those standards located in member states or territories to provide distance education to residents of other member states. KRS 164.540(3) also authorizes the council to serve as the lead or portal agency on behalf of the Commonwealth's public and private postsecondary institutions seeking to offer distance education in member states. This administrative regulation establishes the mechanism by which Kentucky institutions may join the State Authorization Reciprocity Agreement and sets forth the process by which non-resident students can file complaints against Kentucky member institutions.

Section 1. Definitions. (1) "Commission" means the Kentucky Commission on Proprietary Education.

(2) "Council" means the Kentucky Council on Postsecondary Education.

(3) "Degree" means an award conferred at the associate level or higher by an institution as official recognition for the successful completion of a program of studies.

(4) "Institution" means a Kentucky degree-granting postsecondary entity.

(5) "NC-SARA" means the National Council for State Authorization Reciprocity Agreements.

(6) "President" means the President of the Kentucky Council on Postsecondary Education.

(7) "State Authorization Reciprocity Agreement," or "SARA," means the agreement among member states, districts, and U.S. territories that establishes comparable national standards for interstate offering of degrees through distance education and authorizes institutions meeting those standards located in member states or territories to provide distance education to residents of other member states.

Section 2. Initial Application Procedures. (1) ~~[In order]~~ To participate in SARA, an institution shall submit the following items to the president for review and action:

(a) The current NC-SARA Application and Approval Form for Institutional Participation in SARA, in electronic format; and

(b) The fees due to the Council, in accordance with Section 6 of this administrative regulation.

(2) The application referenced in subsection (1)(a) of this section may be found online at [www.nc-sara.org](http://www.nc-sara.org).

Section 3. Renewal Application Procedures. (1) ~~[In order]~~ To continue participating in SARA, an institution shall submit the following items to the president for review and action at least sixty (60) days before the anniversary date of the institution's initial approval:

(a) The current NC-SARA Application for Institutional Renewal to Participate in SARA, in electronic format; and

(b) The fees due to the council, in accordance with Section 6 of this administrative regulation.

(2) The application referenced in subsection (1)(a) of this section may be found online at [www.nc-sara.org](http://www.nc-sara.org).

Section 4. Standards for Approval. ~~[In order]~~ To participate in SARA, an institution shall ~~[comply with the following]~~:

(1) Maintain authorization to operate in Kentucky through one (1) of the following:

(a) Creation by Kentucky Revised Statutes;

(b) Licensure by the council; or

(c) Licensure by the commission; and

(2) Meet the current minimum requirements to participate in SARA.

Section 5. Consumer Complaints. (1) After first exhausting the institution's internal procedure for complaint resolution, a non-resident student may file a complaint against the institution for failure to comply with any SARA standard within two (2) years of the incident about which the complaint is made.

(2) ~~[In order]~~ To be considered, a complaint shall be submitted by the student in writing and include ~~[the following information]~~:

(a) ~~The~~ name, address, email address, and phone number of ~~the~~ student;

(b) ~~The~~ name of ~~the~~ institution;

(c) ~~The~~ location of ~~the~~ institution;

(d) ~~The~~ dates of attendance;

(e) An explanation of the steps taken to exhaust the institution's grievance process;

(f) A full description of the issue and any relevant documentation supporting the complaint; and

(g) The desired resolution of the complaint.

(3) Complaints regarding student grades or student conduct violations shall not be considered.

(4) The president shall forward the complaint by email to the

institution and require a written response no later than thirty (30) days from the date of transmittal.

(5) After review of information and materials provided by the student and the institution, the president may request additional information from either party.

(6) After review of all relevant information and materials, the president shall facilitate a resolution of the complaint. The relief provided the student, if any, shall be commensurate with the circumstances.

(7) Resolution of a complaint by the president shall be final, except in instances where the subject matter of the complaint may violate any other applicable laws.

(8) The president shall provide to the executive director of the commission, for reference purposes, a copy of:

- (a) Any complaint initiated against an institution licensed by the commission;
- (b) The resolution; and
- (c) Any related materials.

Section 6. Fees. The council shall charge an initial and annual renewal fee to institutions based on all enrolled full-time equivalent students, which shall be due at the time of application. Applications shall not be reviewed without receipt of fee payment. Failure to pay a fee on or before the date of application shall be sufficient grounds for denial of an application. Fees shall be in addition to any fees charged by NC-SARA and shall be in accordance with the following schedule:

- (1) Under 2,500 [~~—\$3,000~~] full-time equivalent students = \$4,500;
- (2) 2,500 [~~—9,999~~ —\$5,000] full-time equivalent students = 9,999 — \$7,500; or
- (3) 10,000 [~~—\$7,000~~] or more full-time equivalent students = \$10,500.

Section 7. Appeals. [~~(4)~~] An institution denied approval for an initial or renewal application may request an appeal of that decision in accordance with the terms of this subsection.

(1)[~~(a)~~] The institution shall notify the president of the intent to appeal the decision within seven (7) days of the receipt of the notice of denial.

(2)[~~(b)~~] The president shall request that the Office of Administrative Hearings appoint a hearing officer who shall conduct an administrative hearing consistent with the provisions of KRS 13B.005-13B.170.

(3)[~~(c)~~] The appeal shall be presented in writing no later than thirty (30) days following the receipt of notification of intent to appeal.

(4)[~~(d)~~] The appeals officer shall review findings of fact, consider testimony, draw conclusions, and formulate a recommendation consistent with the facts and this administrative regulation.

(5)[~~(e)~~] Upon completion, the report of the appeals officer shall be forwarded to the institution and to the president.

(6)[~~(f)~~] Within thirty (30) working days of receiving the report of the appeals officer, the president shall either uphold the decision or approve the application.

CONTACT PERSON: Sarah Levy, Executive Director of Postsecondary Licensing, Council on Postsecondary Education, 100 Airport Road, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 892-3034, email sarah.levy@ky.gov.

**PERSONNEL CABINET**  
**(As Amended at ARRS, May 11, 2021)**

**101 KAR 2:095. Classified service general requirements.**

RELATES TO: KRS 18A.030(2), 18A.110, 26 U.S.C. 501(c)(3)  
STATUTORY AUTHORITY: KRS 18A.030, 18A.110  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 requires the Secretary of Personnel to promulgate comprehensive administrative regulations for the classified service. This

administrative regulation establishes requirements for the classified service and governs the maintenance of employee and other records and reports in the cabinet and other conditions of employment.

Section 1. Definitions. (1) "Charitable federation" means a legally constituted grouping, made up of or supporting at least ten (10) health and human welfare organizations, all of which:

- (a) Qualify as exempt voluntary charitable organizations pursuant to 26 U.S.C. 501(c)(3); and
  - (b) Have a substantial Kentucky presence.
- (2) "Designated nonprofit agency" means an organization with proof of tax-exempt status pursuant to 26 U.S.C. 501(c)(3) written in on a pledge card by a state employee as a choice to receive contributions.

(3) "State employee" means a person, including an elected public official, who is employed by a department, board, agency, or branch of state government, except one [~~(4)~~] relating to a state college or university.

(4) "Substantial Kentucky presence" means a facility, staffed by professionals or volunteers, available to provide its services and open at least fifteen (15) hours a week and with a regional or statewide presence that meets the requirements of Section 2(2) of this administrative regulation.

Section 2. Requirements for the Kentucky Employees Charitable Campaign. (1) General Purpose. The purpose of the Kentucky Employees Charitable Campaign shall be to:

- (a) Provide an opportunity for employees to contribute to eligible Kentucky organizations through the state's payroll deduction process;
- (b) Ensure accountability for participants in regard to the funds raised;
- (c) Encourage the involvement of state employees as responsible citizens;
- (d) Give recognition to state employee volunteers; and
- (e) Minimize workplace disruption and administrative costs to Kentucky taxpayers by allowing only one (1) statewide payroll deduction charitable solicitation per year.

(2) An organization shall be considered to have a substantial Kentucky presence if the requirements established in this subsection are met.

(a) Services shall be available to state employees in the local community.

(b) Services shall directly benefit human beings whether children, youth, adults, the aged, the ill and infirm, or the mentally or physically disabled.

- (c) Services shall consist of:
  1. Care, research, education, or prevention in the fields of human health or social adjustment and rehabilitation;
  2. Relief for victims of natural disasters and other emergencies;

or

3. Assistance to those who are impoverished and in need of food, shelter, clothing, and basic human welfare services.

(3) The secretary shall approve a charitable organization for participation in the campaign if the charitable organization demonstrates:

- (a) Proof of tax exempt status pursuant to 26 U.S.C. 501(c)(3);
- (b) Proof of current registration and compliance with the reporting requirements of the Secretary of State and the Office of the Attorney General;
- (c) Proof of financial responsibility, including:
  1. Adoption of a detailed annual budget;
  2. Use of generally accepted accounting principles and procedures;
  3. The board of directors' approval for deviations from the approved budget; and
  4. An annual financial audit;
- (d) Proof of direction by an active volunteer board of directors, which shall meet regularly and whose members shall serve without compensation;
- (e) A written nondiscrimination policy;
- (f) Public disclosure of fundraising administrative costs with a

statement demonstrating that, if fund and administrative expenses are in excess of twenty-five (25) percent of total support and revenue, actual expenses for those purposes are reasonable under all the circumstances in its case; and

(g) Publication of an annual report available to the general public, which includes a full description of the organization's Kentucky activities including fundraising activities.

(4) A charitable federation may apply on behalf of all its [their] member organizations if both the federation and all federation members meet the criteria established in subsection (3) of this section.

(5) Authority of the Secretary of Personnel.

(a) The Secretary of Personnel shall have the full authority over the procedures and policies relating to the operation of the Kentucky Employees Charitable Campaign.

(b) The secretary shall designate a group of state employees to compose the Kentucky Employees Charitable Campaign Committee to make recommendations on related matters.

(c) The committee shall be composed of a cross-section of state employees, involving the large cabinets and small agencies.

(d) The chair of the committee shall be appointed by the secretary.

(6) Functions of the committee. The committee shall make recommendations on ~~[the following]~~:

(a) ~~The~~ designation of a campaign administrator who shall be:

1. ~~[The campaign administrator shall]~~ Serve for a minimum period of two (2) years; ~~and~~;

2. ~~[The campaign administrator shall]~~ Be charged to manage and administer the charitable fund campaign for the Commonwealth, subject to the direction and control of the Secretary of Personnel. The campaign administrator shall have statewide workplace campaign experience and have the necessary staff and volunteer support to administer the Kentucky Employees Charitable Campaign;

(b) ~~The~~ establishment of minimum amount, based on cost effectiveness, that an employee may authorize to be deducted for each approved charitable federation;

(c) The format of the brochure, pledge card, or other promotional materials for the annual campaign;

(d) The dates and duration of the campaign;

(e) The annual campaign budget submitted by the campaign administrator; and

(f) The costs of the campaign, which shall be:

1. Detailed in the budget; and

2. Borne by each recipient organization proportionally.

(7) Charitable federations to apply for statewide campaign.

(a) A federation desiring inclusion shall apply by February 15 of each year.

(b) A federation that has previously participated in the campaign shall update its application with a letter and a copy of the most recent year's audit.

(c) A charitable organization that has previously participated in the campaign shall be eligible if it fulfills all conditions of eligibility.

(8) The campaign administrator. The campaign administrator shall:

(a) Provide staffing to manage and administer the annual campaign, which includes preparing drafts of campaign materials for consideration by the Secretary of Personnel;

(b) Serve as the central accounting point for both campaign cash and for payroll deductions received from the Personnel Cabinet including:

1. The preparation and submission of an annual campaign budget. Costs of the campaign shall be divided among recipient organizations; and

2. A separate account maintained for managing the income and expenses of the campaign;

(c) Distribute campaign funds received from the Personnel Cabinet to participating organizations in accordance with agreed upon time periods. This shall include distribution of funds to designated nonprofit agencies;

(d) Provide an end-of-campaign report to the Secretary of Personnel and to participating organizations; and

(e) Annually furnish a financial statement prepared by a

certified public accountant.

Section 3. Attendance; Hours of Work. (1) The number of hours a full-time employee shall be required to work shall be thirty-seven and one-half (37 1/2) hours per week or forty (40) hours per week, unless specified otherwise by the appointing authority or the statutes.

(2) The normal work day shall be from:

(a) 8 a.m. to 4:30 p.m., local time, Monday through Friday, for a thirty-seven and one-half (37 1/2) hour work schedule; or

(b) 8 a.m. to 5 p.m., local time, Monday through Friday, for a forty (40) hour work schedule.

(3) An appointing authority may require an employee to work hours and days other than regular days and hours, including an overtime or inclement weather schedule if it is in the best interest of the agency.

(4) An employee who works for an agency that requires more than one (1) shift or seven (7) days a week operation may be reassigned from one (1) shift to another or from one (1) post to another or alternate days off by the agency to meet staffing requirements or to maintain security or provide essential services of the agency.

(5) An employee shall give reasonable notice in advance of absence from an official [a] work station or alternate work station.

Section 4. Official Work Station, Alternate Work Station, and Temporary Assignment. (1) Each employee shall be assigned an official [a] work station and may be assigned one (1) or more additional alternate work stations by the appointing authority.

(2) An official [A] work station or alternate work station may be changed to better meet the needs of the agency.

(3) An employee may be temporarily assigned to a different official work station or alternate work station in a different county. The assignment shall be to the same job classification.

(a) If an employee is temporarily assigned to a different official work station or alternate work station in a different county, the assignment shall not last more than sixty (60) calendar days.

(b) Temporary assignment may be renewed with prior approval of the Secretary of Personnel.

(c) A temporarily reassigned employee shall be reimbursed for travel expenses in accordance with 200 KAR 2:006, and the appointing authority shall notify the employee in writing prior to the effective date of the action.

(4) An appointing authority may assign an employee to work in a different site within the county of employment within the same job classification.

Section 5. Dual Employment. An employee holding a full-time position covered under KRS Chapter 18A shall not hold another KRS Chapter 18A position except upon recommendation of the appointing authority and the written approval of the secretary.

Section 6. Notice of Resignation and Retirement. (1) An employee who decides to terminate his or her service shall submit a written resignation or notice of retirement to the appointing authority.

(2) A resignation or notice of retirement shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's notice shall be attached to the separation personnel action and placed in the personnel files maintained by the agency and the Personnel Cabinet.

(3) Failure of an employee to give fourteen (14) calendar days' notice may result in forfeiture of accrued annual leave, based on:

(a) If the fourteen (14) day deadline was:

1. Practicable under the circumstances;

2. Appropriate for the situation; and

3. Complied with; or

(b) If the appointing authority and the employee have agreed that the employee shall retain the leave.

(4) The effective date of a separation shall be the next calendar day following the last work day unless the employee has been approved for the use of annual, compensatory, or sick leave prior to termination.

Section 7. Records and Reports. (1) An appointing authority shall provide a request to the Personnel Cabinet for a personnel action or status change.

(a) The Secretary of the Personnel Cabinet shall determine which personnel actions warrant a Personnel Action Notification to the employee, in accordance with KRS 18A.020 and 18A.095.

(b) The secretary shall provide a Personnel Action Notification to the appointing authority.

(c) The appointing authority shall provide a copy of a Personnel Action Notification to the employee affected by the action.

(2) The secretary shall maintain a leave record showing for each employee:

- (a) Annual leave earned, used and unused;
- (b) Sick leave earned, used and unused;
- (c) Compensatory leave earned, used and unused; and
- (d) Special leave or other leave with or without pay.

Section 8. Telecommuting. (1) Telecommuting shall be a work arrangement in which a selected state employee is allowed to perform the normal duties and responsibilities of his or her position through the use of computer or telecommunications at home or another place apart from the employee's usual official work station or alternate work station.

(2) An appointing authority may establish a telecommuting program for all or any part of the agency.

(3) Eligibility and selection for participation in a telecommuting program shall be the decision of the agency, with no implied or specific right to participation being granted to an employee.

(4) The telecommuter's conditions of employment shall remain the same as for a nontelecommuting employee.

(a) Employee salary, benefits, and employer-sponsored insurance coverage shall not change as a result of telecommuting.

(b) The telecommuter shall be responsible for the security and confidentiality of data, as well as the protection of state-provided equipment, used and accessed during telecommuting.

(c) The telecommuter shall agree to maintain a clean, safe workplace.

(d) An on-site visit by the employer for monitoring of safety issues shall not require advance notice by the employer.

Section 9. Workplace Violence Policy. (1) Workplace violence shall be prohibited and shall include:

(a) The attempted, threatened, or actual conduct of a person who endangers or is likely to endanger the health and safety of state employees or the general public; or

(b) A threatening statement, harassment, or behavior that gives a state employee or member of the general public reasonable cause to believe that his or her health or safety is at risk.

(2) Examples of prohibited workplace violence shall include:

(a) Threats of harm;

(b) Brandishing or displaying a weapon or an object that looks like a weapon in a manner that would present a safety risk to a state employee or a member of the general public or threatens or intimidates them;

(c) Intimidating, threatening, or directing abusive language toward another person, either verbally, in writing or by gesture;

(d) Stalking;

(e) Striking, slapping, or otherwise physically attacking another person; or

(f) Disobeying or failing to follow the reasonable directive of a supervisor to take action or cease actions that create a risk to the health or safety of a state employee or the public or threatens or intimidates them.

(3) Violation of this section shall constitute grounds for disciplinary action and referral for criminal prosecution.

Section 10. Issuance of Pay to State Employees. (1) Pay shall be issued to state employees on the 15th and 30th day of each month.

(2) If the regularly scheduled pay date falls on a weekend, state employees shall be issued pay on the preceding Friday.

(3) If the regularly scheduled pay date falls on a state holiday, as defined in KRS 18A.190, pay shall be issued on the workday preceding the holiday.

Section 11. Incorporation by Reference. (1) "Personnel Action Notification", PAN, August 2011, is incorporated by reference.

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

CONTACT PERSON: Rosemary Holbrook, Assistant General Counsel, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email RosemaryG.Holbrook@ky.gov.

**BOARDS AND COMMISSIONS**  
**Kentucky State Board of Accountancy**  
**(As Amended at ARRS, May 11, 2021)**

**201 KAR 1:100. Continuing professional education requirements.**

RELATES TO: KRS 325.330

STATUTORY AUTHORITY: KRS 325.240(2), 325.330(4)(a), (7)(b)1.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.240(2) authorizes the Kentucky State Board of Accountancy to promulgate administrative regulations for the administration of KRS Chapter 325. KRS 325.330(4) and (7)(b)1 require the board to promulgate administrative regulations to establish the continuing professional education requirements for certified public accountants. This administrative regulation establishes the continuing professional education requirements a certified public accountant shall satisfy to renew a license.

Section 1. Definitions. (1) "Continuing professional education hour" or "CPE hour" means a fifty (50) minute period excluding meals, breaks, and business sessions.

(2) "Technical standards courses" means continuing education courses if the subject matter area of the courses are accounting, auditing, business law, economics, finance, information technology, management services, professional ethics, statistics, securities, tax, and specialized areas of industry, all of which shall contribute directly to the professional competence of a licensee.

(3) "Worked" means hours devoted by a licensee that are documented as billable and nonbillable hours to a public accounting firm or client.

Section 2. Requirements for Continuing Professional Education Credit. (1) ~~A~~ [Each] licensee who worked 3,000 hours or more in a public accounting firm licensed with the board during the two (2) calendar years prior to the renewal date of his or her license shall complete eighty (80) CPE hours. The eighty (80) hours shall be completed during the preceding two (2) calendar years. All other licensees shall complete sixty (60) CPE hours.

(a) Beginning January 1, 2021, fifty (50) percent of the eighty (80) hours and sixty (60) hours shall include technical standards courses.

(b) Beginning January 1, 2021, licensees who worked in a public accounting firm licensed with the board during the two (2) calendar years prior to the renewal date of his or her license and who perform attest services, as defined in KRS 325.220, or compilation or preparation of financial statement engagements subject to the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Accounting and Review Services (SSARS)]

1. Attest services, as defined in KRS 325.220; or  
2. Compilation or preparation of financial statement engagements subject to the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Accounting and Review Services (SSARS)] [prepare audits,

reviews, compilations, or the preparation of financial statements] shall complete eight (8) hours of CPE in the subject matter area of auditing or accounting each calendar year for a total of sixteen (16) hours per reporting period.

(c) Beginning January 1, 2021, licensees required to obtain eighty (80) hours of CPE may include eight (8) hours of personal development courses toward the required hours, and licensees required to obtain sixty (60) hours of CPE may include up to twelve (12) hours of personal development courses in the required hours. An acceptable personal development course shall be limited to a course intended to improve the time management, leadership, team building, goal setting, and similar soft skills related to working in an office or professional setting.

(2) **A [Each]** licensee shall complete two (2) CPE hours in professional ethics. These two (2) hours shall be included as part of the eighty (80) or sixty (60) CPE hours a licensee is required to complete to renew his or her license.

(3)(a) A certified public accountant who, for the two (2) calendar years prior to renewal of his or her license, did not operate or work in an office in this state shall satisfy the requirements of this section by complying with the continuing professional education requirements for renewal of his or her license:

1. In the state in which the licensee's principal office is located; or

2. In the state in which the office is located where the licensee worked a majority of the time.

(b) If the state designated by paragraph (a) of this subsection does not have continuing professional education requirements for renewal of a license, the licensee shall comply with all continuing professional education requirements for renewal of a license in this state.

Section 3. **A [Each]** licensee who held a license for less than a full two (2) calendar year period shall obtain two (2) CPE hours for each full month a license was held not to exceed the total number of required hours for the reporting period. The two (2) hours in professional ethics shall not be required to be part of the CPE hours completed in this time period.

Section 4. Waivers from Continuing Professional Education. (1) A reduction or waiver may be granted by the board if the licensee:

(a) Establishes that he or she is temporarily physically or psychologically unable to complete the continuing professional education requirements. The licensee shall submit an Initial Request for Waiver of CPE Requirements form with each request and a written statement:

1. From a licensed physician or other appropriate licensed health care provider that substantiates the physical or psychological claim of the licensee; and

2. That describes the licensee's working status during the time the licensee was unable to complete the continuing education, the licensee's current working status, and if the licensee plans to return to work;

(b) Has encountered a temporary extreme hardship, which was so severe that it was extremely difficult or impossible to meet the continuing professional education requirements. The licensee shall submit an Initial Request for Waiver of CPE Requirements form **with each request** and a written statement **that [with each request]**:

1. **[That]** Describes in detail the facts associated with the extreme hardship; and

2. **Provides** documentation to substantiate the extreme hardship; or

(c) Is completely retired from practice and is fifty-five (55) years of age or older. To be considered completely retired, the licensee shall not perform accounting services in the practice of public accounting (which includes the preparation of tax returns), education, government, or industry except for management of personal assets or investments.

(2) The board shall advise a licensee in writing whether the request is approved or denied.

(3) A licensee granted a waiver shall reaffirm the basis of the

waiver when the license is next renewed by completing the:

(a) License Renewal - CPE Waiver Due to Medical or Extreme Personal Hardship form; or

(b) License Renewal - CPE Retirement Waiver form.

(4) A licensee completing the License Renewal - CPE Waiver Due to Medical or Extreme Personal Hardship form shall submit with the form updated medical documentation to support that the basis of the waiver continues to limit the licensee's ability to meet the CPE requirements.

(5) If the circumstances which form the basis of the waiver change, the licensee shall notify the board within thirty (30) days from the date of the change and resume compliance with the continuing professional education requirements from the date of the change.

(6) If the waiver request is granted, the licensee shall pay the license renewal fee listed in 201 KAR 1:065 on or before August 1.

Section 5. Courses that Qualify. (1) The overriding consideration in determining whether a specific course qualifies as acceptable continuing professional education shall be whether it is a formal program of learning which contributes directly to the professional competence of an individual licensed to practice as a certified public accountant in this state.

(2) Continuing professional education courses may qualify only if:

(a) An outline of the course is prepared in advance and preserved;

(b) The course is at least one (1) CPE hour in length. Credit shall be awarded for a course less than fifty (50) minutes in length if it is part of a continuing professional education program where at least one (1) fifty (50) minute course is also being offered;

(c) The course is conducted by a qualified instructor. A qualified instructor or discussion leader shall be anyone whose background training, education, or experience makes it appropriate for him or her to lead a discussion on the subject matter of the particular course;

(d) A record of registration or attendance is maintained;

(e) A course completion document is given to each attendee; and

(f) The course topic is an acceptable field of study.

(3) Acceptable fields of study.

(a) The following fields of study shall be considered acceptable if the courses satisfy all of the criteria established in subsections (1), (2), and (5) of this section:

1. Any of the courses defined in Section 1(2) of this administrative regulation;

2. Business communications; **or [and]**

3. Marketing.

(b) The responsibility for substantiating that a particular course is acceptable and meets the requirements of this administrative regulation shall be the obligation of the licensee.

(4) Acceptable programs. The following programs qualify for credit if they meet the standards specified in subsections (1), (2), (3), and (6) of this section:

(a) Professional education and development programs of national, state, and local accounting organizations;

(b) University or college courses; **[.]**

1. Credit and not for credit courses completed at or through a university or college that is accredited by one (1) of the (6) six regional accrediting associations listed in 201 KAR 1:190, Section 5;

2. Documentation to verify completion of a course shall be issued by the appropriate representative of the university or college; **and[.]**

3. Each unit of credit for a university or college course shall be equal to the following CPE hours:

a. One (1) semester hour equals fifteen (15) CPE hours; and

b. One (1) quarter hour equals ten (10) CPE hours; **or [and]**

(c) Formal in-firm education programs. Portions of a program devoted to firm administrative, financial, and operating matters shall not qualify.

(5) Formal individual study courses, Web casts, and online learning courses.

(a) The amount of credit allowed for any individual study course shall be recommended by the course sponsor.

(b) A licensee claiming credit for an individual study course shall obtain evidence of satisfactory completion of the course from the course sponsor.

(c) Credit shall be assigned to the reporting period in which the provider indicates the course was completed.

(6) Service as lecturer, discussion leader, or speaker.

(a) Instructors, discussion leaders, and speakers may claim continuing professional education credit for both preparation and presentation time.

(b) Credit may be claimed for actual preparation time up to two (2) times the class contact hours. (c) Credit as an instructor, discussion leader, or speaker may be claimed if the presentation is one which would meet the requirements of this section.

(d) Credit shall not be granted for repetitious presentations of courses unless it can be demonstrated that the course content was substantially changed and the change required significant additional study or research.

(e) Maximum credit for preparation and teaching shall not exceed sixty (60) percent of the renewal period requirement.

(7) Published articles and books.

(a) A licensee may be awarded credit for articles or books the licensee writes if:

1. The subject matter of the article or book contributes directly to the professional competence of the licensee; and

2. Prior to publication, the licensee submits a final draft of the article or book to the board to review and determine the amount of credit to be awarded.

(b) Credit for preparation of the article or book shall not exceed twenty-five (25) percent of the total CPE hours required.

(c) The board shall make the final determination of the amount of credit to be granted.

(8) Certifications and licenses. Licensees who receive a certification or license from a nationally organized business organization or a federal governmental entity following successful completion of an exam in one (1) of the fields of study listed in subsection (3) of this section shall receive credit only for the length of time assigned by the organization or governmental entity to complete the examination.

Section 6. Programs that deal with the following subject areas shall not be considered acceptable continuing education:

(1) Self-realization;

(2) Spirituality;

(3) Personal health or fitness;

(4) Sports and recreation;

(5) Foreign languages or cultures; and

(6) Any other subjects that do not contribute directly to the professional competence of the licensee.

Section 7. Reporting and Controls. (1) **A** **[Each]** licensee shall obtain the appropriate documentation to establish that he or she completed the continuing professional education requirements.

(2) **The** **[This]** documentation shall be retained by **the** **[each]** licensee for a period of five (5) years.

(3) The board shall conduct annually a random audit to verify a certain percentage of licensees completed the amount of continuing professional education hours required to renew his or her license. A licensee who misrepresented that he or she completed the sixty (60) or eighty (80) CPE hours at the time the licensee renewed his or her license shall not be eligible for a retirement, medical, or extreme personal hardship waiver after being selected to participate in an audit.

(4) Course completion evidence shall consist of a document prepared by the course sponsor indicating the licensee completed a formal program of learning. A document shall include the: (a) Names of the licensee and program sponsor;

(b) Title and field of study;

(c) Dates attended; and

(d) Number of CPE hours awarded.

(5) A licensee who completed continuing professional education courses that complied with the requirements of this

administrative regulation and were presented by or on behalf of his or her employer may submit to the board a list of the courses completed if the list contains the:

(a) Information described in subsection (4) of this section; and

(b) Signature of the person at the licensee's place of employment who verifies the accuracy of the information for a third party.

Section 8. Continuing Professional Education Sponsors. (1) Sponsors shall not be required to be preapproved by the board.

(2) Detailed records of each program shall be kept by the sponsor and shall include:

(a) The date of the program presentation;

(b) The name of each instructor or discussion leader;

(c) A listing of licensees attending each program presentation; and

(d) A written agenda of the program presentation.

(3) Records shall be kept by the sponsor for a period of five (5) years following the date each program is presented.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference: (a) "Initial Request for Waiver of CPE Requirements", September 2016;

(b) "License Renewal-CPE Waiver Due to Medical or Extreme Personal Hardship", September 2016; and

(c) "License Renewal-CPE Retirement Waiver", September 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Joseph P. Donohue, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281, email joep.donohue@ky.gov.

## BOARDS AND COMMISSIONS

### Board of Pharmacy

(As Amended at ARRS, May 11, 2021)

#### 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)** [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 or mucocutaneous fungal infection;

(5) Alcohol use disorder **utilizing naltrexone-based therapy pursuant to recommendations from the American Psychiatric Association**;

(6) Allergic rhinitis;

(7) Anaphylaxis;

(8) Colorectal cancer prevention and screening;

(9) HCV infection screening;

(10) HIV infection prophylaxis, **pre-exposure and post-exposure pursuant to recommendations by the CDC**;

(11) HIV infection screening **pursuant to recommendations by the CDC**;

(7) HIV infection prevention through pre-exposure prophylaxis pursuant to recommendations by the CDC];

(12) Nutritional supplementation with vitamins and minerals;

(13) Opioid use disorder pursuant to recommendations by the American Society of Addiction Medicine;

(14) Tobacco use disorder;

(15) Traveler's health pursuant to recommendations by the CDC;

(16) Tuberculosis prevention and control through skin testing, and referral as necessary, pursuant to recommendations by the CDC; and

(17) Self-care conditions appropriately treated with over-the-counter medications and products.

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## BOARDS AND COMMISSIONS

### Board of Nursing

(As Amended at ARRS, May 11, 2021)

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

RELATES TO: KRS **218A.010, 218A.170,** 314.011, 314.042, **218A.010, 218A.170,** 21 U.S.C. 823, **42 U.S.C. 1395**

STATUTORY AUTHORITY: KRS 314.131

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

Section 1. Definitions.

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

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

(3) **"Consultation" means the process by which an APRN directs the patient to a physician, APRN, or other specialist, as required by Section 3(3)(a), Section 3(4)(b)2.(2), or Section 3(4)(g)2.(2) of this administrative regulation to render an opinion with regard to the prescribing of Buprenorphine to the patient, and includes the requirements as established in Section 8 of this administrative regulation. [Consultation does not require an in-person visit. It may include a discussion by the APRN and the consultant by telephone or other appropriate electronic communication. The consultant may recommend further evaluation which may be either in-person, by telehealth, or a records review. It is the responsibility of the APRN to initiate a consultation and to communicate clearly to the consultant that the APRN is seeking a consultation. A consultation may involve the consultant providing advice and information to the APRN or patient. It is the responsibility of the APRN to provide all relevant client records to the consultant, including a written summary of the client's history and presenting problem, as deemed appropriate by the consultant. Consultation shall be fully documented by the APRN in the patient's record, including the consultant's name, date of service, and the consultant's findings, opinions, and recommendations. The APRN shall discuss the consultant's recommendations with the patient.]** ["Mental health counseling" means the provision of guidance, by a qualified health professional as defined at KRS 202A.011(12), to the individual through the utilization of methodologies such as the collection of case history data, valid and reliable screening tools, and psychological techniques such as the personal interview.]

Section 2. Minimum Qualifications for Prescribing Buprenorphine. An advanced practice registered nurse (APRN) shall not prescribe Buprenorphine for Opioid Use Disorder unless that APRN possesses the minimum qualifications established in this section.

(1) The APRN shall obtain and maintain in good standing a DATA 2000 waiver and registration as issued by the United States Drug Enforcement Administration (DEA) to prescribe Buprenorphine for the treatment of Opioid Use Disorder.

(2) The APRN shall:

(a) Be a DEA-registered prescriber of Buprenorphine; and  
(b) Have obtained medication assisted treatment education through completion of a Substance Abuse and Mental Health Services Administration (SAMHSA) sponsored course.

(3) The APRN shall provide to the board a copy of the DEA Controlled Substance Registration Certificate as required by 201 KAR 20:057, Section 6(4), via the APRN Update online portal at [https://kbn.ky.gov/aprn\\_practice/Pages/aprn\\_update.aspx](https://kbn.ky.gov/aprn_practice/Pages/aprn_update.aspx).

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

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

(6) The APRN shall comply with all federal statutes and regulations pertaining to the prescribing of controlled substances via telehealth for medication assisted treatment for opioid use disorder.

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

Section 3. Professional Standards for Prescribing Buprenorphine for Supervised Withdrawal or the Treatment of Opioid Use Disorder.

(1) Buprenorphine may be prescribed for supervised withdrawal or as a maintenance treatment for a patient diagnosed with opioid use disorder in accordance with the standards established by this administrative regulation.

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

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

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

(c) As administered under supervision in an APRN's office or other healthcare facility, including hospitals, urgent care settings, surgical care centers, residential treatment facilities, and correctional facilities; or

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

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

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

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

a. Addictions Nursing Certification Board;  
b. American Academy of Health Care Providers in the Addictive Disorders; or  
c. National Certification Commission for Addiction Professionals; or

3. A psychiatric-mental health nurse practitioner.

(b) An APRN may prescribe buprenorphine to a patient who is also being prescribed benzodiazepines, other sedative hypnotics,

stimulants, or other opioids, without consultation in order to address a documented extraordinary and acute medical need not to exceed a combined period of thirty (30) days.

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

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

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

a. The patient's history of present illness;  
b. The patient's history of drug use;  
c. The patient's social and family history;  
d. The patient's medical and psychiatric histories;  
e. A focused physical examination of the patient; and  
f. Appropriate laboratory tests, which ~~may~~shall include a

complete blood count (CBC), a comprehensive quantitative drug screen, liver function tests, a complete metabolic panel (CMP), HIV screening, and hepatitis serology[;]. If an appropriate justification for initiation of treatment in advance of the review of laboratory tests is documented by the APRN, this subsection shall be satisfied though the documentation of a plan for obtaining and reviewing the laboratory tests required by this subsection within thirty (30) days of initiating treatment.

2. Document a plan to obtain ~~[Obtain]~~ the patient's consent and authorizations in order to obtain and discuss the patient's prior medical records within thirty (30) days of initiating treatment, which shall require:

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

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

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

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

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

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

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

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

(b) 1. Prior to initiating treatment, the APRN shall recommend ~~[require]~~ that female patients of child bearing age and ability ~~[the patient]~~ submit to a pregnancy test and, if pregnant, the APRN shall provide counseling as to the risk of neonatal abstinence syndrome which shall be consistent with current SAMHSA guidance. The APRN shall document a patient's decision to decline to take a pregnancy test and the stated rationale for the patient's decision.

2. Prior to prescribing buprenorphine to a patient who is pregnant or breastfeeding, an APRN who is not an obstetrical care provider shall have a plan to obtain and document consultation with an obstetrical care provider to co-manage the patient's care. The APRN shall document a patient's decision to decline consultation referenced in this subsection, and the stated rationale for the patient's decision ~~[obstetrician or a maternal fetal medicine specialist who holds a DATA 2000 waiver that determines the potential benefit of Buprenorphine use outweighs the potential risk of use].~~

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

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

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

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

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

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

a. May be followed by subsequent doses if withdrawal persists; and

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

(d) If the patient is transferred from another treatment provider and has previously experienced withdrawal without a relapse and has not had a lapse in treatment, the APRN shall:

1. Document the previous history of withdrawal;

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

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

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

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

1. Is necessary to minimize craving and opiate withdrawal;

2. Does not produce opiate sedation;

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

4. Does not exceed the FDA-approved dosage limit.

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

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

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

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

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

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

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

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

(g) After initial induction of Buprenorphine, the APRN shall review compliance with the recommendations of the treatment plan and drug screen results at each visit to help guide the treatment plan. Current [including review of] KASPER and [or] other relevant PDMP reports shall be obtained no less frequently than once every

three (3) months, [and drug screens] to help guide the treatment plan [at each visit].

1. The APRN shall:

a. Incorporate those findings into the treatment plan to support the continuation or modification of treatment; and  
b. Accurately document the same in the patient record.

2. Appropriate evaluation of continued Buprenorphine prescribing shall include documented consideration of initial laboratory test results as specified in subsection (4)(a) [1. B]. of this section, subsequent laboratory test results, and the patient's prior medical records. [7.7] Appropriate evaluation of continued Buprenorphine prescribing shall also include, if appropriate and relevant, [may include] adjustment of dose strength or frequency of visits, increased screening, a consultation with or referral to a specialist, or an alternative treatment, including consideration of weaning, if weaning is clinically appropriate.

3. The APRN shall obtain a minimum of eight (8) drug screens from the patient within each

twelve (12) month period of treatment in order to help guide the treatment plan.

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

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

c. The two (2) drug screens confirmed by gas chromatography/ mass spectrometry (GC/MS) or liquid chromatography/ mass spectrometry (LC/MS) shall screen for buprenorphine, methadone, opioids, THC, benzodiazepines, amphetamines, alcohol, gabapentin, and cocaine.

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

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

(ii) Document in the patient record.

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

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

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

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

(j) The APRN shall document a plan for dealing with any lost or stolen medication, which shall not provide for the automatic replacement of medication prior to the specified interval date.

Replacement medication shall not be authorized by the APRN in the absence of an individual assessment, specific consideration of all prior instances of lost or stolen medication, and documented discussion [consultation] with the patient.

(k) After initial induction, the APRN shall:

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

2. Require the patient to obtain an evaluation by a qualified mental health professional as defined in KRS 202A.011(12), with

expertise in addiction, within ninety (90) days of initiating treatment, and to comply with the evaluator's recommendations.]

Section 4. Continuing Education. An APRN who has obtained a waiver and registration as issued by the DEA to prescribe buprenorphine for the treatment of Opioid Use Disorder shall complete a total of four (4) hours annually in addiction disorders, including the one and one-half (1.5) contact hours in pharmacology as defined by 201 KAR 20:215, Section 5(1)(c). The pharmacology hours shall/must be on the dual subjects of addiction disorders and pharmacology.

Section 5. Use of Transmucosal Buprenorphine for Treatment of Opioid Use Disorder in an Emergency Situation or Inpatient Setting.

(1) In an emergency, including in a hospital emergency department or similar outpatient urgent care setting, or in an inpatient setting, an APRN may offer and initiate buprenorphine treatment to patients who present with opioid use disorder, without meeting the requirements established in Sections 2 and 3 of this administrative regulation and to the extent permitted by federal law, if:

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

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

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

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

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

Section 7. Documented Deviation from Professional Standards for Prescribing Buprenorphine. If an APRN is unable to conform to professional standards for prescribing Buprenorphine as set forth in this administrative regulation due to circumstances beyond the APRN's control, or the APRN 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 APRN shall document those circumstances in the patient's record and only prescribe Buprenorphine to the patient if the patient record appropriately justifies the prescribing under the circumstances and in accordance with SAMHSA guidelines.

**Section 8. Consultation Requirements.**

**(1) Consultation shall not require an in-person visit.**

**(2) It may include a discussion by the APRN and the consultant by telephone or other appropriate electronic communication.**

**(3) The consultant may recommend further evaluation which may be either in-person, by telehealth, or a records review.**

**(4) It is the responsibility of the APRN to initiate a consultation and to communicate clearly to the consultant that the APRN is seeking a consultation.**

**(5) A consultation may involve the consultant providing advice and information to the APRN or patient.**

**(6) It is the responsibility of the APRN to provide all relevant client records to the consultant, including a written**

**summary of the client's history and presenting problem, as deemed appropriate by the consultant.**

**(7) Consultation shall be fully documented in writing by the APRN in the patient's record, including the consultant's name, date of service, and the consultant's findings, opinions, and recommendations.**

**(8) The APRN shall discuss the consultant's recommendations with the patient.**

CONTACT PERSON: Morgan Ransdell, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 415-3964, email Morgan.Ransdell@ky.gov.

**BOARDS AND COMMISSIONS**

**Board of Nursing**

**(As Amended at ARRS, May 11, 2021)**

**201 KAR 20:370. Applications for licensure.**

RELATES TO: KRS 314.041, 314.042, 314.051, 314.071, 314.091, 314.103, 314.475

STATUTORY AUTHORITY: KRS 314.041, 314.042, 314.051, 314.071, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.041, 314.042, 314.051, and 314.071 require the board to review an application for licensure and a licensee for conformity with KRS Chapter 314. This administrative regulation establishes requirements and procedures for [nursing] licensure.

Section 1. To be eligible for licensure by examination, endorsement, renewal, reinstatement, retired licensure status, or for advanced practice registered nurse licensure, renewal, or reinstatement, an applicant shall:

(1) Submit the completed application form to the board office, for:

(a) RN or LPN licensure by examination, endorsement, or reinstatement, Application for Licensure;

(b) RN or LPN Renewal, Annual Licensure Renewal Application: RN or LPN;

(c) Licensure or reinstatement as an advanced practice registered nurse, Application for Licensure as an Advanced Practice Registered Nurse;

(d) Renewal as an RN and an APRN, Annual Licensure Renewal Application: RN and APRN;

(e) Licensure as an RN and as an APRN, Application for RN and APRN Licensure;

(f) Retired licensure status, Application for Retired Status;

(g) APRN renewal with an RN Compact license, Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky);

(h) APRN renewal with a Kentucky RN License, Annual Licensure Renewal Application, APRN with Kentucky RN License; or

(i) In addition to any other renewal form, for APRN renewal, APRN Practice Data;

(2) Submit the current application fee, as required by 201 KAR 20:240;

(3) Submit a certified or attested copy of the court record of each misdemeanor or felony conviction in this or any other jurisdiction and a letter of explanation that addresses each conviction, except for traffic-related misdemeanors (other than DUI) or misdemeanors older than five (5) years;

(4) Submit a certified copy of a disciplinary action taken in another jurisdiction with a letter of explanation or report a disciplinary action pending on a nurse licensure application or license in another jurisdiction;

(5) Have paid all monies due to the board;

(6) Submit a copy of an official name change document (court order, marriage certificate, divorce decree, Social Security card), if

applicable;

(7) Submit additional information as required by the board in 201 KAR Chapter 20;

(8) Meet the additional requirements for:

(a) Licensure by examination established by 201 KAR 20:070;

(b) Licensure by endorsement established by 201 KAR 20:110;

(c) Licensure by reinstatement established by 201 KAR 20:225;

(d) Licensure by renewal established by 201 KAR 20:230;

(e) Retired nurse or inactive licensure status established by 201 KAR 20:095; or

(f) Advanced practice registered nurse licensure, renewal, or reinstatement established by 201 KAR 20:056;

(9) If not a citizen of the United States, maintain proof of legal permanent or temporary residency under the laws and regulations of the United States; and

(10) Notify the board upon establishment of a new mailing address.

Section 2. An application shall lapse and the fee shall be forfeited if the application is not completed:

(1) For an application for licensure by endorsement, within six (6) months from the date the application form is filed with the board office;

(2) For an application for licensure by examination, within one (1) year from the date the application form is filed with the board office or the date the applicant fails the examination, whichever comes first; or

(3) For all other applications except renewal of license applications, within one (1) year from the date the application form is filed with the board office.

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

(a) "Application for Licensure", 1/2016, Kentucky Board of Nursing;

(b) "Annual Licensure Renewal Application: RN or LPN", 02/2021 [2/2020], Kentucky Board of Nursing;

(c) "Application for Licensure as an Advanced Practice Registered Nurse", 1/2016, Kentucky Board of Nursing;

(d) "Annual Licensure Renewal Application: RN and APRN", 02/2021 [2/2020], Kentucky Board of Nursing;

(e) "Application for RN and APRN Licensure", 1/2016, Kentucky Board of Nursing;

(f) "Application for Retired Status", 8/2004, Kentucky Board of Nursing;

(g) "Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky)", 02/2021 [2/2020], Kentucky Board of Nursing;

(h) "Annual Licensure Renewal Application, APRN with Kentucky RN License", 02/2021 [2/2020], Kentucky Board of Nursing; and

(i) "APRN Practice Data", 6/2012, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. **This material is also available on the board's Web site at <https://kbn.ky.gov/legalopinions/Pages/laws.aspx>.**

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## BOARDS AND COMMISSIONS

### Board of Nursing

(As Amended at ARRS, May 11, 2021)

**201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.**

RELATES TO: KRS 216B.400(2), (4), (5), 314.011(14), 314.103, 314.142, 314.475, 403.707, 421.500-421.575, 431.600-

431.660

STATUTORY AUTHORITY: KRS 314.131(1), 314.142(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.142(1) requires the board to promulgate administrative regulations to create a Sexual Assault Nurse Examiner Program. This administrative regulation establishes the requirements relating to a sexual assault nurse examiner course and the credentials of a sexual assault nurse examiner.

Section 1. Definitions. (1) "Adolescent" means a child who has reached the onset of physiologically normal puberty.

(2) "Pediatric" means a child who has not reached the age of eighteen (18).

(3) "SANE-A/A course" means a formal, organized course of instruction that is designed to prepare a registered nurse to perform forensic evaluation of an adult or adolescent sexual assault victim and to promote and preserve the victim's biological, psychological, and social health.

(4) "SANE course" means the SANE-A/A course and the SANE-P/A course.

(5) "SANE-P/A course" means a formal, organized course of instruction that is designed to prepare a registered nurse to perform forensic evaluation of a pediatric or adolescent sexual assault victim and to promote and preserve the victim's biological, psychological, and social health.

### Section 2. SANE Course Approval Application.

(1) On the form Application for Initial or Continued SANE Course Approval, the applicant for approval of a SANE-A/A course or a SANE-P/A course shall submit evidence to the board of completion of the requirements for course approval that consists of the following documentation:

(a) Position description and qualifications of the nurse administrator of the SANE course;

(b) Qualifications and description of the faculty;

(c) Course syllabus;

(d) Course completion requirements;

(e) Tentative course presentation dates;

(f) Records maintenance policy; and

(g) Copy of certificate of course completion form.

(2) Nurse administrator of SANE course. A registered nurse, with current, active Kentucky licensure or a multistate licensure privilege pursuant to KRS 314.475, a baccalaureate or higher degree in nursing, and experience in adult and nursing education shall be administratively responsible for assessment, planning, development, implementation, and evaluation of the SANE course.

(3) Faculty qualifications. Faculty qualifications shall be consistent with the instructor qualifications set out in Sexual Assault Nurse Examiner (SANE) Education Guidelines. The name, title, and credentials identifying the educational and professional qualifications for each instructor shall be provided as part of the application.

(4) Course syllabus. The syllabus shall include:

(a) Course prerequisites, requirements, and fees;

(b) Course outcomes, which shall provide statements of observable competencies, which if taken as a whole, present a clear description of the entry level behaviors to be achieved by the learner;

(c) Unit objectives for an individual, which shall be stated in operational or behavioral terms with supportive content identified;

(d) Content as specified in subsection (6) of this section, which shall be described in detailed outline format with corresponding lesson plans and time frame, and which shall be related to, and consistent with, the unit objectives, and support achievement of expected course outcomes;

(e) Teaching methods with the activities of both instructor and learner specified in relation to the content outline, and which shall be congruent with stated course objectives and content, and reflect the application of adult learning principles;

(f) Evaluation methods, which shall be clearly defined for evaluating the learner's achievement of course outcomes, and which shall include a process for annual course evaluation by

students, providers, faculty, and administration; and

(g) Instructional or reference materials required, which shall be identified.

(5) Completion requirements. Requirements for successful completion of the SANE course shall be clearly specified and shall include demonstration of clinical competency. A statement of policy regarding a candidate who fails to successfully complete the course shall be included.

(6) The SANE-A/A course and the SANE-P/A course content shall be consistent with Sexual Assault Nurse Examiner (SANE) Education Guidelines.

(a) In addition to that content, the SANE-A/A course and the SANE-P/A course shall include:

1. Observing live or previously recorded criminal trials and meeting with the Commonwealth Attorney or a representative from the Commonwealth Attorney's office in order to gain an understanding of the trial process including testifying;

2. Meeting with the local rape crisis center and a rape crisis center victim advocate in order to gain an understanding of the services provided to victims by rape crisis centers and the role of an advocate;

3. Meeting with local law enforcement officers or investigators responsible for investigating reports of rape or sexual assault in order to gain an understanding of the investigative process; and

4. Application of the Kentucky statewide medical protocol relating to the forensic and medical examination of an individual reporting sexual assault pursuant to KRS 216B.400(2) and (4), and (5). The victim's bill of rights, KRS 421.500 through 421.575.

(b) In addition to the requirements of paragraph (a) of this subsection, the SANE-P/A course shall include:

1. Principles of child development;

2. Techniques for acute evaluations;

3. An overview of Kentucky Child Advocacy Centers; and

4. An overview of KRS 431.600 through 431.660 which shall include information about multidisciplinary teams and their functions, model protocols approved by the Kentucky Multidisciplinary Commission on Child Sexual Abuse, and the role of peer review in child sexual abuse cases.

Section 3. Contact hour credit for continuing education. (1) The SANE course shall be approved for contact hour credit which may be applied to licensure requirements.

(2) Approval period. Board approval for a SANE course shall be granted for a four (4) year period.

(3) Records shall be maintained for a period of five (5) years, including the following:

(a) Provider name, date, and site of the course; and

(b) Participant roster, containing at a minimum the name, Social Security number, and license number for each participant.

(4) A participant shall receive a certificate of completion that documents the following:

(a) Name of participant;

(b) Title of course, date, and location;

(c) Provider's name; and

(d) Name and signature of authorized provider representative.

Section 4. Continued Board Approval of a SANE Course.

(1) An application for continued approval of a SANE course shall be submitted on the Application for Initial or Continued SANE Course Approval at least three (3) months prior to the end of the current approval period.

(2) A SANE course syllabus shall be submitted with the Application for Initial or Continued SANE Course Approval.

(3) Continued approval shall be based on the past approval period performance and compliance with the board standards described in this administrative regulation.

Section 5. The board may deny, revoke, or suspend the approval status of a SANE course for violation of this administrative regulation.

Section 6. Appeal. If a SANE course administrator is dissatisfied with a board decision concerning approval and wishes

a review of the decision, the procedure established in this section shall be followed.

(1) A written request for the review shall be filed with the board within thirty (30) days after the date of notification of the board action which the SANE course administrator contests.

(2) The board, or its designee, shall conduct a review in which the SANE course administrator may appear in person and with counsel to present reasons why the board's decision should be set aside or modified.

Section 7. Requirements for Sexual Assault Nurse Examiner (SANE) Credential.

(1) The applicant for the SANE-A/A or SANE-P/A credential shall:

(a) Hold a current, active registered nurse license in Kentucky or a multistate licensure privilege pursuant to KRS 314.475;

(b) Have completed a board approved SANE educational course or a comparable course, which the board or its designee shall:

1. Evaluate to determine its course comparability; and

2. Advise an applicant if the course is not comparable and specify what additional components shall be completed to allow the applicant to be credentialed.

(c) Complete the Sexual Assault Nurse Examiner Application for Credential;

(d) Pay the fee established in 201 KAR 20:240;

(e) Provide a criminal record check by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI);

(f) Use the FBI Applicant Fingerprint Card;

(g) Pay any required fee to the KSP and the FBI;

(h) Complete the criminal record check within six (6) months of the date of the application;

(i) Provide a certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(j) Provide a letter of explanation that addresses each conviction, if applicable.

(2) Upon completion of the application process, the board shall issue the appropriate SANE credential for a period ending October 31.

(3) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted under subsection (1)(e) of this section and any conviction is addressed by the board.

Section 8. Renewal. (1) To renew the SANE-P/A or the SANE-A/A credential for the next period, each sexual assault nurse examiner shall complete at least five (5) contact hours of continuing education related to the role of the sexual assault nurse examiner or forensic nursing within each continuing education earning period. A provider of a board approved SANE course may offer continuing education related to the role of the sexual assault nurse examiner.

(2) Upon completion of the required continuing education, completion of the Annual Credential Renewal Application: SANE Credential with RN in Kentucky or Annual Credential Renewal Application: SANE with RN Compact License (Not Kentucky), as applicable, and payment of the fee established in 201 KAR 20:240, the appropriate SANE credential shall be renewed at the same time the registered nurse license is renewed.

(3) The five (5) contact hours may count toward the required contact hours of continuing education for renewal of the registered nurse license.

(4) Failure to meet the five (5) contact hour continuing education requirement shall cause the SANE credential to lapse.

Section 9. Reinstatement. (1) If the SANE credential has lapsed for a period of less than four (4) consecutive registered nurse licensure periods, and the individual wants the credential reinstated, the individual shall apply to reinstate the credential by:

(a) Submitting the Sexual Assault Nurse Examiner Application for Credential;

- (b) Paying the fee established in 201 KAR 20:240;
  - (c) Submitting evidence of earning the continuing education requirement referenced in Section 8(1) of this administrative regulation for the number of registered nurse licensure periods since the SANE credential lapsed;
  - (d) Providing a criminal record check by the KSP and FBI;
  - (e) Using the FBI Applicant Fingerprint Card;
  - (f) Paying any required fee to the KSP and the FBI;
  - (g) Completing the criminal record check within six (6) months of the date of the application;
  - (h) Providing a certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and
  - (i) Providing a letter of explanation that addresses each conviction, if applicable.
- (2) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted under subsection (1)(d) of this section and any conviction is addressed by the board.
- (3) If the SANE credential has lapsed for more than four (4) consecutive licensure periods, the nurse shall complete a SANE course prior to reinstatement.

Section 10. The board shall obtain input from the Sexual Assault Response Team Advisory Committee concerning any proposed amendment to this administrative regulation as follows:

- (1) The board shall send a draft copy of any proposed amendment to the co-chairs of the Sexual Assault Response Team Advisory Committee prior to approval by the board;
- (2) The board shall request that comments on the proposed amendment be forwarded to the board's designated staff person within ninety (90) days; and
- (3) At the conclusion of that time period or upon receipt of comments, whichever is sooner, the board, at its next regularly scheduled meeting, shall consider the comments.

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

- (a) "Application for Initial or Continued SANE Course Approval", 10/2018;
- (b) "Sexual Assault Nurse Examiner Application for Credential", 10/2018;
- (c) "Annual Credential Renewal Application: SANE Credential with RN in Kentucky", 02/2021 [2/2020];
- (d) "Annual Credential Renewal Application: SANE with RN Compact License (Not Kentucky)", 02/2021 [2/2020]; and
- (e) "Sexual Assault Nurse Examiner (SANE) Education Guidelines", 2018, International Association of Forensic Nurses.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8:00 a.m. to 4:30 p.m. **This material is also available on the board's Web site at <https://kbn.ky.gov/legalopinions/Pages/laws.aspx>.**

**(3) The material in subsection 1(e) of this section may be obtained at [https://cdn.vmaxs.com/www.forensicnurses.org/resource/resmgr/education/2018\\_sane\\_edguidelines.pdf](https://cdn.vmaxs.com/www.forensicnurses.org/resource/resmgr/education/2018_sane_edguidelines.pdf).**

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**BOARDS AND COMMISSIONS**  
**Board of Nursing**  
**(As Amended at ARRS, May 11, 2021)**

**201 KAR 20:660. Licensed certified professional midwives duty to report.**

RELATES TO: KRS **61.878(1)(i)**, 213.046, Chapter 209A, 314.400 – 314.414, **61.874(1)(i)** 145 C.F.R. Part 164

STATUTORY AUTHORITY: KRS 314.131(1), 314.404  
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.404(10) **requires[authorizes][requires]** the board to promulgate an administrative regulation to require licensed certified professional midwives to report to the board annually as specified by the board information regarding cases in which the licensed certified professional midwife provided services when the intended place of birth at the onset of care was in an out-of-hospital setting. KRS 314.404(11) **requires[authorizes][requires]** the board to promulgate an administrative regulation to require licensed certified professional midwives to report to the board, within thirty (30) days of the occurrence, a case of newborn or maternal death attended by a licensed certified professional midwife at the discovery of death. **This administrative regulation establishes reporting requirements for licensed certified professional midwives and for the review of those reports.** [This administrative regulation establishes reporting requirements for licensed certified professional midwives and for the review of those reports.]

Section 1. Pursuant to KRS 314.404(11), within thirty (30) days [of the occurrence] of a case of newborn or maternal death, the attending LCPM shall report the occurrence to the Board of Nursing on LCPM Incident Form.

Section 2. Pursuant to KRS 314.404(10), an LCPM shall report the following information **on the LCPM Annual Report Form** to the Board of Nursing on or before September 1 of each year for the period July 1 through June 30 preceding:

- (1) The total number of clients served;
- (2) The number of live births;
- (3) The number of cases of fetal demise, newborn deaths, and maternal deaths;
- (4) The number, reason for, and outcome of each [referral;] transfer, or transport of a client in the antepartum, intrapartum, or immediate postpartum periods;
- (5) **The number and reason for each referral of a client in the antepartum, intrapartum, or immediate postpartum periods;**
- (6) A brief description of any complications resulting in the morbidity or mortality of a mother or a newborn for the first six (6) weeks; and
- (7) ~~[(6)]~~ The planned location of the delivery and the actual location of the delivery if it is different.

Section 3. The LCPM Advisory Council shall review all reports.

Section 4. (1) The LCPM shall comply with the requirements of KRS 213.046 regarding the reporting of birth.

(2) The LCPM shall comply with the requirements of KRS Chapter 209A regarding reporting of suspected domestic violence.

Section 5. (1) **Each** LCPM Incident **Form[forms]** and LCPM Annual Report **Form[forms]** submitted for LCPM Advisory Council review in accordance with Sections 1 **through[-]3** of this administrative regulation shall be regarded as correspondence with private individuals, not notice of the final action of a public agency, and shall not be disclosed to the public.

(2) **The Kentucky Board of Nursing shall make public aggregate incident and annual report data that does not identify individual licensees or information that would violate the confidentiality of information or knowledge concerning any patient, except as authorized or required by law such as pursuant to the Health Insurance Portability and Accountability Act [(HIPAA)] of 1996 (HIPAA), Pub. L. No. 104-191, 110 Stat. 1936.**

Section 6. Incorporation by Reference. (1) **The following material is[forms are]** incorporated by reference:

- (a) "LCPM Incident Form", 1/2020, ~~is incorporated by reference.]; and~~
  - (b) "LCPM Annual Report Form", 12/2020.
- (2) This material may be inspected, copied, or obtained,

subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8:00 a.m. to 4:30 p.m. **This material is also available on the board's Web site at <https://kbn.ky.gov/legalopinions/Pages/laws.aspx>.**

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**LABOR CABINET  
Department of Workers' Claims  
(As Amended at ARRS, May 11, 2021)**

**803 KAR 25:092. Workers' compensation pharmacy fee schedule.**

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.020, 342.035, 342.260, 342.270, 342.735

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035 requires the commissioner [Workers' Compensation Board] to ~~[periodically]~~ promulgate administrative regulations to ~~establish~~~~[adopt]~~ a schedule of fees for the purpose of ensuring that all fees, charges, and reimbursements under KRS 342.020 shall be fair, current, reasonable, and limited to that paid for similar treatment of other patients in the same community. **KRS 342.035(1) authorizes the commissioner to consider the increased security of payment afforded by KRS Chapter 342 in determining what constitutes a reasonable fee.**~~The Workers' Compensation Act may be taken into consideration in determining what fees are reasonable.~~ KRS 342.735 requires the commissioner [board] to establish administrative regulations to expedite the payment of medical expense benefits. ~~[The function of]~~ This administrative regulation establishes~~[is to regulate]~~ charges for pharmaceuticals provided pursuant to KRS 342.020~~;~~ and expedites~~[to expedite]~~ the payment of this class of medical expense benefits.

Section 1. Definitions. (1) **"Brand drug" means a drug product identified as a brand by Medi-span or any other drug product commercially available from only one (1) source. ["Brand name" has the meaning set forth in KRS 217.814(1).]**

(2) "Compound" is defined by/in 803 KAR 25:270, Section 1(3).

(3) [(2)] "Equivalent drug product" is defined by/has the meaning set forth in KRS 217.814(5).

(4) [(3)] **"Generic drug" means a drug that is not a brand drug.** ["Generic name" has the meaning set forth in KRS 217.814(6) [(2)].]

(5) [(4)] "Hospital" is defined by/has the meaning set forth in 803 KAR 25:091, Section 1(1).

(6) "Medical payment obligor" is defined by/in 803 KAR 25:260, Section 1(10).

(7) "Medical provider" is defined by/in 803 KAR 25:260(11). [(5)] "Practitioner" means any person licensed under the professional laws of Kentucky or any other state to prescribe and administer medicine and drugs.

(6) "Wholesale price" means the average wholesale price charged by wholesalers at a given time.]

(8) "NDC number" means the unique eleven (11) digit, three (3) segment~~[14]~~~~[40]~~~~[digit, 3-segment]~~, number assigned to a drug product and maintained in the NDC Directory published by the U.S. Food and Drug Administration.

(9) "Pharmacist" is defined by/in 803 KAR 25:270, Section 1~~[260]~~~~(15)~~.

(10) "Pharmacy benefit manager" means an entity licensed pursuant to KRS 304.9-053 that, on behalf of a medical payment obligor:

(a) Contracts directly or indirectly with pharmacies to provide prescription drugs to individuals;

(b) Administers a prescription drug benefit;

(c) Processes or pays pharmacy claims;

(d) Makes or assists in making prior authorization determinations on prescription drugs; or

(e) Establishes a pharmacy network.

(11) "Prescription drug" is defined by/in 803 KAR 25:270, Section 1(18).

(12) "Repackage" means the act of taking a finished drug product from the container in which it was distributed by the original manufacturer and placing it into a different container without further manipulation of the drug.

**(13) "Usual and customary" means the charge a provider would apply to an otherwise uninsured patient.**

Section 2. Payment for Pharmaceuticals. (1) Reimbursement shall be determined on the date of service. The maximum allowable reimbursement for prescription drugs shall be a dispensing fee of five (5) dollars and the lesser of:

(a) The provider's usual and customary charge for the drug; [

**(b) The amount the medical payment obligor has agreed to pay under its contract with a pharmacy benefit manager or other pharmacy service provider, in which case, upon request, the medical payment obligor shall certify or otherwise disclose the applicable reimbursement provision contained in the contract;]**

(b) [(c)] If it is a generic drug, eighty-five (85) percent ~~[(85%)]~~~~sixty percent (60%)~~ of the average wholesale price of the lowest priced equivalent drug product; or

(c) [(d)] If it is a brand ~~[name]~~ drug, ninety (90) percent ~~[(90%)]~~~~eighty-five percent (85%)~~ of average wholesale price.

(2) Average wholesale price shall be determined from the publication in effect on the date of service. The publication to be used shall be/is:

(a) Medi-Span, produced by Wolters-Kluwer; or

(b) If the drug is not included in Medi-Span, then the Red Book, produced by Micromedex, shall be used.

(3) The usual and customary charge of the provider for the prescription drug shall/must be included on each statement for services.

(4) A generic drug shall/must be substituted for a brand ~~[name]~~ drug unless there is no equivalent drug product available or the prescribing medical provider indicates on the prescription that substitutions are prohibited ~~[by including the words "Dispense as Written" or "No Substitution Allowed" along with a statement that the brand name drug is medically necessary].~~

(5) If a claimant chooses a brand ~~[name]~~ drug and/when a generic drug is available and allowed by the medical provider, the claimant shall pay the difference in price between the brand ~~[name]~~ and the generic drug as determined pursuant to subsection (1) of this section.

(6) A dispensing provider that is not a pharmacist shall be reimbursed the same as a pharmacist, but shall not receive a dispensing fee. [;]

(7) Repackaged or Compounded Drugs

(a) Pharmaceutical bills submitted for repackaged or compounded drugs shall/must include the NDC Number of the original manufacturer registered with the U.S. Food and Drug Administration.

(b) Reimbursement shall be determined using the original manufacturer's NDC number for the product or ingredient, calculated on a per unit basis, as of the date of service. The maximum reimbursement limitations established~~[provided]~~ in subsection (1) of this section shall apply to each product or ingredient contained in the repackaged or compounded drug.

(c) An NDC number obtained for a repackaged or compounded drug shall not be considered the original manufacturer's NDC Number.

(d) If the original manufacturer's NDC Number is not provided on the bill, then the reimbursement shall be based on the average wholesale price of the lowest priced equivalent drug product, calculated on a per unit basis.

(e) A single compounding [dispensing] fee of twenty (20) dollars~~[\$20]~~ shall ~~[may]~~ be reimbursed for a ~~[repackaged or]~~ compounded drug [when applicable].

(1) An employee entitled to receive pharmaceuticals under KRS 342.020 may request and require that a brand name drug be used in treating the employee. Unless the prescribing practitioner has indicated that an equivalent drug product should not be substituted, an employee who requests a brand name drug shall be responsible for payment of the difference between the equivalent drug product wholesale price of the lowest priced therapeutically equivalent drug the dispensing pharmacist has in stock and the brand name drug wholesale price at the time of dispensing.

(2) Any duly licensed pharmacist dispensing pharmaceuticals pursuant to KRS Chapter 342 shall be entitled to be reimbursed in the amount of the equivalent drug product wholesale price of the lowest priced therapeutically equivalent drug the dispensing pharmacist has in stock, at the time of dispensing, plus a five (5) dollar dispensing fee plus any applicable federal or state tax or assessment.]

**[(8)](3) [If an employee's prescription is marked "Do Not Substitute," the employee shall receive a brand name drug.]** [the dispensing pharmacist shall be entitled to reimbursement in an amount equal to the brand name drug wholesale price, at the time of dispensing, plus a five (5) dollar dispensing fee plus any applicable federal or state tax or assessment.]

Section 3. Disputes; Applicability. (1) Any dispute arising under this administrative regulation may [shall] be resolved pursuant to 803 KAR 25:012 or 803 KAR 25:110, Section 10[25:110(10)].

(2) This administrative regulation shall apply to prescriptions dispensed to a workers' compensation patient by a hospital pharmacy if the patient is not otherwise being treated or obtaining medical care from the hospital.

(3) This administrative regulation shall not apply to prescriptions dispensed by a hospital pharmacy, of a hospital regulated pursuant to 803 KAR 25:091, to a workers' compensation patient receiving medical treatment or care from the hospital on an inpatient or outpatient basis.

(4) Any insurance carrier, self-insured employer, [or] group self-insured employer, or pharmacy benefit manager may enter into an agreement with any pharmacy or other provider [with any pharmacy] to provide reimbursement at a lower amount than that required in this administrative regulation.

Section 4. Balance Billing. (1) A[No] pharmacy filling a prescription covered under KRS 342.020 shall not knowingly collect, attempt to collect, coerce, or attempt to coerce, directly or indirectly, the payment by a workers' compensation patient of any charge in excess of that permitted under this administrative regulation, except as established[provided] in Section 2(2)[(4)] of this administrative regulation.

(2) This prohibition shall be[is] applicable to prescriptions filled pursuant to KRS 342.020 and any prescription [which is] denied or disputed by the medical payment obligor may be billed directly to the party presenting the prescription for filling.

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**PUBLIC PROTECTION CABINET  
Department of Insurance  
Division of Health and Life Insurance and Managed Care  
(As Amended at ARRS, May 11, 2021)**

**806 KAR 14:121. Minimum standards for the readability and intelligibility of insurance contracts.**

RELATES TO: KRS 304.14-130, 304.14-420-304.14-450

STATUTORY AUTHORITY: KRS 304.2-110, 304.14-420, 304.14-450(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. ~~[KRS 304.2-110 provides that the Executive Director of Insurance may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code.]~~ KRS 304.14-420(2) requires the Commissioner ~~[Executive Director]~~ of Insurance to promulgate administrative regulations to establish [the] minimum standards for ~~[the]~~ the readability and intelligibility of insurance contracts. KRS 304.14-450(1) requires the Commissioner ~~[Executive Director]~~ of Insurance to promulgate administrative regulations establishing a list of type face styles acceptable for use in insurance contracts. [The function of] This administrative regulation establishes[is to establish] the list of type face styles acceptable for [the] use in insurance contracts, and the minimum standards for readability and intelligibility of insurance contracts.

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

(1) "Amended" or "renewed" does not include changes or an extension of the term that are contractually granted and exercised by the policy owner or insured under the provisions of the policy;

(2) "Commissioner" is defined by KRS 304.1-050(1); [.] "Executive director" means the Executive Director of the Kentucky Office of Insurance;

(3)[(2)] "Personal lines insurance" means those personal lines of insurance established [designated] in KRS 304.14-420(1); and[

(3) "Amended" or "renewed" do not include changes or extension of term that [which] are contractually granted and exercised by the policyowner or insured under the provisions of the policy;

(4) "Text" means all printed matter, except:

- (a) 1. The name and address of the insurer;
- 2.[.] The name, number, or title of the policy;
- 3.[.] The table of contents or index;
- 4.[.] Captions and subcaptions;
- 5.[.] Specification or declarations pages;
- 6.[.] Schedules; [.] or
- 7. Tables; and

(b) Any policy language that [which] is drafted to conform to the requirements of any federal law, administrative regulation, or agency interpretation, any medical terminology, and any policy language required by law or administrative regulation, but the insurer shall certify that the language is entitled to be excepted from the definition of "text" as established[set forth] in this paragraph.

Section 2. Scope.

(1) This administrative regulation shall apply [applies] to all personal lines insurance policies delivered, issued for delivery, amended, or renewed in Kentucky on and after one (1) year from the effective date of this administrative regulation.

(2) This administrative regulation shall not apply to policies issued for conversion from policies not subject to this administrative regulation.

Section 3. Minimum Standards for Legibility. A[No] personal lines insurance policy shall not be delivered, issued for delivery, amended, or renewed in Kentucky unless it is printed, except for specification or declarations pages, schedules, and tables, in not less than ten (10) point type, one (1) point leaded.

Section 4. (1) The following type face styles shall be acceptable for personal lines insurance policies:

- (a) Aldus;
- (b) Alternate Gothic No. 3;
- (c) American Typewriter Light;
- (d) American Typewriter Medium;
- (e) Americana;

(f) Andover (Palatino);  
 (g) Antique Olive Light;  
 (h) Aster;  
 (i) Auriga;  
 (j) Avant Garde Light;  
 (k) Avant Garde Book;  
 (l) Baskerville;  
 (m) Bembo;  
 (n) Benguiat Book;  
 (o) Bodoni;  
 (p) Bodoni Book;  
 (q) Bookman;  
 (r) Caledonia;  
 (s) Candida;  
 (t) Caslon Old Face No. 2;  
 (u) Century Expanded;  
 (v) Century Schoolbook;  
 (w)(x) Chelmsford (Optima);  
 (x)(y) Clarendon Light;  
 (y)(z) Clearface;  
 (z)(aa) Crown (Century);  
 (aa)(bb) Egyptian;  
 (bb)(cc) Egyptian Light;  
 (cc)(dd) Electra;  
 (dd)(ee) Eurostile;  
 (ee)(ff) Fairfield Medium;  
 (ff)(gg) Friz Quadrata;  
 (gg)(hh) Garamond;  
 (hh)(ii) Garamond No. 3;  
 (ii)(jj) Goudy Oldstyle;  
 (jj)(kk) Hanover (Melior);  
 (kk)(ll) Helvetica Light;  
 (ll)(mm) Helvetica;  
 (mm)(nn) Helvetica Condensed;  
 (nn)(oo) Highland (Calendonia);  
 (oo)(pp) Iridium;  
 (pp)(qq) Italia Book;  
 (qq)(rr) Janson;  
 (rr)(ss) Korinna;  
 (ss)(tt) Megaron Light (Helvetica Light);  
 (tt)(uu) Megaron Medium (Helvetica Medium);  
 (uu)(vv) Melior;  
 (vv)(ww) Memphis Light;  
 (ww)(xx) Memphis Medium;  
 (xx)(yy) Monticello;  
 (yy)(zz) News Gothic;  
 (zz)(aaa) Optima;  
 (aaa)(bbb) Orion;  
 (bbb)(ccc) Palatino;  
 (ccc)(ddd) Primer;  
 (ddd)(eee) Quorum Light;  
 (eee)(fff) Quorum Book;  
 (fff)(ggg) Rotation;  
 (ggg)(hhh) Sabon;  
 (hhh)(iii) Schoolbook;  
 (iii)(jjj) Serif Gothic Light;  
 (jjj)(kkk) Souvenir;  
 (kkk)(lll) Souvenir Light;  
 (lll)(mmm) Stymie Medium;  
 (mmm)(nnn) Stymie Light;  
 (nnn)(ooo) Tiffany Light;  
 (ooo)(ppp) Tiffany Medium;  
 (ppp)(qqq) Times Roman;  
 (qqq)(rrr) Trade Gothic Light;  
 (rrr)(sss) Trade Gothic;  
 (sss)(ttt) Trade Gothic Condensed;  
 (ttt)(uuu) Trade Gothic Extended;  
 (uuu)(vvv) Triumvirant;  
 (vvv)(www) Trump;  
 (www)(xxx) Trump Medieval;  
 (xxx)(yyy) Univers Light;  
 (yyy)(zzz) Univers Medium;  
 (zzz)(aaaa) Univers No. 45;

(aaaa)(bbbb) Univers No. 46;  
 (bbbb)(cccc) Univers No. 55;  
 (cccc)(dddd) Univers No. 56;  
 (dddd)(eeee) Univers No. 57; and  
 (eeee)(ffff) Univers 45 Light.

(2) [This list is not intended to be exhaustive, but is an indication of the legibility of a type face style that is required.] Any type face style selected other than those listed in subsection (1) of this section shall not be used unless approved by the commissioner [executive director]. Extreme type styles including [such as] "Old English" or heavy block shall [are] not be acceptable.

(3) Italics, bold face, and contrasting styles may be used to emphasize important or technical terms and for captions. If/When two (2) or more type face styles are used, these/they shall be visually compatible.

#### Section 5. Minimum Standards for Intelligibility.

(1) A [No] personal lines insurance policy shall not be delivered, issued for delivery, amended, or renewed in this state unless the text achieves a minimum score of forty (40) on the Flesch reading ease test, or an equivalent score on any other reading test approved by the commissioner [executive director] for use as an alternative that is comparable in result to the Flesch reading ease test, [if it is comparable in result to the Flesch reading ease test.]

(2) For the purposes of this section, a Flesch reading ease test score shall be measured by the following method:

(a) For policy forms containing 10,000 words or less of text, the entire policy form shall be analyzed. For policy forms containing more than 10,000 words, the readability of two (2) 200 word samples per page may be analyzed instead of the entire policy form. The samples shall be separated by at least twenty (20) printed lines. Any endorsement made a part of the policy may, at the determination/discretion of the insurer [insurer's option], be scored separately or as part of the policy.

(b) The number of words and sentences in the text shall be counted and the total number of words divided by the total number of sentences. The figure obtained shall be multiplied by a factor of 1.015.

(c) The total number of syllables shall be counted and divided by the total number of words. The figure obtained shall be multiplied by a factor of 84.6.

(d) The sum of the figures computed under paragraphs (b) and (c) of this subsection subtracted from 206.835 equals the Flesch reading ease score for the policy form.

(e) For the purposes of paragraphs (b), (c), and (d) of this subsection, the following procedures shall be used:

1. A contraction, hyphenated word, or numbers and letters, if/when separated by spaces, shall be counted as one (1) word;

2. A unit of words ending with a period, semicolon, or colon, but excluding headings and captions, shall be counted as one (1)[a] sentence; and

3. A syllable means a unit of spoken language consisting of one (1) or more letters of words as divided by an accepted dictionary. If/Where the dictionary shows two (2) or more equally acceptable pronunciations of a word, the pronunciation containing fewer syllables may be used.

(3) Each/All policy form filing/filings subject to this administrative regulation shall be accompanied by a certificate signed by an officer of the insurer or other insurer representative authorized by the board of directors stating that the policy form meets the minimum reading ease score on the test used, or stating that the score is lower than the minimum required, but the policy form may be approved in accordance with subsection (4) of this section. [To confirm the accuracy of any certification, the executive director may require the submission of further information to verify the certification in question.]

(4) The commissioner [executive director] may approve a policy form filing [authorize] with a lower reading ease test score than the Flesch reading ease score required in subsection (1) of this section if [whenever in his sole discretion,] he or she finds that a lower score:

(a) Will provide a more accurate reflection of the readability of a policy form;

(b) Is warranted by the nature of a particular policy form, or type or class of policy forms; or

(c) Is caused by certain policy language that [which] is drafted to conform to the requirements of any federal or state law, administrative regulation, or agency interpretation.[]

~~Section 6. Severability; Effective Date. (1) If any provision of this administrative regulation or the application of this administrative regulation to any person or circumstance is for any reason held to be invalid, the remainder of the administrative regulation and the application of such provision to other persons or circumstances shall not be affected thereby.~~

~~(2) This administrative regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.]~~

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**PUBLIC PROTECTION CABINET**  
**Department of Insurance**  
**Division of Health and Life Insurance and Managed Care**  
**(As Amended at ARRS, May 11, 2021)**

**806 KAR 15:050. Reporting and general requirements for settlement providers and brokers.**

RELATES TO: KRS 304.12-020, 304.14-120, 304.14-440 [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), 304.15-719, 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 establishes [is to establish] [establishes] the standards [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" is [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" is [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 without a [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 a copy [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, shall [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, which 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 that satisfy the requirements of KRS 304.15-700 through KRS 304.15-720 and this administrative regulation.

Section 3. Life Settlement Contract and Form Approval. (1) A life settlement form submitted to the commissioner for approval shall:

(a) Be filed in accordance with KRS 304.14-120;

(b) Provide space for identifying the parties;

(c) Provide space for including the amount of the proceeds payable to the owner; and

(d) Provide that the contract shall [is to] be governed under the laws of the Commonwealth of Kentucky, and that the courts of the Commonwealth of Kentucky shall be the exclusive forum for any judicial remedies sought by either party.

(2) Each life settlement contract or other form submitted for approval shall:

(a) Be accompanied by the filing fee prescribed by 806 KAR 4:010;

(b) Have a form number in the lower left corner;

(c) Meet the readability standards established by KRS 304.14-440; and

(d) Meet the legibility standards established by KRS 304.14-450, except the disclosures required by KRS 304.15-710 shall be in at least twelve (12) point type.

(3) The commissioner may review any previously approved life settlement contract or other form for compliance with KRS 304.15-700 to 304.15-725 and this administrative regulation.

Section 4. Filing Requirements for Advertising of Life Settlements. (1) This section shall apply to advertising of life settlement contracts, or related products or services intended for dissemination in Kentucky, including Internet advertising viewed by persons located in Kentucky.

(2) A life settlement licensee shall establish and maintain a system of control over the content, form, and method of dissemination of advertisements of its contracts, products, and services. A system of control shall include routine notification, at least once a year, to persons authorized by the life settlement licensee to disseminate advertisements, of the requirements and procedures for review by the department prior to the use of any advertisements not furnished by the life settlement licensee.

(3) A life settlement licensee shall provide a copy of any advertising for life settlements intended for use in Kentucky whether through written, radio, or television medium to the commissioner for review in accordance with KRS 304.12-020.

(4) An advertisement shall be truthful and not misleading in fact or by implication. The form and content of an advertisement shall be sufficiently complete and clear ~~[so as]~~ to avoid deception. It shall not have the capacity or tendency to mislead or deceive. ~~If [Whether]~~ an advertisement has the capacity or tendency to mislead or deceive shall be determined by the commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

(5) The information required to be disclosed under this section shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to [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, endorsement, or analysis is used in an advertisement, the testimonial, appraisal, endorsement, 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, endorsements, or analysis, the life settlement licensee shall make [makes] as its own all the statements contained therein, and the statements shall be [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~~1~~, or otherwise appear to be of such a nature~~1~~, 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 if ~~[, provided]~~ it does not exaggerate that fact or suggest or imply that competing life settlement licensee~~s~~ 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. If 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 life [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 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[215 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>].

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  
Office of Inspector General  
Division of Certificate of Need  
(As Amended at ARRS, May 11, 2021)**

**900 KAR 6:030. Certificate of Need expenditure minimums.**

RELATES TO: KRS 216B.015

STATUTORY AUTHORITY: KRS 194A.030(1)(c)4, 216B.040(3)(a), 216B.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(3)(a) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations. KRS 216B.130 requires the cabinet to promulgate an administrative regulation to annually adjust expenditure minimums provided in KRS Chapter 216B. This administrative regulation provides for the adjustment of expenditure minimums for capital expenditures and major medical equipment.

Section 1. Price Index. [(4)] The U.S. Department of Commerce, Bureau of Economic Analysis Price Indexes for Private Fixed Investment by Type shall be used in making annual adjustments to the expenditure minimums required by KRS 216B.130.[]

(2) ~~The change in the price index for the twelve (12) month period ending December 31, 2013, represents a 3.43 percent increase.~~]

Section 2. **Expenditure Minimums Based on 2013 Change in Price Indexes. (1) The capital expenditure minimum established in KRS 216B.015(8) shall be \$2,913,541.**

**(2) The major medical equipment minimum established in KRS 216B.015(17) shall be \$2,913,541.**

**Section 3. [Expenditure Minimums Based on 2013 Change in Price Indexes. (1) The capital expenditure minimum established in KRS 216B.015(8) shall be \$2,913,541.**

**(2) The major medical equipment minimum established in KRS 216B.015(17) shall be \$2,913,541.**

Section 3.[] Annual Adjustments of Expenditure Minimums. (1) **Beginning July 1, 2015,** [Beginning July 1, 2015,] the cabinet shall annually adjust the capital expenditure minimum and the major medical equipment expenditure minimum [minimums] on July 1 based on the change in the price index referenced in Section 1[(4)] of this administrative regulation for the previous twelve (12) month period ending December 31.

(2) The annual adjustments of the expenditure minimums shall be available by July 1 for the previous twelve (12) month period on the Office of Inspector General, Division of Certificate of Need Web site at <https://chfs.ky.gov/agencies/os/oig/dcn> [https://chfs.ky.gov/agencies/os/oig/dcn/Pages/cn.aspx].

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

**CABINET FOR HEALTH AND FAMILY SERVICES  
Office of Inspector General  
Division of Certificate of Need  
(As Amended at ARRS, May 11, 2021)**

**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 center operated by the hospital and licensed pursuant to 902 KAR 20:074 [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 center operated by the hospital and licensed pursuant to 902 KAR 20:074 [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.

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

Office of Inspector General  
Division of Certificate of Need  
(As Amended at ARRS, May 11, 2021)

#### 900 KAR 6:065. Certificate of need application process.

RELATES TO: KRS 216B.015, 216B.040, 216B.062(1), 216B.085, 216B.095

STATUTORY AUTHORITY: KRS 194A.030(1)(c)4., 216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the requirements necessary for the orderly administration of the certificate of need application, review, decision, and reconsideration process.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(6).

(2) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Office of Inspector General, Division of Certificate of Need Web site at <https://chfs.ky.gov/agencies/os/oig/dcn> [<http://chfs.ky.gov/ohp/con>].

(3) "Days" means calendar days, unless otherwise specified.

(4) "Formal review" means the review of an application for certificate of need that is reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and that is reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(5) "Nonsubstantive review" is defined by KRS 216B.015(18).

(6) "Owner" means a person as defined in KRS 216B.015(22) who is applying for the certificate of need and will become the licensee of the proposed health service or facility.

(7) **"Person" is defined by KRS 216B.015(22).**

(8) "Proposed service area" means the geographic area the applicant proposes to serve.

(9) [(8)] "Secretary" is defined by KRS 216B.015(26).

(10) [(9)] "Show cause hearing" means a hearing during which it is determined whether a person or entity has violated provisions of KRS Chapter 216B.

Section 2. Certificate of Need Application. (1) An applicant for a certificate of need shall file an application with the cabinet on the appropriate certificate of need application form: CON[OHP] - Form 2A, CON[OHP] - Form 2B, or CON[OHP] - Form 2C, incorporated by reference in 900 KAR 6:055.

(2) To file an application for certificate of need, the applicant shall file [an original and one (1) copy of] the appropriate certificate of need application form together with the prescribed fee set forth in 900 KAR 6:020 on or before the deadlines established by 900 KAR 6:060. The appropriate fee shall be received by the Division of Certificate of Need before an application may be deemed complete.

(3) **(a) For the purpose of completing the application, neither the geographic area the applicant proposes to serve nor the health service area in which the project is proposed to be located shall include any area that is located outside of the Commonwealth of Kentucky.**

**(b) A person located and residing solely outside of the Commonwealth of Kentucky shall not qualify as an affected person for the purpose of opposing an application.**

(4) Formal or nonsubstantive review of an application for a certificate of need shall not begin until the application has been deemed complete by the cabinet.

(5) [(4)] The cabinet shall deem an application complete if the applicant has:

(a) Provided the cabinet with all of the information necessary to complete the application; or

(b) Declined to submit the requested information and has requested that its application be reviewed as submitted.

(6) [(5)] Once an application has been deemed complete, the applicant shall not submit additional information regarding the application unless the information is introduced at a public hearing.

(7) [(6)] Once an application has been deemed complete, it shall not be amended to:

(a) Increase the scope of the project;

(b) Increase the amount of the capital expenditure;

(c) Expand the size of the proposed service area;

(d) Change the location of the health facility or health service;

or

(e) Change the owner, unless the application involves a licensed health facility and a change of ownership with appropriate notice has occurred after the application was submitted.

(8) [(7)] An application that has been deemed complete may be amended at a public hearing to:

(a) Decrease the scope of the project;

(b) Decrease the amount of the capital expenditure; or

(c) Decrease the proposed service area.

(9) [(8)] An applicant that has had a certificate of need approved under the nonsubstantive review provisions of KRS 216B.095(3)(a) through (f) may request that the cabinet change the specific location to be designated on the certificate of need if:

(a) The facility has not yet been licensed;

(b) The location is within the county listed on the certificate of need application; and

(c) The applicant files a written request with the cabinet within

180 days of the date of issuance of the certificate of need. A request shall include the reason why the change is necessary.

~~(10)(9)~~ An application that is not deemed complete within one (1) year from the date that it is filed shall expire and shall not be placed on public notice or reviewed for approval.

Section 3. Certificate of Need Review. (1) Prior to being reviewed for the approval or denial of a certificate of need, an application for certificate of need shall be reviewed for completeness pursuant to Section 4 of this administrative regulation.

(2) Unless granted nonsubstantive review status under the criteria in 900 KAR 6:075, an application for a certificate of need shall be reviewed for approval or denial according to the formal review criteria set forth in 900 KAR 6:070.

(3) If granted nonsubstantive review status under the criteria in 900 KAR 6:075, an application for a certificate of need shall be reviewed for approval or denial of the certificate of need according to the nonsubstantive review criteria set forth in 900 KAR 6:075.

Section 4. Completeness Review. (1) Fifteen (15) days after the deadline for filing an application in the [next] appropriate batching cycle, the cabinet shall conduct an initial review to determine if the application is complete for formal review or nonsubstantive review requested pursuant to KRS 216B.095(3)(a) through (f).

(2) If the cabinet finds that the application for formal review is complete, the cabinet shall:

(a) Notify the applicant in writing within one (1) day that the application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice in the next appropriate Certificate of Need Newsletter, pursuant to the timetable set forth in 900 KAR 6:060, that review of the application for approval or denial of a certificate of need has begun.

(3) If the cabinet finds that the application for nonsubstantive review is complete, the cabinet shall notify the applicant in writing within ten (10) days that the application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given.

(4) A decision to grant or deny nonsubstantive review status shall be made within ten (10) days of the date the applicant is notified that the application has been deemed complete.

(5) The cabinet shall give public notice for applications granted nonsubstantive review status under the provisions of KRS 216B.095(3)(a) through (f) in the next appropriate Certificate of Need Newsletter, pursuant to the timetable set forth in 900 KAR 6:060, that status has been granted and that review of the application for approval or denial of a certificate of need has begun.

(6) If the cabinet finds that the application is incomplete, the cabinet shall:

(a) Provide the applicant with written notice of the information necessary to complete the application; and

(b) Notify the applicant that the cabinet shall not deem the application complete unless within fifteen (15) days of the date of the cabinet's request for additional information:

1. The applicant submits the information necessary to complete the application by the date specified in the request; or

2. The applicant requests in writing that the cabinet review its application as submitted.

(7) If, upon the receipt of the additional information requested, the cabinet finds that the application for formal review is complete, the cabinet shall:

(a) Notify the applicant in writing that:

1. The application for formal review has been deemed complete; and

2. Review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice in the next appropriate Certificate of Need Newsletter, pursuant to the timetable set forth in 900 KAR

6:060, that review of the application for approval or denial of a certificate of need has begun.

(8) If, upon the receipt of the additional information requested, the cabinet finds that an application for nonsubstantive review is complete, the cabinet shall:

(a) Notify the applicant in writing that:

1. The application has been deemed complete;

2. Review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

3. A decision to grant or deny nonsubstantive review status shall be made within ten (10) days of the date that the application was deemed complete; and

(b) Give public notice in the next appropriate Certificate of Need Newsletter, pursuant to the timetable set forth in 900 KAR 6:060, for an application~~applications~~ granted nonsubstantive review status under the provisions of KRS 216B.095(3)(a) through (f) that status has been granted and that review of the application for approval or denial of a certificate of need has begun.

(9) If the information submitted in response to the cabinet's request for additional information is insufficient to complete the application, the cabinet shall:

(a) Request the information necessary to complete the application; and

(b) Inform the applicant that the application shall not be deemed complete and shall not be placed on public notice until:

1. The applicant submits the information necessary to complete the application; or

2. The applicant requests in writing that its application be reviewed as submitted.

(10) Once an application has been deemed complete, an applicant shall not submit additional information to be made part of the public record unless:

(a) The information is introduced at a public hearing;

(b) For a deferred application for formal review, the additional information is submitted at least twenty (20) days prior to the date that the deferred application is placed on public notice; or

(c) For a deferred application for nonsubstantive review, the additional information is submitted at least ten (10) days prior to the date that the deferred application is placed on public notice.

(11) A determination that an application is complete shall:

(a) Indicate that the application is sufficiently complete to be reviewed for approval or disapproval;

(b) Not be determinative of the accuracy of, or weight to be given to, the information contained in the application; and

(c) Not imply that the application has met the review criteria for approval.

Section 5. Notice of Decision. (1) The cabinet shall notify the applicant and any party to the proceeding of the final action on a certificate of need application within three (3) days.

(2) Notification of approval shall be in writing and shall include:

(a) Verification that the review criteria for approval have been met;

(b) Specification of any terms or conditions limiting a certificate of need approval, including limitations regarding certain services or patients. This specification shall be listed on the facility or service's certificate of need and license;

(c) Notice of appeal rights; and

(d) The amount of capital expenditure authorized, if applicable.

(3) Written notification of disapproval shall include:

(a) The reason for the disapproval; and

(b) Notice of appeal rights.

(4) An identical application for certificate of need that is disapproved shall not be refiled for a period of twelve (12) months from the original date of filing, absent a change in circumstances.

Section 6. Deferral of an Application. (1)(a) Except as described in paragraph (b) of this subsection, an applicant may defer review of an application a maximum of two (2) times by notifying the cabinet in writing of its intent to defer review.

(b) An applicant shall not defer review of an application filed pursuant to 900 KAR 6:080 to alleviate an emergency circumstance.

(c)1. If the application has been granted nonsubstantive review status under the provisions of KRS 216B.095(3)(a) through (f), the notice to defer shall be filed pursuant to 900 KAR 6:090 no later than five (5) days prior to the date that the decision is due on the application unless a hearing has been scheduled.

2. If a hearing has been scheduled, the notice to defer shall be filed pursuant to 900 KAR 6:090 no later than six (6) days prior to the date of the hearing.

(d)1. If the application is being reviewed under formal review, the notice to defer shall be filed pursuant to 900 KAR 6:090 no later than ten (10) days prior to the date that the decision is due on the application unless a hearing has been scheduled.

2. If a hearing has been scheduled, the notice to defer shall be filed pursuant to 900 KAR 6:090 no later than eight (8) days prior to the date of the hearing.

(e) If a hearing has been scheduled, the applicant shall also notify all parties to the proceedings in writing of the applicant's intent to defer the application.

(2) If a notice to defer an application for formal review is filed, the application shall be deferred to the next regular batching cycle and shall be placed on public notice pursuant to the timetables set forth in 900 KAR 6:060.

(3) If an application for formal review is deferred, an applicant may update its application by providing additional information to the cabinet at least twenty (20) days prior to the date that the deferred application is placed on public notice.

(4) If a notice to defer an application that has been granted nonsubstantive review is filed, the application shall be deferred and shall be placed on public notice in the Certificate of Need Newsletter published the next calendar month following the date the request was received month.

(5) If an application for nonsubstantive review is deferred, an applicant may update its application by providing additional information to the cabinet at least ten (10) days prior to the date that the deferred application is placed on public notice.

(6) In order for a hearing to be held on a deferred application, a hearing shall be requested by either the applicant or an affected person within:

(a) Ten (10) days of the deferred application being placed on public notice if the application has been granted nonsubstantive review status; or

(b) Fifteen (15) days of the deferred application being placed on public notice if the application is being reviewed under the provision of formal review.

Section 7. Withdrawal of an Application. (1) An applicant may withdraw an application for certificate of need by notifying the cabinet in writing of the decision to withdraw the application prior to the entry of a decision to deny or approve the application.

(2) If a hearing has been scheduled or held on the application, the applicant shall also notify all parties to the proceedings in writing of the applicant's decision to withdraw the application.

~~(3) If an applicant withdraws a deferred application between February 5, 2015 and June 30, 2015 and submits a new application for the same proposed health facility or service within five (5) years from the date of withdrawal, the cabinet shall apply the application fee that was submitted for the withdrawn application toward the fee assessed pursuant to 900 KAR 6:020 for the new application.]~~

Section 8. Location of New and Replacement Facilities. A certificate of need approved for the establishment of a new facility or the replacement of an existing facility shall be valid only for the location stated on the certificate.

Section 9. Requests for Reconsideration. (1) A request for reconsideration shall be filed, pursuant to 900 KAR 6:090, within fifteen (15) days of the date of the notice of the cabinet's final decision relating to:

(a) Approval or disapproval of an application for a certificate of need;

(b) An advisory opinion entered after a public hearing;

(c) Revocation of a certificate of need; or

(d) A show cause hearing conducted in accordance with 900 KAR 6:090.

(2) A copy of the request for reconsideration shall be served by the requester on all parties to the proceedings.

(3) A party to the proceedings shall have seven (7) days from the date of service of the request for reconsideration to file a response to the request with the cabinet.

(4) If a hearing was held pursuant to subsection (1)(a), (b), or (c) of this section, the hearing officer that presided over the hearing shall enter a decision to grant or deny a request for reconsideration within thirty (30) days of the request being filed.

(5) If a hearing was held pursuant to subsection (1)(d) of this section, the secretary shall enter a decision to grant or deny a request for reconsideration within thirty (30) days of the request being filed.

(6) If reconsideration is granted, the hearing shall be held by the cabinet in accordance with the applicable provisions of 900 KAR 6:090, Section 3 or 4, within thirty (30) days of the date of the decision to grant reconsideration, and a final decision shall be entered by the cabinet no later than thirty (30) days following the conclusion of the hearing.

(7) If reconsideration is granted on the grounds that a public hearing was not held pursuant to KRS 216B.085, the applicant shall have the right to waive the reconsideration hearing if the deficiencies in the application can be adequately corrected by submission of written documentation.

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

Office of Inspector General

Division of Certificate of Need

(As Amended at ARRS, May 11, 2021)

#### 900 KAR 6:090. Certificate of need filing, hearing, and show cause hearing.

RELATES TO: KRS 45A.340, 216B.015, 216B.020(2)(a), 216B.040, 216B.062(1), 216B.095(1), 216B.990

STATUTORY AUTHORITY: KRS 194A.030(1)(c)4., 216B.040(2)(a)1., (b), 216B.085, 216B.086, 216B.090

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1. and (b) require the Cabinet for Health and Family Services to administer Kentucky's certificate of need program, to promulgate administrative regulations as necessary for the program, and to conduct public hearings in respect to certificate of need applications and revocations of certificates of need. KRS 216B.085, 216B.086, and 216B.090 establish requirements for certificate of need, revocation, and reconsideration hearings. This administrative regulation establishes the requirements for filing, hearing, and show cause hearings necessary for the orderly administration of the certificate of need program.

Section 1. Definitions. (1) "Affected person" is defined by KRS 216B.015(3).

(2) "Cabinet" is defined by KRS 216B.015(6).

(3) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at <https://chfs.ky.gov/agencies/os/oig/dcn> [<http://chfs.ky.gov/ohp/con>].

~~—~~(4) "Days" means calendar days, unless otherwise specified.

(5) "Nonsubstantive review" is defined by KRS 216B.015(18).

(6) "Notice" means notice given through the cabinet's Certificate of Need Newsletter.

(7) "Office of Inspector General" means the office within the Cabinet for Health and Family Services that is responsible for licensing and regulatory functions of health facilities and services.

(8) "Office or clinic" means the physical location at which

health care services are provided.

(9) "Party to the proceedings" is defined by KRS 216B.015(20).

(10) "Person" is defined by KRS 216B.015(22).

(11) "Proposed findings" means the submission of a proposed final order by the applicant or an affected party for review and consideration by the hearing officer.

(12) "Secretary" is defined by KRS 216B.015(26).

(13) "Show cause hearing" means a hearing during which it is determined whether a person or entity has violated provisions of KRS Chapter 216B.

Section 2. Filing. (1) The filing of documents required by this administrative regulation shall be made with the Office of Inspector General, Division of Certificate of Need, [Health Policy] CHR Building, [4-WE] 5E-A, 275 East Main Street, Frankfort, Kentucky 40621 on or before 4:30 p.m. Eastern time on the due date.

(2) Filing of a document [~~other than a certificate of need application or a proposed hearing report;~~] may be made by facsimile transmission or email if [:

(a)] the document is received by the cabinet by facsimile transmission or email on or before 4:30 p.m. Eastern time on the due date [due; and

(b) The original document is filed with the cabinet on or before 4:30 p.m. Eastern time on the next business day after the due date].

(3) The Office of Inspector General, Division of Certificate of Need, [Health Policy] shall endorse by file stamp the date that each filing is received and the endorsement shall constitute the filing of the document.

(4) In computing any period of time prescribed by this administrative regulation, the date of notice, decision, or order shall not be included.

(5)(a) Except as provided in paragraph (b) of this subsection, the last day of the period so computed shall be included.

(b) If the last day is a Saturday, Sunday, or legal state holiday, the period shall run until 4:30 p.m. Eastern time of the first business day following the Saturday, Sunday, or legal state holiday.

Section 3. Hearing. (1)(a) A hearing on a certificate of need application or revocation of a certificate of need shall be held by a hearing officer from the Cabinet for Health and Family Services, Division of Administrative Hearings.

(b) A hearing officer shall not act on any matter in which the hearing officer has a conflict of interest as defined by KRS 45A.340.

(c) A party may file with the cabinet a petition for removal based upon a conflict of interest supported by affidavit.

(2) The hearing officer shall preside over the conduct of each hearing and shall regulate the course of the proceedings in a manner that shall promote the orderly and prompt conduct of the hearing.

(3) Notice of the time, date, place, and subject matter of each hearing shall be:

(a) Mailed to the applicant and each affected person who requested the hearing not less than ten (10) days prior to the date of the hearing; and

(b) Published in the Certificate of Need Newsletter, if applicable.

**(4)(a) By motion, pursuant to 900 KAR 6:065, Section 2(3), an applicant may challenge the standing of any person to request a hearing or participate in a public hearing.**

**(b) If a motion challenging the standing of a person is filed by an applicant, the hearing officer shall conduct an evidentiary hearing on the matter and obtain sworn testimony from the person. The applicant shall have the right to cross-examine the person.**

**(c) If the hearing officer determines that the person is located and residing solely outside of the Commonwealth of Kentucky, the hearing officer shall prohibit further participation by the person in the proceedings on the application at issue.**

**(d) If the hearing officer determines that the person is**

**acting as a surrogate for another person who does not qualify as an affected person, the hearing officer shall prohibit further participation by the person in the proceedings on the application at issue.**

**(5)** A public hearing shall be canceled if each ~~[affected]~~ person **who has been determined to be acting as a surrogate for another person or** who requested the hearing withdraws the request by giving written notification to the Office of Inspector General, Division of Certificate of Need, [Health Policy] that the hearing is no longer required. The consent of each affected person who has not requested a hearing shall not be required in order for a hearing to be canceled.

**(6)/(5)** A dispositive motion made by a party to the proceedings shall be filed with the cabinet at least three (3) working days prior to the scheduled date of the hearing.

**(7)/(6)** The hearing officer may convene a preliminary conference.

(a) The purposes of the conference shall be to:

1. Formulate and simplify the issues;

2. Identify additional information and evidence needed for the hearing; and

3. Dispose of pending motions.

(b) A written summary of the preliminary conference and the orders thereby issued shall be made a part of the record.

(c) The hearing officer shall:

1. Record the conference; or

2. If requested by a party to the proceedings, allow a court reporter to be present at the expense of the requesting party.

(d) During the preliminary conference, the hearing officer may:

1. Instruct the parties to:

a. Formulate and submit a list of genuine contested issues to be decided at the hearing;

b. Raise and address issues that can be decided before the hearing; or

c. Formulate and submit stipulations to facts, laws, and other matters;

2. Prescribe the manner and extent of the participation of the parties to the proceedings;

3. Rule on any pending motions for discovery or subpoenas; or

4. Schedule dates for the submission of prefiled testimony, further preliminary conferences, and submission of briefs and documents.

**(8)/(7)** At least five (5) days prior to the scheduled date of a nonsubstantive review hearing and at least seven (7) days prior to the scheduled date of any other certificate of need hearing, each affected person wishing to participate as a party to the proceeding shall file with the cabinet ~~[an original and one (1) copy of]~~ the following for each affected application and serve copies on all other known parties to the proceeding:

(a) CON[OHP] - Form 3, Notice of Appearance, incorporated by reference in 900 KAR 6:055;

(b) CON[OHP] - Form 4, Witness List, incorporated by reference in 900 KAR 6:055; and

(c) CON[OHP] - Form 5, Exhibit List, incorporated by reference in 900 KAR 6:055 and attached exhibits.

**(9)/(8)**(a) If a hearing is requested on an application that has been deferred from a previous cycle and for which a hearing had previously been scheduled, parties shall:

1. File a new CON[OHP] - Form 3, Notice of Appearance; and

2. Either:

a. Incorporate previously-filed witness lists (CON[OHP] - Form 4) and exhibit lists (CON[OHP] - Form 5); or

b. File an amended CON[OHP] - Form 4 and CON[OHP] - Form 5.

(b) A new party to the proceedings~~[hearings]~~ shall file an original CON[OHP] - Form 3, CON[OHP] - Form 4, and CON[OHP] - Form 5.

(c) Forms shall be filed in accordance with subsection (7) of this section.

**(10)/(9)**(a) If a party to the proceedings requests a court reporter to be present during the hearing, the party shall:

1. Arrange for and bear the cost for a court reporter to transcribe the hearing; and

2. File an original copy of the transcript with the cabinet.

(b) If all parties agree, the hearing may be recorded in lieu of a written transcript.

~~(11)~~~~(10)~~ The hearing officer shall convene the hearing and shall state the purpose and scope of the hearing or the issues upon which evidence shall be heard. Each party appearing at the hearing shall enter an appearance by stating the party's name and address.

~~(12)~~~~(11)~~ Each party shall have the opportunity to:

- (a) Present its case;
- (b) Make an opening statement;
- (c) Call and examine witnesses;
- (d) Offer documentary evidence into the record;
- (e) Make a closing statement; and
- (f) Cross-examine opposing witnesses on:
  - 1. Matters covered in direct examination; and
  - 2. At the discretion of the hearing officer, other matters relevant to the issues.

~~(13)~~~~(12)~~ A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

~~(14)~~~~(13)~~ The hearing officer may:

- (a) Allow testimony or other evidence on an issue not previously identified in the preliminary order that may arise during the course of the hearing, including a petition for intervention that may be filed;
- (b) Act to exclude irrelevant, immaterial, or unduly repetitious evidence; and
- (c) Question any party or witness.

~~(15)~~~~(14)~~ The hearing officer shall not be bound by the Kentucky Rules of Evidence. Relevant hearsay evidence may be allowed at the discretion of the hearing officer.

~~(16)~~~~(15)~~ The hearing officer shall have discretion to designate the order of presentation of evidence and the burden of proof as to persuasion.

~~(17)~~~~(16)~~ A witness shall be examined under oath or affirmation.

~~(18)~~~~(17)~~ A witness may, at the discretion of the hearing officer:

- (a) Appear through deposition or in person; and
- (b) Provide written testimony in accordance with the following:
  - 1. The written testimony of a witness shall be in the form of questions and answers or a narrative statement;
  - 2. The witness shall authenticate the document under oath; and
  - 3. The witness shall be subject to cross-examination.

~~(19)~~~~(18)~~ The hearing officer may accept documentary evidence in the form of copies of excerpts if:

- (a) The original is not readily available;
- (b) Upon request, parties are given an opportunity to compare the copy with the original; and
- (c) The documents to be considered for acceptance are listed on and attached to the party's Exhibit List (CON[OHP]- Form 5).

~~(20)~~~~(19)~~ A document shall not be incorporated into the record by reference without the permission of the hearing officer. Each referenced document shall be precisely identified.

~~(21)~~~~(20)~~ The hearing officer may take official notice of facts that are not in dispute or of generally-recognized technical or scientific facts within the agency's special knowledge.

~~(22)~~~~(21)~~ The hearing officer may permit a party to offer, or request a party to produce, additional evidence or briefs of issues as part of the record within a designated time after the conclusion of the hearing. During this period, the hearing record shall remain open. The conclusion of the hearing shall occur when the additional information is timely filed or at the end of the designated time period, whichever occurs first.

~~(23)~~~~(22)~~ The hearing officer may, upon the agreement of the applicant, extend the review deadlines established by KRS 216B.062(1) and 216B.095(1).

~~(24)~~~~(23)~~ If all parties agree to waive the established decision date, the hearing officer shall render a decision within sixty (60) days of the filing of proposed findings.

~~(25)~~~~(24)~~ The cabinet shall forward a copy of the hearing officer's final decision by U.S. mail to each party to the

proceedings. The original hearing decision shall be filed in the administrative record maintained by the cabinet.

Section 4. Show Cause Hearing. (1) The cabinet may conduct a show cause hearing on its own initiative or at the request of an affected person, to include hearings requested pursuant to Humana of Kentucky v. NKC Hospitals, Ky., 751 S.W.2d 369 (1988), in order to determine if a person:

(a) Has established or is operating a health facility or health service in violation of:

- 1. The provisions of KRS Chapter 216B; [or]
- 2. The provisions of 900 KAR Chapter 6; or
- 3. The terms or conditions that are a part of a certificate of need approval and license held by that person; or

(b) Is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(2) The cabinet shall conduct a show cause hearing if a complaint investigation or licensure inspection by the Office of the Inspector General or the Kentucky Board of Emergency Medical Services reveals a possible violation of KRS Chapter 216B.

(3) Unless initiated by the cabinet, in order for a show cause hearing to be held, a request for a show cause hearing submitted by an affected person shall be accompanied and corroborated by credible, relevant, and substantial evidence, including an affidavit or other documentation that demonstrates probable cause to believe that a person:

(a) Has established, or is operating, a health facility or health service in violation of:

- 1. The provisions of KRS Chapter 216B;
- 2. The provisions of [or] 900 KAR Chapter 6; or
- 3. The terms and conditions that were a part of a certificate of need approval and license held by that person; or

(b) Is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(4) If a show cause hearing is requested by an affected person, the cabinet shall provide a copy of the request for show cause hearing to the person alleged to be in violation and the person shall have fourteen (14) days in which to file a response to the request and supporting documentation.

(5) ~~(3)~~ Based upon the materials accompanying the request for a show cause hearing, and any subsequent response to the allegations, the cabinet shall determine if sufficient cause exists to conduct a hearing.

~~(6)~~~~(4)~~ The cabinet shall conduct a show cause hearing if a complaint investigation or licensure inspection by the Office of the Inspector General or the Kentucky Board of Emergency Medical Services reveals a possible violation of KRS Chapter 216B.

~~(5)~~ The cabinet shall also conduct a show cause hearing regarding terms and conditions that are a part of a certificate of need approval and license at the request of any affected person.

~~(6)~~ The show cause hearing regarding the terms and conditions shall determine if a person is operating a health facility or health service in violation of any terms or conditions that are a part of that certificate of need approval and license.

~~(7)~~ Show cause hearings shall be conducted in accordance with the provisions of Section 3 of this administrative regulation.

~~(8)~~ If a show cause hearing is held, the individual or entity alleged to be in violation of KRS Chapter 216B shall have the burden of showing that the individual or entity:

(a) Has not established or is not operating a health facility or health service in violation of the provisions of KRS Chapter 216B or 900 KAR Chapter 6; or

(b) Is not subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

~~(9)~~ If it is alleged that an office or clinic offering services or equipment covered by the State Health Plan was established or is operating in violation of KRS 216B.020(2)(a), the hearing officer shall base his or her recommended findings of fact, conclusions of law, and recommended decision on whether the clinic or office meets the physician exemption criteria set forth in 900 KAR 6:130, Certificate of Need criteria for physician exemption.

~~(10)~~ Prior to convening a show cause hearing, the cabinet shall give the parties [person suspected or alleged to be in violation]

not less than twenty (20) days' notice of its intent to conduct a hearing and notice shall be published in the Certificate of Need Newsletter, if applicable.

~~(7)(44)~~ The notice shall include~~advise the person of~~:

(a) The allegations against the person suspected or alleged to be in violation;

(b) Any facts determined to exist that support the existence of the allegation; and

(c) The statute or administrative regulation alleged to have been violated;

(d) The person's response to the allegations, if any; and

(e) Notice of the time, date, place, and subject matter of the hearing.

~~(8)(42) Notice of the time, date, place, and subject matter of each hearing shall be:~~

~~(a) Mailed to all known affected persons or entities not less than ten (10) business days prior to the date of the hearing; and~~

~~(b) Published in the Certificate of Need Newsletter, if applicable.~~

~~(43)~~ At least seven (7) days prior to a show cause hearing required or requested pursuant to KRS Chapter 216B, all persons or entities wishing to participate as a party to the proceedings shall file ~~[an original and one (1) copy of]~~ the following with the cabinet and serve copies on all other known parties to the proceedings:

(a) CON[OHP] - Form 3, Notice of Appearance;

(b) CON[OHP] - Form 4, Witness List; and

(c) CON[OHP] - Form 5, Exhibit List [and attached exhibits].

(9) A show cause hearing shall be conducted in accordance with the provisions of Section 3 of this administrative regulation.

(10) If a show cause hearing is held, the person alleged to be in violation of KRS Chapter 216B shall have the burden of showing that the person:

(a) Has not established, or is not operating, a health facility or health service in violation of:

1. The provisions of KRS Chapter 216B;

2. The provisions of 900 KAR Chapter 6; or

3. The terms and conditions that are a part of a certificate of need approval and license held by that person; or

(b) Is not subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(11) If it is alleged that an office or clinic offering services or equipment covered by the State Health Plan was established or is operating in violation of KRS 216B.020(2)(a), the hearing officer shall base his or her recommended findings of fact, conclusions of law, and recommended decision on whether the clinic or office meets the physician exemption criteria established in 900 KAR 6:130.

(12)(44) Within thirty (30) days of the conclusion of the hearing, the hearing officer shall tender findings of fact and a recommended decision to the Office of Inspector General, Division of Certificate of Need for submission to the secretary. A copy of the findings of fact and recommended decision shall be forwarded to each party and the party's legal representative by the Division of Certificate of Need.

(13)(45) Each party shall have fifteen (15) days from the date the recommended decision is forwarded~~mailed~~ by the cabinet to file exceptions to the findings of fact and recommended decision with the Office of Inspector General, Division of Certificate of Need, for submission to the secretary and the hearing officer~~with the secretary~~.

(14)(46) Within thirty (30) days of the receipt of any exceptions~~the findings of fact and recommended decision from the hearing officer~~, the secretary shall either accept the hearing officer's recommended decision or request changes. The hearing officer shall then prepare a final decision for the secretary's signature~~issue a final decision on the matter~~.

(15) The Office of Inspector General, Division of Certificate of Need shall mail~~(17)~~ a copy of the final decision ~~[shall be mailed]~~ to each party ~~[or]~~ and his or her legal representative with the original hearing decision filed in the administrative record maintained by the cabinet.

(16)(48) If a violation is found to have occurred as a result of a show cause hearing conducted pursuant to subsection (1) of this

section, the cabinet shall take action as provided by KRS Chapter 216B.

~~(17)(49)~~ If the person is found to have violated any of the terms or conditions of any certificate of need approval and license as a result of a show cause hearing conducted pursuant to subsection (1) or (2)(4) of this section, the cabinet shall take the action required by this subsection.

(a) If the person had not previously been found to be in violation of the terms and conditions that were made a part of the person's certificate of need approval and license, the person shall be given a period of time, not to exceed sixty (60) days after issuance of the cabinet's decision, in which to demonstrate that the violation has been corrected. At the conclusion of this period, the cabinet shall verify that the facility or service is operating in compliance with the terms or conditions of the certificate of need and license at issue.

(b) If the cabinet is unable to verify that the facility or service has corrected the violation in accordance with paragraph (a) of this subsection, or if a person who had previously been found to be in violation of the terms and conditions that were a part of the person's certificate of need approval and license is found in a subsequent show cause hearing conducted pursuant to this section to be in violation of the terms and conditions again, the matter shall be referred to the Office of Inspector General for appropriate action.

~~(18)(20)~~ The deadlines established with respect to hearings shall be modified if agreed to by all parties and the hearing officer.

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**

**Office of Inspector General**

**Division of Certificate of Need**

**(As Amended at ARRS, May 11, 2021)**

#### **900 KAR 6:100. Certificate of need standards for implementation and biennial review.**

RELATES TO: KRS 216B.015, **216B.086**

STATUTORY AUTHORITY: KRS 194A.030(1)(c)4., 216B.040(2)(a)1, 216B.086

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.086 authorizes the revocation of certificate of need, or portion thereof, for failure to implement the project in accordance with timetables and standards established by administrative regulation. This administrative regulation establishes the required timetables and standards for implementation as well as requirements for biennial reviews for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(6)(5).

(2) "Days" means calendar days, unless otherwise specified.

(3) "Long-term care beds" means nursing home beds, intermediate care beds, skilled nursing beds, nursing facility beds, and Alzheimer nursing home beds.

(4) "Office of Inspector General" means the office within the Cabinet for Health and Family Services that is responsible for licensing and regulatory functions of health facilities and services.

(5) "Show cause hearing" means a hearing during which it is determined whether a person or entity has violated provisions of KRS Chapter 216B.

Section 2. Standards for Implementation. (1) As a condition for the issuance of a certificate of need, a holder of a certificate of need shall submit progress reports on the CON[OHP] - Form 8, Certificate of Need Six Month Progress Report, incorporated by

reference in 900 KAR 6:055, at the six (6) month intervals specified in this section.

(2) A notice specifying the date each progress report is due shall be sent to every holder of a certificate of need whose project is not fully implemented.

(3) The cabinet or its designee shall review a progress report and shall determine:

(a) If the required elements have been completed; and

(b) If the required elements have not been completed, whether sufficient reasons for failure to complete have been provided.

(4) A certificate of need shall be deemed complete if:

(a) The project has been approved for licensure or occupancy by the Office of Inspector General;

(b) A final cost breakdown has been submitted; and

(c) The required progress report fee pursuant to Section 3 of this administrative regulation has been submitted.

(5) Until a project is deemed complete by the cabinet, the cabinet may require:

(a) The submission of additional reports as specified in subsections (16) through (18) of this section; or

(b) Progress reports in addition to those required at six (6) month intervals under the provisions of this section.

(6) Except for a long-term care bed proposal, a certificate of need shall not be revoked for failure to complete the items required during a six (6) month period if the holder of the certificate of need establishes that the failure was due to circumstances that:

(a) Could not reasonably be anticipated and avoided by the holder; or

(b) Were not the result of action or inaction of the holder.

(7) If the cabinet determines that required elements have not been completed for reasons other than those set forth in subsection (6) of this section, it shall notify the holder of the certificate of need, in writing, that it has determined to revoke the certificate of need.

(8) The revocation shall become final thirty (30) days from the date of notice of revocation unless the holder requests a hearing pursuant to KRS 216B.086.

(9) The first progress report for any project other than long-term care beds shall include:

(a) For a project for the addition of new services or expansion of existing services that does not involve construction, renovation, or the installation of equipment: plans for implementation of the project;

(b) For a project for the purchase of equipment only: a copy of the purchase order;

(c) For a project involving the acquisition of real property: evidence of an option to acquire the site; or

(d) For a construction or renovation project: evidence that schematic plans have been submitted to the Public Protection Cabinet, Department of Housing, Buildings, and Construction, and the Office of Inspector General, Division of Healthcare.

(10) For a project other than long-term care beds not deemed complete, a second progress report shall include:

(a) For a project converting beds: documentation that all beds are licensed;

(b) For a project for addition of new services or expansion of existing services that do not involve construction, renovation, or the installation of equipment: documentation of approval for licensure and occupancy by the Office of Inspector General, Division of Healthcare, or the Kentucky Board of Emergency Medical Services; or

(c) For a construction or renovation project: the schedule for project completion, evidence of preliminary negotiation with a financial agency, and evidence of preliminary negotiation with contractors.

(11) For a project other than long-term care beds not deemed complete, a third progress report shall include:

(a) For a construction or renovation project:

1. A copy of the deed or lease of land;

2. Documentation of the final enforceable financing agreement, if applicable;

3. Documentation that final plans have been submitted to the Public Protection Cabinet, Department of Housing, Buildings, and Construction, and the Office of Inspector General, Division of Healthcare; and

4. An enforceable contract with a construction contractor; or

(b) For a project for purchase of equipment only: evidence of approval for licensure and occupancy by the Office of Inspector General, Division of Healthcare.

(12) For a project other than long-term care beds not deemed complete, a fourth progress report shall include documentation of final plan approval by the Public Protection Cabinet, Department of Housing, Buildings, and Construction, and the Office of Inspector General, Division of Healthcare, and evidence that construction has begun.

(13) For a project other than long-term care beds not deemed complete, a fifth progress report shall include documentation that construction or renovation is progressing according to schedule.

(14) For a project other than long-term care beds not deemed complete, a sixth progress report shall include documentation that the project has been approved for licensure or occupancy by the Office of Inspector General, Division of Healthcare, and, if required, that the appropriate license has been approved for the health care service or facility.

(15) For a project other than long-term care beds not deemed complete after the sixth progress report, the certificate holder shall, upon request, provide the cabinet or its designee with a written statement showing cause why the certificate should not be revoked. The cabinet may defer revocation action upon a showing by the certificate holder that the project shall be completed on a revised schedule. The cabinet or its designee may require additional progress reports.

(16) For a project involving long-term care beds, the progress reports required by this subsection shall be submitted:

(a) The first progress report shall include:

1. A copy of the deed or lease of land for a project requiring acquisition of real property; and

2. Evidence that final plans have been submitted to the Public Protection Cabinet, Department of Housing, Buildings, and Construction, and the Office of Inspector General, Division of Healthcare.

(b) For a project involving long-term care beds not deemed complete, a second progress report shall include:

1. For a conversion of bed project: documentation that the beds in the project are licensed; or

2. For a construction project:

a. A schedule for project completion with projected dates;

b. Documentation of final financing;

c. Documentation of final plan approval by the Public Protection Cabinet, Department of Housing, Buildings, and Construction, and the Office of Inspector General, Division of Healthcare; and

d. An enforceable construction contract.

(17) For a project involving long-term care beds not deemed complete, a third progress report shall include documentation that construction or renovation is progressing according to the schedule for project completion.

(18) For a project involving long-term care beds not deemed complete, a fourth progress report shall include documentation that the project has been appropriately licensed and approved for occupancy by the Office of Inspector General, Division of Healthcare.

(19) The cabinet or its designee may grant no more than three (3) additional extensions of six (6) months for good cause shown if the certificate holder of long-term care beds has failed to comply with the relevant progress report requirements established in this section.

(20) If the project involves a capital expenditure, a final cost breakdown shall be included in the final progress report.

(21) If the Office of Inspector General, Division of Healthcare, discovers a violation of terms and conditions listed on a certificate of need and license while it is conducting its annual licensure inspection, it shall refer this violation for a show cause hearing in

accordance with 900 KAR 6:090, Section 4.

Section 3. Progress Report Fee. (1) ~~Upon the effective date of this administrative regulation,~~ A progress report fee in the amount of \$100.00 or one (1) percent of the application fee assessed pursuant to 900 KAR 6:020, whichever amount is greater, shall be submitted by the certificate of need holder with each semi-annual progress report filed for each certificate of need that has been issued for more than three (3) years.

(2) A certificate of need shall be revoked for failure to submit the progress report fee.

Section 4. Voluntary Revocation of a Certificate of Need. If a certificate of need holder requests revocation of a certificate of need or a portion of a certificate of need ~~within six (6) months of the effective date of this administrative regulation~~ and submits a new application for the same proposed health facility or service within five (5) years from the date of revocation, the cabinet shall apply the application fee ~~that~~which was submitted for the revoked certificate of need or portion of a certificate of need toward the fee assessed pursuant to 900 KAR 6:020 for the new application.

Section 5. Biennial Review. (1) A certificate of need ~~holder~~holders may be subject to biennial review to determine if ~~the holder is~~they are in compliance with the terms as listed on ~~the~~their certificate of need.

(2) Biennial review may be conducted within sixty (60) days of the second anniversary of the final progress report and at twenty-four (24) month intervals thereafter.

(3) The cabinet or its designee shall provide sixty (60) days' advance written notification to the subject of any biennial review, including the following:

(a) When the biennial review will be initiated;

(b) Request for information necessary for the review to which the cabinet does not have ready access; and

(c) A deadline for a response to the request for information.

(4) If the cabinet finds that any of the terms and conditions of a certificate of need approval and license have been violated, the review of, and any sanctions for, this violation shall be conducted in accordance with 900 KAR 6:090, Section 4.

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**  
Office of Inspector General  
Division of Certificate of Need  
(As Amended at ARRS, May 11, 2021)

**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)(5).

(2) "Days" means calendar days, unless otherwise specified.

Section 2. Notification of the Addition ~~[or Establishment]~~ of a Health Service or Equipment. (1) A health facility shall submit a completed CON[OHP] - Form 10A, incorporated by reference in 900 KAR 6:055, to notify the cabinet that a service or equipment has been added.

(2) The notification shall be submitted within ten (10) days of the date the facility:

(a) Makes an addition to an existing health service (including adding respite beds in an intermediate care facility~~[facilities]~~ for individuals with an intellectual disability) for which there is review criteria in the State Health Plan, but for which a certificate of need is not required; or

(b) Adds equipment for which there is a review criteria in the State Health Plan, but for which a certificate of need is not required.

Section 3. Notification of the Reduction or Termination of a Health Service or Bed Capacity. A health facility shall submit a completed CON[OHP] - Form 10B, incorporated by reference in 900 KAR 6:055, to notify the cabinet of the reduction or termination of a health service, or reduction of bed capacity within thirty (30) days prior to the reduction or termination.

Section 4. Notification of Relocation of Acute Care Beds. If a certificate of need is not otherwise required, a hospital shall submit a completed CON - Form 10C, incorporated by reference in 900 KAR 6:055, to notify the cabinet that the facility has relocated acute care beds to another hospital under common ownership in the same area development district, including an outpatient health care center operated by the hospital and licensed pursuant to 902 KAR 20:074 [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 an outpatient health care center operated by the hospital and licensed pursuant to 902 KAR 20:074 [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.

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

**CABINET FOR HEALTH AND FAMILY SERVICES**  
Department for Public Health  
Division of Public Health Protection and Safety  
(As Amended at ARRS, May 11, 2021)

**902 KAR 95:040. Radon Contractor Registration**~~[Certification]~~ Program.

RELATES TO: KRS Chapter 13B, 211.180(1)(a), 211.9101, 211.9107, 211.3113, 211.9119 [-211.9135]

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.9109, 211.9111, 211.9115, 211.9121, 211.9125[211.9127], 211.9135(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.9135(3) requires the cabinet to promulgate administrative regulations to administer, coordinate, and enforce KRS 211.9101 to 211.9135. This administrative regulation establishes requirements for the registration[certification] of an individual or laboratory to perform radon measurement, radon mitigation, or laboratory analysis.

Section 1. Registration[Definitions]. (1) "AARST" means the American Association of Radon Scientists and Technologists.

(2) "ANSI" means the American National Standards Institute.

(3) "ASTM" means the American Society for Testing and Materials International.

(4) "Mitigation system" is defined by KRS 211.9101(21).

(5) "NRPP" means the National Radon Proficiency Program.

(6) "NRSB" means the National Radon Safety Board.

(7) "Pecuries per liter" or "pCi/L" means a unit of radioactivity corresponding to one (1) decay every twenty-seven (27) seconds in a volume of one (1) liter, or 0.037 decays per second in every liter of air.

Section 2. Certification] Requirements. (1) A person seeking registration[shall be eligible to be certified] as a radon measurement contractor or a radon mitigation contractor shall submit[if the individual:

(a) Submits] to the cabinet:

(a)[1-] A completed DFS-375, Application for Registration[Certification] for Radon Contractors and Laboratories;

(b)[2-] Verification of completion of a cabinet-approved course and exam pursuant to Section 5(3) of this administrative regulation;

3-] The fee established in Section 2(2)[3(2)] of this administrative regulation; and

(c)[4-] A quality control program plan that meets the requirements established in Section 4(1) or (2) of this administrative regulation; and

5-] Evidence of financial responsibility in accordance with KRS 211.9109 (1)(b)[(f)] or 211.9111(1)(b)[(f)]; and

(b) Adheres to the requirements established in KRS 211.9123 if the individual is a non-resident of Kentucky].

(2) A radon laboratory seeking registration shall submit[be eligible for certification if the entity:

(a) Employs a minimum of one (1) individual who is a Kentucky certified radon measurement contractor;

(b) submits] to the cabinet:

(a)[1-] A completed DFS-375, Application for Registration[Certification] for Radon Contractors and Laboratories;

(b)[2-] The fee established in Section 2(2)[3(2)] of this administrative regulation; and

(c) Evidence of financial responsibility in accordance with KRS 211.9115(2)(b)[3-] A quality control program plan as established in Section 4(3) of this administrative regulation; and

(c) Adheres to the requirements established in KRS 211.9123 if the entity is a non-resident analytical laboratory that is seeking reciprocity].

(3) A contractor with a dual certification as a radon measurement contractor and a radon mitigation contractor shall submit[:

(a) maintain] a separate registration[certificate] for each discipline.

(4)(a) All potential registrants as a radon measurement or radon mitigation contractor shall have a background check performed by:

1. The Administrative Office of the Courts; and

2. The Division of Protection and Permanency within the Cabinet for Health and Family Services.

(b) The required background check results shall be submitted directly to the cabinet.

(c) The cabinet shall review the Kentucky Sex Offender Registry prior to the registration of a radon measurement or radon mitigation contractor.

(d) In accordance with KRS 211.9125(1)(a) the cabinet may

refuse or revoke a registration based on the results of the background check[-; and

(b) Adhere to the limitations established in KRS 211.9117(1) and (2).

(4) Only radon measurements performed by a certified radon measurement contractor shall be reported or disclosed to another party].

(5) A registered[certified] radon measurement contractor employee working exclusively for a registered[certified] radon laboratory shall not be required to meet:

(a) The insurance [and quality control program] requirements established in subsection (1) of this section; and

(b) The background check requirements established in subsection (4) of this section.

Section 2[3]. Schedule of Fees. (1) The fees required by subsection (2) of this section shall be:

(a) Nonrefundable;

(b) Submitted with an application for initial registration or registration[certification or certification] renewal; and

(c) Made payable to the Kentucky State Treasurer.

(2)(a) The fee for initial registration[certification] shall be \$500[250]. The initial registration shall be valid for two (2) years.

(b) The biennial[annual] renewal fee shall be \$500[250].

(c) [The annual fee for reciprocity meeting the requirements of KRS 211.9123 shall be \$250.

(d) The fee for a duplicate certificate shall be twenty (20) dollars.

(e) The fee for late renewal shall be \$500[400].

(d)[(f)] The [annual] fee for inactive registration[certification] status shall be \$200[400]. The inactive registration status shall be valid for two (2) years.

Section 3. Registration Renewal. (1) Each registration shall be renewed every odd-numbered year.

(2) An individual seeking registration renewal shall submit to the cabinet:

(a) A completed renewal application on DFS-375, Application for Registration for Radon Contractors and Laboratories;

(b) Proof of compliance with a proficiency program in accordance with KRS 211.9109(2)(a) or 211.9111(2)(a);

(c) The background checks required under Section 1(4) of this administrative regulation;

(d) The fee established in Section 2 of this administrative regulation; and

(e) Evidence of financial responsibility in accordance with KRS 211.9109(2)(b) or 211.9111(2)(b).

(3) A laboratory seeking registration renewal shall submit to the cabinet:

(a) A completed renewal application on DFS-375, Application for Registration for Radon Contractors and Laboratories;

(b) Proof of compliance with a proficiency program in accordance with KRS 211.9115(2)(a);

(c) The fee established in Section 2 of this administrative regulation; and

(d) Evidence of financial responsibility in accordance with KRS 211.9115(2)(b).

(4) A registration not renewed within thirty (30) days after the renewal date shall lapse and may only be reinstated:

(a) By meeting the requirements of subsections (2) or (3) of this section; and

(b) Payment of the late renewal fee required by Section 2(2)(c) of this administrative regulation.

Section 4. [Quality Control Program Plan and Standard Operating Procedures. (1) A person certified as a radon measurement contractor shall submit for cabinet approval a quality control program plan that includes:

(a) A statement committing to provide quality work;

(b) A listing of personnel and personnel qualifications and training;

(c) A description of types of radon measurements performed

and other related services offered;

(d) A description of measurement types and devices the measurement contractor will utilize in conducting measurements;

(e) A statement of compliance with cabinet-approved standard operating procedures pursuant to Section 5(3) of this administrative regulation; and

(f) The location where records are retained in accordance with KRS 211.9131(3).

(2) A person certified as a radon mitigation contractor shall submit to the cabinet a quality control program plan that includes:

(a) A statement committing to provide quality work;

(b) A listing of personnel and personnel qualifications and training;

(c) A description of all types of radon mitigation methods performed and other related services offered;

(d) A description of diagnostic testing methods utilized in designing mitigation systems; and

(e) A statement of compliance with cabinet-approved standard operating procedures pursuant to Section 5(3) of this administrative regulation.

(3) A certified radon laboratory shall submit to the cabinet a quality control program plan that includes:

(a) A statement committing to provide quality work;

(b) A listing of personnel and personnel qualifications and training;

(c) A description of laboratory services performed and other related services offered;

(d) Documentation of enrollment and good standing within an independent laboratory accreditation program; and

(e) A requirement that all radon laboratory analyses shall be conducted in compliance with applicable state and federal laws.

(4) A mitigation system shall achieve a radon level below the U.S. Environmental Protection Agency's action level of four and zero-tenths (4.0) picocuries per liter for all post mitigation testing.

(5) Failure to achieve a reduction below the EPA's action level of four and zero-tenths (4.0) picocuries per liter shall require additional radon mitigation and testing until the level is as low as reasonably achievable (ALARA).

(6) Prior to mitigation, educational material about radon levels shall be provided to the client.

(7) Upon modification to a component of the quality control program plan, the radon measurement or mitigation contractor shall resubmit the plan to the cabinet.

(8) If a deviation from cabinet-approved standard operating procedures occurs, the radon measurement or mitigation contractor shall document the reason for the deviation in the inspection report provided to the client.

#### Section 5. Training and Continuing Education Requirements.

##### (1) Continuing Education.

(a) Measurement contractors shall acquire eight (8) hours of continuing education credits per year.

(b) Mitigation contractors shall acquire eight (8) hours of continuing education credits per year.

(c) A certified person shall be responsible for submitting proof of continuing education in accordance with KRS 211.9109, 211.9111, 211.9115, or 211.9127.

(d) A person dually certified as a radon measurement and mitigation contractor shall acquire sixteen (16) hours of continuing educational credits per year.

(e) Continuing education units shall be obtained from a cabinet-approved course in accordance with subsection (3) of this section.

##### (2) Certification Courses.

(a) Measurement contractor initial certification courses shall be a minimum of sixteen (16) hours of in-person instruction.

(b) Mitigation contractor initial certification courses shall:

1. Be a minimum of sixteen (16) hours of in-person instruction;

and

2. Include an additional four (4) hours of hands-on field work at a mitigation site.

(3) A radon training course, exam, or standard operating procedure shall be cabinet-approved if issued by the:

(a) AARST;

(b) ANSI;

(c) ASTM;

(d) NRPP; or

(e) NRSB.

Section 6. Renewal of Certification. (1) Each annual certification shall expire on June 30.

(2) A person seeking renewal of certification shall:

(a) Meet the requirements in accordance with Section 2 of this administrative regulation; and

(b) Submit to the cabinet a minimum of thirty (30) calendar days prior to certification expiration:

1. A completed renewal application on DFS-375, Application for Certification for Radon Contractors and Laboratories;

2. The fee established in Section 3 of this administrative regulation;

3. Proof of fulfillment of continuing education requirements as established in Section 5(1) of this administrative regulation;

4. An updated quality control program plan that meets the applicable requirements established in Section 4 of this administrative regulation; and

5. Evidence of financial responsibility in accordance with KRS 211.9109(1)(f) or 211.9111(1)(f).

(3) A certification not renewed within thirty (30) days after the renewal date shall pay a late renewal fee as established in Section 3(2)(e) of this administrative regulation.

(4) A certification not renewed within ninety (90) days after the renewal date shall lapse and may only be reinstated in accordance with KRS 211.9121(3).

Section 7. Termination of Registration[Certification] and Inactive Registration[Certification]. (1) A registered[certified] radon measurement contractor or radon mitigation contractor shall notify the cabinet in writing upon electing to terminate registration[certification].

(2) A person previously registered with[certified by] the cabinet and not engaged in radon measurement or mitigation in the Commonwealth but desiring to maintain registration[certification] may request and be granted inactive status.

(a) If inactive status is granted, the person shall:

1. pay the registration[certification] fee established in Section 2(2)(d)[3(2)(f)] of this administrative regulation; and

2. Be exempt from the continuing education requirements.

(b) A registered[certified] radon measurement contractor or radon mitigation contractor on inactive status may petition the cabinet for renewal of active registration[certification]. If a registered[certified] radon measurement contractor or radon mitigation contractor on inactive status wishes to renew active registration[certification], the petitioner shall meet the requirements of this administrative regulation.

Section 5[8]. Registration[Certification] Denial, Suspension, or Revocation. A registration[certification] shall be subject to denial, suspension, or revocation in accordance with KRS 211.9125.

Section 6[9]. Reporting Requirements. (1) A person, business entity, or analytical laboratory shall submit a report to the cabinet on an annual basis for each[a semi-annual basis after a]:

(a) Radon measurement activity [or radon progeny test];

(b) Radon mitigation activity; or

(c) Laboratory analysis[Modification to any component of the radon contractor's quality control program plan; or

(d) Request from the cabinet].

(2) The result of each measurement activity conducted shall include:

(a) The location of the building;

(b) The result of the measurement in picocuries per liter (pCi/L) of radon gas;

(c) The start and end date of the measurement activity;

(d) The type of measurement activity conducted;

(e) The registrant responsible for supervising the measurement; and

(f) The type of building measured, including the foundation type.

(3) The result of each mitigation activity conducted shall include:

(a) The location of the building;

(b) The result of the post-mitigation measurement in picocuries per liter (pCi/L) of radon gas;

(c) The date of the mitigation activity;

(d) The type of mitigation conducted;

(e) The registrant responsible for supervising the mitigation; and

(f) The type of building mitigated, including the foundation type.

(4) The result of each laboratory analysis conducted shall include:

(a) The location of the building;

(b) The result of the measurement in picocuries per liter (pCi/L) of radon gas;

(c) The date of the measurement activity and laboratory analysis;

(d) The type of laboratory analysis conducted;

(e) The registrant responsible for supervising the measurement and laboratory analysis; and

(f) The type of building measured, including the foundation type. The report shall include the:

(a) ZIP Code or location of the building; and

(b) Results of tests performed.

(3) The results for each measurement conducted shall include the:

(a) Results of the test or tests in picocuries per liter (pCi/L) of radon gas;

(b) Date on which the test or tests were conducted; and

(c) Type of structure measured].

Section 7[40]. Administrative Hearings. A person, business entity, or analytical laboratory shall be afforded an opportunity for an administrative hearing in accordance with KRS Chapter 13B.

Section 8[44]. Penalties. The cabinet may assess civil penalties in accordance with KRS 211.9125 against any individual in violation of any cabinet administrative regulation pertaining to radon measurement, mitigation, or laboratory analysis.

Section 9[42]. Incorporation by Reference. (1) "DFS-375, Application for Registration[Certification] for Radon Contractors and Laboratories", 7/2020[8/2017], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

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 Medicaid Services  
Division of Community Alternatives  
(As Amended at ARRS, May 11, 2021)**

**907 KAR 7:020. 1915(c) Home and community based services waiting list and waiting list placement appeal processes.**

RELATES TO: KRS 205.520, 205.5605, 205.5606, 205.5607, 42 C.F.R. **431 Subpart E**, 441 Subpart G, **[42 C.F.R. 431 Subpart E]** 42 U.S.C. 1396a, 1396b, 1396d, 1396n

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606(1), 205.6317

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 policies governing 1915(c) waiver waiting lists, and governs the circumstances under which an appeal will be granted if emergency status is not granted for a waiting list for the Supports for Community Living waiver.

**Section 1. Definitions.**

(1) "1915(c) waiver program" means a Kentucky Medicaid program established pursuant to, and in accordance with, 42 U.S.C. 1396n(c).

(2) "Department" means the Department for Medicaid Services.

(3) "Emergency category of need" means an order of waiting list placement, including the placement described in 907 KAR 12:010, Section 12(3)(b), for the Supports for Community Living (SCL) waiver.

(4) "Good cause" means a circumstance that:

(a) Is beyond the control of an individual and affects the individual's ability to access funding or services; and

(b) Includes:

1. An illness or hospitalization of the individual that is expected to last sixty (60) days or less;

2. The required paperwork and documentation for processing in accordance with Section 2 of this administrative regulation has not been completed, but is expected to be completed in two (2) weeks or less; or

3. The individual or his or her guardian has made diligent contact with a potential provider to secure placement or access services, but has not been accepted within the sixty (60) day time period.

(5) "MWMA" means the Kentucky Medicaid Waiver Management Application internet portal administered by the department, **located at:** <https://chfs.ky.gov/agencies/dms/Pages/mwma.aspx>.

(6) "Slot" means an allocation of funding available for placing an individual in a 1915(c) waiver program.

**Section 2. Waiting Lists.** (1) Notwithstanding other provisions established in KAR Title 907, the provisions of this section and Section 3 of this administrative regulation shall control in relation to the department's policy relating to 1915(c) waiting lists and appeals relating to waiting list placement.

(2) As appropriate, each 1915(c) waiver program shall maintain a statewide waiting list.

(3) If an applicant for a 1915(c) waiver program meets that waiver's criteria for waiting list placement and there are no available slots at the time, the applicant shall be placed on the waiting list for that waiver.

(4) The department shall send a written notification of placement on the waiting list to the applicant, the applicant's legal guardian, or authorized representative.

(5) At least annually, the department shall contact each individual, the individual's legal guardian, or authorized representative, on any 1915(c) waiver waiting list program to verify:

(a) The accuracy of the individual's information; and

(b) Whether the individual wishes to continue to pursue enrollment in the applicable waiver program.

(6) The department shall remove an individual from a waiting list if:

(a) The individual is deceased;

(b) A review of documentation reveals that the individual does not have a diagnosis that qualifies for the applicable 1915(c) waiver;

(c) The individual has relocated to a primary residence outside of the Commonwealth of Kentucky; or

(d) The department notifies the individual, the individual's legal guardian, or authorized representative of potential funding approved to enroll the individual in the applicable waiver program and the individual, individual's legal guardian, or authorized representative:

1. Within sixty (60) calendar days of the potential funding notice, declines the potential funding for enrollment in the program:

- a. Expressly;
- b. By not completing the enrollment process, or
- c. By not asking for a good cause extension to complete the enrollment process within sixty (60) calendar days of the potential funding notice date; and

2. Does not request to remain on the waiting list.

(7) After being notified by the department of potential funding approved to enroll the individual in the waiver program, the individual shall maintain his or her current position on the waiting list if the individual and, if applicable, the individual's legal guardian or authorized representative:

- (a) Declines the potential funding; and
- (b) Requests to remain on the waiver waiting list.

(8) If the department denies a request for emergency category of need, the department shall send written notice of the denial, including a notice of appeal rights, in accordance with 42 C.F.R. Part 431 Subpart E and 907 KAR 1:563, to:

- (a) The individual and, if applicable, the individual's legal guardian or authorized representative; and
- (b) The individual's case manager, waiver case manager, or participant directed services case manager if the individual has a waiver case manager or participant directed services case manager.

(9) The removal of an individual from a 1915(c) waiting list shall not preclude the individual from applying for participation with any 1915(c) waivers in the future.

(10) If the department removes an individual from a 1915(c) waiver program waiting list, the department shall send written notice of the removal, including a notice of appeal rights in accordance with 42 C.F.R. Part 431 Subpart E and 907 KAR 1:563, to:

- (a) The individual, and, if applicable, the individual's legal guardian or authorized representative; and
- (b) The individual's waiver case manager or participant directed services case manager if the individual has a waiver case manager or participant directed services case manager.

(11)(a) If requested the department shall grant an appeal regarding an application of this administrative regulation.

(b) All appeals shall, as appropriate, be in accordance with 907 KAR 1:563.

(12) The hearing shall be conducted in accordance with 907 KAR 1:563.

Section 3. Waiting List Emergency Category Within the Supports for Community Living Waiver. An individual shall be placed on the waiting list for the Supports for Community Living waiver in the order of receipt of application in the MWMA. An individual on a waiting list shall be categorized as established in this section.

(1)(a) Notwithstanding the emergency criteria established in 907 KAR 12:010, Section 12(3)(b), an individual's category of need shall be in the emergency category if the supporting documentation requirements and request for emergency category of need in the 1915(c) waiver program submitted to the department, indicate that an immediate service is needed due to any of the following, if all other applicable and appropriate service options have been exhausted or determined as [deemed] inappropriate:

- 1. Abuse, neglect, or exploitation of the individual as substantiated by the Department of Community Based Services;
- 2. The death of the individual's primary caregiver and lack of an alternative primary caregiver;
- 3. The lack of appropriate living arrangement placement due to:

- a. Loss of housing;
- b. Loss of funding sources including 1915(c) waiver funding sources; or
- c. Imminent discharge from a temporary placement;
- 4. Jeopardy to the health and safety of the individual due to the primary caregiver's inability to provide all care needed due to the primary caregiver's:
  - a. Physical health status; or
  - b. Mental health status;
- 5. Imminent or threat of imminent institutionalization if 1915(c)

home and community based waiver program services are not provided; or

6. Present institutionalization and the applicant is not opposed to community placement in the most integrated setting appropriate to the applicant's needs; and

(b) The individual:

- 1. Does not have a combination of care needs beyond the capability of the supports for community living waiver program; or
- 2. Does not pose a serious potential danger to the health, safety, and welfare of the individual, other participants, or staff.

(2) An individual on the waiting list who does not meet the requirements for the emergency category of need pursuant to subsection (1) of this section shall be placed in the future planning or urgent category of the Supports for Community Living waiting list, in accordance with 907 KAR 12:010.

(3) Priority on a waiting list shall first be given to those on the emergency category, then to others on the waiting list. However, within each category, the order shall remain the same, based on when the recipient applied for Supports for Community Living waiver services.

Section 4. Federal Approval and Federal Financial Participation. The department's coverage of any services established in this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation; and
- (2) Centers for Medicare and Medicaid Services' approval.

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**  
**(As Amended at ARRS, May 11, 2021)**

**922 KAR 1:540. Registration of a foreign adoption.**

RELATES TO: KRS 199.011(4), 199.470, 199.475, 199.585, 213.056(2), 8 U.S.C. 1201-1204, 1421-1458, 42 U.S.C. 14901-14954, 22 C.F.R. Part 42[, 42 U.S.C. 14901-14954]

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472, 199.585(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires [authorizes] the cabinet to promulgate, administer, and enforce administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.585(1) and (2) require the cabinet to register, through a certified notice, an original decree, judgment, or final order of adoption of a child approved for United States citizenship issued by a court or another governmental authority with appropriate jurisdiction in a foreign country. KRS 199.472 mandates that the cabinet establish criteria for the adoption of children by administrative regulation. This administrative regulation establishes a certified notice registering a foreign adoption in Kentucky.

Section 1. Definitions. (1) "Child" is defined by KRS 199.011(4).

(2) "Foreign adoption" means a decree, judgment, or final order of adoption as established [specified] in KRS 199.585(1).

(3) "IH3" or "IR3" means an immigration visa classification that indicates that [classifies] the holder is [as] an immediate relative of a [an] United States citizen in accordance with 8 U.S.C. 1204 and 22 C.F.R. 42.11.

Section 2. Requirements for Certified Notice. (1) In accordance with KRS 199.585, the cabinet shall issue a certified notice registering a foreign adoption in Kentucky[, if the adoptive parent presents the following items in hardcopy:

- (a) The adopted child's:
1. Certificate of citizenship in accordance with 8 U.S.C. 1431; ~~or~~
  2. Proof of the child's IR3; ~~or~~
  3. Proof of the child's IH3;
  - (b) 1. A copy of the original decree, judgment, or final order of the child's adoption; or
  2. A translated copy of the original decree, judgment, or final order of the child's adoption, if the copy of the original decree, judgment, or final order of the child's adoption is not in English; and
  - (c) The "DPP-188, Application for Registration of Foreign Adoption".
- (2) ~~[(a)]~~ The adoptive parent shall submit the items required ~~by~~ ~~[in]~~ subsection (1) of this section by mail to the Department for Community Based Services:
1. ~~By certified or registered mail; and~~
  2. ~~To the secretary in care of the Commissioner of the Department for Community Based Services; and~~
  - (b) ~~The return receipt of certified or registered mail shall be proof of the filing of the items required in subsection (1) of this section for a certified notice registering a foreign adoption in Kentucky.~~
  - (3) The cabinet shall not issue a "DPP 188A, Foreign Adoption Certificate of Registration" until all items required by subsection (1) of this section are received [return to the sender an application if:
  - (a) ~~The sender's return address is provided; and~~
  - (b) ~~The application for a certified notice registering a foreign adoption in Kentucky:~~
  1. ~~Does not contain the items required in subsection (1) of this section; and~~
  2. ~~Was not submitted in the manner specified in subsection (2) of this section].~~

Section 3. Limitations and Restrictions. (1) In accordance with KRS 199.585(3), a petition for adoption shall be:

- (a) Required for a foreign adoption without an item included in Section 2(1) of this administrative regulation; and
- (b) Filed in the circuit court with the appropriate jurisdiction in accordance with KRS 199.470 or 199.475.
- (2)(a) The certified notice registering a foreign adoption in Kentucky shall be distinguished from a record of foreign birth; and
- (b) An individual may apply for a record of foreign birth in accordance with KRS 213.056(2) through the Office of Vital Statistics.

Section 4. Record of Registered Foreign Adoptions. (1) The cabinet shall issue the "DPP-188A, Foreign Adoption Certificate of Registration" as the certified notice registering a foreign adoption in Kentucky.

(2) The DPP-188A shall have the same force and effect as a legal adoption finalized in a circuit court of the Commonwealth of Kentucky.

(3) The cabinet shall maintain a copy of each certified notice registering a foreign adoption in Kentucky and supporting documentation in accordance with KRS 199.585(2).

(4) Within existing appropriations, the cabinet shall make up to three (3) additional copies of the DPP-188A available to an adoptive parent who:

- (a) Made an application in accordance with Section 2 of this administrative regulation; and
- (b) Resubmits the DPP-188 to request an additional copy of the DPP-188A.

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

- (a) "DPP-188, Application for Registration of Foreign Adoption", 02/21 [edition date 12/05]; and
- (b) "DPP-188A, Foreign Adoption Certificate of Registration", 02/21 [edition date 12/05].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 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/dcbps/Pages/default.aspx>.**

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  
(As Amended at ARRS, May 11, 2021)**

**922 KAR 1:580. Standards for children's advocacy centers.**

RELATES TO: KRS Chapter 13B, 17.165, 202A.011(12), 309.130-1399, 314.011(14), 314.142, Chapter 319, Chapter 335, 431.600, 620.020, 620.045, 620.050

STATUTORY AUTHORITY: KRS 194A.050(1), 620.045(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary ~~of~~ ~~[for]~~ the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the ~~health~~ ~~[welfare]~~, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. In order to ~~[To]~~ be eligible for grants from state government entities, KRS 620.045(2) requires children's advocacy centers to comply with the statutory definition established in KRS 620.020(4) and administrative regulations promulgated by the cabinet. This administrative regulation establishes staff qualifications and program standards for children's advocacy centers.

Section 1. Definitions. (1) "Governing board" or "board" means the board of directors vested with the legal responsibility for management of the children's advocacy center.

(2) "Mental health discipline" means:

- (a) Art therapy in accordance with KRS 309.130 to 309.1399;
- (b) Marriage and family therapy in accordance with KRS 335.300 to 335.399;
- (c) Professional counseling in accordance with KRS 335.500 to 335.599;
- (d) Psychiatric nursing in accordance with KRS 202A.011(12)(d);
- (e) Psychiatry in accordance with KRS 202A.011(12)(b);
- (f) Psychology in accordance with KRS Chapter 319; or
- (g) Social work in accordance with KRS 335.010 to 335.160 ~~[335.170]~~.

(3) "Referral agreement" means a written protocol or process:

- (a) Defined within the operating policies of the center; and
- (b) That details how services required by Section 4 of this administrative regulation are established for the center's clients if the center does not have the capacity to provide these services.
- (4) "Regional children's advocacy center" or "center" means an agency defined by KRS 620.020(4) and designated by the cabinet to serve as the regional children's advocacy center in accordance with KRS 620.045(1).

Section 2. Governing Board of Directors. (1) A center shall be managed by a governing board in order to allow community involvement in the planning, development, and evaluation of services.

(2) A governing board shall adopt written bylaws. The bylaws shall include the:

- (a) Purpose of the agency;
- (b) Minimum and maximum number of board member positions;
- (c) Qualifications for board members;
- (d) Method of selecting board members;
- (e) Terms of board members;
- (f) Officers and duties;

- (g) Method of election of officers and chairpersons;
- (h) Quorum requirements for meetings of the board; and
- (i) Method for removal of directors.
- (3) The duties of the board shall be to:
  - (a) Schedule meetings of the board to be held at least six (6) times per state fiscal year;
  - (b) Maintain minutes of each meeting of the board containing:
    - 1. The date and place of the meeting;
    - 2. Names of board members present;
    - 3. The subject matter discussed and actions taken; and
    - 4. The name of the reporter;
  - (c) Establish standing committees of the board to include executive, nominating, finance, and personnel committees;
  - (d) Establish restrictions on reimbursement of board members, including the prohibition against a member contracting with the board to perform personal or professional services;
  - (e) Ensure that the facility housing the center is properly clean, maintained, private, and child-friendly; and
  - (f) Recruit and maintain board members who provide broad regional representation of the area development district [Area Development District] where the center is located.

Section 3. Personnel Management. (1) A personnel file shall be maintained by the center for each employee.

- (2) The minimum contents of the personnel file shall include:
  - (a) Current professional credentials to reflect training and experience adequate for qualification for the position to which the employee is hired;
  - (b) Conditions or terms of employment that shall include a confidentiality statement signed by the employee;
  - (c) A personnel action document reflecting a change in status of an employee, such as salary change, promotion, resignation, or termination;
  - (d) A position description document including title of the position, description of duties, and requirements of training and experience necessary to qualify for the position; and
  - (e) Results from a criminal records background and central registry check conducted in accordance with KRS 17.165 and 922 KAR 1:470 on the employee during the application process and every two (2) years thereafter while employed by the center.
- (3) Written personnel policies shall be established by the center and shall include:
  - (a) Attendance and leave policies;
  - (b) A compensation [Compensation] plan;
  - (c) Hiring, disciplinary, and firing practices;
  - (d) Staff development and continuing education provisions;
  - (e) Employee grievance procedures;
  - (f) Employee performance evaluations;
  - (g) Equal opportunity employment statements;
  - (h) Staff screening; and
  - (i) Staff training and orientation.

(4) The governing board shall employ one (1) staff person as executive director of the children's advocacy center. The executive director shall:

- (a) Be responsible for financial management of the center, including budgets and grant writing;
- (b) Supervise the duties and activities of center staff and volunteers;
- (c) Coordinate the design and delivery of services;
- (d) Fulfill duties as required by the governing board;
- (e) Report directly to the board on all center activities;
- (f) Have a master's degree from an accredited college or university and three (3) years of experience in:
  - 1. Human services;
  - 2. Management; or
  - 3. A criminal justice field; and
- (g) Affirm a commitment to the welfare and protection of children.

(5)(a) A governing board may establish the staff positions specified in subparagraphs 1 through 5 of this paragraph.

1. Child advocate. A child advocate shall have a bachelor's degree from an accredited college or university and two (2) years of experience in a human services or criminal justice field.

- 2. Therapist. A therapist shall:
  - a. Have a doctorate or master's [master] degree from an accredited college or university in a mental health discipline and two (2) years post-degree counseling or clinical experience; and
  - b. Possess a certificate or license to practice under the laws of the Commonwealth of Kentucky in a mental health discipline.
- 3. Forensic interviewer. A forensic interviewer, if employed by the center, shall have:
  - a. A doctorate or master's [master] degree from an accredited college or university in a mental health, education, human services, or criminal justice field[discipline];
  - b. Two (2) years of post-degree counseling or clinical experience; and
  - c. Three (3) years of experience working with[interviewing] children.
- 4. Multidisciplinary team facilitator. A multidisciplinary team facilitator shall have a bachelor's degree from an accredited college or university and two (2) years of experience in a human services or criminal justice field.
- 5. Other staff necessary to support the administration or service delivery of the agency.
  - (b) The qualifications established in paragraph (a)1 through [-] 4 of this subsection shall not apply to center staff hired prior to December 17, 2007.
  - (c) Within three (3) months of employment, staff providing direct services to a child shall have received twenty-four (24) hours of training on issues related to child abuse.
  - (d) Within three (3) months of beginning service, a center volunteer who has access to or contact with a child shall have received twenty-four (24) hours of training on issues related to child abuse.
  - (e) An employee of a center shall receive at least eight (8) hours of the training required by paragraph (c) of this subsection before providing services to a child.
  - (f) A center volunteer who has access to or contact with a child shall receive at least eight (8) hours of training required by paragraph (d) of this subsection before providing services at the center.
  - (g)1. A center contracting for direct services to a child by a professional not on the staff of the center shall document that the professional meets the qualifications established [outlined] in this section.
  - 2. An agreement for provision of service shall:
    - a. Be on file at the center; and
    - b. Specify the qualifications of the staff.
  - (h) An employee of a children's advocacy center shall be at least twenty-one (21) years of age.
  - (i) An applicant for employment shall submit to a criminal records check in accordance with KRS 17.165 and 922 KAR 1:470 during the application process and every two (2) years thereafter while employed by the center.
  - (j) A center volunteer who has access to or contact with a child shall submit to a criminal records check in accordance with KRS 17.165 and 922 KAR 1:470 prior to beginning service to the center and every two (2) year thereafter while service is being provided to the center.
  - (k) An employee of a center under indictment or legally charged with a violent or sex crime as defined in KRS 17.165 shall be immediately removed from contact with children in the center until the employee is cleared of the charge.
  - (l) A center volunteer under indictment or legally charged with a violent or sex crime as defined in KRS 17.165 shall be immediately removed from contact with children in the center until the center volunteer is cleared of the charge.
  - (m) An employee or designated agent shall have immunity from civil liability and shall be provided a defense in civil actions pursuant to KRS 620.050(2).

Section 4. Center Services and Responsibilities. (1) A center shall:

- (a) Provide:
  - 1. Advocacy services;
  - 2. Counseling services;

3. Clinical services;
4. Forensic interviewing;
5. Multidisciplinary team facilitation;
6. Medical examination services; and
7. Consultation and education services; or
- (b) Develop a referral agreement to refer clients to a provider of the services listed in paragraph (a)1 through 7 of this subsection.
- (2) Advocacy services assist child victims and their non-offending caregivers and may include:
  - (a) Accompaniment to court or court-related meetings;
  - (b) Case management services; or
  - (c) Information and referral services.
  - (3) Counseling services may include:
    - (a) A crisis telephone line;
    - (b) Crisis counseling services; and
    - (c) Support group services.
    - (4)(a) Clinical services may include:
      1. A mental health evaluation;
      2. Individual therapy services for a child and non-offending caretaker and family; or
      3. Group therapy services for a child and non-offending caretaker.
      - (b) Clinical services shall be provided by a professional who meets the requirements of Section 3(5)(a)2 of this administrative regulation.
      - (5) Forensic interviewing shall include structured interviews with a child for the purpose of facilitating a criminal investigation and may be provided on site at the center by:
        - (a) The center staff forensic interviewer meeting the requirements established in [accordance—with] Section 3(5)(a)3, 3(5)(a)(3) of this administrative regulation;
        - (b) A law enforcement officer; or
        - (c) A worker who is employed by the cabinet.
        - (6) A child's recorded interview shall not be duplicated except in accordance with KRS 620.050(10).
        - (7) Multidisciplinary team facilitation may include:
          - (a) Scheduling of meetings;
          - (b) Case tracking;
          - (c) Case review; or
          - (d) Data collection.
          - (8)(a) Medical examination services shall be:
            1. Reimbursed by the Department for Medicaid Services in accordance with 907 KAR 3:160; and
            2. Provided by:
              - a. A licensed physician with pediatric experience and expertise in the evaluation and treatment of child abuse;
              - b. A licensed advanced practice registered nurse with pediatric experience and expertise in evaluation and treatment of child abuse; or
              - c. A sexual assault nurse examiner certified in accordance with KRS 314.011(14) and 314.142 [if the child is fourteen (14) years of age or older].
              - (b) If a medical exam is conducted by the center staff or a contractor, a mental health evaluation shall be provided:
                1. Within twenty-four (24) hours of the medical exam; or
                2. If the medical exam will be billed to Medicaid, the same day and at the same location as the medical exam, in accordance with Section 907 KAR 3:160, Section 1(2)(4)(d).
            - (9)(a) Consultation and education services may include:
              1. School-based prevention programs;
              2. Community education programs;
              3. Media presentations;
              4. In-service training; or
              5. Case consultation services.
              - (b) A center shall provide a minimum of one (1) training session per year for community partners or the community at large.
              - (10) In addition to providing services to children in the county in which the center is located, regional center staff shall serve:
                - (a) Children in other counties in the area development district, including those who need medical examinations or forensic interviewing services; and
                - (b) As a technical assistant and consultation resource to

- criminal justice and human service professionals in the area development district in which the center is located.
- (11) Services provided by a center shall be coordinated with multidisciplinary teams as defined in KRS 431.600 and 620.020.
- (12) A center shall provide written policies and procedures for clients and volunteers that include:
- (a) Volunteer screening;
  - (b) Volunteer training and orientation;
  - (c) Grievance procedures for clients and volunteers;
  - (d) Safety;
  - (e) Clients of the center;
  - (f) Client records;
  - (g) Intake;
  - (h) Comprehensive child sexual abuse examinations;
  - (i) Therapy;
  - (j) Forensic interviews; and
  - (k) Mandatory reporting of child and adult abuse.
- (13) A center shall provide to the non-offending caregiver written instructions that include:
- (a) The name and contact information for the center;
  - (b) The name of the cabinet staff member involved in the case;
  - (c) The names of law enforcement personnel handling the case;
  - (d) The name and contact information for the County or Commonwealth's [Commonwealth] Attorney involved in the case;
  - (e) The name and contact information for the receiving medical provider if a referral for additional assessment or treatment is made;
  - (f) The name and contact information for the receiving mental health provider if a referral for additional assessment or treatment is made; and
  - (g) Any known information regarding follow-up appointment times and recommended after-care referrals.
- (14) A center shall develop and maintain written confidentiality policies and procedures to ensure client privacy as provided in Kentucky Rules of Evidence 506 and 507.
- (15) A center shall develop and maintain written policies to limit disclosure of confidential information pursuant to KRS 620.050(5).
- (16) A center shall maintain good standing as a private, nonprofit agency within the Commonwealth of Kentucky.
- (17)(a) A center shall obtain the following insurance coverage:
1. Malpractice insurance for the center staff, Board of Directors, and volunteers;
  2. Liability insurance for the center staff, Board of Directors, and volunteers;
  3. Fidelity bonding;
  4. Facility insurance; and
  5. Workers compensation insurance.
- (b) If contracted professionals provide their own insurance and are not covered by the center, the center shall maintain documentation that shows an active and appropriate policy.
- (c) The center shall submit documentation showing proof of insurance to the cabinet.
- Section 5. Client Files and Documentation. (1) A center shall open a client file for a child who is provided a service, excluding service that is limited to a telephone conversation.
- (2) A client file shall include information sufficient to document the services provided or referral made by the center and shall include:
- (a) The names of the client and primary caregiver;
  - (b) The name of the recipient of service;
  - (c) The client's address;
  - (d) The client's date of birth;
  - (e) Each date of service provided by the center;
  - (f) The name and title of each service provider of the center;
  - (g) A description of any services provided by the center;
  - (h) The referral sources used;
  - (i) A description of any follow-up services provided; and
  - (j) Descriptions of contacts with, report to, and referrals from the cabinet and law enforcement agency.
- (3)(a) A center shall maintain a system for tracking:
1. Services rendered by region, except that comprehensive

medical services and forensic interviewing shall be tracked by county of the client's residence;

2. Clients seen by county of client's residence;
3. Referrals made; and
4. Contacts with other community agencies on behalf of clients.

(b) Documentation shall be sufficient to support statistics reported to the cabinet.

Section 6. Funding. (1)(a) The cabinet shall designate one (1) regional children's advocacy center in each area development district.

(b) A children's advocacy center designated on or after July 1, 2007, shall retain the designation unless it has been rescinded by the cabinet based on:

1. Periodic review of the center's performance; or
2. The annual plan and budget submitted by the center to the cabinet for funding for the next fiscal year.

(c) The cabinet shall notify the Office of the Attorney General, the Department for Medicaid Services, and the Justice and Public Safety Cabinet of any designation of a regional children's advocacy center made pursuant to this administrative regulation.

(2) The requirements of this administrative regulation shall not prohibit the center from applying for nongovernmental grants or fundraising to support efforts consistent with the mission of the center.

(3)(a) In addition to the provisions of subsection 1(b) of this Section, the Commissioner of the Department for Community Based Services may rescind the designation of a center if a determination is made that the center failed to:

1. Submit a budget and plan for services, which shall substantiate the capacity to provide services specified in KRS 620.020(4) and in accordance with this administrative regulation;
2. Operate in accordance with a budget and plan for services approved by the cabinet; or
3. Operate in accordance with the requirements of this administrative regulation.

(b) Any notice of rescission of a designation shall:

1. Be in writing;
2. Be mailed to the center's last known mailing address;
3. State the basis for the rescission;
4. State the effective date of the rescission; and
5. State any appeal rights.

(c) The cabinet shall notify the Office of the Attorney General, the Department for Medicaid Services, and the Justice and Public Safety Cabinet of any notice of rescission of a designation of a regional children's advocacy center issued pursuant to this administrative regulation. Failure by the cabinet to provide such notice shall not serve as grounds for the affected center to invalidate the notice of rescission.

(4) Cabinet funding for a center shall be contracted through the regional center or the centers' state association.

(5) A center may contract or establish referral agreements with other agencies or professionals to provide services established in [as defined within] Section 4 of this administrative regulation.

(6)(a) Except in cases where designation has terminated, as established [set forth] in subsection 1(b) of this Section, a center that has received written notice that its designation has been rescinded may appeal the determination of the Commissioner of the Department for Community Based Services by requesting an administrative hearing.

(b) Any request for an administrative hearing shall be in writing and shall be received by the Department for Community Based Services within thirty (30) days of the date of receipt of the notice of rescission. This type of request shall be sent to the Office of the Commissioner, Department for Community Based Services, Cabinet for Health and Family Services, 275 East Main Street, 3E-A [3rd Floor], Frankfort, Kentucky 40621.

(c) Any administrative hearing held pursuant to this administrative regulation shall be conducted in accordance with KRS Chapter 13B by a hearing officer employed by the cabinet.

(d) A request for an administrative appeal shall stay the rescission of the designation until the administrative appeal process is final.

(e) The stay on the rescission of the designation granted by paragraph (d) of this subsection [Section 6(6)(d) in this administrative regulation] shall not extend to judicial review, unless a stay is granted pursuant to KRS 13B.140(4).

Section 7. Audit and Monitoring. (1) The cabinet or its agent shall randomly, or upon receipt of a complaint, audit, monitor, or conduct program reviews of a center.

(2) A center shall allow the cabinet or its agent access to its property and records as required by subsection (1) of this section.

Section 8. Grievance and Appeals Process. Client grievances. A center shall establish a written grievance procedure that shall:

(1) Be given to the parent or guardian of each child who comes to the center for services; and

(2) Contain a description of the services provided by the center and the procedure for filing a client grievance in accordance with 922 KAR 1:320, Section 10.

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 Licensure of Marriage and Family Therapists  
(Amended After Comments)

201 KAR 32:030. Fees.

RELATES TO: KRS 335.330, 335.340(1), (3), 335.342

STATUTORY AUTHORITY: KRS 335.320(4), 335.330, 335.340(1), (3), 335.348

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.330 requires the board to promulgate an administrative regulation establishing the initial fee for licensure required to be paid by an applicant for licensure and requires an applicant to pass a written examination prescribed by the board. KRS 335.340(1) requires that all licenses issued under KRS 335.330 shall be renewed annually, and that the board promulgate an administrative regulation establishing the fee for licensure renewal. KRS 335.340(3) requires the board to promulgate an administrative regulation establishing the late renewal fee. This administrative regulation establishes fees for licensure as a marriage and family therapist or marriage and family therapy[therapist] associate.

Section 1. Initial Application Fee. The initial application fee for licensure as a marriage and family therapist shall be:

- (1) Fifty (50) dollars;
- (2) Nonrefundable; and
- (3) Payable to the Kentucky State Treasurer.

Section 2. Initial Licensure Fee. The initial fee for licensure as a marriage and family therapist shall be:

- (1) \$175;
- (2) Nonrefundable; and
- (3) Payable to the Kentucky State Treasurer.

Section 3. Initial Application. (1) An applicant for licensure as a marriage and family therapist shall submit a completed Licensure as a Marriage and Family Therapist Application to the board in accordance with KRS 335.330 and with the fees required under Sections 1 and 2 of this administrative regulation.

(2) The applicant shall complete six (6) hours of training in the field of suicide assessment, treatment, and management every six (6) years as required by 201 KAR 32:060, Section 1(4).

(3) The applicant shall complete the three (3) hours of training in the field of domestic violence within three (3) years of licensure as required by 201 KAR 32:060, Section 1(5).

(4) The applicant shall document professional experience obtained as a marriage and family therapy[therapist] associate, including 1,000 client hours over a minimum of two (2) years, and verify clinical supervision as required by 201 KAR 32:035.

Section 4. Examination Fee. (1) An applicant shall pass the National Marital and Family Therapy Examination administered and verified by the Association of Marital and Family Therapy Regulatory Boards.

(2) The applicant shall pay the required examination fee.

Section 5. Renewal Fee. (1) A licensed marriage and family therapist shall submit a completed Licensure as a Marriage and Family Therapist Renewal Application to the board in accordance with KRS 335.340.

(2) The fee for renewal of licensure as a marriage and family therapist shall be:

- (a) \$150 annually;
- (b) Nonrefundable; and
- (c) Payable to the Kentucky State Treasurer.

(3) The licensee shall complete six (6) hours of training in the field of suicide assessment, treatment, and management every six (6) years as required by 201 KAR 32:060, Section 1(4).

(4) The licensee shall complete the three (3) hours of training in the field of domestic violence within three (3) years of licensure

as required by 201 KAR 32:060, Section 1(5).

(5) The licensee shall submit proof of completion of the continuing education requirements under 201 KAR 32:060.

Section 6. Late Renewal Fees. (1) A licensee who renews a license during the ninety (90) day grace period provided by KRS 335.340(3) shall pay a late renewal fee of seventy-five (75) dollars in addition to the payment of the renewal fee as established in Section 5 of this administrative regulation.

(2) The fee shall be:

- (a) Nonrefundable; and
- (b) Payable to the Kentucky State Treasurer.

Section 7. Administrative Fine. A licensee who fails to meet the continuing education unit requirements as set forth in 201 KAR 32:060, by the renewal date, shall pay an additional administrative fine of seventy-five (75) dollars.

Section 8. Reinstatement of Expired License. (1) In accordance with KRS 335.340, an expired license shall be reinstated by:

(a) Submitting a completed Application for License Reactivation;

(b) Paying of the renewal fee as established in Section 5 of this administrative regulation for each year since the date of last active licensure;

(c) Paying of a reinstatement fee of \$100, which shall be:

1. Nonrefundable; and
2. Payable to the Kentucky State Treasurer; and

(d) Meeting all other requirements of this section of this administrative regulation.

(2) The applicant for reinstatement of an expired license shall submit proof of:

(a) Completion of fifteen (15) hours of continuing education for each year since the date of last active licensure as required by 201 KAR 32:060;

(b) Completion of six (6) hours of training in the field of suicide assessment, treatment and management every six (6) years as required by 201 KAR 32:060, Section 1(4); and

(c) Completion of three (3) hours of training in the field of domestic violence within three (3) years of licensure as required by 201 KAR 32:060, Section 1(5).

Section 9. Fees for Providers of Continuing Education. (1) There shall be a nonrefundable fee of \$100[fifty (50) dollars] for a single continuing education workshop offered an unlimited number of times in a calendar year, January 1 to December 31. The provider shall submit the Continuing Education Program Provider Approval Application with the applicable fee required under this subsection[per day for six (6) continuing education workshops or less offered a single time].

(2) There shall be a nonrefundable fee of \$300 for a provider designated as an approved sponsor for continuing education for two consecutive calendar years, January 1 to December 31. The provider shall submit the Application for Continuing Education Sponsor with the applicable fee required under this subsection[\$125 per day for seven (7) or more continuing education workshops offered a single time].

(3) [There shall be a nonrefundable fee of \$250 for a single continuing education workshop offered unlimited times in a calendar year, January 1 to December 31.]

(4) The provider shall submit the Continuing Education Program Provider Approval Application with the applicable fee required under subsections (1) through (3) of this section.

(5) The marriage and family therapist, and the marriage and family therapy[therapist] associate shall submit the Application for Continuing Education Program Approval Individual for post approval only.

Section 10. Incorporation by Reference. (1) The following

material is incorporated by reference:

- (a) "Licensure as a Marriage and Family Therapist Application", July 2016;
- (b) "Licensure as a Marriage and Family Therapist Renewal Application", July 2016;
- (c) "Application for License Reactivation", July 2016;
- (d) "Continuing Education Program Provider Approval Application", September 2016; [and]
- (e) "Application for Continuing Education Program Approval Individual", 2016; and
- (f) "Application for Continuing Education Sponsor", May[January] 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Marriage and Family Therapists, 500 Mero Street, 2SC32[911-Leawood Drive], Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

DR. C. SHAWN OAK, Ph.D., Chair

APPROVED BY AGENCY: May 12, 2021

FILED WITH LRC: May 13, 2021 at 8:00 a.m.

CONTACT PERSON: Kevin R. Winstead, Commissioner,  
Department of Professional Licensing, Kentucky Public Protection  
Cabinet, 500 Mero Street, 237CW, Frankfort, Kentucky 40601,  
phone 502-782-0562, fax 502-564-4818,  
KevinR.Winstead@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the fees for licensure, renewal, reinstatement, and sponsors of continuing education.

(b) The necessity of this administrative regulation: The administrative regulation is necessary under KRS 335.320(4) and 335.330, which requires the Board to set by administrative regulation an initial licensure fee; KRS 335.332(3), which require the Board to set by administrative regulation, an initial permit fee for associates; KRS 335.340(1), which requires the Board to set by administrative regulation a renewal fee; KRS 335.340(3), which requires the Board to set by administrative regulation a late fee; KRS 335.340(7), which requires the Board to prescribe administrative regulations for continuing education; and KRS 335.320(9), which requires the Board to promulgate administrative regulations to implement the purpose and scope of KRS 335.300 to 335.399.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.320(4) and 335.330 authorize the Board to charge a fee for an applicant to become licensed. KRS 335.332(3) authorizes the Board to charge a fee for an applicant to receive a permit from the Board. KRS 335.340(1) authorizes the Board to establish a fee for an applicant to renew license. KRS 335.340(3) allows the board to charge a late renewal fee. KRS 335.340(7) authorizes the Board to prescribe regulations for continuing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by setting forth the fees for licensure, to receive a permit, to renew and reinstate a license, and to provide continuing education programming.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by: (1) eliminating the existing fee of fifty (50) dollars per day for six (6) continuing education workshops or less offered a single time; (2) eliminating the \$250 fee for a single continuing education workshop offered unlimited times in a calendar year, January 1 to December 31; (3) allowing a continuing education provider to pay \$100 for a single continuing education workshop offered an unlimited number of times in a calendar year; and (4)

allowing a continuing education sponsor to pay \$300 to provide unlimited continuing education programs for two consecutive calendar years. Further, the Amended After Comments version will change the Application for Continuing Education Sponsorship, which is incorporated by reference in this administrative regulation, to clarify that certain references to two years are to two consecutive calendar years, to make a technical correction, and to update the edition date.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to notify continuing education providers of the costs of becoming a board-approved continuing education provider. Further, the Amended After Comments version is necessary to make certain clarification and technical changes to this administrative regulation and the material incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes. KRS 335.340(7) requires the Board to prescribe administrative regulations for continuing education. KRS 335.320(9) requires the Board to promulgate administrative regulations to implement the purpose and scope of KRS 335.300 to 335.399.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide continuing education providers a way to become board-approved providers of continuing education programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Licensed Marriage and Family Therapists and Marriage, Family Therapy Associates, and continuing education providers will be affected by this administrative regulation. As of December 7, 2020, there were 770 total active license and permit holders. It is unknown how many program providers there are. The Board averages 44 requests a month to provide board-approved continuing education programs.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Licensees and permit holders do not have to take any action to conform to the amendment. Program providers will have to fill out an application and pay a fee to comply with the amended regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Licensees and permit holders will have no cost associated with the amendment. Program providers who want to apply to provide a single board-approved continuing education program for one calendar year will be required to pay a nonrefundable fee of \$100. Sponsors who want to apply to provide unlimited board-approved continuing education programs for two calendar years will be required to pay a nonrefundable fee of \$300.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, licensees and permit holders will know the board-approved continuing education programs. Board-approved program providers will be able to advertise their continuing education programs as board approved.

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

(a) Initially: Initially, there is no additional cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: On a continuing basis, there is no additional cost to the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Under KRS 335.342(1), all fees and other moneys received by the Board pursuant to KRS 335.300 through KRS 335.599 shall be deposited in the State Treasury to the credit of a revolving fund for the use of the board.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The amendment

establishes a fee of \$100 for a single continuing education workshop offered an unlimited number of times in a calendar year, January 1 to December 31. It also establishes a fee of \$300 for a provider designated as an approved sponsor for continuing education for two consecutive calendar years, January 1 to December 31.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment establishes a fee of \$100 for a single continuing education workshop offered an unlimited number of times in a calendar year, January 1 to December 31. It also establishes a fee of \$300 for a provider designated as an approved sponsor for continuing education for two consecutive calendar years, January 1 to December 31.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply to all applicants.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensure for Marriage and Family Therapists is housed for administrative purposes within the Public Protection Cabinet Department of Professional Licensing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.320(4) and 335.330 require the Board to set by administrative regulation an initial licensure fee. KRS 335.332(3) requires the Board to set by administrative regulation, an initial permit fee for associates. KRS 335.340(1) requires the Board to set by administrative regulation a renewal fee. KRS 335.340(3) requires the Board to set by administrative regulation a late fee. KRS 335.340(7) requires the Board to prescribe administrative regulations for continuing education. KRS 335.320(9) requires the Board to promulgate administrative regulations to implement the purpose and scope of KRS 335.300 to 335.399.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

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

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

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

Revenues (+/-): Neutral  
Expenditures (+/-): Neutral  
Other Explanation: None

#### BOARDS AND COMMISSIONS

##### Board of Licensure of Marriage and Family Therapists (Amended After Comments)

#### 201 KAR 32:060. Continuing education requirements.

RELATES TO: KRS 194.540, 210.366, 335.300(4), 335.340

STATUTORY AUTHORITY: KRS 335.320(4), (9), 335.340(7)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.340(7) authorizes the board to promulgate administrative regulations to establish the fees and other requirements for a permit as a marriage and family therapy[therapist and] associate. This administrative regulation establishes the requirements for continuing education and the methods and standards for the accreditation of continuing education courses.

Section 1. Accrual of Continuing Education Hours; Computation of Accrual. (1) Effective January 1, 2017, a minimum of fifteen (15) approved continuing education hours shall be accrued by each licensee and a minimum of ten (10) approved continuing education hours shall be accrued by each associate during each one (1) year renewal period.

(2) All hours shall be in "the practice of marriage and family therapy" as defined by KRS 335.300(4) and shall relate to the professional application of psychotherapeutic and systems theories and techniques in the delivery of services to individuals, couples, and families.

(3) Three (3) hours of the hours required by subsection (1) of this section for licensees and associates shall be accrued in the field of professional marriage and family therapy ethics.

(4) Commencing on January 1, 2017, each licensee and associate shall be required to show proof of completion of six (6) hours of continuing education in suicide assessment, treatment, and management every six (6) years beginning January 1, 2015 as required by KRS 210.366. These hours shall be in addition to the requirements set forth in subsection (1) of this section unless preapproved by the board as meeting the requirements set forth in subsection (2) of this section or meets requirements of Section 2 of this administrative regulation.

(5) Within three (3) years of initial licensure or certification, each licensee and associate~~[all mental health professionals]~~ shall successfully complete a three (3) hour training that covers dynamics of domestic violence, elder abuse, neglect, and exploitation; effects of domestic violence and elder abuse, neglect, and exploitation on adult and child victims; legal remedies for protection; lethality and risk issues; model protocols for addressing domestic violence and elder abuse, neglect, and exploitation; available community resources and victim services and reporting requirements as required by KRS 194A.540.

Section 2. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the license or permit shall be directly related to the professional growth and development of marriage and family therapy practitioners and associates. Education hours shall be earned by completing any of the educational activities established in this subsection. (1) Programs not requiring board review and approval. Programs from the following sources shall be deemed to be relevant to the practice of marriage and family therapy and shall be approved without further review by the board:

(a) Programs provided or approved by the American Association for Marriage and Family Therapy (AAMFT) and its state affiliates;

(b) Academic courses as defined in 201 KAR 32:010; and

(c) Continuing education programs offered by Commission on Accreditation for Marriage and Family Therapy Education accredited institutions.

(2) Programs requiring board review and approval. Programs from the following sources shall be reviewed and may be determined to be relevant and subsequently approved by the board:

(a) Relevant programs including online study courses, manualized training, and face-to-face workshops, by other organizations, educational institutions, or other service providers approved by the board;

(b) Relevant programs or academic courses presented by the licensee. Presenters of relevant programs or academic courses may earn full continuing education credit for each contact hour of instruction, not to exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated

instruction of the same course; and

(c) Relevant publications in a professionally recognized or juried publication. Credit shall not be granted except for those publications that were published within the one (1) year period immediately preceding the renewal date. A licensee shall earn one-half (1/2) of the continuing education hours required for a relevant publication. More than one (1) publication shall not be counted during each renewal period.

Section 3. Continuing Education Providers. (1) Any entity seeking to obtain approval of a continuing education program prior to its offering shall pay the fee as established in 201 KAR 32:030, Section 9, and submit a Continuing Education Program Provider Approval Application, as incorporated by reference in 201 KAR 32:030, Section 10, to the board at least sixty (60) days in advance of the program. The application shall include the:

- (a) Type of learning activity;
- (b) Subject matter;
- (c) Names and qualifications of the instructors; and
- (d) Number of continuing education hours offered.

(2) A continuing education activity shall be qualified for preapproval if the activity being presented:

- (a) Is an organized program of learning;
- (b) Pertains to subject matters that integrally relate to the practice of marriage and family therapy;
- (c) Contributes to the professional competency of the licensee or associate; and
- (d) Is conducted by individuals who have relevant educational training or experience.

(3) An approved continuing education sponsor is a person or organization which is approved by the board to provide more than one (1) continuing education programs over a two (2) consecutive calendar year period of time.

(a) Any person or organization seeking to obtain approval as a continuing education sponsor shall:

- 1. Pay the fee established in 201 KAR 32:030, Section 9; and
- 2. Complete the Application for Continuing Education Sponsor and submit it at least sixty (60) days in advance of offering courses. The application shall include the following:

- a. Continuing education sponsor provider information;
- b. Sponsor administrator information;

c. One sample continuing education course that would qualify for approval under Section 1(2) of this administrative regulation. Although only one course is submitted, it is understood that this course serves as an example of all courses provided[providing Kentucky].

d. The sample course provided must include the following:

- (i) Published course or similar description;
- (ii) Complete resume of each instructor;
- (iii) Copy of the program indicating hours of education;
- (iv) Time agenda include coffee and lunch breaks listed;
- (v) Copy of the evaluation tool to be used; and
- (vi) Official certificate from the provider. The official certificate must include the following statement: "KY LMFT Board granted approval for this program on (date)."

(vii). The documents submitted in this subsection must be kept on file for each of the programs and courses presented as board-approved continuing education hours. The board may request a copy of this information at any time.

e. The delivery format for which the applicant is applying:

f. A description of how the continuing education of licensed marriage and family therapist and permitted marriage and family therapy associates support the overall goals of the provider;

g. A description of the target audience, including education level and profession, to whom the program is directed;

h. A statement that the applicant will provide all legally required disability accommodations to participants at live events;

i. A statement that all live programs offered for board-approved credit will be presented in facilities compliant with all federal and state laws, including the Americans with Disabilities Act, 42 U.S.C. 12101, et seq.;

j. A description of the process by which the applicant selects presenters for the continuing education programs;

k. A statement of whether the provider maintains policies concerning program fee, refunds, and cancellations;

l. A description of the organization's procedure for verifying attending including sign-in sign-out procedures;

m. A description of the organization's procedure for distributing certificates of completion;

n. A description of the record-keeping process that will be utilized to maintain all materials for a period of five (5) years following each program;

o. A description of the method by which program evaluations are obtained from participants and how the evaluation results are used for future program planning; and

p. An attestation that the information provided in the application:

(i) Is complete;

(ii) If approved as a continuing education sponsor, the provider will comply with the terms set forth by the board;

(iii) Board approval will be for a period of two (2) consecutive calendar years;

(iv) Board approval will include all programs and courses that meet board continuing education requirements; and

(v) That the board has the right to audit, at any time, programs and courses to evaluate if they comply with board regulations.

(b) An approved continuing education sponsor shall submit to the board an annual report of the education programs offered during the year.

(c) Notwithstanding this subsection, the board shall individually approve the following courses:

1. The six (6) hours of board-approved continuing education courses in supervision under 201 KAR 32:035, Section 2(4);

2. The two (2) hours of continuing education in supervision under 201 KAR 32:035, Section 2(5) needed by a non-AAMFT approved supervisor to maintain board-approved supervisor status;

3. The one (1) hour of continuing education in Kentucky law required under 201 KAR 32:035, Section 2(6);

4. The three (3) hours of marriage and family therapy ethics required by Section 1(1) of this regulation; and

5. The fifteen (15) hour telehealth course required by 201 KAR 32:110, Section 3.

(d) The applicant must designate an authorized representative to serve as the sponsor administrator.

1. The administrator is responsible for assuring:

a. That the content of all programs offering continuing education hours meet the qualifications of Section 1(2) of this administrative regulation; and

b. That the programs are conducted by individuals who have relevant education training or experience.

2. The administrator shall serve as the primary contact person with the board concerning sponsor program matters.

Section 4. Responsibilities and Reporting Requirements of Licensees and Associates. (1) Licensees and associates shall:

(a) Be responsible for obtaining required continuing education hours;

(b) Identify personal continuing education needs;

(c) Take the initiative in seeking continuing professional education activities to meet these needs; and

(d) Seek ways to integrate new knowledge, skills, and attitudes.

(2) Each person holding a license or permit shall:

(a) Select approved activities by which to earn continuing education hours;

(b) If seeking approval for continuing education from a program not already approved pursuant to Section 2(2) of this administrative regulation and not exempted from requiring board approval pursuant to Section 2(1) of this administrative regulation, submit an application to the board for consideration. The application shall include the:

1. Agenda that is detailed, timed, and includes topics and presenters;

2. Presenter's biography, including education;

3. Credentials of all presenters;

4. All presenters' experience related to topic;

5. Description of training; and

6. Objectives and goals;

(c) Maintain records of continuing education hours. Each licensee and associate shall maintain, for a period of one (1) year from the date of renewal, all documentation verifying successful completion of continuing education hours. During each renewal period, up to fifteen (15) percent of all licensees and associates shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education hours for the current renewal period. Verification of continuing education hours shall not otherwise be reported to the board;

(d) Document attendance and participation in a continuing education activity in the form of official documents including transcripts, certificates, or affidavits signed by instructors. The type of documentation required shall vary depending on the specific activity submitted to the board for approval; and

(e) Fully comply with the provisions of this administrative regulation. Failure to comply shall constitute a violation of KRS 335.340(7) and may result in the refusal to renew, suspension, or revocation of the license or permit.

Section 5. Carryover of Continuing Education Hours, Prohibited. There shall not be a carryover of continuing education hours earned in excess of those required under Section 1 of this administrative regulation into the immediately following renewal period.

Section 6. Board to Approve Continuing Education Hours; Appeal Upon Approval Denial. In the event of denial, in whole or part, of any application for approval of continuing education hours, the licensee or associate shall have the right to request reconsideration by the board of its decision. The request shall be in writing and shall be received by the board within thirty (30) days after the date of the board's decision denying approval of continuing education hours.

Section 7. Waiver or Extensions of Continuing Education. (1) The board may, in individual cases involving medical disability, illness, or undue hardship, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill the same or make the required reports.

(2) A request for waiver or extension shall be in writing and submitted within the renewal grace period.

(3) A written request for waiver or extension of time involving medical disability or illness shall be submitted by the licensee or associate accompanied by a verifying document signed by a licensed physician, a physician's assistant, or a nurse practitioner, and shall be received by the board within the grace period.

(4) A written request for waiver or extension of time involving undue hardship shall be submitted by the licensee or associate accompanied by a verifying document signed by the licensee or associate, and shall be received by the board within the grace period.

(5) A waiver of the minimum continuing education requirements or an extension of time within which to fulfill the continuing education requirements may be granted by the board for a period of time not to exceed one (1) calendar year.

(6) If the medical disability, illness, or undue hardship upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the licensee or associate shall reapply for the waiver or extension in writing prior to the expiration of the previous extension or waiver.

Section 8. Incorporation by Reference. (1) ~~The following material is incorporated by reference:~~

~~(a) "Application for Continuing Education Sponsor", May/January 2021, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Marriage and Family Therapists, 500 Mero Street, 2SC32, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~

DR. C. SHAWN OAK, Ph.D., Chair

APPROVED BY AGENCY: May 12, 2021

FILED WITH LRC: May 13, 2021 at 8:00 a.m.

CONTACT PERSON: Kevin R. Winstead, Commissioner,  
Department of Professional Licensing, Kentucky Public Protection  
Cabinet, 500 Mero Street, 237CW, Frankfort, Kentucky 40601,  
phone 502-782-0562, fax 502-564-4818,  
KevinR.Winstead@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for continuing education for licensed marriage and family therapists and marriage and family therapy associates.

(b) The necessity of this administrative regulation: The administrative regulation is necessary under KRS 335.340(7), which requires the Board to prescribe regulations for a person applying for renewal or reinstatement of licensure to show evidence of completion of continuing education; and KRS 335.320(9), which requires the Board to promulgate administrative regulations, in accordance with KRS Chapter 13A, to implement the purpose and scope of KRS 335.300 to 335.399.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting forth the continuing education requirements for licensed marriage and family therapists and marriage and family therapy associates.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation conforms to the content of the authorizing statutes by setting forth the continuing education requirements for licensed marriage and family therapists and marriage and family therapy associates.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by allowing entities to become an approved sponsor able to provide more than one continuing education programs over a two-year period of time. Further, the Amended After Comments version will change the existing administrative regulation by clarifying that: certain training applies to each licensee and associate instead of all mental health professionals; references to two years are to two consecutive calendar years; that the sample course submitted with the Application for Continuing Education Sponsor is an example of all courses provided; that the annual report of education programs shall be submitted to the board by the continuing education sponsor; and by changing the edition date of the Application for Continuing Education Sponsorship which is incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow entities to have sponsor status to receive board approval to become sponsors that can provide more than one continuing education programs over a two-year period of time. Further, the Amended After Comments version is necessary to make certain clarification and technical changes to this administrative regulation and the material incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes. KRS 335.340(7) requires the Board to prescribe administrative regulations for continuing education. KRS 335.320(9) requires the Board to promulgate administrative regulations to implement the purpose and scope of KRS 335.300 to 335.399.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will allow sponsors the ability to be approved to provide unlimited continuing education programs without having to submit individual programs to the Board for approval.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Licensed Marriage and Family Therapists and Marriage, Family Therapy Associates, and continuing education providers will be affected by this administrative regulation. As of December 7, 2020, there were 770 total active license and permit holders. It is unknown how many program providers there are. The Board averages 44 requests a month to provide board-approved continuing education programs.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Licensees and permit holders do not have to take any action to conform to the amendment. Program providers will have to fill out an application and pay a fee to comply with the amended regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Licensees and permit holders will have no cost associated with the amendment. Program providers who want to apply to provide a single board-approved continuing education program for one calendar year will be required to pay a nonrefundable fee set forth in 201 KAR 32:030.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, licensees and permit holders will know the board-approved continuing education programs. Board-approved program providers will be able to advertise their continuing education programs as board approved.

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

(a) Initially: Initially, there is no additional cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: On a continuing basis, there is no additional cost to the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Under KRS 335.342(1), all fees and other moneys received by the Board pursuant to KRS 335.300 through KRS 335.599 shall be deposited in the State Treasury to the credit of a revolving fund for the use of the board.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: A fee of \$300 is established in 201 KAR 32:030 for a provider designated as an approved sponsor for continuing education for two consecutive calendar years, January 1 to December 31.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation established directly or indirectly a fee of \$300 for a provider designated as an approved sponsor for continuing education for two (2) consecutive calendar years, January 1 to December 31.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply to all licensed marriage and family therapists and permitted marriage and family therapy associates.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensure for Marriage and Family Therapists is housed for administrative purposes within the Public Protection Cabinet Department of Professional Licensing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.340(7) requires the Board to prescribe administrative regulations for continuing education. KRS 335.320(9) requires the Board to promulgate administrative regulations to implement the purpose and scope of KRS 335.300

to 335.399.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

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

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

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

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*.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Education Professional Standards Board  
(Amendment)**

**16 KAR 3:060. School[Guidance] counselor, provisional and standard certificates, all grades.**

RELATES TO: KRS 156.101, 156.160, 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.020, 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board (EPSB) to establish standards and requirements for obtaining and maintaining a teaching certificate and for programs of preparation for teachers and other professional school personnel, and KRS 161.030(1) requires all certificates issued under KRS 161.010 to 161.126 to be issued in accordance with the administrative regulations of the EPSB[board]. This administrative regulation establishes the preparation and certification program for school[guidance] counselors, at all grade levels.

Section 1. Conditions and Prerequisites. (1) The provisional and standard certificate for school[guidance] counselor shall be issued in accordance with KRS Chapter 161 and 16 KAR Chapters 3 and 6 to an applicant who has completed the approved program of preparation which corresponds to the certificate at an educator preparation[a teacher education] institution approved in accordance with 16 KAR 5:010.

(2) The school[guidance] counseling program shall be subject to the program approval requirements established in 16 KAR 5:010 and shall incorporate the Kentucky Standards of Preparation for School Counselors[Kentucky Standards For Guidance Counselor Programs, incorporated by reference in 16 KAR 5:010].

(3) The provisional and standard certificate for school[guidance] counselor established under this administrative regulation shall be valid for the position of school[guidance] counselor for all grade levels, primary through grade twelve.

Section 2. (1) The provisional certificate for school[guidance] counselor shall be issued to an applicant who meets the requirements of 16 KAR 2:010, Section 3(1), and has completed [upon completion of] an approved master's level program in school[guidance] counseling.

(2) The provisional certificate for school[guidance] counselor shall be issued for a period of five (5) years and may be renewed upon application to the EPSB[board], compliance with 16 KAR 2:010, Section 3(1), [using the "Form TC-2, Application for Certificate Renewal Duplicate," incorporated by reference in 16 KAR 2:090;] and submission of proof of the completion of a minimum of three (3)[nine (9)] semester hours of graduate credit in the areas of counseling or school[guidance] counseling.

(2) An applicant with a valid Kentucky teaching certificate who has completed the coursework for the standard certificate for school counselor, but has not met the employment requirements of Section 3 of this administrative regulation, may renew the provisional school counselor certificate upon meeting the requirements of 16 KAR 4:060 for the renewal of the applicant's teaching certificate. (4)[(3)] If there is a lapse of a provisional certificate for school[guidance] counselor for lack of meeting the renewal requirements, certification may be reissued at a later date upon application to the EPSB[board], compliance with 16 KAR 2:010, Section 3(1), [using the "Form TC-2, Application for Certificate Renewal/Duplicate," incorporated by reference in 16 KAR 2:090;] and the submission of proof of the completion of a minimum of six (6)[nine (9)] semester hours of graduate credit [for each five (5) year period of validity or period of lapse of the guidance counselor certificate. The graduate credit shall be] in the

areas of counseling or school[guidance] counseling.

Section 3. (1) The standard certificate for school[guidance] counselor shall be issued to an applicant who meets the requirements of 16 KAR 2:010, Section 3(1) and one (1) of the following qualification options:

(a) Option I:

1. Successful completion of an approved master's level program in school[guidance] counseling;

2. Successful completion of an additional three (3) to six (6) credit hours from an approved graduate level counseling or school[guidance] counseling program.

3. One (1) year of full time employment as a provisionally-certified school[guidance] counselor in a public school or nonpublic school which meets the state performance standards as established in KRS 156.160 or which has been accredited by a regional or national accrediting association;

4. A valid Kentucky Professional teaching certificate; and

5. A minimum of one (1) year of full time classroom teaching experience on a Professional Teaching Certificate in a public school or a nonpublic school which meets the state performance standards as established in KRS 156.160 or which has been accredited by a regional or national accrediting association; or

(b) Option II:

1. Successful completion of an approved master's level program in school[guidance] counseling;

2. Successful completion of an additional three (3) to six (6) credit hours from an approved graduate level counseling or school[guidance] counseling program; and

3. A minimum of two (2) years of full-time[successful] employment as a provisionally [full-time] certified school[guidance] counselor.

(2) The standard certificate for school[guidance] counselor shall be issued for a period of five (5) years and shall be renewed subsequently for five (5) year periods upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and completion of [by September 1 of the year of expiration, the Effective Instructional Leadership Act (EILA) hours as specified by the Kentucky Department of Education in KRS 156.101. It shall be the responsibility of the guidance counselor to provide documentation of this training to the local school superintendent who recommends certificate renewal.]

(a) Two (2) years of experience as a certified school counselor;

(b) Three (3) semester hours of additional graduate credit in counseling or school counseling; or

(c) The Effective Instructional Leadership Act hours as specified by the Kentucky Department of Education in KRS 156.101. It shall be the responsibility of the school counselor to provide documentation of this training to the local school superintendent who recommends certificate renewal.

(3) If there is a lapse in the standard certificate for school[guidance] counselor for lack of meeting renewal requirements, the certificate may be reissued at a later date upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and completion of [by first completing] twelve (12) clock hours of counselor role specific training for each year since the expiration of the certificate up to a maximum of seventy-five (75) clock hours or six[nine (9)] semester hours of additional graduate credit appropriate to position of school[guidance] counselor.[

Section 4. Implementation Dates. (1) The provisions for the issuance of the provisional and standard certificate for guidance counselor, all grades, shall apply to a student admitted to a program of preparation beginning September 1, 2003.

(2)(a) A candidate admitted by September 1, 2003 to an approved preparation program for guidance counselor shall complete the program by December 31, 2006.

(b) A candidate formally admitted by September 1, 2003, to an approved preparation program for guidance counselor shall be eligible for the guidance counselor certificate, all grades upon:

1. Completion of the program in which the candidate is enrolled as identified in this subsection;

2. Successful completion of an approved additional three (3) to six (6) credit hours from an approved graduate level counseling or guidance counseling program. The additional graduate semester hours shall be designed to address content of the preparation program not previously addressed and which provides the candidate with knowledge relevant to counseling all grades; and

3. A recommendation from the institution of higher education for the appropriate certificate.

(3) An individual who holds a valid Kentucky provisional or standard guidance counselor certificate, grades K-8, grades 7-12, or grades 5-12 shall be eligible to extend that certificate to a provisional or standard guidance counselor certificate, all grades, upon application and proof of the following:

(a) Successful completion of an approved additional three (3) to six (6) credit hours from an approved graduate level counseling or guidance counseling program. The additional graduate semester hours shall be designed to address content of the preparation program not already addressed and for the grade range sought by the extension; and

(b) Recommendation from the institution of higher education for the appropriate certificate.]

Section 4[Section 5]. Validity of Prior Certificates. (1) A valid Provisional or Standard Certificate for Guidance Counselor grades K-8, 5-12, or 7-12 issued prior to August 5, 2005 shall be valid for the position of school[guidance] counselor for any[grades K-8 and also for any other] school configurations containing[having] at least one (1) grade level listed on the certificate.[sequential combination of the grades K-12 that includes any grade K-8.]

(2) An individual who holds a valid Kentucky provisional or standard guidance counselor certificate, grades K-8, grades 7-12, or grades 5-12 shall be eligible to extend that certificate to a provisional or standard school counselor certificate, all grades, upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and proof of the following:

(a) Successful completion of a minimum three (3) credit hours from an approved graduate level counseling or school counseling program. The additional graduate semester hours shall be designed to address content of the preparation program not previously addressed and which provides the candidate with knowledge relevant to counseling all grades; and

(b) A recommendation from the institution of higher education for the appropriate certificate. [

(2) A valid Provisional or Standard Certificate for Guidance Counselor grades 5-12 issued prior August 5, 2005 shall be valid for the position of guidance counselor for grades 5-12 and also for any other school configurations having sequential combination of the grades K-12 that includes any grade 5-12.

(3) A valid Provisional or Standard Certificate for Guidance Counselor grades 7-12 issued prior to August 5, 2005 shall be valid for the position of guidance counselor for grades 7-12 and also for any other school configurations having sequential combination of the grades K-12 that includes any grade 7-12.]

Section 5. Incorporation by Reference. (1) "Kentucky Standards of Preparation for School Counselors", 2019, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the Education Professional Standards Board, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LISA RUDZINSKI, Board Chair

APPROVED BY AGENCY: April 26, 2021

FILED WITH LRC: May 14, 2021 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 22, 2021, at 10:00 a.m. in the State Board Room, Fifth Floor, 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 through July 31, 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, Interim General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for preparation and certification of school counselors.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the standards for school counselor preparation programs and issuance and renewal of the provisional and standard school counselor certificates.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and to set the standards for and approve university programs for the preparation of teachers and other professional school personnel.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the requirements for issuance and renewal of the provisional and standard certificate for school counselor.

(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 incorporates by reference the Kentucky Standards of Preparation for School Counselor Programs. It updates the terminology from guidance counselor to school counselors and removes the reference to an outdated application. The amendment also updates the renewal and reissuance requirements to align with the certificates for advanced educational leaders.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the standards of preparation to align with the current requirements for school counselors. The amendment is also needed to update the terminology to reflect the current title of school counselor.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and to set standards for, evaluate, and approve college, university, and school district programs for the preparation of teachers and other professional school personnel.

(d) How the amendment will assist in the effective administration of the statutes: The amendments updates the preparation program and certification requirements to more accurately reflect an educator's preparedness for school counselor certification. It also updates the renewal and reissuance requirements to align with current certification practices.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 172 Kentucky school districts, 30 educator

preparation program providers, and educators seeking new or continuing school counselor certification.

(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 approved educator preparation programs, and any programs seeking future approval, will have to adjust their programs to align with the standards of preparation. Further, applicants will have to meet the minimum standards delineated in the amendment prior to admission to an educator preparation program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The applicant will have to bear the cost of the admission test unless it is provided by the institution. The fee is established by the test provider. There is no fee established by the Education Professional Standards Board.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The educator preparation programs will align to standards that prepare school counselors with the skills and knowledge necessary to serve in that role. School counselors will also have updated options for reissuance and renewal of the certificate. School districts will have access to school counselors that have been prepared in accordance with the updated standards.

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

(a) Initially: None

(b) On a continuing basis: None

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Certification fees are established by 16 KAR 4:040. No additional fees are established by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board, public colleges and universities with educator preparation programs and public-school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, KRS 161.028, KRS 161.030.

(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? There will be no additional revenues created by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenues created by this amendment.

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

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

amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a cost incurring program but, rather, establishes the standards for preparation and certification of school counselors.

#### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Education Professional Standards Board (Amendment)

#### 16 KAR 5:020. Standards for admission to educator preparation.

RELATES TO: KRS 161.020, 161.028, 161.030, 161.048

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(b) requires that the Education Professional Standards Board (EPSB) promulgate administrative regulations setting standards for educator preparation programs. KRS 161.030(1) requires that the EPSB promulgate administrative regulations establishing requirements for issuance of a certificate authorized under KRS 161.010 to 161.126. This administrative regulation establishes the standards for admission to an educator preparation program that is required for certification.

Section 1. Selection and Admission to Educator Preparation Programs. (1) Each accredited provider of an approved program of educator preparation shall adhere to minimum standards for admission to its certification educator preparation programs, including those programs established pursuant to KRS 161.048, in accordance with this section.

(2) Admission to an approved undergraduate initial certification education preparation program[~~including those programs established pursuant to KRS 161.048(2), 161.048(3), 161.048(6), and 161.048(8).~~] shall require the following:

(a) 1. A cumulative grade point average of 2.75 on a 4.0 scale; or

2. A grade point average of 3.00 on a 4.0 scale on the last thirty (30) hours of credit completed, in accordance with the following:

a. Grade point average (GPA) shall be calculated by beginning with the most recent course completed and proceeding backward for two (2) semesters in the order the grades fall on the transcript to accumulate the last thirty (30) hours completed; and

b. If it is necessary to go back further than two (2) semesters, then the courses in the third semester included in the calculation shall be chosen based on the highest grades earned during that third semester; and

(b) Successful completion of one (1) of the following [pre-professional skills] assessments of basic knowledge [administered by the Educational Testing Service with the corresponding minimum score]:

1. The ACT with a composite score of 22 or the corresponding minimum scores:

a. Reading-20;

b. Writing-18; and

c. Math-19; or

2. The pre-professional skills assessments of basic knowledge administered by the Educational Testing Service with the corresponding minimum scores:

a.[4-] "Praxis Core Academic Skills for Educators (CASE): Reading (5713)" – 156;

b.[2-] "Praxis Core Academic Skills for Educators (CASE): Writing (5723)" – 162; and

c.[3-] "Praxis Core Academic Skills for Educators (CASE): Mathematics (5733)" – 150.

(c) An applicant can use a combination of ACT and CASE minimum scores to meet the requirements of paragraph (b) of this

subsection.

(d) If an applicant has a minimum cumulative grade point average of 3.0 on a 4.0 scale, the educator preparation provider may admit the applicant to an approved undergraduate initial certification education preparation program if the applicant is within five points of one or more of the corresponding minimum scores on the pre-professional skills assessments listed in paragraph (b)2. of this subsection.

(3) Admission to an approved graduate level initial certification educator preparation program shall require the following:

(a) [1-] A bachelor's degree or advanced degree awarded by a regionally or nationally accredited college or university with a cumulative grade point average of 2.75 on a 4.0 scale; or

(b)[2-] A grade point average of 3.00 on a 4.0 scale on the last thirty (30) hours of credit completed, including undergraduate and graduate coursework[; and]

(4)[(b)] Admission to an Option 7 program established in accordance with KRS 161.048(8) shall also require successful completion of one of the following:

(a)[1-] The[Successful completion of the pre-professional skills] assessments in subsection (2)(b)2. of this section; or

(b)[2-] The[Successful completion of the] Graduate Record Exam (GRE) administered by the Education Testing Service with the following corresponding minimum scores on the corresponding sections:

1.[a-] Verbal reasoning – 150;

2.[b-] Quantitative Reasoning – 143; and

3.[c-] Analytical Writing – 4.0.

(5)[(4)] Admission to an advanced certification educator preparation program shall require the following:

(a)1. A statement of eligibility or an initial certificate earned by completion of an approved program through an approved educator preparation provider in Kentucky; or

2. For out-of-state applicants, a statement of eligibility or an initial certificate issued by EPSB and earned by completion of a program through an approved educator preparation provider; and

(b)1. A cumulative grade point average of 2.75 on a 4.0 scale; or

2. A grade point average of 3.00 on a 4.0 scale on the last thirty (30) hours of credit completed, including undergraduate and graduate coursework; and

(c)1. Completion of requirements for the administrative certificate as established in 16 KAR Chapter 3; or

2. Completion of requirements for the certificate as established in [16-KAR 2:060-] 16 KAR 2:070[,] and 16 KAR 2:090.

(6)[(5)] Each accredited provider of an approved program of educator preparation shall have a formal application procedure for admission that shall include the following:

(a) Documentation that the applicant demonstrates the following:

1. Critical thinking;

2. Communication;

3. Creativity; and

4. Collaboration;

(b) Evidence that the applicant has reviewed the Professional Code of Ethics for Kentucky School Certified Personnel established in 16 KAR 1:020; and

(c) A method to allow the applicant to demonstrate that the applicant understands professional dispositions expected of professional educators.

(7)[(6)] The educator preparation program shall not enroll undergraduate students in any educator preparation program courses restricted to admitted candidates.

(8)[(7)] The educator preparation provider shall maintain electronic records that document that all students meet the requirements established in this section.

Section 2. Selection and Admission to an Approved Educator Preparation Program for Occupation-Based Career and Technical Education. (1) Admission to an approved program of preparation for occupation-based career and technical education that results in certification pursuant to 16 KAR 2:020 shall require:

(a) A minimum of a high school diploma or equivalency exam;

(b) Four (4) years of successful and appropriate occupational experience in the area to be taught, which shall include:

1. At least two (2) years of occupational experience completed within the last five (5) years. A maximum of one (1) year of the required work experience may be satisfied by completion of an approved program of preparation for the occupation to be taught; and

2. The occupational experience confirmed by the Kentucky Department of Education, Office of Career and Technical Education;

(c) The assessment provisions established in 16 KAR 6:020; and

(d) An offer of employment from a state or local technology center, or a school district.

(2) Each provider of an approved occupation-based educator preparation program shall have a formal application procedure for admission that shall include the following:

(a) Evidence that the applicant has reviewed the Professional Code of Ethics for Kentucky School Certified Personnel established in 16 KAR 1:020; and

(b) A method to allow the applicant to demonstrate that the applicant understands professional dispositions expected of professional educators.

(3) The educator preparation provider shall not enroll undergraduate students in any educator preparation program courses restricted to admitted candidates.

(4) The educator preparation provider shall maintain electronic records that document that all students meet the requirements established in this section.

(5) A provider of approved educator preparation programs shall provide notice to the EPSB of which candidates it has admitted to an approved program of educator preparation within six (6) months of the candidate's admission.

(6) Failure of an approved educator preparation provider to provide EPSB with notice of each candidate it admitted to an approved program of preparation in accordance with this section may result in action against the provider's accreditation status.

Section 3. Assessment Recency. A passing score on an assessment established at the time of admission shall be valid for the purpose of applying for admission for five (5) years from the assessment administration date.

Section 4. Annual Report. (1) Each educator preparation provider shall submit an electronic report annually to the EPSB that includes the following program data on each candidate admitted to educator preparation programs:

(a) EPSB Person Identifier;

(b) Student School Identification number;

(c) Social Security number;

(d) Full name;

(e) Birth date;

(f) Reported ethnicity;

(g) Reported gender;

(h) Email address;

(i) Present home mailing address;

(j) Permanent home mailing address;

(k) Phone number;

(l) Admission date;

(m) Total number of credit hours prior to admission to the provider's educator preparation program;

(n) Total number of credit hours in educator preparation courses completed prior to admission to the provider's educator preparation program;

(o) Grade point average at admission;

(p) Current program enrollment status;

(q) Program completion date;

(r) Grade point average at program completion;

(s) Academic major at program completion; and

(t) Academic minor or minors at program completion, if applicable.

(2) The report shall be submitted in the following manner:

(a) The provider shall electronically submit all data identified in

subsection (1) to the EPSB; and

(b) By September 15 of each year, each institution shall provide written confirmation by electronic mail to the EPSB that all required information has been entered.

(3) The preparation program shall exit any candidate who has not been enrolled in at least one (1) course required for program completion within the last twelve (12) months.

(4) Failure to submit the annual report in accordance with this section may result in action against the program's accreditation status.

LISA RUDZINSKI, Board Chair

APPROVED BY AGENCY: April 26, 2021

FILED WITH LRC: May 14, 2021 at 8:00 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this proposed administrative regulation shall be held on July 22, 2021, at 10:00 a.m. in the State Board Room, Fifth Floor, 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 through July 31, 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, Interim General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for admission to an educator preparation program that is required for certification.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide notice to educator preparation programs and applicants of the minimum standards applicants must attain prior to admission to educator preparations programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and to set standards for, evaluate, and approve college, university, and school district programs for the preparation of teachers and other professional school personnel.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets the standards for admission to an educator preparation program.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds additional ways for applicants for admission to an initial undergraduate educator preparation program to demonstrate basic knowledge in the areas of reading, writing and mathematics. Specifically, applicants can demonstrate this knowledge through minimum scores on the ACT, the Praxis Core Academic Skills for Educators (CASE), or a combination of the two assessments. Those applicants with a 3.0 grade point average may be admitted to an initial undergraduate preparation program if they are within five points of any of the minimum CASE scores. The amendment also removes the requirement that applicants for admission to a graduate level initial preparation program successfully complete

an admission assessment. As required by KRS 161.048(8), Option 7 candidates will still be required to complete an admission assessment.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide applicants for admission to an initial undergraduate educator preparation program with additional options for demonstrating the requisite basic knowledge in reading, writing and mathematics. It is also necessary to remove the admission assessment requirement for all graduate level educator preparation programs, except for Option 7 programs.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and to set standards for, evaluate, and approve college, university, and school district programs for the preparation of teachers and other professional school personnel.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that all candidates in undergraduate educator preparation programs in Kentucky possess basic knowledge in reading, writing and mathematics, and have options for demonstrating this knowledge.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 30 educator preparation program providers, any providers seeking future approval for an educator preparation program, and any applicant seeking admission to an educator preparation 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: The approved educator preparation programs, and any programs seeking future approval will have to adjust their admission standards to ensure that they meet the standards required by this amendment. Further, applicants will have to meet the minimum standards delineated in the amendment prior to admission to an educator preparation program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The applicant will have to bear the cost of the admission test unless it is provided by the institution. The fee is established by the test provider. There is no fee established by the Education Professional Standards Board.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The educator preparation programs will benefit from having candidates proficient in the skills necessary to be an educator. Additionally, potential candidates will benefit from a selection process that will ensure they meet a minimum level of competency for the education profession prior to engaging in coursework. Applicants will also benefit from having more than one way to demonstrate competency.

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

(a) Initially: None

(b) On a continuing basis: None

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Certification fees are established by 16 KAR 4:040. No additional fees are established by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board, public colleges and universities with educator preparation programs and public-school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028, KRS 161.030

(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? There will be no additional revenues created by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenues created by this amendment.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a cost incurring program but, rather, establishes the standards for admission to an educator preparation program.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Education Professional Standards Board  
(Amendment)**

**16 KAR 9:090. University based alternative certification program for teachers of world languages.**

RELATES TO: KRS 161.020, 161.028, 161.030, 161.048, 161.1221

STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.048

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028 and 161.030 authorize the Education Professional Standards Board (EPSB) to establish standards and requirements for obtaining and maintaining a teaching certificate and to set standards to approve and evaluate educator preparation programs. KRS 161.048(7) authorizes the EPSB[Education Professional Standards Board] to approve alternative programs that enroll students in postbaccalaureate educator preparation programs concurrently with employment as a teacher in a local school district. This administrative regulation establishes the program requirements and candidate qualifications for the university-based alternative certification program for teachers of world languages and the requirements for issuance of a temporary provisional certificate to teach world languages.

Section 1. Definitions. (1) "University-based alternative certification program" means a postbaccalaureate educator preparation program that enrolls a teacher candidate concurrently with employment as a teacher in a local school district.

(2) "World language" means any currently spoken and written language other than English.

Section 2. An accredited college or university, or a consortium of institutions, may apply to the EPSB[Education Professional Standards Board] for approval to provide a university based

alternative certification program for teachers of world languages if the college, university, or consortium meets the requirements established in Section 4(1) of this administrative regulation.

Section 3. Admission Requirements. To be admitted to a postbaccalaureate educator preparation program that enrolls a candidate concurrently with employment as a teacher of world language, the individual shall have:

(1) A bachelor's degree from an accredited college or university with a minimum cumulative grade point average of 2.75 on a 4.0 scale or a 3.0 on a 4.0 scale on the last thirty (30) hours of credit completed, including undergraduate and graduate coursework[the required cumulative grade point average]; and

(2) Successful completion of the program's approved assessments to measure proficiency for program admission as established in Section 4(1)(a) of this administrative regulation.

Section 4. University Requirements. (1) In addition to the standards for program approval established in 16 KAR 5:010, the university based alternative certification program for teachers of world languages shall:

(a) Select assessments to measure proficiency for program admission, which shall include:

1. A nationally recognized assessment for written and oral proficiency in the world language area in which the candidate is seeking certification; and

2. A nationally recognized assessment for oral and written proficiency in English language usage;

(b) Establish a protocol to assess a candidate's educational background to develop a plan of coursework that shall adequately prepare the candidate for successful completion of the requirements for program completion and certification for the areas and grades that correspond with the candidate's school placement;

(c) Design coursework and mentoring to permit a candidate to maintain employment in an eligible position and successfully complete any applicable assessments, including internship programs, within a period of three (3) years;

(d) Develop an agreement to provide, in collaboration with the administration of a candidate's employing school, mentoring to the candidate in the employment setting, which shall include:

1. Prior to the candidate's enrollment in the Kentucky Teacher Internship pursuant to KRS 161.030 and 16 KAR 7:010, a minimum of fifteen (15) hours of annual observation utilizing university faculty and a district-based mentor of the candidate practicing instruction in the classroom;

2. A description of how support shall be offered to the candidate during in-class and out-of-class time to assist the candidate in meeting the teacher's instructional responsibilities;

3. An acknowledgement by the employing school district that the school district shall be responsible for all costs associated with providing school district mentors for the teacher;

4. The name, contact person, and role for the collaborating educator preparation institution mentor; and

5. The names and roles of the school district mentor teachers;

(e) Require the candidate to begin course work no later than ninety (90) days from the date the eligibility notice is issued; and

(f) Establish a process to maintain regular communications with the employing school so that the institution and employing school may assist the candidate as needed and address identified areas of improvement.

(2) Student teaching shall not be required for program completion.

Section 5. Issuance of a Temporary Provisional Certificate for World Language. (1) Prior to seeking employment in a Kentucky public school, a candidate shall request from the institution written and dated documentation of eligibility for the university based alternative certification program to provide to school districts pursuant to KRS 160.345(2)(h).

(2) Prior to employment, a superintendent, on behalf of the employing local board of education, shall be responsible for requesting the temporary provisional certificate for world language.

(3) The candidate shall demonstrate compliance with 16 KAR

2:010, Section 3(1):

(4) The candidate shall submit to the EPSB an official college transcript from each college or university attended.

(5) All transcripts from institutions outside of the United States shall be accompanied by a course-by-course evaluation with a grade point average from a credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES®).

(5) The educator preparation institution shall submit a recommendation for the grade level and specialization of the temporary provisional certificate.

(6) The employing school district shall submit a completed and signed copy of the mentoring collaboration agreement with the university based alternative certification program as required by Section 4(1)(d) of this administrative regulation.

Section 6.[Section 5:] Temporary Provisional Certificate for World Language. (1) The temporary provisional certificate for world language shall be issued for a validity period not to exceed one (1) year.

(2) The temporary provisional certificate for world language may be renewed a maximum of two (2) times.

(3) The temporary provisional certificate for world language shall be:

(a) Issued in accordance with a grade level and specialization as recommended by the educator preparation institution ~~[on Form TC-WL]; and~~

(b) Valid for the world language and all grades listed on the face of the certificate.

(4) The temporary provisional certificate for world language shall be issued at the rank corresponding to the degree held by the teacher applicant in accordance with the requirements established in 16 KAR 8:020.[

~~Section 6. Issuance of a Temporary Provisional Certificate for World Language. (1) Prior to seeking employment in a Kentucky public school, a candidate shall request from the institution written and dated documentation of eligibility for the university based alternative certification program to provide to school districts pursuant to KRS 160.345(2)(h).~~

~~(2) Prior to employment, a superintendent, on behalf of the employing local board of education, shall be responsible for requesting the temporary provisional certificate for world language.~~

~~(3) The candidate shall submit to the Education Professional Standards Board an official college transcript from each college or university attended.~~

~~(4) All transcripts from institutions outside of the United States shall be accompanied by a course-by-course evaluation from the American Association of Collegiate Registrars and Admissions Officers or a member of NACES®.~~

~~(5) The employing school district shall submit with Form TC-WL a completed and signed copy of the mentoring collaboration agreement with the university based alternative certification program as required by Section 4(1)(d) of this administrative regulation.]~~

Section 7. Requirements for renewal of the temporary provisional certificate for world language. (1) A candidate shall be eligible for the first renewal of the temporary provisional certificate for world language upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or nonpublic school in the content area or areas indicated on the initial provisional world language certificate; and

(b) A minimum of six (6) semester hours or its equivalent from the approved preparation program.]; and

(c) Completion of Form TC-WL.]

(2) A candidate shall be eligible for the final renewal of the temporary provisional certificate for world language upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or

nonpublic school in the content area or areas indicated on the initial provisional world language certificate;

(b) A minimum of six (6) semester hours or its equivalent from the approved preparation program; and

(c) The required assessments as established in 16 KAR 6:010.]; and

(d) Completion of Form TC-WL.]

Section 8. (1) Upon completion of all program requirements of the university based alternative certification program for teachers of world languages[~~, including successful completion of the Kentucky Teacher Internship Program established in KRS 161.030 and 16 KAR 7:040;~~] the candidate may apply to the EPSB for the professional certificate.[make application to the Education Professional Standards Board for the professional certificate on the form TC-1 which is incorporated by reference in 16 KAR 2:010.]

(2) Upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and verification that a candidate has met all eligibility requirements for certificate issuance, the EPSB[Education Professional Standards Board] shall issue a professional certificate.[

~~Section 9. Incorporation by Reference. (1) "Application for World Language Temporary Provisional Certification," Form TC-WL, September 2011, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

LISA RUDZINSKI, Board Chair

APPROVED BY AGENCY: April 26, 2021

FILED WITH LRC: May 14, 2021 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 22, 2021, at 10:00 a.m. in the State Board Room, Fifth Floor, 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 through July 31, 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, Interim General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the program requirements and candidate qualifications for the university-based alternative certification program for teachers of world languages and the requirements for issuance of a temporary provisional certificate to teach world languages.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide notice to educator preparation programs and applicants of the requirements of the university-based alternative certification program for teachers of world languages and the accompanying temporary provisional certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and

requirements for obtaining and maintaining a teaching certificate and to set standards for, evaluate, and approve college, university, and school district programs for the preparation of teachers and other professional school personnel. KRS 161.048(7) authorizes the Education Professional Standards Board to approve alternative programs that enroll students in postbaccalaureate educator preparation programs concurrently with employment as a teacher in a local school district.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets the standards for the university-based alternative certification program for teachers of world languages and the temporary provisional certificate to teach world languages.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes the reference to an outdated application, states the required grade point average for admission to the program and clarifies the requirements for the evaluation of international transcripts.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide applicants with notice of the required grade point average and to align with updated certification practices.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and to set standards for, evaluate, and approve college, university, and school district programs for the preparation of teachers and other professional school personnel. KRS 161.048(7) authorizes the Education Professional Standards Board to approve alternative programs that enroll students in postbaccalaureate educator preparation programs concurrently with employment as a teacher in a local school district.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that the university-based alternative certification program for teachers of world languages and the temporary provisional certificate to teach world languages are aligned with the updated certification practices.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 30 educator preparation program providers, any providers seeking future approval for a university-based alternative certification program for teachers of world languages and any applicant seeking admission to the program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action will be required of the regulated entities to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will benefit from clear notice of the required grade point average and international transcript analysis.

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

(a) Initially: None

(b) On a continuing basis: None

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Certification fees are established by 16 KAR 4:040. No additional fees are established

by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board, public colleges and universities with educator preparation programs and public-school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028, KRS 161.030, KRS 161.048.

(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? There will be no additional revenues created by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenues created by this amendment.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a cost incurring program.

#### STATE BOARD OF ELECTIONS (Amendment)

##### 31 KAR 3:010. Current address of Kentucky registered voters and distribution of voter registration lists.

RELATES TO: KRS 116.085, 116.155, 117.025, 117.225

STATUTORY AUTHORITY: KRS 117.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015 authorizes the Kentucky State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. This administrative regulation establishes the procedures for election officials and voters to follow to correct and maintain voter registration records and establishes standards for the State Board of Elections to follow when reviewing a request for a voter registration list.

Section 1. Definitions. (1) "Advertisement" means any attempt by publication, dissemination, solicitation, or circulation to induce any person to enter into any obligation, or acquire any title or interest in any good or service.

(2) "Alphabetical labels" means labels of registered voters within the precinct with one (1) name per label and sorted in alphabetical order.

(3) "Alphabetical lists" means lists of registered voters generated from the statewide voter registration database and sorted in alphabetical order by last name within a precinct that have the name, address, age code, party, gender, zip code, and five (5) year voting history of every voter in the precinct.

(4) "Duly qualified candidate" means any person who has filed:

(a) A letter of intent with the Kentucky Registry of Election Finance; or

(b) Nomination papers with the Office of the Secretary of State or county clerk.

(5) "Household labels by street order" means labels that are generated from the statewide voter registration database and sorted by street address within the precinct with as many as four (4) names per label of the voters whose last name and address are an identical match.

(6) "Household labels by zip code order" means labels that are generated from the statewide voter registration database and sorted by zip code within the county with as many as four (4) names per label of the voters whose last name and address are an identical match.

(7) "Sale" means any sale, rental, distribution, offer for sale, rental, or distribution, or attempt to sell, rent, or distribute any good or service to another.

(8) "Statewide voter registration database" means a complete roster of all qualified voters within the state by county and precinct that the State Board of Elections is required to maintain pursuant to KRS 117.025(3)(a).

(9) "Street order lists" means lists of registered voters generated from the statewide voter registration database sorted in street order within a precinct and contain the name, address, age code, party, gender, zip code, and a five (5) year voting history of every registered voter in the precinct.

(10) "Voter registration list" means a list of registered voters generated from the statewide voter registration database in any format in any given election precinct in the Commonwealth of Kentucky that the State Board of Elections is required to furnish pursuant to KRS 117.025(3)(h).

Section 2. Correction of Voter Registration Records. (1) Each county clerk shall instruct the precinct election officers of the necessity for informing each voter that he or she shall correct any error existing in his or her address as it appears upon the precinct signature roster.

(2) Each precinct election officer shall instruct each voter to correct any error existing in his or her address as it appears upon the precinct signature roster.

(3) Each voter shall, when he or she signs the precinct signature roster, correct any error existing in his or her address as it appears upon the precinct signature roster.

(4) Each county clerk shall take all steps necessary to correct and update each voter's address upon the statewide voter registration database.

Section 3. Interpretation of Commercial Use. Commercial use, as that term is used in KRS 117.025(3)(h), shall be interpreted by the Board of Elections to mean:

(1) The use by the requester of the voter registration list, or any part thereof, in any form, for profit, the solicitation of donations, or for the sale or advertisement of any good, or service, or publication; or

(2) The transfer or sale of a voter registration list by the requester ~~for a profit~~ to any other person whom the requester knew or should have known intended to use the voter registration list, or any part thereof, in any form, for profit, the solicitation of donations, or for the sale or advertisement of any[a] good, or service, or publication.

Section 4. Exceptions to Commercial Use Interpretation. Commercial use shall not include use of a voter registration list, or any part thereof, for the following purposes:

(1) Use for scholarly, journalistic, political (including political fund raising), or governmental purposes; or

(2) Use for publication, broadcast, or related use by a newspaper, magazine, radio station, television station, or other news medium in its news or other publications or broadcasts; or

~~(3) Use in a publication provided or sold to duly qualified candidates; political party committees, or officials thereof; or any committee that advocates or opposes an amendment or public question.]~~

Section 5. State Board to Prohibit Foreign Access to Voter

Registration Lists. The board's discretion to furnish precinct lists to other persons, as stated in KRS 117.025(3)(h), shall not extend to:

(1) Requests known to come from outside of the United States or from requestors known to be closely associated with other persons known to be located outside of the United States, or;

(2) Requests of which, the board believes if filled, would reasonably be expected to result in voter registration data leaving the United States.

Section 6. [Section 5.] Requests for Voter Registration Lists. A request for voter registration lists shall be made by submitting a completed Request for Voter Registration Data, form SBE-84, to the State Board of Elections with payment of fees established in form SBE-84.

Section 7. [Section 6.] Incorporation by Reference. (1) "Request for Voter Registration Data", SBE 84, May 2021 [2048], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 West Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JARED DEARING, Executive Director

APPROVED BY AGENCY: May 14, 2021

FILED WITH LRC: May 14, 2021 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 30, 2021, at 10:00 a.m. ET, at the Office of the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for election officials and voters to follow to correct and maintain voter registration records and establishes standards for the State Board of Elections to follow when reviewing a request for a voter registration list.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to securely manage the Commonwealth's voter registration data.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) allows the State Board of Elections to "promulgate administrative regulations necessary to properly carry out its duties."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 117.015(3)(h) requires the State Board of Elections to "furnish at a reasonable price any and all precinct lists to duly qualified candidates, political party committees or officials thereof, or any committee that advocates or opposes an amendment or public question." The statute also allows the State Board of Elections to "furnish the precinct lists to other persons at the board's discretion, at a reasonable price to be determined by the board." This administrative regulation will assist in the effective and secure fulfillment of these duties.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds measures to ensure that the Commonwealth's voter registration data is treated as securely as possible.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary given the evolving demands related to the security of voter registration data.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 117.015(1)(a) allows the State Board of Elections to "promulgate administrative regulations necessary to properly carry out its duties."

(d) How the amendment will assist in the effective administration of the statutes: KRS 117.015(3)(h) requires the State Board of Elections to "furnish at a reasonable price any and all precinct lists to duly qualified candidates, political party committees or officials thereof, or any committee that advocates or opposes an amendment or public question." The statute also allows the State Board of Elections to "furnish the precinct lists to other persons at the board's discretion, at a reasonable price to be determined by the board." This amendment will assist in the effective and secure fulfillment of these duties.

(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 those mentioned in KRS 117.015(3)(h): "duly qualified candidates, political party committees or officials thereof, or any committee that advocates or opposes an amendment or public question," as well as, "other persons" who may choose to request voter registration data.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will require those mentioned above to take the same action they previously engaged in, namely, submitting a completed Request for Voter Registration Data, form SBE-84.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs associated with a completed Request for Voter Registration Data, form SBE-84 will remain at current levels.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with the amendments to this administrative regulation, affected entities will realize the benefit of having access to the most secure and accurate transmission of voter registration data possible.

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

(a) Initially: The cost of the implementation of this administrative regulation for the State Board of Elections will be minimal as the amendment will only require disposal of any Request for Voter Registration Data, form SBE-84 that currently exists in printed form.

(b) On a continuing basis: The State Board of Elections expects that this administrative regulation amendment will cost no more to implement on a continual basis than is currently expended.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections' administrative budget will be used in the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The State Board of Elections believes that the implementation of this administrative regulation amendment can be achieved without an increase in fees or funding.

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

Fees associated with a completed Request for Voter Registration Data, form SBE-84 will remain at current levels.

(9) TIERING: Is tiering applied? Tiering is not used in this administrative regulation, as a desired result of the promulgation of this administrative regulation is uniform procedures for fulfilling the requests for voter registration data authorized in KRS 117.025.

#### 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 State Board of Elections will be the only unit of state government impacted by this administrative regulation; no unit of local government should be impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 117.015(3)(h) requires the State Board of Elections to "furnish at a reasonable price any and all precinct lists to duly qualified candidates, political party committees or officials thereof, or any committee that advocates or opposes an amendment or public question." The statute also allows the State Board of Elections to "furnish the precinct lists to other persons at the board's discretion, at a reasonable price to be determined by the board."

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is not expected or intended that this administrative regulation amendment will generate any more revenue than the current version may.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is not expected or intended that this administrative regulation amendment will generate any more revenue than the current version may.

(c) How much will it cost to administer this program for the first year? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

#### FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems (Amendment)

**105 KAR 1:270. [~~Special federal income tax withholding~~]Federal tax withholding or direct rollover of funds for eligible distributions.**

RELATES TO: KRS 61.505(1)(f), 61.510, 61.625, 61.635, 61.640, 61.690, 61.645(9)(g), 16.505, 16.578, 16.645, 78.510, 78.545; 26 U.S.C. 72(t), 401(a), 402

STATUTORY AUTHORITY: KRS 61.505(1)(f)~~61.645(9)(g)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(f)~~[KRS 61.645(9)(g)]~~ authorizes the Kentucky Public Pensions Authority~~[Board of Trustees of Kentucky Retirement Systems]~~ to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with~~[necessary to carry out the provisions of]~~ KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. 26 U.S.C. 402 establishes the federal taxation requirements regarding direct rollovers of distributions and the withholding of federal income tax. This administrative regulation

establishes the procedure for informing affected members, beneficiaries, and alternate payees of their rights with regard to federal taxation rules and provides forms for members, beneficiaries, and alternate payees to indicate their preference for federal tax withholding or direct rollover of funds. This administrative regulation also establishes a procedure to issue a check to an alternate payee of a qualified domestic relations order if the alternate payee does not file[return] the form required for federal income tax purposes at the retirement office within a reasonable time, and a procedure for the event that an alternate payee cannot be located.

Section 1. Definitions.

(1) Definitions contained in KRS 16.505, 61.510, and 78.510 shall apply to this regulation.

(2) Prior to April 1, 2021, "the Agency" means the Kentucky Retirement Systems, which administers the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System. Effective April 1, 2021, "the Agency" means the Kentucky Public Pension Authority, which is authorized carry out the day-to-day administrative needs of the Kentucky Retirement Systems (comprised of the State Police Retirement System and the Kentucky Employees Retirement System) and the County Employees Retirement System.

(3) "File" means the following methods for delivering or submitting a form to the retirement office: mail, fax, secure email, in-person delivery, and upload via Self Service on the Web site maintained by the Agency (if available). A form shall not be deemed filed until it has been received at the retirement office.

(4) "Provide" means the following methods for the Agency to make a form available to a member, beneficiary, or alternate payee: mail, fax, secure email, and upload via Self Service on the Web site maintained by the Agency (if available).

Section 2. Application for Refund of Accumulated Account Balance.

(1)(a) In order to receive a refund of his or her accumulated account balance in accordance with KRS 61.625 and 78.545, a member shall apply for such a refund on a Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection.

(b) Upon [receipt of a] request by[for refund of member contributions from]the member, the Agency[the retirement office] shall provide[mail] the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, along with a copy of the Special Tax Notice Regarding Payments, to the member[requesting payment].

(c) Additionally, the Agency may make the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, along with a copy of the Special Tax Notice Regarding Payments, available on its Web site.

(2)(a) The member shall complete the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, and file[return] it at[to] the retirement office.

(b) If the member intends to have the funds rolled over directly into an IRA or other plan, the member shall have the trustee or institution complete the applicable section[back] of the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection,[the form] certifying that the rollover will be accepted.

(c) The employer(s) participating in the Agency from which the member has terminated employment may complete the applicable portion of the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, verifying termination of employment.

(3)(a) The refund of contributions shall not be processed unless[until] the member is eligible to receive a refund pursuant to KRS 61.625 and 78.545 and the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, is filed[returned] by the member at[to] the retirement office.

(b) The refund of contributions shall be processed no earlier

than forty-five (45) days from the date of the member's termination of employment with the participating employer(s) that previously employed the member.

Section 3[2]. Required form following member selection of an actuarial refund retirement payment option, lump-sum refund of contributions, or partial lump-sum retirement payment option.

(1)(a) Along with each blank[Upon receipt of a completed] Form 6010, Estimated Retirement Allowance, the Agency[on which the member has selected the actuarial refund or partial lump-sum option, the retirement office] shall provide[mail to the member] the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding[or a Spouse Beneficiary of] an Eligible Rollover Distribution, along with the Special Tax Notice Regarding Payments, to the member.

(b) Additionally, the Agency may make the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, along with a copy of the Special Tax Notice Regarding Payments, available on its Web site.

(2)(a) If the member completes the Form 6010, Estimated Retirement Allowance, and selects an actuarial refund retirement payment option, lump-sum refund of contributions, or partial lump-sum retirement payment option, the[The] member shall also complete the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding[or a Spouse Beneficiary of]an Eligible Rollover Distribution, and file both completed forms at[return it to] the retirement office.

(b) If the member intends to have the funds rolled over directly into an IRA or other plan, the member shall have the trustee or institution complete the applicable section[back] of the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution,[the form] certifying that the rollover will be accepted.

(3) The payment option selected by the member on the completed and filed Form 6010, Estimated Retirement Allowance, shall not be processed unless[until] the completed Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding[or a Spouse Beneficiary of] an Eligible Rollover Distribution, is filed at[is returned to] the retirement office.

Section 4[3]. Required form following beneficiary selection of lump-sum payment option or sixty (60) months certain payment option, or if beneficiary eligible for lump-sum refund of contributions only.

(1)(a) Upon receipt of a completed Form 6010, Estimated Retirement Allowance, on which the beneficiary [who is the surviving spouse]of the deceased member has selected the lump-sum actuarial refund, lump-sum refund of the deceased member's accumulated account balance, or sixty (60) months certain payment option, the Agency[retirement office] shall provide[mail to the beneficiary who is the surviving spouse of the deceased member] the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding[or a Spouse Beneficiary of] an Eligible Rollover Distribution, along with the Special Tax Notice Regarding Payments, to the beneficiary of the deceased member.

(b) If the beneficiary of the deceased member is only eligible for a lump-sum refund of the deceased member's accumulated account balance, the Agency shall provide the Form 6025, Direct Rollover, Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding Eligible Rollover Distribution, along with the Special Tax Notice Regarding Payments, to the beneficiary of the deceased member.

(c) Additionally, the Agency may make the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, along with a copy of the Special Tax Notice Regarding Payments, available on its Web site.

(2)(a) The beneficiary [who is the surviving spouse]of the deceased member shall complete the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary,

~~or Alternate Payee Regarding~~ ~~or a Spouse Beneficiary of~~ an Eligible Rollover Distribution, and ~~file~~~~[return]~~ it ~~at~~~~[to]~~ the retirement office.

(b) If the beneficiary ~~[who is the surviving spouse]~~ of the deceased member intends to have the funds rolled over directly into an IRA or other plan, the beneficiary ~~[who is the surviving spouse]~~ of the deceased member shall have the trustee or institution complete the applicable section~~[back]~~ of the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution,~~[form]~~ certifying that the rollover will be accepted.

(3)~~(a)~~ The payment options selected by the beneficiary ~~[who is the surviving spouse]~~ of the deceased member on a Form 6010, Estimated Retirement Allowance shall not be processed unless~~[until]~~ the completed Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding ~~or a Spouse Beneficiary of~~ an Eligible Rollover Distribution, is filed~~at~~~~[returned to]~~ the retirement office.

(b) If the beneficiary of the deceased member is only eligible for a lump-sum refund of the deceased member's accumulated account balance, payment to the beneficiary of the deceased member shall not be processed unless the completed Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, is filed at the retirement office.

Section 5. Required form for alternate payee who is eligible for actuarial refund or partial lump-sum payment option, or eligible for a portion of the lump-sum refund, partial lump-sum, or actuarial refund retirement payment option selected by the member.

~~Section 4. (1) Upon receipt of a completed Form 6010, Estimated Retirement Allowance, on which the beneficiary who is not the surviving spouse of the deceased member has selected the actuarial refund or a sixty (60) months certain payment option, the retirement office shall mail to the beneficiary who is not the surviving spouse of the deceased member the Form 6026, Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution, along with the Special Tax Notice Regarding Payments.~~

~~(2)(a) The beneficiary who is not the surviving spouse of the deceased member shall complete the Form 6026, Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution, and return it to the retirement office.~~

~~(b) If the beneficiary who is not the surviving spouse of the deceased member intends to have the funds rolled over directly into an IRA or other plan, the beneficiary who is not the surviving spouse of the deceased member shall have the trustee or institution complete the back of the form certifying that the rollover will be accepted.~~

~~(3) The payment option selected by the beneficiary who is not the surviving spouse of the deceased member shall not be processed until the completed Form 6026, Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution, is returned to the retirement office.~~

Section 5.] (1)(a) If the alternate payee is eligible for a lump-sum portion of the member's accumulated contributions,~~[contribution account]~~ actuarial refund, or partial lump-sum payment option pursuant to a qualified domestic relations order, the agency shall provide the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution~~[4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection]~~, along with the Special Tax Notice Regarding Payments~~[shall be mailed to the alternate payee]~~, to the alternate payee.

(b) If the alternate payee is eligible ~~for~~~~[to select a payment option and selects]~~ an actuarial refund or partial lump-sum payment option pursuant to a qualified domestic relations order, the agency shall provide a Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate

Payee Regarding~~or a Spouse Beneficiary of~~ an Eligible Rollover Distribution, along with the Special Tax Notice Regarding Payments, to the alternate payee~~[shall be mailed to the alternate payee]~~.

(c) Additionally, the Agency may make the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution, along with a copy of the Special Tax Notice Regarding Payments, available on its Web site.

(2)(a) The alternate payee shall complete the ~~[Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, or]~~Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding ~~or a Spouse Beneficiary of~~ an Eligible Rollover Distribution, and ~~file~~~~[return]~~ it ~~at~~~~[to]~~ the retirement office.

(b) If the alternate payee intends to have the funds rolled over directly into an IRA or other plan, the alternate payee shall have the trustee or institution complete the applicable section~~[back]~~ of the ~~[Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, or]~~Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding ~~or a Spouse Beneficiary of~~ an Eligible Rollover Distribution, certifying that the rollover will be accepted.

(3)~~(a)~~ The payment to an alternate payee of an actuarial refund or lump-sum refund, or a portion of the member's accumulated account balance, actuarial refund, or partial lump-sum payment option,~~[partial lump-sum]~~ pursuant to the qualified domestic relations order shall not be processed until the completed Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding ~~or a Spouse Beneficiary of~~ an Eligible Rollover Distribution, is filed~~at~~~~[returned to]~~ the retirement office.

(4)~~(a)~~~~(b)~~ If the ~~[payment is a portion of the member's contribution account and the]~~ alternate payee does not file at the retirement office~~[return]~~ the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution~~[4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection]~~, within thirty (30) days of receipt of the form and the Special Tax Notice Regarding Payments, the alternate payee's payment shall be processed and treated for federal income tax purposes as if the alternate payee had made an election to directly receive the funds instead of rolling over the payment to an IRA or other plan~~[form, the payment shall be processed and the alternate payee's portion of the refund shall be treated for federal income tax purposes as if the alternate payee had made an election to receive the funds]~~.

(b) The agency shall hold the amount payable to the alternate payee under this section for at least 180 days after the payment becomes payable.

1. The agency shall make all reasonable efforts to locate the alternate payee during the 180 days and shall make payment to the alternate payee if he or she is located within that period.

2. If the alternate payee has not been located within 180 days after the alternate payee's payment becomes payable and the Agency has exhausted all reasonable efforts to locate the alternate payee, the Agency shall pay the payment held to the member and shall assign the federal tax liability for this payment to the member. No interest shall accrue on this lump-sum payment during the 180 day period or thereafter. If the alternate payee is subsequently located, any amounts already paid to the member shall no longer be payable to the alternate payee.

Section 6. Optional form for qualified public safety employee electing to receive an actuarial refund retirement payment option, lump-sum refund, partial lump-sum refund, or ten (10) year certain retirement payment option.

(1) A member who was last employed as a "qualified public safety employee" as defined in 26 U.S.C. Internal Revenue Code, Section 72(t), will not be subject to the ten (10) percent early distribution tax penalty if electing to receive an actuarial refund,

lump-sum refund, partial lump-sum refund, or the ten (10) years certain option if the member files the following completed forms at the retirement office:[may file a]

(a) The Form 4527, Certification by a "Qualified Public Safety Employee[Employees]" and Request for an Exception to the [ten (10%)]percent Early Distribution Penalty in IRC 72(t), and[to avoid the ten (10) percent early distribution tax penalty if electing to receive an actuarial refund, lump-sum refund, partial lump-sum refund, or the ten (10) years certain option.]

(b) The Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, or the Form 6025, Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution.

(2)(a) Upon request by the member, the Agency shall provide the Form 4527, Certification by a "Qualified Public Safety Employee" and Request for an Exception to the 10% Early Distribution Penalty in IRC 72(t), to the member.

(b) Additionally, the agency may make the Form 4527, Certification by a "Qualified Public Safety Employee" and Request for an Exception to the 10% Early Distribution Penalty in IRC 72(t), available on its Web site.[The member who was last employed as a "qualified public safety employee" shall file the Form 4527, Certification by a Qualified Public Safety Employee and Request for an Exception to the 10 percent Early Distribution Penalty in IRC 72(t), with the Form 4525, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection, or the Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution, at the retirement office in order to avoid the ten (10) percent early distribution tax penalty.]

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

(a) Form 4525, "Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection", February 2021[May 2008];

(b) "Special Tax Notice Regarding Payments", February 2021[May 2008];

(c) Form 6010, "Estimated Retirement Allowance", February 2021[July 2004];

(d) Form 6025, "Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding[or a Spouse Beneficiary of] an Eligible Rollover Distribution", February 2021[May 2008]; and

(e) [Form 6026, "Direct Rollover/Direct Payment Election Form for a Non-Spouse Beneficiary of an Eligible Rollover Distribution", May 2008; and

(f) Form 4527, "Certification by a "Qualified Public Safety Employee[Employees]" and Request for an Exception to the 10% [percent]Early Distribution Penalty in IRC 72(t)", February 2021[May 2008].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority[Retirement Systems], [Perimeter Park West,] 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m.

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: May 12, 2021

FILED WITH LRC: May 14, 2021 at 8:00 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, July 26, 2021 at 10:00 a.m. at the Kentucky Public Pensions Authority, 1270 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Saturday, July 31, 2021. Send

written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure for informing affected members, beneficiaries, and alternate payees their rights with regard to federal taxation rules and provides forms for members, beneficiaries, and alternate payees to indicate their preference for federal tax withholding or direct rollover of funds. This administrative regulation also establishes a procedure to issue a check to an alternate payee of a qualified domestic relations order if the alternate payee does not file the form required for federal income tax purposes within a reasonable time.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedure for informing affected members, beneficiaries, and alternate payees their rights with regard to federal taxation rules and provides forms for members, beneficiaries, and alternate payees to indicate their preference for federal tax withholding or direct rollover of funds. This administrative regulation also is necessary to establish a procedure to issue a check to an alternate payee of a qualified domestic relations order if the alternate payee does not file the form required for federal income tax purposes within a reasonable time, and a procedure for the event that an alternate payee cannot be located.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute because it is necessary to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852, in accordance with KRS 61.505(1)(f).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the procedures and forms necessary to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852, and assists the Kentucky Public Pensions Authority, Kentucky Retirement Systems, and County Employees Retirement System in ensuring conformity with federal statutes and regulations.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the existing regulation to reflect changes in forms used by the Kentucky Public Pensions Authority, and increased online/electronic communications used by the Kentucky Public Pensions Authority. The amendment also clarifies the existing regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the Special Tax Notice and forms used by the Kentucky Public Pensions Authority, and increased online/electronic communications used by the Kentucky Public Pensions Authority. The amendment also clarifies the existing regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statute because it is necessary to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852, in accordance with KRS 61.505(1)(f).

(d) How the amendment will assist in the effective administration of the statutes: The amendment establishes the procedures and forms necessary to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852, and assists the Kentucky Public Pensions Authority, Kentucky Retirement Systems, and County Employees Retirement System in ensuring conformity with federal statutes and regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: the Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System, and the members, beneficiaries, and alternate payees of the Kentucky Retirement Systems and the County Employees Retirement System. Number of individuals is unknown. Number of businesses, organizations, or state and local governments affected is three (3), the Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation establishes the procedures and forms necessary to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852, and assists the Kentucky Public Pensions Authority, Kentucky Retirement Systems, and County Employees Retirement System in ensuring conformity with federal statutes and regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation should not cost any additional funds.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation establishes the procedures and forms necessary to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852, and assists the Kentucky Public Pensions Authority, Kentucky Retirement Systems, and County Employees Retirement System in ensuring conformity with federal statutes and regulations.

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

(a) Initially: The costs associated with the implementation of this administrative regulation should be negligible.

(b) On a continuing basis: The costs associated with the implementation of this administrative regulation should be negligible.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Public Pensions Authority are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All members, beneficiaries, and alternate payees are subject to the same processes and procedures.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.505(1)(f).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for the first year? None

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

(c) How much will it cost to administer this program for the first year? The cost to Kentucky Public Pensions Authority should be negligible.

(d) How much will it cost to administer this program for subsequent years? The cost to Kentucky Public Pensions Authority should be negligible.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

#### 301 KAR 1:201. Taking of fish by traditional fishing methods.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area. KRS 150.470 authorizes the department to promulgate administrative regulations for creel and size limits for fish. This administrative regulation establishes fish size limits, daily creel limits, and possession limits for fishing.

Section 1. Definitions. (1) "Artificial bait" means a lure, bare hook, or fly made of wood, metal, plastic, feathers, preserved pork rind, or a similar inert material.

(2) "Catfish" means a blue catfish, channel catfish, or flathead catfish.

(3) "Chumming" means placing substances in the water for the purpose of attracting fish to a particular area.

(4) "Culling" means releasing a previously caught fish that an angler has kept as a part of a daily creel limit and replacing it with another fish of the same species.

(5) "Daily creel limit" means the maximum number of a particular species or group of species a person may legally take in one (1) calendar day while fishing.

(6) "Lake" means impounded waters from the dam upstream to the first riffle on the main stem river and tributary streams.

(7) "Possession limit" means the maximum number of unprocessed fish a person may hold after two (2) or more days of fishing.

(8) "Processed fish" means a fish that has been gutted, with the head removed.

(9) "Release" means to return a fish to the water from which it was taken immediately after removing the hook.

(10) "Shad" means a live gizzard shad or threadfin shad.

(11) "Single hook" means a hook with no more than one (1) point.

(12) "Size limit" means the minimum legal length of a fish that is measured by laying the fish flat on a ruler with the mouth closed and tail lobes squeezed together.

(13) "Slot limit" means a size range of a fish species that shall be released by an angler.

(14) "Traditional fishing methods" means the act of taking or attempting to take for noncommercial purposes any freshwater fish species using:

(a) Hook and line in hand; or

(b) Rod in hand.

(15) "Trophy catfish" means a:

(a) Blue or flathead catfish that is a minimum of thirty-five (35) inches in length; or

(b) Channel catfish that is a minimum of twenty-eight (28) inches in length.

(16) "Unprocessed fish" means the whole fish prior to being processed.

Section 2. Statewide Limits and Requirements. (1) A person taking fish from public or private waters using traditional fishing methods shall observe the daily creel limits and size limits established in paragraphs (a) through (l) of this subsection, except as established in Sections 3 through 8 of this administrative regulation or pursuant to 301 KAR 1:180:

(a) Black bass daily creel limit, six (6).

1. Largemouth bass and smallmouth bass size limit, twelve (12) inches.

2. Kentucky bass and Coosa bass, no size limit;

(b) Rock bass daily creel limit, fifteen (15); no size limit;

(c) Sauger, walleye, and any hybrid thereof daily creel limit, singly or in combination, six (6); size limit, fourteen (14) inches;

(d) Muskellunge daily creel limit, one (1); size limit, thirty (30) inches;

(e) Chain pickerel daily creel limit, five (5); no size limit;

(f) White bass and hybrid striped bass daily creel limit, singly or in combination, fifteen (15); size limit, no more than five (5) fish in a daily creel limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer;

(g) Striped bass daily creel limit, five (5); size limit, fifteen (15) inches;

(h) Crappie daily creel limit, twenty (20); no size limit;

(i) Trout.

1. No culling statewide.

2. Rainbow trout daily creel limit, eight (8); no size limit.

3. Brown trout daily creel limit, one (1); size limit, sixteen (16) inches.

4. Brook trout, catch and release only.

5. Cutthroat trout daily creel limit, one (1); size limit, twenty (20) inches;

(j) Redear sunfish daily creel limit, twenty (20); no size limit;

(k) Paddlefish daily creel limit, two (2); no size limit; and

(l) Catfish daily creel limit is unlimited; no size limit, except that only one (1) trophy catfish of each species may be harvested daily.

(2) The possession limit shall be two (2) times the daily creel limit, except as established in Section 3 of this administrative regulation.

(3) A person shall release grass carp caught from a lake owned or managed by the department.

(4) A person shall release any:

(a) Lake sturgeon; or

(b) Alligator gar.

(5) A person shall release fish:

(a) Below the minimum size limits established by this administrative regulation;

(b) Within a protected slot limit established by this administrative regulation; or

(c) Of a particular species if a person already possesses the daily creel limit for that species.

(6) A person shall not possess more than one (1) daily creel limit of processed or unprocessed fish while:

(a) Fishing;

(b) On the shoreline; or

(c) On the water.

(7) A fishing tournament organizer or representative, excluding a tournament angler, may possess more than the daily creel limit of tournament caught fish:

(a) At the weigh-in site;

(b) At the release site; or

(c) While transporting live fish from a remote weigh-in site back to the water body of origin for release.

(8) A fishing tournament organizer or representative, excluding a tournament angler, may possess more than the daily creel limit of

unprocessed tournament caught fish that expired at the sites established in subsection (7) of this section for subsequent disposal by one (1) of the methods established in paragraphs (a) through (c) of this subsection:

(a) Bagged, sealed, and placed in a garbage dump;

(b) Donated to a charity for the purpose of human consumption; or

(c) Transferred to a conservation officer or another agent of the department.

(9) A person shall not remove the head or tail of any fish for which a size limit or daily creel limit exists while:

(a) Fishing;

(b) On the shoreline; or

(c) On the water.

(10) A person may possess sport fish below the size limit or beyond the possession limit if the person:

(a) Obtains the fish from a licensed fish propagator or other legal source; and

(b) Retains a receipt or other written proof that the fish were legally acquired.

(11) A person shall release all caught trout unless the person:

(a) Has a valid trout permit;

(b) Is exempted from trout permit requirements pursuant to KRS 150.170(2); or

(c) Is fishing in a licensed pay lake stocked with trout by the lake operator.

(12) A person fishing in an artificial bait-only area shall not attach any of the items established in paragraphs (a) through (h) of this subsection to the artificial bait:

(a) An insect;

(b) Minnow;

(c) Fish egg;

(d) A worm;

(e) Corn;

(f) Cheese;

(g) Cut bait; or

(h) A similar organic bait substance including dough bait and putty or paste-type bait designed to attract fish by taste or smell.

(13) The fishing season shall be open year-round.

Section 3. Exceptions. All other provisions of this administrative regulation shall apply to the bodies of water listed in this section, with the exceptions established in subsections (1) through (7)(3) of this section. (1) Bad Branch, Letcher County. A person shall only fish with artificial bait with a single hook;

(2) Barkley Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, ten (10) inches;

(3) Barren River Lake.

(a) Crappie size limit, ten (10) inches.

(b) Largemouth and smallmouth bass size limit, fifteen (15) inches, except that a person may keep one (1) bass under fifteen (15) inches within a daily creel limit.

(c) Blue and channel catfish aggregate daily creel limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.

(d) Barren River Lake shall extend up:

1. Barren River to the Highway 100 bridge;

2. Long Creek to the Highway 100 bridge;

3. Beaver Creek to the Highway 1297 bridge;

4. Skaggs Creek to the Mathews Mill Road bridge; and

5. Peter Creek to the Peter Creek Road bridge;

(4) Beaver Lake, Anderson County. A person shall not possess shad or use shad as bait;

(5) Beech Fork Reservoir, Powell County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Bluegill daily creel limit, fifteen (15);

(6) Bert Combs Lake, Clay County. A person shall not possess shad or use shad as bait;

(7) Boltz Lake, Grant County. A person shall not possess shad or use shad as bait;

(8) Briggs Lake, Logan County. A person shall not possess

shad or use shad as bait;

(9) Buckhorn Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Muskellunge size limit, forty (40) inches.

(c) Crappie size limit, nine (9) inches;

(10) Carnico Lake, Nicholas County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Sunfish daily creel limit, fifteen (15);

(11) Carr Creek Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, nine (9) inches;

(12) Carter Caves State Park Lake, Carter County.

(a) Fishing shall be during daylight hours only.

(b) Largemouth bass.

1. There shall be a slot limit between twelve (12) and fifteen (15) inches.

2. The daily creel limit shall not include more than one (1) fish greater than fifteen (15) inches.

(c) A person shall not possess shad or use shad as bait;

(13) Cave Run Lake.

(a) Largemouth bass. There shall be a slot limit between thirteen (13) and sixteen (16) inches.

(b) Smallmouth bass size limit, eighteen (18) inches.

(c) Muskellunge size limit, thirty-six (36) inches.

(d) Cave Run Lake shall extend up:

1. Scott's Creek to the Highway 801 culvert;

2. Beaver Creek to the Highway 1274 culvert;

3. North Fork Creek to the confluence of Craney Creek;

4. Licking River to the Highway 772 bridge; and

5. Ramey Creek to include the pool of water north of Highway 801;

(14) Cedar Creek Lake, Lincoln County. Largemouth bass size limit, twenty (20) inches; daily creel limit, one (1);

(15) Chimney Top Creek, Wolfe County. A person shall only fish with artificial bait;

(16) Clear Fork, tributary of the Gasper River. A person shall release all sportfish;

(17) Corinth Lake, Grant County. A person shall not possess shad or use shad as bait;

(18)[(47)] Cumberland Lake.

(a) 1. Largemouth bass size limit, fifteen (15) inches.

2. Smallmouth bass size limit, eighteen (18) inches.

3. Striped bass size limit, twenty-two (22) inches; daily creel limit, two (2).

4. Crappie size limit, ten (10) inches.

(b) Cumberland Lake shall extend up:

1. The Cumberland River to Cumberland Falls;

2. The Big South Fork to Devil's Jump;

3. The Rockcastle River to The Narrows; and

4. The Laurel River to Laurel River Dam;

(19)[(48)] Cumberland River from Wolf Creek Dam downstream to the Kentucky-Tennessee state line and tributaries, except Hatchery Creek in Russell County as established in subsections (34) and (35) of this section.

(a) Brown trout size limit, twenty (20) inches; daily creel limit, one (1).

(b) Brook trout size limit, fifteen (15) inches; daily creel limit, one (1).

(c) Rainbow trout. There shall be a slot limit between fifteen (15) and twenty (20) inches; daily creel limit, five (5), which shall not include more than one (1) fish greater than twenty (20) inches.

(d) A trout permit shall be required in order to fish the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.

(e) Chumming shall not be permitted in the Cumberland River below Wolf Creek Dam to the Tennessee state line, including the Hatchery Creek and all other tributaries upstream to the first riffle;

(20)[(49)] Cumberland River below Barkley Lake. Fishing is prohibited at the mouth of the lock chamber, as designated by signs.

(21)[(20)] Dale Hollow Lake.

(a) Smallmouth bass. There shall be a slot limit between sixteen (16) and twenty-one (21) inches. The daily creel limits shall not include more than one (1) fish less than sixteen (16) inches long and one (1) fish greater than twenty-one (21) inches long.

(b) Walleye and walleye hybrids, daily creel limit, five (5); size limit, sixteen (16) inches.

(c) Sauger daily creel limit, ten (10); size limit, fourteen (14) inches.

(d) Rainbow trout and brown trout, no size limit; daily creel limit, seven (7), singly or in combination.

(e) Largemouth bass size limit, fifteen (15) inches.

(f) Black bass aggregate daily creel limit, five (5), no more than two (2) of which shall be smallmouth bass.

(g) Crappie size limit, ten (10) inches; daily creel limit, fifteen (15);

(22)[(24)] Dewey Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Blue and channel catfish aggregate creel limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.

(c) Muskellunge size limit, thirty-six (36) inches;

(23)[(22)] Dix River for two (2) miles downstream from Herrington Lake Dam. A person shall only fish with artificial bait;

(24)[(23)] Doe Run Lake, Kenton County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait;

(25)[(24)] Dog Fork, Wolfe County. A person shall only fish with an artificial bait with a single hook;

(26)[(25)] Elkhorn Creek, downstream from the confluence of the North and South forks to the first shoal located 3,400 feet above its confluence with the Kentucky River, as posted with signs. Largemouth bass and smallmouth bass.

(a) There shall be a slot limit between twelve (12) and sixteen (16) inches.

(b) The daily creel limit shall not include more than two (2) fish greater than sixteen (16) inches;

(27)[(26)] Elmer Davis Lake, Owen County.

(a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.

(b) A person shall not possess shad or use shad as bait;

(28)[(27)] Fishtrap Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, nine (9) inches.

(c) Blue and channel catfish aggregate daily limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches;

(29)[(28)] Floyd's Fork Creek, from Highway 60 downstream to Bardstown Road in Jefferson County. Largemouth and smallmouth bass size limit, fifteen (15) inches; daily creel limit, one (1);

(30)[(29)] Golden Pond at the Visitors' Center at Land Between the Lakes. Channel catfish daily creel limit, five (5); size limit, fifteen (15) inches;

(31)[(30)] General Butler State Park Lake, Carroll County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait;

(32)[(31)] Grayson Lake. Largemouth bass and smallmouth bass size limit, fifteen (15) inches;

(33)[(32)] Greenbo Lake, Greenup County.

(a) A person shall not possess shad or use shad as bait.

(b) Bluegill and sunfish daily creel limit, fifteen (15) fish;

(34) Green River from Green River Lake Dam and extending downstream to the end of the concrete wall. Fishing shall be limited to rod in hand using either:

(a) An artificial bait with a single hook; or

(b) Live bait attached to a single hook;

(35)[(33)] Green River Lake.

(a) Crappie size limit, nine (9) inches.

(b) Muskellunge size limit, thirty-six (36) inches.  
(c) Green River Lake shall extend up:  
1. Green River to the Snake Creek Boat Ramp;  
2. Robinson Creek to the Highway 76 Bridge; and  
3. Casey Creek to the Arnolds Landing Boat Ramp.];  
(36) [(34)] Hatchery Creek, upper section as established by signs, Russell County. Rainbow trout, brown trout, and brook trout, no size limit; daily creel limit, five (5), singly or in combination;  
(37) [(35)] Hatchery Creek, lower section as established by signs, Russell County. A person fishing for trout shall:  
(a) Only use artificial bait; and  
(b) Release all trout;  
(38) Highsplint Lake, Harlan County. Largemouth bass size limit, twenty (20) inches; daily creel limit, one (1);  
(39) [(36)] Jericho Lake, Henry County.  
(a) Largemouth bass size limit, fifteen (15) inches.  
(b) A person shall not possess shad or use shad as bait;  
(40) [(37)] Kentucky Lake and the canal connecting Kentucky and Barkley lakes.  
(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.  
(b) Crappie size limit, ten (10) inches;  
(41) [(38)] Kentucky River WMA, Boone Tract, excluding Benji Kinman Lake.  
(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1).  
(b) Sunfish daily creel limit, fifteen (15).  
(c) Catfish daily creel limit, four (4);  
(42) [(39)] Lake Blythe, Christian County. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;  
(43) [(40)] Lake Chumley, and the department-owned property surrounding the lake, Boyle and Lincoln counties. Closed to public access from one-half (1/2) hour after sunset through one-half (1/2) hour before sunrise;  
(44) [(41)] Lake Malone, Muhlenberg and Logan counties. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;  
(45) [(42)] Lake Mingo, Jessamine County. A person shall not possess shad or use shad as bait;  
(46) [(43)] Lake Reba, Madison County. A person shall not possess shad or use shad as bait;  
(47) [(44)] Lake Shelby, Shelby County.  
(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).  
(b) Channel catfish daily creel limit, four (4).  
(c) A person shall not possess shad or use shad as bait;  
(48) [(45)] Laurel River Lake.  
(a) Largemouth bass size limit, fifteen (15) inches.  
(b) Smallmouth bass size limit, eighteen (18) inches; daily creel limit, two (2).  
(c) Crappie size limit, nine (9) inches; daily creel limit, fifteen (15);  
(49) [(46)] Lebanon City Lake (Fagan Branch), Marion County. Largemouth bass and smallmouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;  
(50) [(47)] Lincoln Homestead Lake, Washington County.  
(a) A person shall not fish except during daylight hours.  
(b) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).  
(c) Channel catfish daily creel limit, four (4).  
(d) A person shall not possess shad or use shad as bait;  
(51) [(48)] Marion County Lake.  
(a) Largemouth bass size limit, fifteen (15) inches.  
(b) A person shall not possess shad or use shad as bait;  
(52) [(49)] McNeely Lake, Jefferson County. A person shall not possess shad or use shad as bait;  
(53) [(50)] Mill Creek Lake, Powell County.  
(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).  
(b) A person shall not possess shad or use shad as bait;  
(54) [(51)] New Haven Optimist Lake, Nelson County.  
(a) Largemouth bass size limit, fifteen (15) inches; daily creel

limit, three (3).  
(b) Channel catfish daily creel limit, four (4).  
(c) A person shall not possess shad or use shad as bait;  
(55) [(52)] Nolin River Lake shall extend up Bacon Creek to Highway 178 and to Wheelers Mill Road Bridge on the Nolin River.  
(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches, except that the daily creel limit may contain one (1) bass under fifteen (15) inches.  
(b) Crappie size limit, nine (9) inches;  
(56) [(53)] Ohio River.  
(a) White bass, striped bass, and any hybrid thereof, daily creel limit, thirty (30); no more than four (4) in the daily creel limit shall be fifteen (15) inches or greater.  
(b) The blue catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be thirty-five (35) inches or longer.  
(c) The channel catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be twenty-eight (28) inches or longer.  
(d) The flathead catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be thirty-five (35) inches or longer;  
(57) [(54)] Otter Creek, Meade County.  
(a) Smallmouth and largemouth bass. There shall be a slot limit between twelve (12) and sixteen (16) inches.  
(b) Daily limit shall not include more than one (1) smallmouth or largemouth bass over sixteen (16) inches;  
(58) [(55)] Paint Creek, between upper Highway 460 Bridge and Highway 40 Bridge, Johnson County. Trout size limit, sixteen (16) inches; daily creel limit, one (1); artificial bait only;  
(59) [(56)] Paintsville Lake. Smallmouth bass size limit, eighteen (18) inches;  
(60) [(57)] Parched Corn Creek, Wolfe County. A person shall only fish with an artificial bait with a single hook;  
(61) [(58)] Pikeville City Lake, Pike County. A person shall release largemouth bass;  
(62) [(59)] Poor Fork and its tributaries in Letcher County downstream to the first crossing of Highway 932. A person shall only fish with an artificial bait with a single hook;  
(63) [(60)] Rockcastle River WMA, all ponds collectively, Pulaski County.  
(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1).  
(b) Bluegill and sunfish daily creel limit, ten (10).  
(c) Catfish daily creel limit, four (4).  
(d) Crappie daily creel limit, fifteen (15);  
(64) [(61)] Rough River Lake.  
(a) Crappie size limit, nine (9) inches.  
(b) Largemouth bass and smallmouth bass size limit, fifteen (15) inches, except that the daily creel limit may contain one (1) bass under fifteen (15) inches.  
(c) Rough River Lake shall extend up Rough River to the Highway 84 Bridge;  
(65) [(62)] Shanty Hollow Lake, Warren County.  
(a) Largemouth bass size limit, fifteen (15) inches.  
(b) A person shall not possess shad or use shad as bait;  
(66) [(63)] Shillalah Creek, Bell County, outside the Cumberland Gap National Park. A person shall only fish with an artificial bait with a single hook;  
(67) [(64)] Spurlington Lake, Taylor County. A person shall not possess shad or use shad as bait;  
(68) [(65)] Simpson Lake, Nelson County. Largemouth bass size limit, fifteen (15) inches;  
(69) [(66)] Taylorsville Lake, including the impounded waters of the lake to Dry Dock Road Bridge on the Salt River.  
(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.  
(b) Blue and channel catfish:  
1. Aggregate daily creel limit of fifteen (15); and  
2. Only one (1) fish of either species in the aggregate daily creel limit shall be longer than twenty-five (25) inches.  
(c) Crappie size limit, ten (10) inches; daily creel limit, fifteen (15);

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~~(70)~~~~(67)~~ Trammel Creek, Allen County. Rainbow trout daily limit, five (5);

~~(71)~~~~(68)~~ Willisburg Park Pond, Washington County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1).

(b) Catfish daily creel limit, four (4).

(c) Sunfish daily creel limit, fifteen (15);

~~(72)~~~~(69)~~ Wood Creek Lake. Largemouth and smallmouth bass size limit, fifteen (15) inches; and

~~(73)~~~~(70)~~ Yatesville Lake. Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

Section 4. Creel and Size Limits for Waters Containing Rockcastle Strain Walleye. (1) Rockcastle Strain Walleye Waters.

(a) Barren River and tributaries upstream from Lock and Dam 1, including Barren River Lake;

(b) Cumberland River and tributaries above Cumberland Falls;

(c) Kentucky River and tributaries upstream from Lock and Dam 14;

(d) Middle Fork Kentucky River and tributaries;

(e) North Fork Kentucky River and tributaries, including Carr Fork below Carr Creek Lake;

(f) South Fork Kentucky River and tributaries;

(g) Levisa Fork River and tributaries upstream from Fishtrap Lake, including Fishtrap Lake;

(h) Martins Fork Lake; and

(i) Wood Creek Lake.

(2) There shall be a slot limit between eighteen (18) and twenty-six (26) inches and a daily creel limit of two (2) for walleye in the waters established in subsection (1) of this section.

Section 5. Seasonal Catch and Release for Trout. (1) There shall be a catch and release trout season from October 1 through March 31 for the bodies of water established in subsection (3) of this section.

(2) A person shall:

(a) Only use artificial bait; and

(b) Release all trout.

(3) The streams established in paragraphs (a) through (n) of this subsection shall be open for the catch and release trout season:

(a) Bark Camp Creek in Whitley County;

(b) Beaver Creek from Highway 90 Bridge upstream to Highway 200 Bridge in Wayne County;

(c) Big Bone Creek within Big Bone Lick State Park in Boone County;

(d) Cane Creek in Laurel County;

(e) Casey Creek in Trigg County;

(f) Clear Creek from mouth upstream to 190 Bridge in Bell County;

(g) East Fork of Indian Creek in Menifee County;

(h) Elk Spring Creek in Wayne County;

(i) Floyd's Fork Creek in Jefferson County from Highway 60 downstream to Bardstown Road;

(j) Gunpowder Creek in Boone County;

(k) Left Fork of Beaver Creek in Floyd County from Highway 122 Bridge upstream to the headwater;

(l) Otter Creek in Meade County on the Fort Knox Reservation and Otter Creek Park;

(m) Rock Creek from the Bell Farm Bridge to the Tennessee state line in McCreary County; and

(n) Trammel Creek in Allen County.

(4) There shall be a seasonal catch and release trout season for Swift Camp Creek in Wolf County from October 1 through May 31.

Section 6. Special Limits for Fishing Events. (1) The commissioner may establish special limits for fishing events including:

(a) Size limits for selected species;

(b) Daily creel limits for selected species;

(c) Eligible participants; and

(d) Dates and times of special limits.

(2) An event sponsor shall post signs informing anglers of any special limits for a minimum of twenty-four (24) hours before the event.

Section 7. Creel and Size Limits for Special Lakes and Ponds. The requirements established in subsections (1) through (5) of this section shall apply to all bodies of water established in the Special Lakes and Ponds list:

(1) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1);

(2) Catfish daily creel limit, four (4);

(3) Sunfish or bream daily creel limit, fifteen (15);

(4) Rainbow trout daily creel limit, five (5); and

(5) A person shall not possess shad or use shad as bait.

Section 8. Special Catfish Size Limit Lakes. All lakes established in the Special Catfish Size Limit Lakes list shall have a twelve (12) inch size limit on catfish.

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

(a) "Special Catfish Size Limit Lakes", 2020[2019] edition; and

(b) "Special Lakes and Ponds", 2020[2019] edition.

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

BRIAN CLARK, Deputy Commissioner

MIKE E. BERRY, Secretary

APPROVED BY AGENCY: April 15, 2021

FILED WITH LRC: April 27, 2021 at 12:13 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 27, 2021 at 1:00 p.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 July 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, email [fwpubliccomments@ky.gov](mailto: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 size limits, daily creel limits, and possession limits for sport fish that may be taken from Kentucky waters.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to properly manage the sport fish populations of Kentucky.

(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 seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area. KRS 150.470 authorizes the department to establish creel and size limits for fish.

(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 limiting the number and size of fish that may be taken from Kentucky's waters. This will ensure that Kentucky's valuable sport fish populations are maintained at high levels.

(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 place a 20-inch minimum size limit and 1-fish daily creel limit on largemouth bass at Highsplint Lake in Harlan County, make the entire stretch of Clear Fork, a tributary of the Gasper River, no harvest for sport fish, provides specific fishing methods allowed while fishing from the spilling basin platform below Green River Lake Dam, and adds Robert J. Barth Park Lake to the list of Special Lakes and Ponds, which is incorporated by reference. This amendment also cleans up a couple of lake names and a county name error in the Special Catfish Size Limit Lakes and Special Lakes and Ponds lists which are incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to protect the largemouth bass population in Highsplint Lake from over-harvest due to increased angling pressure resulting from the latest largemouth bass state record coming from this small lake. In addition, it protects the sportfish in Clear Fork, a tributary of the Gasper River, from harvest following a fish kill which eliminated most sportfish from this stream. It also sets specific allowable fishing methods in the area of the concrete stilling basin platform below Green River Lake Dam due to reported recreational fishing tactics allowing for the snagging of sportfish. Finally, Robert J. Barth Park Lake is being added to the KDFWR FINs program and the program's standard regulations need to be added to this lake.

(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: All anglers fishing at the water bodies and for the species identified in 2(a) above 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:

(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: Anglers will need to comply with the regulation changes identified in 2(a).

(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 incurred by the anglers identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anglers who fish at the water bodies and for the species identified in 2(a) above will benefit in the long run from a higher quality sport fishery and improved angling opportunities.

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no 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 a fee or funding to implement this administrative regulation.

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

This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals fishing in Kentucky must abide by the same requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? 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 150.025(1) authorizes the Department to promulgate administrative regulations to regulate bag, creel, and possession limits of game and fish. KRS 150.470 authorizes the department to promulgate creel and size limits for fish.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is unknown if this administrative regulation could indirectly increase any fishing license sales during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no direct revenue generated in subsequent years, and it is unknown if fishing license sales will be indirectly increased because of this amendment.

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

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

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

#### 301 KAR 2:132. Elk hunting seasons, permits, zones, and requirements.

RELATES TO: KRS 150.010, 150.170(4), 150.180, 150.990  
STATUTORY AUTHORITY: KRS 150.025(1), 150.177, 150.178, 150.390(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.177 authorizes the department to issue special commission permits for game species to nonprofit wildlife conservation organizations. KRS 150.178 authorizes the department to issue cooperator permits to landowners who enroll property for public hunting access. KRS 150.390(3) requires the department to promulgate administrative regulations establishing the conditions under which depredation permits for elk may be issued. This administrative regulation establishes the requirements for the elk permit drawing and quota hunts, the conditions under which special commission and landowner cooperator permits may be used, procedures for elk damage abatement, and any postseason hunt held after the quota

hunts.

#### Section 1. Definitions.

(1) "Antlered elk" means an elk having visible polished antler protruding above the hairline.

(2) "Antlerless elk" means an elk without visible polished antler protruding above the hairline.

(3) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(4) "Bait":

(a) Means a substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, that could lure, entice, or attract wildlife; and

(b) Does not mean the establishment and maintenance of plantings for wildlife, foods found scattered solely as the result of normal agricultural planning or harvesting practices, foods available to wildlife through normal agricultural practices of livestock feeding if the areas are occupied by livestock actively consuming the feed on a daily basis, or standing farm crops under normal agricultural practices.

(5) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(6) "Electronic decoy" means a motorized decoy powered by electricity, regardless of source.

(7) "Elk" means *Cervus canadensis nelsoni*.

(8) "Elk Management Unit" or "EMU" means a designated area in the restoration zone with specific management restrictions for a post-season antlerless elk quota hunt.

(9) "Elk Restoration Permit" or "ERP" means an elk permit given to a landowner or lessee who allows the department to capture elk on the landowner or lessee's property for restoration or restocking purposes.

(10) "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun.

(11) "Landowner cooperator" means a landowner or lessee who owns or leases at least 5,000 acres of land in the restoration zone and enters into an agreement with the department to allow public access and hunting for at least five (5) years.

(12) "Muzzleloader" means a rifle, shotgun, or handgun that is loaded from the discharging end of the barrel or discharging end of the cylinder.

(13) "Out-of-zone" means all counties not included in the restoration zone.

(14) "Restoration zone" means the Kentucky counties: Bell, Breathitt, Clay, Floyd, Harlan, Johnson, Knott, Knox, Leslie, Letcher, Magoffin, Martin, McCreary, Perry, Pike, and Whitley.

(15) "Shed" means an antler that has naturally been cast off the skull as a part of the annual growth and replacement process.

(16) "Spike" means an elk having one (1) or two (2) antler points on each side.

(17) "Unit" means a designated area in the restoration zone with specific management restrictions.

(18) "Voucher cooperator" means a landowner or lessee who owns or leases at least 100 acres of land in the restoration zone and enters into an agreement with the department to allow elk hunting access.

(19) "Youth" means a person under the age of sixteen (16) by the first date of the hunt.

Section 2. Elk Damage Control. The department may authorize the removal or destruction of elk that are causing property damage. A person authorized to destroy an elk shall:

(1) Attach a department-issued destruction tag to an elk prior to moving the carcass; and

(2) Not remove the destruction tag until the carcass is processed.

#### Section 3. Elk Quota Hunts.

(1) The elk quota hunt application period shall be January 1 to April 30.

(2) An applicant shall:

(a) Complete the elk quota hunt application process on the department's Web site at fw.ky.gov; and

(b) Pay a nonrefundable application fee of ten (10) dollars.

(3) The commissioner shall extend the application deadline if technical difficulties with the application system prevent applications from being accepted for one (1) or more days during the application period.

(4) There shall be a random electronic drawing from each applicant pool.

(5) Youth may enter a separate drawing pool for either-sex elk permits that shall be valid for use during all elk seasons, pursuant to Section 7(4) of this administrative regulation.

(6) A youth shall not apply for the youth-only elk quota hunt more than once per application period.

(7) An applicant for the youth-only elk quota hunt may also apply for a regular quota hunt, as established in subsection (12) of this section.

(8) A youth drawn for the youth-only elk quota hunt shall not be drawn in any other elk quota hunt held during the same calendar year.

(9) A youth drawn for the youth-only elk quota hunt shall be ineligible to be drawn in the youth-only elk quota hunt in subsequent years.

(10) Nonresidents shall not comprise more than ten (10) percent of all drawn applicants in each quota hunt pool.

(11) A quota hunt permit awarded from any department-administered drawing shall not be transferable.

(12) In addition to the youth-only quota hunt, there shall be three (3) separate regular elk quota hunts consisting of:

(a) Antlered firearms;

(b) Antlerless firearms; and

(c) Either-sex archery and crossbow.

(13) An applicant shall:

(a) Apply only once for an individual elk quota hunt;

(b) Not be eligible to be drawn in more than one (1) of the three

(3) quota hunt pools;

(c) Only be selected by a random electronic drawing; and

(d) Pay a nonrefundable application fee of ten (10) dollars for each entry.

(14) A person who is drawn for an elk quota hunt shall be ineligible to be drawn for any elk quota hunt for the following three (3) years.

(15) A person who does not have access to the department's Web site to apply for any quota hunt may contact the department toll free at (800)858-1549 for assistance in applying.

#### Section 4. Landowner Cooperator Permits.

(1) With the approval of the commission, the commissioner shall issue to a landowner cooperator:

(a) One (1) either-sex permit annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement;

(b) Two (2) antlerless-only permits annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement; or

(c) One (1) antlerless-only permit annually per 5,000 acres of land enrolled with the department in an elk hunting access agreement for the duration of the agreement.

(2) A recipient of a landowner cooperator permit shall comply with the season, bag limit, and hunter requirements in Sections 7 and 8 of this administrative regulation.

(3) A landowner cooperator permit shall only be used on the land that is established in the agreement, except that it may be used on adjacent property if:

(a) The adjacent property is owned by a different landowner; and

(b) The adjacent landowner has granted permission to the permit holder.

(4) A landowner cooperator permit may be transferred to any person eligible to hunt in Kentucky, but prior to hunting, the landowner cooperator or person who has received the transferred permit shall provide the department with the hunter's:

(a) Name;

- (b) Fish and Wildlife customer identification number;
- (c) Address; and
- (d) Telephone number.
- (5) The landowner cooperators permit shall not be transferable if it was already used for the harvest of an elk.
- (6) Public access agreements with the department shall be recorded in writing.

Section 5. Voucher Cooperator Permits.

- (1) A voucher cooperator shall accrue one (1) voucher point for each legally harvested elk.
- (2) A voucher cooperator who accrues ten (10) total points on land enrolled pursuant to Section 1(18) of this administrative regulation shall receive one (1) either-sex elk permit from the department.
- (3) A recipient of a voucher cooperator elk permit shall comply with all of the requirements established in Sections 7 and 8 of this administrative regulation.
- (4) A voucher cooperator elk permit shall only be used on:
  - (a) The property enrolled with the department per agreement; or
  - (b) Other property that the landowner or lessee owns or leases.
- (5) A voucher cooperator permit may be transferable to any person eligible to hunt in Kentucky.
- (6) If a voucher cooperator permit is to be transferred, then the landowner, lessee, or person who has received the transferred permit shall provide to the department by August 15 the hunter's:
  - (a) Name;
  - (b) Fish and Wildlife customer identification number;
  - (c) Address; and
  - (d) Telephone number.
- (7) A permit shall not be transferable after being used for the harvest of an elk.

Section 6. Elk Restoration Permits.

- (1) A landowner or lessee who allows the department to capture elk on the landowner or lessee's property shall accrue one (1) point for each captured elk.
- (2) A landowner or lessee who accrues ten (10) total points shall receive one (1) either-sex elk permit from the department that shall only be used the following hunting season.
- (3) A recipient of an ERP shall comply with all the requirements established in Sections 7 and 8 of this administrative regulation.
- (4) An ERP shall only be used on property that the ERP recipient owns or leases.
- (5) An ERP recipient may transfer the permit to any person eligible to hunt in Kentucky.
- (6) If an ERP recipient transfers an ERP to another hunter, then the ERP recipient shall provide to the department by August 15 the hunter's:
  - (a) Name;
  - (b) Address;
  - (c) Telephone number; and
  - (d) Fish and Wildlife customer identification number.
- (7) An ERP shall be invalid if it has already been used to harvest an elk.

Section 7. Hunter Requirements.

- (1) A person shall carry proof of purchase of a valid Kentucky hunting license and valid elk permit while hunting, unless exempted by KRS 150.170.
- (2) The statewide bag limit shall be one (1) elk per hunter per license year.
- (3) If a legal elk hunter kills any elk, then:
  - (a) The person shall immediately cease hunting elk for the remainder of the elk season; and
  - (b) The elk permit held by that individual shall immediately become invalid.
- (4) A drawn hunter may apply to hunt in up to five (5)~~two (2)~~ units by completing the application process on the department's Web site at fw.ky.gov.
- (a) Up to three (3) drawn hunters may apply for their unit

choices as a party.

(b) If the party is drawn for a unit, then all hunters in the party shall be assigned to that same unit.

(c) If the number of slots remaining in the quota is less than the number of hunters in the next party selected, the entire party shall be assigned to the party's next choice ranking or be assigned to a unit by the department.

(5) A drawn hunter who does not apply for a unit shall be assigned to a unit by the department.

(6) A hunter drawn for a unit may hunt only in the assigned unit, except that a person who is drawn for any elk quota hunt may hunt on his or her land within the restoration zone.

(7) An elk hunter or any person accompanying an elk hunter shall comply with hunter orange requirements established in 301 KAR 2:172.

(8) An elk hunter shall not:

- (a) Take elk except during daylight hours;
  - (b) Use dogs, except to recover wounded elk using leashed tracking dogs;
  - (c) Hunt over bait inside the elk restoration zone;
  - (d) Drive elk from outside the assigned area;
  - (e) Take an elk while it is swimming;
  - (f) Use electronic calls or electronic decoys; or
  - (g) Take an elk if the hunter is in a vehicle, boat, or on horseback, except that a disabled hunter who has a hunting method exemption permit issued pursuant to 301 KAR 3:027 may use a stationary vehicle as a hunting platform.
- (9) A person shall:
- (a) Obtain a vehicle tag from the department prior to hunting elk in the restoration zone; and
  - (b) Display the vehicle tag in the windshield of the vehicle while hunting elk.
- (10) A youth shall be accompanied by an adult who shall remain in a position to take immediate control of the youth's firearm.

(11) An adult accompanying a youth shall not be required to possess a hunting license or elk permit if the adult is not hunting.

(12) A person shall only use the equipment~~weapons~~ and ammunition established in paragraphs (a) through (e) of this subsection to take an elk:

- (a) A crossbow or archery equipment loaded with a broadhead of seven-eighths (7/8) inch or wider upon expansion;
  - (b) A firearm:
    - 1. With an action that fires a single round of ammunition upon each manipulation of the trigger;
    - 2. Of .270 caliber or larger; and
    - 3. Loaded with centerfire, single projectile ammunition designed to expand upon impact;
  - (c) A muzzleloader of .50 caliber or larger;
  - (d) A shotgun of twenty (20) gauge or larger loaded with a shell containing one (1) projectile; or
  - (e) A handgun loaded with:
    - 1. Centerfire cartridges;
    - 2. Bullets of .270 caliber or larger designed to expand upon impact; and
    - 3. Cartridges with a case length of 1.285 inches or larger.
- (13) A crossbow shall contain a working safety device.

(14) An elk hunter shall not use a magazine capable of holding more than ten (10) rounds.

(15) A quota elk hunter shall only take an elk of the type and sex determined by the permit drawn.

(16) A hunter drawn for a firearms elk permit shall hunt elk pursuant to that permit only during the five (5) day period assigned during the initial drawing.

(17) An individual who receives or is transferred a landowner cooperators permit, a voucher cooperator permit, an elk restoration permit, or a special commission permit may hunt in all of the quota hunts and shall hunt in accordance with the seasons, limits, and equipment~~weapons~~ established in Section 7 of this administrative regulation.

(18)(a) A person who is drawn for an elk quota hunt permit or was issued a landowner cooperators permit, a special commission permit, an elk restoration permit, or voucher cooperator permit

shall complete and submit a post-season elk hunting survey on the department's Web site at fw.ky.gov no later than the last day of February.

(b) A person who fails to comply with the requirements established in paragraph (a) of this subsection shall be ineligible to apply for any quota hunt or no-hunt option the following year.

Section 8. Elk Quota Hunt Seasons and Limits.

(1) A person drawn for an either-sex archery and crossbow permit shall use archery or crossbow equipment to take either-sex elk from the:

(a) Second Saturday in September through the fourth Friday in September; and

(b) First Saturday in December through the second Friday in December.

(2) A person drawn for an antlered firearms permit shall use any legal ~~equipment~~[~~weapon~~] as established in Section 7(12) of this administrative regulation to take an antlered elk during one (1) of two (2) five (5) day periods randomly assigned by the department from the:

(a) Last Saturday in September for five (5) consecutive days; or

(b) First Saturday in October for five (5) consecutive days.

(3) A person drawn for an antlerless firearms permit shall use any legal ~~equipment~~[~~weapon~~] as established in Section 7(12) of this administrative regulation to take an antlerless elk during one (1) of two (2) five (5) day periods randomly assigned by the department from the:

(a) Last Saturday in November for five (5) consecutive days; or

(b) Last Saturday in December for five (5) consecutive days.

Section 9. Unit Boundaries and Elk Viewing Areas.

(1) Hunting unit boundaries and the boundaries of the Appalachian Wildlife Center Viewing Area are incorporated by reference.

(2) Elk viewing areas shall be closed to all elk hunting.[]

~~Section 10. Post-season Quota Hunt on Private Land.~~

~~(1) A modern firearms quota hunt for antlerless elk and spikes shall take place beginning on the fourth Saturday in January for fourteen (14) consecutive days.~~

~~(2) Each hunter shall be randomly drawn from the pool of applicants who:~~

~~(a) Were not drawn for the previous elk quota hunts; and~~

~~(b) Are residents of counties included, wholly or in part, within an EMU boundary.~~

~~(3) A drawn applicant shall comply with the requirements in Section 7 of this administrative regulation except that an applicant may hunt only in the assigned EMU or on land the applicant owns within another EMU.~~

~~(4) The EMU boundaries shall be as incorporated by reference in this administrative regulation.~~

~~(5) Any public hunting area within an EMU shall be closed to elk hunting during this season.]~~

Section 10[14]. Tagging and Checking Requirements.

(1) Immediately after taking an elk, a hunter shall record on a hunter's log:

(a) The species harvested;

(b) The sex of the animal;

(c) Date of harvest; and

(d) County of harvest.

(2) A hunter shall check a harvested elk before midnight on the day the elk is recovered by:

(a) Calling (800) 245-4263 and providing the requested information; or

(b) Completing the online check-in process at fw.ky.gov.

(3) A hunter who has checked in an elk shall record the confirmation number on a hunter's log.

(4) If the hide or head is removed from the carcass before the elk is checked in, then the hunter shall be required to demonstrate proof of the sex of the elk.

(a) For antlered elk the hunter shall retain the:

1. Head with antlers; or

2. Testicles, scrotum, or penis attached to the carcass; or

(b) For antlerless elk the hunter shall retain the:

1. Head;

2. Udder or vulva attached to the carcass; or

3. Testicles, scrotum, or penis attached to the carcass.

(5) If a harvested elk leaves the possession of the hunter, the hunter shall attach to the carcass a hand-made tag that contains the hunter's:

(a) Confirmation number;

(b) Name; and

(c) Telephone number.

(6) A person shall not provide false information in:

(a) Completing the hunter's log;

(b) Checking an elk; or

(c) Creating a carcass tag.

Section 11[42]. Elk Hunting on Public Land.

(1) A person drawn for an elk quota hunt or the recipient of a special commission permit may hunt on the areas listed in paragraphs (a) through (f) of this subsection within the restoration zone pursuant to the conditions of the permit received:

(a) Wildlife Management Areas;

(b) Hunter Access Areas;

(c) State forests;

(d) Big South Fork National River and Recreation Area;

(e) Daniel Boone National Forest; or

(f) Jefferson National Forest.

(2) Portions of Paintsville Lake WMA that lie out of the restoration zone shall be subject to the requirements established in Section 13 of this administrative regulation.

(3) Elk hunting shall not be allowed on public areas during quota deer hunts listed in 301 KAR 2:178.

(4) Paul Van Booven WMA and Fishtrap Lake WMA shall be designated as an elk viewing area and shall be closed to all elk hunting.

(5) A person shall not mimic the sound of an elk on public land open to elk hunting from September 1 until the opening of the elk archery season.

Section 12[13]. Out-of-zone Elk Hunting.

(1) The methods for taking deer and the deer seasons established in 301 KAR 2:172 shall apply to a person taking elk outside of the restoration zone, except that a hunter shall comply with the ~~equipment~~[~~weapons~~] and ammunition requirements established in Section 7 of this administrative regulation.

(2) Unless exempted by KRS 150.170, a person who is hunting out-of-zone elk shall possess:

(a) A valid Kentucky hunting license; and

(b) An out-of-zone elk permit.

(3) A person may take an elk of either sex, which shall not count toward the person's deer bag limit.

(4) Any elk harvested out-of-zone shall be telechecked pursuant to Section 11 of this administrative regulation.

Section 13[14]. Elk Antlers.

(1) A person who takes possession of any elk antler that has the skull or skull plate attached to it shall contact the department's Law Enforcement Division within twenty-four (24) hours.

(2) An elk shed shall be legal to possess.

Section 14[15]. Elk Permit Deferral. A person who is the recipient of a valid elk quota hunt permit, landowner cooperator permit, voucher cooperator permit, an ERP, or special commission permit may defer use of the permit to the following year if:

(1) There is a death of the permit holder's:

(a) Spouse;

(b) Child; or

(c) Legal guardian, if the permit holder is under eighteen (18) years old; and

(2) The permit holder provides to the department a death certificate and one (1) of the following documents prior to May 1 of the year following the hunting season:

- (a) A marriage certificate;
- (b) A birth certificate; or
- (c) An affidavit of paternity or maternity.

Section 15[46]. Incorporation by Reference.

(1) The following material is incorporated by reference: [

(a) "~~Knott-Floyd Elk Management Unit 2017 Edition~~" map;  
(b) "~~Mayking-Letcher Elk Management Unit 2017 Edition~~" map;]

(a)[(c)] "Elk Hunting Units" map, 2019 edition; and  
(b)[(d)] "Appalachian Wildlife Center Viewing Area" map, 2019 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., Eastern Time.

RICH STORM, Commissioner

MIKE BERRY, Secretary

APPROVED BY AGENCY: May 14, 2021

FILED WITH LRC: May 14, 2021 at 11:57 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 27, 2021 at 2:00 P.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 July 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Beth Frazee

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the elk permit drawing and quota hunts, the conditions under which special commission permits, landowner cooperator permits, elk restoration permits, and cooperator voucher permits can be used, and procedures for elk damage abatement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage elk populations in Kentucky, while providing optimal elk hunting and tourism opportunities.

(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 hunting seasons, bag limits, and the methods of taking wildlife. KRS 150.177 authorizes the department to issue special commission permits for game species to nonprofit wildlife conservation organizations. KRS 150.178 authorizes the department to issue cooperator permits to landowners who enroll property for public hunting access. KRS 150.390(3) authorizes the department to promulgate administrative regulations establishing the conditions under which depredation permits for elk may be issued.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of

the statutes by establishing all the requirements for elk hunting and the procedures for elk damage abatement.

(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 remove the use of the postseason elk hunt as a means of damage abatement. Additionally, it will address a clean-up item regarding the number of units for which a hunter may apply.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because the postseason elk hunt has minimal to no effect on damage abatement where damage occurs.

(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: There were approximately 4,000 people who were considered for the postseason elk hunt each year, of which, up to 4 were drawn to 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: Members of the public will still have an avenue to remedy damage caused by elk by contacting department personnel that will provide assistance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not alter any costs for the entities in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Elk damage recipients will not have to wait until the postseason elk hunt to remedy elk damage issues.

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

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency 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: Additional fees for direct implementation of this regulation are not necessary, as infrastructure for conducting all aspects of elk management and quota hunts already exists.

(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 indirectly increase any fees.

(9) TIERING: Is tiering applied? No.

#### 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 Wildlife 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 150.025, KRS 150.177, KRS 150.178, and KRS 150.390.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

**301 KAR 2:251. Hunting and trapping seasons and limits for furbearers.**

RELATES TO: KRS 150.170, 150.180, 150.370, 150.399, 150.415, 150.416, 150.990, 150.995

STATUTORY AUTHORITY: KRS 150.025(1), 150.175(7), (9), 150.360, 150.400, 150.410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.175(7), (9) authorizes the department to issue licenses, permits, and tags for hunting and trapping. KRS 150.360 requires restrictions on the taking of wildlife and authorizes the department to promulgate administrative regulations establishing the requirements for hunting coyotes at night. KRS 150.400 authorizes the department to establish the types of traps that can legally be used by trappers. KRS 150.410 authorizes the department to regulate trap tags, trap visitation, and trap placement to protect domestic animals. This administrative regulation establishes seasons, bag limits, legal methods of take, and checking and recording requirements for hunting and trapping furbearers.

Section 1. Definitions. (1) "Body-gripping trap" means a commercially manufactured spring-loaded trap designed to kill an animal upon capture.

(2) "Dry land set" means a trap that is placed so that no portion of the trap touches the water of a river, stream, pond, lake, wetland, or other water course.

(3) "Foothold trap" means a commercially manufactured spring-loaded trap with smooth, metallic or rubber soft-catch jaws that close upon an animal's foot.

(4) "Furbearer" means mink, muskrat, beaver, raccoon, opossum, gray fox, red fox, least weasel, long-tailed weasel, river otter, bobcat, coyote, or striped skunk.

(5) "Hunter" means a person legally taking furbearers by means other than trapping.

(6) "Otter Zone 1" means the following counties: Anderson, Ballard, Bath, Boone, Bourbon, Bracken, Breckinridge, Bullitt, Caldwell, Calloway, Campbell, Carlisle, Carroll, Christian, Crittenden, Daviess, Fayette, Fleming, Franklin, Fulton, Gallatin, Grant, Graves, Grayson, Hancock, Hardin, Harrison, Henderson, Henry, Hickman, Hopkins, Jefferson, Kenton, Larue, Livingston, Lyon, Marshall, Mason, McCracken, McLean, Meade, Muhlenberg,

Nelson, Nicholas, Ohio, Oldham, Owen, Pendleton, Robertson, Rowan, Scott, Shelby, Spencer, Trigg, Trimble, Union, Webster, and Woodford.

(7) "Otter Zone 2" means all Kentucky counties not included in subsection (6) of this section.

(8) "Snare" means a wire, cable, or string with a knot, loop, or a single piece closing device, the deployment of which is or is not spring-assisted, but any spring-assisted device is not for the purpose of applying tension to the closing device.

(9) "Squaller" means a hand-operated, mouth-operated, or electronic call capable of mimicking the vocalizations of furbearers.

(10) "Trap" means a body-gripping trap, box trap, deadfall, foothold trap, snare, or wire cage trap used to catch furbearers, in the set or unset position.

(11) "Water set" means a trap placed in the water of a river, stream, pond, lake, wetland, or other water course so that a portion of the trap body is underwater.

(12) "Youth" means a person under the age of sixteen (16) by the date of the hunt or the trapping date.

Section 2. License and Permit Requirements. Unless exempted by KRS 150.170, a person shall carry on his or her person a valid:

(1) Hunting~~[Valid hunting]~~ license while hunting furbearers; and~~[or]~~

(2) Bobcat hunting permit while hunting bobcat; or

(3) Trapping~~[Valid trapping]~~ license while trapping furbearers.

Section 3. Furbearer Hunting Seasons. Except as established in 301 KAR 2:049, a person shall only take furbearers by hunting during the seasons established in subsections (1) through (5) of this section:

(1) Bobcat, from one-half (1/2) hour before sunrise on the third~~[fourth]~~ Saturday in November through the last day of February;

(2) Coyote, year-round;

(3) Raccoon and opossum, October 1 through the last day of February;

(4) All other furbearers except as established in subsection (5) of this section, from one-half (1/2) hour before sunrise on the third day of modern gun deer season through the last day of February; and

(5) Furbearers taken by falconry, September 1 through March 30.

Section 4. Furbearer Trapping Season. Except as established in 301 KAR 2:049, a person shall only take furbearers by trapping from one-half (1/2) hour before sunrise on the third day of the modern gun deer season through the last day of February.

Section 5. License-Exempt Youth Season. For seven (7) consecutive days beginning on the Saturday after Christmas, a youth may hunt or trap furbearers without a license, but all other statewide requirements shall apply.

Section 6. Legal Hunting Equipment ~~[weapons]~~. Except as established in Section 7(8) of this administrative regulation, a hunter shall only use the equipment~~[weapons]~~ established in subsections (1) through (7) of this section to hunt furbearers:

(1) Centerfire gun;

(2) Rimfire gun;

(3) Shotgun;

(4) Muzzleloader;

(5) Bow and arrow;

(6) Crossbow; or

(7) An air gun using pellets at least .22 caliber in size.

Section 7. Hunter Restrictions. (1) Furbearers may be taken during daylight hours only, except for the following, which may also be taken after daylight hours:

(a) Coyote;

(b) Opossum; or

(c) Raccoon.

(2) A person shall not take a raccoon or opossum during daylight hours during the modern gun deer season, as established in 301 KAR 2:172.

(3) A person hunting from a boat shall not use a light in conjunction with taking a raccoon or opossum.

(4) A person shall not use the following while chasing a raccoon or opossum from noon on March 1 through September 30;

- (a) A firearm;
- (b) Slingshot;
- (c) Tree climber; or

(d) Any device to kill, injure, or force a raccoon or opossum from a tree or den.

(5) A person may use a squaller year-round.

(6) There shall not be a closed season on:

(a) Chasing red and gray foxes during daylight hours for sport and not to kill; or

(b) Chasing raccoons or opossums for sport and not to kill.

(7) A hunter may use a hand or mouth-operated call, electronic call, or any other attracting device during a furbearer hunting season.

(8) A person may take a coyote after daylight hours year-round, except that:

(a) It shall not be allowed in a county or area where a deer or elk firearm season is open;

(b) Artificial[A person shall not use artificial] light or other means designed to make wildlife visible at night shall only be used from December 1[June 1] through May 31[November 30];

(c) Any artificial light or other means designed to make wildlife visible at night shall not be connected to or cast from a mechanized vehicle;

(d) A holder of a valid Mobility-Impaired Access Permit or Hunting Methods Exemption - Vehicle Permit may use a stationary vehicle as a hunting platform and may cast lights or other means designed to make wildlife visible at night so long as the means used are not connected to the vehicle[A person shall not use any weapon other than a shotgun on public land];

(e) On public land, a[A] person shall not use any equipment[weapon] other than a bow, crossbow, or shotgun and shall not use a shotgun shell with a single-projectile;

(f) On private land, a person shall not use any equipment other than a bow, crossbow or shotgun and shall not use a shotgun shell with a single-projectile, except that from December 1 through March 31 a person may also use a[er] rifle of 6.5mm (.264 caliber)[Greebmoor caliber] or smaller bullet diameter, a muzzleloader of .54 caliber or less, or a shotgun shell with a single projectile[on private land from December 1 through March 31];

(f) A person using a shotgun shall not use a shell with a single projectile.

Section 8. Legal Traps. (1) A person who is trapping with a dry land set shall only use traps as established in paragraphs (a) through (e) of this subsection:

(a) Deadfall;

(b) Wire cage or box trap;

(c) Foothold trap with a maximum inside jaw spread of six (6) inches measured perpendicular to the hinges;

(d) A snare; or

(e) Except as established in 301 KAR 2:049, a body-gripping trap with a maximum inside jaw spread of seven and one-half (7 1/2) inches measured parallel with the trigger:

1. In the center of the trap; and

2. In the unset position.

(2) There shall be no restrictions on the size or type of trap used as a water set, except that any body-gripping trap greater than twenty (20) inches in width shall be set so that the trap is completely submerged underwater.

Section 9. Trapper Restrictions. (1) A person trapping on private land shall not place traps used as dry land sets any closer than ten (10) feet apart unless possessing written permission from the landowner or the landowner's designee, except that there shall not be more than three (3) traps placed within any ten (10) foot spacing.

(2) The trap spacing requirement established in subsection (1) of this section shall not apply to:

(a) Box or cage live traps; or

(b) Properties of five (5) acres or less.

(3) A trap shall not be set in a trail or path commonly used by a human or a domestic animal.

(4) A trapper may use lights from a boat or a vehicle in conjunction with trapping furbearers.

Section 10. Trap Tags. (1) Each trap shall have a metal tag attached to it that clearly shows:

(a) The name and address of the person setting, using, or maintaining the trap; or

(b) A wildlife identification number issued by the department and the 1-800-25ALERT department hotline phone number.

(2) A person applying for a wildlife identification number shall apply by:

(a) Completing the Wildlife Identification Number for Trap Tags – Application available on the department's Web site at fw.ky.gov; or

(b) Calling the department's information center at 1-800-858-1549.

(3) The following information shall be required for a person to apply for a wildlife identification number:

(a) Name;

(b) Current home address;

(c) Social Security number;

(d) Current phone number;

(e) Date of birth; and

(f) Driver's license number, if available.

(4) A person shall:

(a) Not use a trap tag that has an inaccurate or outdated address;

(b) Not use a trap tag that has a wildlife identification number that corresponds to an inaccurate or outdated address or phone number; and

(c) Contact the department to provide updated address and phone number.

(5) A wildlife identification number shall be valid for the life of the holder.

Section 11. Bag Limits. (1) There shall not be a bag limit on furbearers, except as established in subsections (2) through (6) of this section.

(2) A person shall not take more than five (5) bobcats per season, no more than three (3) of which shall be taken with a gun, except as established in subsection (3) of this section.

(3) Hunters and trappers may increase their bobcat bag limit for the following season, under the following criteria:

(a) A hunter or trapper who submits lower jaws from all harvested bobcats in a single season may receive one (1) additional bobcat to the bag limit for the following season for every two (2) jaws submitted;

(b) Additions to the bobcat bag limit also increase the allowable number of bobcats that may be taken with a gun;

(c) Hunters and trappers must submit all lower jaws, from bobcats they harvest during a single season, to the department by March 15<sup>th</sup> the year the season ends to be eligible for bag limit incentives. Instructions how to remove and submit the lower jaws can be obtained from the department's Web site at fw.ky.gov.

(d) Additions of bobcats to bag limits are non-transferable.

(4) A person shall not take more than ten (10) river otters per season in Otter Zone 1.

(5) ~~(4)~~ A person shall not take more than six (6) river otters per season in Otter Zone 2.

(6) ~~(5)~~ The total river otter bag limit per season shall be ten (10) per person, only six (6) of which can be taken from Otter Zone 2.

(7) ~~(6)~~ A falconer hunting within the falconry season, but outside the dates specified in Section 3(3) and (4) of this administrative regulation, shall not take more than two (2) of any furbearer per day.

Section 12. Harvest Recording. (1) Immediately after harvesting a river otter or bobcat, and prior to moving the carcass, a person shall record in writing the:

- (a) Species;
- (b) Date;
- (c) County where taken; and
- (d) Sex of the river otter or bobcat.

(2) The information required by subsection (1)(a) through (d) of this section shall be documented on:

- (a) The hunter's log section on the reverse side of a license or permit;
  - (b) A hunter's log printed from the department's Web site at fw.ky.gov;
  - (c) A hunter's log available from any KDSS agent; or
  - (d) An index card or similar card.
- (3) A person shall retain and possess the completed hunter's log while hunting or trapping during the current season.

Section 13. Checking a River Otter or Bobcat. (1) A person who harvests a river otter or bobcat shall check each animal by:

(a) Completing the telecheck process after calling 800-245-4263 or completing the check-in process on the department's Web site at fw.ky.gov:

1. Before midnight on the day the river otter or bobcat is recovered;
2. Prior to processing the carcass; and
3. Prior to transporting the raw fur, pelt, or unskinned carcass out of Kentucky; and

(b) Writing the check-in confirmation number on the hunter's log as established in this section.

(2) A person who intends to sell the raw fur of a river otter or bobcat to a licensed fur processor, fur buyer, or taxidermist or wishing to export a river otter or bobcat pelt outside the United States shall:

(a) Contact the department and request a Convention on International Trade of Endangered Species of Flora and Fauna (CITES) tag by providing:

1. A valid check-in confirmation number as established in subsection (1) of this section; and
  2. A street address where the tag is to be mailed; or
- (b) Complete the CITES tag request form on the department's Web site at fw.ky.gov.

(3) A person who is transferring a river otter or bobcat that does not have an attached CITES tag shall attach to the carcass a handmade tag that contains the:

- (a) Confirmation number;
  - (b) Hunter or trapper's name; and
  - (c) Hunter or trapper's phone number.
- (4) A person shall not knowingly provide false information when:

- (a) Completing the hunter's log;
- (b) Checking a river otter or bobcat;
- (c) Completing a CITES tag request form; or
- (d) Creating a handmade carcass tag.

(5) A CITES tag shall be attached to the raw fur, pelt, or unskinned carcass upon receipt of the tag from the department per the instructions provided by the department and remain attached until it is processed or exported outside the United States.

(6) Possession of an unused CITES tag issued by the department shall be prohibited.

Section 14. Transporting and Processing a River Otter or Bobcat. (1) A person shall not sell the raw fur of a river otter or bobcat except to a licensed:

- (a) Fur buyer;
  - (b) Fur processor; or
  - (c) Taxidermist.
- (2) A taxidermist, fur buyer, or fur processor shall:

(a) Not accept a river otter or bobcat carcass or any part thereof without a proper carcass tag or CITES tag as established in Section 13 of this administrative regulation; and

(b) Retain the information established in subparagraphs 1. through 4. of this paragraph from a hunter or trapper:

1. Name;
2. Address;
3. Confirmation number or CITES tag number; and
4. Date received for each river otter or bobcat.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Wildlife Identification Number for Trap Tags – Application", 2014 edition; and

(b) "CITES Tag Request" form, 2014 edition.

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

BRIAN CLARK, Deputy Commissioner  
MIKE BERRY, Secretary

APPROVED BY AGENCY: May 13, 2021

FILED WITH LRC: May 14, 2021 at 8:27 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 27, 2021 at 10:00 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 July 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Frazee

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes furbearer hunting and trapping seasons, bag limits, legal methods of take, and other furbearer hunting and trapping requirements.

(b) The necessity of this administrative regulation: This regulation is necessary to provide adequate furbearer hunting and trapping opportunities and to properly manage furbearer populations in Kentucky.

(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, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.175(7), (9) authorizes the department to issue licenses, permits, and tags for hunting and trapping. KRS 150.360 requires restrictions on the taking of wildlife and authorizes the department to promulgate administrative regulations establishing the requirements for hunting coyotes at night. KRS 150.400 authorizes the department to establish the types of traps that can legally be used by trappers. KRS 150.410 authorizes the department to regulate trap tags, trap visitation, and trap placement to protect domestic animals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will fulfill the purposes of KRS 150.025 and 150.410 by defining the seasons, bag limits, and methods of take used to manage furbearers in Kentucky.

(2) If this is an amendment to an existing administrative

regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the equipment that may be used while hunting coyotes, addresses mobility impaired hunting of coyotes, and implements a system for submission of bobcat jaws for testing in exchange for an increased bag limit the following season

(b) The necessity of the amendment to this administrative regulation: This amendment will provide an increased level of hunter opportunity and aid the department in collection of data for monitoring bobcat populations.

(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: All legal hunters could pursue coyotes at night with more effective equipment than were allowed in the past. Additionally, farmers and others experiencing coyote nuisance issues can use this amendment to better control coyote numbers and protect their agricultural interests.

(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: Hunters may pursue coyotes at night with a bow, crossbow, or muzzleloader in addition to rifle and shotgun. Hunters may now take bobcats during a longer season.

(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 licensed hunters.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Hunters will have more opportunity to pursue coyotes at night. Hunters and trappers will have the opportunity to increase their bag limit for bobcats.

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

(a) Initially: There will be no additional cost to the department to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the department 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 to 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: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering is not applied because all hunters of coyotes and bobcats in Kentucky must comply with the requirements of this administrative regulation.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement 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 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS

150.175(7), (9) authorizes the department to issue licenses, permits, and tags for hunting and trapping. KRS 150.360 requires restrictions on the taking of wildlife and authorizes the department to promulgate administrative regulations establishing the requirements for hunting coyotes at night. KRS 150.400 authorizes the department to establish the types of traps that can legally be used by trappers. KRS 150.410 authorizes the department to regulate trap tags, trap visitation, and trap placement to protect domestic animals.

(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? No additional revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue will be generated by this administrative regulation during subsequent years.

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

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

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

Revenues (+/-): None; see 3(a) and (b) above.

Expenditures (+/-): None; see 3(b) and (c) above.

Other Explanation:

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

#### 301 KAR 2:300. Black bear seasons and requirements.

RELATES TO: KRS 150.010, 150.092, 150.170, 150.175, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.390(1) prohibits the taking of bears in any manner contrary to any provisions of KRS Chapter 150 or KAR Title 301. This administrative regulation establishes bear hunting and chasing seasons, bear hunting areas, legal methods of take, and permitting, checking, and recording requirements.

Section 1. Definitions. (1) "Adult" means an individual who is at least eighteen (18) years of age.

(2) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(3) "Arrow" means the projectile fired from a bow or crossbow.

(4) "Baited area" means an area where feed, grains, or other substances capable of luring black bears have been placed.

(5) "Bear" means the species *Ursus americanus*.

(6) "Bear chase permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to use dogs to chase a bear.

(7) "Bear permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to harvest one (1) black bear of either sex.

(8) "Bear Zone 3" means Adair, Bath, Boyd, Carter, Casey,

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Clark, Cumberland, Elliot, Estill, Fleming, Garrard, Greenup, Lee, Lewis, Lincoln, Madison, Menifee, Montgomery, Morgan, Powell, Rowan, and Wolfe counties.

(9) "Bell Zone" means Bell County.

(10) "Chase-only season" means a designated season when a person may use dogs to chase a bear, without killing or intentionally injuring a bear.

(11) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(12) "East Zone 2" means Breathitt, Clay, Floyd, Johnson, Knott, Knox, Lawrence, [Leslie,] Magoffin, Martin and [Owsley, Perry, and Pike] counties.

(13) "Firearm" means a breech- or muzzle-loading rifle, shotgun, or handgun.

(14) "Harlan Zone" means Harlan County.

(15) "Leslie Zone" means Leslie County.

(16)[(15)] "Letcher Zone" means Letcher County.

(17)[(16)] "License year" means the period from March 1 through the last day of February.

(18)[(17)] "McCreary Zone" means McCreary County.

(19)[(18)] "Modern gun" means a rifle, handgun, or shotgun loaded from the rear of the barrel.

(20)[(19)] "Muzzleloader" means a rifle, shotgun, or handgun loaded from the discharging end of the barrel or discharging end of the receiver.

(21) "Perry Zone" means Perry County.

(22) "Pike Zone" means Pike County.

(23)[(20)] "Wayne Zone" means Wayne County.

(24)[(21)] "West Zone 2" means Clinton, Jackson, Laurel, Pulaski, Rockcastle, Russell, and Whitley counties.

(25)[(22)] "Youth" means a person under the age of sixteen (16) on the day of the hunt.

(26)[(23)] "Youth bear chase permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows a youth to use dogs to chase a bear.

Section 2. Feeding Black Bears. A person shall not engage in any direct or indirect feeding of black bears.

Section 3. Bear Chase Requirements. (1) Unless exempted by KRS 150.170, a person, while using dogs to chase a bear, shall carry on his or her person a valid Kentucky hunting license and a valid:

- (a) Bear chase permit; or
- (b) Youth bear chase permit.

(2) A bear chase permit or youth bear chase permit shall only be purchased by a resident of Kentucky.

(3) A person shall not:

- (a) Kill or intentionally injure a bear during a chase-only season;
- (b) Chase a bear except during daylight hours while a chase season is open;

(c) Chase a bear from a baited area:

- 1. While bait is present; or
- 2. For thirty (30) days after the bait has been removed; or

(d) Disturb a bear in a den.

(4) A person shall only use a dog to chase a bear on public hunting areas, or on private land with permission of the landowner, in all bear zones, except that it shall be prohibited to chase bears with dogs in the areas established in paragraphs (a) through (h) of this subsection:

- (a) McCreary Zone;
- (b) Daniel Boone National Forest;
- (c) Miller-Welch Central Kentucky Wildlife Management Area;
- (d) Beaver Creek Wildlife Management Area;
- (e) Cane Creek Wildlife Management Area;
- (f) Mill Creek Wildlife Management Area;
- (g) Pioneer Weapons Wildlife Management Area;
- (h) Redbird Wildlife Management Area.

Section 4. Chasing Bears with Dogs. A person shall not use a dog to chase a bear except during the seasons established in subsections (1) and (2) of this section.

(1) The chase-only season shall be from:

(a) June 1 through August 31; and

(b) September 9 through September 30; and

(2) The bear [quota] hunt with dogs season shall be pursuant to Section 8(1) of this administrative regulation.

Section 5. Bear Permit Requirements. Unless exempted by KRS 150.170, a person hunting a bear shall carry on his or her person a valid Kentucky hunting license and the appropriate valid bear permit or permits while hunting during the seasons established in Section 8(1) of this administrative regulation.

Section 6. Hunter Restrictions. (1) A person shall not:

(a) Harvest a bear except during daylight hours;

(b) Use a dog during the modern gun, muzzleloader, or archery and crossbow season to hunt bears[for], except leashed tracking dogs may be used to recover a wounded or dead bear;

(c) Hunt bear on a baited area:

- 1. While bait is present; or
- 2. For thirty (30) days after the bait has been removed;

(d) Harvest:

- 1. A female bear that has a cub; or
- 2. A bear that weighs less than seventy-five (75) pounds;

(e) Harvest a bear that is swimming;

(f) Harvest a bear if the person is in a vehicle, boat, or on horseback, except that a hunter in possession of a disability [disabled] hunting methods exemption permit issued by the department may use a stationary vehicle as a hunting platform;

(g) Harvest a bear in a den;

(h) Disturb a bear in a den for the purpose of taking the bear if the bear exits the den; or

(i) Use radio telemetry equipment to locate a bear that is equipped with a radio-tracking collar.

(2) An adult shall accompany and maintain control of a youth who is hunting bear with a firearm.

Section 7. Equipment[Weapon] Restrictions. (1) A person shall only use the equipment [weapons] and ammunition established in paragraphs (a) through (e) of this subsection to take a bear:

(a) A crossbow or archery equipment loaded with a broadhead of seven-eighths (7/8) inch or wider upon expansion;

(b) A modern rifle[firearm]:

1. With an action that fires a single round of ammunition upon each manipulation of the trigger;

2. Loaded with:

a. Bullets of .270 caliber or larger; and

b. Centerfire[3. Loaded with centerfire], single projectile ammunition designed to expand upon impact;

(c) A muzzleloader of .50 caliber or larger;

(d) A shotgun of twenty (20) gauge or larger loaded with a shell containing a slug or a slug with a sabot[one (1) projectile]; or

(e) A handgun loaded with:

- 1. Centerfire cartridges;
- 2. Bullets of .270 caliber or larger designed to expand upon impact; and

3. Cartridges with a case length of 1.285 inches or larger.

(2) A crossbow shall contain a working safety device.

(3) A bear hunter using a modern gun shall not use a magazine capable of holding more than ten (10) rounds.

(4) A bear hunter may use archery, crossbow, or muzzleloader equipment to take a bear during bear modern gun season.

Section 8. Bear Season Dates and Bag Limits. (1) A legal bear hunter shall only kill a bear in the open bear zones during the seasons established in paragraphs (a) through (c) of this subsection:

(a) The archery and crossbow season for bears, which shall be for seven (7) consecutive days beginning on the fourth Saturday in October in all bear zones, except Bear Zone 3;

(b) The modern gun season for bears, which shall be for seven (7) consecutive days beginning on the second Saturday in December in all bear zones; and

(c) The bear [quota] hunt with dogs season, which shall be for fourteen (14) consecutive days beginning on the third Monday in

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October in all bear zones, except the McCreary Zone.

(2) A person shall not harvest more than one (1) bear in a license year.

Section 9. Bear Season Closure. (1) The archery and crossbow season for bears in each open bear zone shall close after daylight hours on the day the quotas established in paragraphs (a) through (f) of this subsection have been reached.

- (a) Bell Zone, two (2) female bears;
- (b) East Zone 2, two (2) female bears;
- (c) Harlan Zone, two (2) female bears;
- (d) Leslie Zone, two (2) female bears;
- (e) Letcher Zone, two (2) female bears;
- (f)(e) McCreary Zone, one (1) female bear;
- (g) Perry Zone, two (2) female bears;
- (h) Pike Zone, two (2) female bears;
- (i)(f) Wayne Zone, two (2) female bears; and
- (j)(g) West Zone 2, one (1) female bear.

(2) The modern gun season for bears in each open bear zone shall close after daylight hours on the day the quotas established in paragraphs (a) through (g) of this subsection have been reached.

- (a) Bell Zone, two (2) female bears;
- (b) East Zone 2, three (3) female bears;
- (c) Harlan Zone, two (2) female bears;
- (d) Leslie Zone, two (2) female bears;
- (e) Letcher Zone, two (2) female bears;
- (f)(e) McCreary Zone, one (1) female bear;
- (g) Perry Zone, two (2) female bears;
- (h) Pike Zone, two (2) female bears;
- (i)(f) Wayne Zone, two (2) female bears;
- (j)(g) West Zone 2, two (2) female bears; and
- (k)(h) Zone 3, two (2) female bears.

(3) The bear [quota] hunt with dogs season [for bears] in each open bear zone will close after daylight hours on the day the quotas established in paragraphs (a) through (f) of this subsection have been reached.

- (a) Bell Zone, one (1) female bear;
- (b) East Zone 2, two (2) female bears;
- (c) Harlan Zone, two (2) female bears;
- (d) Leslie Zone, two (2) female bears;
- (e) Letcher Zone, two (2) female bears;
- (f) Perry Zone, two (2) female bears;
- (g) Pike Zone, two (2) female bears;
- (h)(e) Wayne Zone, two (2) female bears; and
- (i)(f) West Zone 2, one (1) female bear; and
- (j)(g) Zone 3, one (1) female bear.

(4) A bear hunter shall call 800-858-1549 after 9 p.m. each day of any open bear season to determine if the quota has been reached for that season.

Section 10. Bear [Quota] Hunt with Dogs Requirements. (1) A person shall only harvest a bear using a legal equipment[weapon] with the use of unleashed dogs that are actively pursuing, chasing, baying, or treeing a bear prior to harvest.

(2) A dog used to harvest bears shall be a purebred or a crossbreed of the recognized dog breeds established in paragraphs (a) through (l) of this subsection.

- (a) Airedale;
- (b) American black and tan coonhound;
- (c) Black mouth cur;
- (d) Bluetick coonhound;
- (e) English coonhound;
- (f) Leopard cur;
- (g) Majestic tree hound;
- (h) Mathis;
- (i) Mountain cur;
- (j) Plott hound;
- (k) Redbone coonhound; or
- (l) Treeing walker coonhound.

(3) The bear [quota] hunt with dogs season shall also be open as a chase-only season for any person who possesses a valid bear chase permit, even if the quota has been met.

Section 11. Hunter Orange Clothing Requirements. (1) During any modern gun or muzzleloader season for bears, a person hunting any species, and any person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest, except these requirements shall not apply to a person hunting:

- (a) Waterfowl; or
- (b) Furbearers at night during a legal furbearer season.

(2) The hunter orange portions of a garment worn to fulfill the requirements of this section:

- (a) May display a small section of another color; and
- (b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.

Section 12. Bear Reserves. The areas established in subsections (1) through (3) of this section shall be closed to all bear hunting and bear chase with dogs.

- (1) Cumberland Gap National Historical Park;
- (2) Hensley-Pine Mountain Wildlife Management Area; and
- (3) Big South Fork National River and Recreation Area.

Section 13. Harvest Recording and Check-in Requirements.

(1) Immediately after harvesting a bear, and before moving the carcass, a person shall record on a hunter's log the:

- (a) Species taken;
- (b) Date taken;
- (c) County where taken; and
- (d) Sex of the bear.

(2) A person who has harvested a bear shall:

- (a) Retain a completed hunter's log;
- (b) Telecheck the bear by 8 p.m. Eastern Standard Time the day the bear was harvested by:

1. Calling 800-245-4263 and completing the telecheck process or checking the bear on the department's Web site at fw.ky.gov; and

2. Recording the confirmation number on the hunter's log;

(c) Arrange for department personnel to inspect the bear by:

1. Calling the department at 800-858-1549 within twenty-four (24) hours of harvest; and

2. Presenting to department personnel the bear carcass or an intact hide that contains the skull and proof of sex by including the attached:

- a. Testicles, scrotum, or penis for a male bear; or
- b. Udder or vulva for a female bear; and
- (d) Attach to the carcass a department issued tag after having the bear inspected by department personnel.

BRIAN CLARK, Deputy Commissioner

MIKE BERRY, Secretary

APPROVED BY AGENCY: April 15, 2021

FILED WITH LRC: April 27, 2021 at 12:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 27, 2021 at 9:00 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 July 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Frazee

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes black bear chase and hunt seasons, chase and hunt requirements, bag limits, and legal methods of take.

(b) The necessity of this administrative regulation: To establish bear hunting season requirements and methods of take to provide reasonable hunting and chasing opportunity, while properly managing bear populations in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to establish open seasons for the taking of wildlife, regulate bag limits, and to make these requirements apply to a limited area. KRS 150.390(1) prohibits the taking of bears in any manner contrary to any provisions of Chapter 150 or its regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in administering the above statutes by defining the seasons, bag limits, and methods of chase and take used to manage black bears in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment will establish Leslie, Perry and Pike Counties as separate bear zones and set the quota within those new zones. It will also clean up some of the existing language of the regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to improve hunter opportunity by making three new bear hunting zones and subsequently increasing the overall quota.

(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: All bear hunters that hunt in Leslie, Perry or Pike Counties will be impacted by this regulation change. These impacts will allow for more hunter opportunity.

(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: All bear hunters must comply with the individual requirements and restrictions for bear hunting, as listed in the fall hunting guide published by the department.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): All bear hunters will not incur any additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Bear hunters will have more hunting opportunity in Leslie, Perry and Pike Counties.

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

(a) Initially: There will be a small administrative cost to the department to implement this regulation.

(b) On a continuing basis: There will be a small cost to the department 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 a fee or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering was not used because all persons who hunt bear are required to abide by the same seasons, methods of take, bag limits, harvest recording procedures, and checking 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 Kentucky Department of Fish and Wildlife Resources' Divisions of Wildlife 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 150.025 and 150.390.

(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 amount of revenue generated by this administrative regulation for the first year is unknown.

(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 amount of revenue generated by this administrative regulation for subsequent years is unknown.

(c) How much will it cost to administer this program for the first year? There will be a small administrative cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be a small administrative cost incurred in subsequent years.

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

Revenues (+/-): Unknown; see 4 (a) and (b) above.

Expenditures (+/-): Minimal; see 4 (c) and (d) above.

Other Explanation:

**TRANSPORTATION CABINET  
Motor Vehicle Commission  
(Amendment)**

**605 KAR 1:030. Applications.**

RELATES TO: KRS 190.010-190.080

STATUTORY AUTHORITY: KRS 190.020, 190.030, 190.035, 190.073

NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.030 provides for the issuance of various licenses to engage in the activity of a motor vehicle dealer. This administrative regulation allows the Motor Vehicle Commission to provide for an orderly procedure for the submission and content of applications to facilitate processing of applications and the issuance of the license.

~~Section 1. [Definitions. In this administrative regulation "established place of business" means, in addition to those requirements of KRS 190.010(18), a dealership sales facility which has the following:~~

~~(1) A business office which:~~

~~(a) Is underpinned and on a permanent foundation;~~

~~(b) Has electricity;~~

~~(c) Has a file cabinet used for the storage of business records;~~

~~(d) Has a working business telephone;~~

~~(e) Has a desk and chairs for the use of the business;~~

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(f) Has at least 100 square feet of floor space;  
(g) Shall be located on or immediately adjacent to the vehicle storage or display lot;  
(h) Is not part of a residence;  
(i) Is used exclusively as a licensee business office; and  
(2) A vehicle storage or display lot which:  
(a) Has a hard surface lot (gravel, asphalt, concrete or other suitable covering);  
(b) Is at least 2,000 square feet in size;  
(c) Is used exclusively for the display and showing of vehicles for sale and licensee customer parking;  
(d) Is a distinctively defined area, from that which surrounds it. The dealership business office need not be a separate walled enclosure.]

Section 2-] An application shall be submitted on behalf of the individual or entity wishing to obtain a license using a name that is not the name of a current licensee. Applicants shall provide additional information in support of the application if requested by the Commission or its staff. The application shall not be considered complete until the additional information is received. [Upon receipt of a completed application, a review of the application will be made, including an appropriate investigation as to the applicant's compliance with the appropriate statutory and regulatory provisions governing the issuance of a license.]

Section 2[3]. The applicant [Applicant] will be notified in writing of the acceptance or rejection of the [his] application. If [-and-if] the application is rejected, the reason or reasons for rejection shall be specifically stated, and the rejected applicant shall be notified of the [his] right to a hearing before the commission in accordance with the rules and administrative regulations of the commission.[

Section 4. A motor vehicle dealer, other than a wholesale dealer, shall display on his premises a sign with lettering not less than nine (9) inches in height, which is clearly visible from the nearest roadway, and which specifically identifies his business. The business name on the sign must be the same as that on the license application.

Section 5. A licensee may conduct more than one (1) business in a building otherwise meeting the requirements of this administrative regulation provided he has suitable space and adequate facilities to conduct the business of a motor vehicle dealer.]

Section 3[6]. All applicants shall comply with the following:

- (1) Submit a financial statement.
- (2) Submit at least six (6) different photographs of the premises to be occupied by the applicant.
- (3) Submit a detailed drawing of the [his] premises in relation to the nearest roadway. This drawing is to include location and size of office, display area and location of dealership sign.
- (4) Furnish a personal data sheet on each individual owning a portion of the business and officers of a corporation or members and managers of a limited liability company, including a photograph and an employment history of each such person.
- (5) Every applicant, partner, [or] corporate officer, and manager or managing member of a limited liability company shall sign a statement authorizing the Motor Vehicle Commission to make inquiries or investigations concerning that individual's [the applicant's] employment, credit, or criminal records.

(6) The applicant [Applicant] shall obtain garage liability insurance and file with the commission a certificate of insurance [(form TD 95-99)] in the exact name in which it applies for a license.[

Section 7. Every applicant who conducts an automobile salvage or junk business on the same premises shall be in compliance with all state administrative regulations regarding junkyard operations. Applicant shall have an area for the display of

vehicles for sale and an office separate and apart from the area where junk cars or parts are stored or situated.

Section 8. If an applicant operates a garage for the repair or rebuilding of wrecked or disabled vehicles, an office and area for the display of vehicles separate and apart from the area where the repairs are made shall be allocated for the licensed activity.

Section 9. Not more than one (1) licensee for the same licensed activity shall be licensed from a single place of business.]

Section 4. An Applicant for a new, used, motorcycle, automotive mobility dealer or motor vehicle leasing dealer license must demonstrate that they possess a minimum of \$50,000 in unencumbered cash or unencumbered inventory.

Section 5. (1) An Applicant for a new, used, motorcycle, automotive mobility dealer or motor vehicle leasing dealer license who demonstrates that they possess between \$50,000 and \$100,000 of unencumbered cash or unencumbered motor vehicle inventory may be granted a license only if the applicant also obtains a commercial bond as set forth in KRS 190.030(9) in the amount of the difference between the unencumbered cash and unencumbered motor vehicle inventory and the \$100,000 amount.

(2) The Commission may require a commercial bond as set forth in KRS 190.030(9) for an applicant with a net worth above the \$100,000 amount if the information submitted by the applicant indicates reasonable cause to doubt the financial responsibility or the applicant's compliance with the provisions of KRS Chapter 190.

Section 6[40]. Every licensee shall obtain a sales tax permit number from the Department of Revenue [Cabinet].

DOUG DOTSON, Chairman

APPROVED BY AGENCY: May 7, 2021

FILED WITH LRC: May 12, 2021 at 3:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2021 at 9 a.m. local time at the Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601. In the event the declaration of a State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020- 243 are not rescinded by July 21, 2021, this hearing will be done by video teleconference. Members of the public wishing to attend may utilize the following link: <https://us02web.zoom.us/j/82520305441>, or by telephone at 19292056099, your meeting I.D. to join in is 825 2030 5441. 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 p.m. on July 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: Suzanne Baskett, Executive Staff Advisor, Kentucky Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 227-8082, email [Suzanne.Baskett@ky.gov](mailto:Suzanne.Baskett@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Suzanne Baskett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application requirements

for individuals and businesses seeking licenses from the Commission. It also explains certain requirements related to the application process.

(b) The necessity of this administrative regulation: KRS 190.030(4) provides that application for a license shall be made at a time, in a form, and containing information the Commission shall require. This regulation explains the timing, form, and information contained in the application.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by ensuring that the Commission has sufficient information concerning applicants.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: The amended regulation will assist in the effective administration of the statute by clarifying information that needs to be submitted in the application.

(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: The amendment removes Sections 1, 4, 5, 7, and 8 which address facilities requirements and will re-issue those sections in a new regulation. The amendment modifies and renumbers Section 2 to eliminate unnecessary language, clarify that licensee names must be unique, and provides that the Commission may request additional information. The amendment renumbers Section 3 and makes grammatical changes. The amendment renumbers Section 6 and includes language to clarify that members and managers of limited liability companies may be required to make disclosures and provide information to the Commission. The amendment adds Section 4 to establish that a minimum net worth of \$50,000 in encumbered cash and unencumbered inventory is considered the minimum amount required to demonstrate financial fitness of the licensee. The amendment adds Section 5 to address the bonding requirements set forth in KRS 190.030(9) will apply to applicants with a net worth between \$50,000 - \$100,000. The amendment renumbers Section 10 and is changed to reflect that the Revenue Cabinet is now the Department of Revenue.

(b) The necessity of the amendment to this administrative regulation: The amendment to remove Sections 1, 4, 5, 7, 8, and 9 is necessary to clarify that requirements regarding dealership facilities are applicable not only during the original application process but also to existing licensees. The amendment to Section 6 is necessary to clarify that members and managers of limited liability companies will be treated the same as officers of a corporation or partners of partnership entities. The amendments adding Section 4 and Section 5 are necessary to establish minimum financial fitness for applicants desiring licenses from the Commission.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by providing the information related to the application that's required pursuant to KRS 190.030(4) and addressing the bonding provisions of KRS 190.030(9).

(d) How the amendment will assist in the effect of administration of the statutes: The amendment will assist the effect of administration of the statute by allowing the Commission to more fully evaluate the fitness of applicants.

(3) List the types and numbers of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all applicants seeking a license from the Commission.

(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 for a license will be required to submit the information and documents listed in the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified

in question (3): It is not possible for the Commission to determine how much an applicant will have to spend to comply with the regulation as the type of applicant and their businesses will vary.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with the amended regulation entities will be allowed to operate as licensed motor vehicle dealers in Kentucky.

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

(a) Initially: No known costs.

(b) On a continuing basis: There are on-going costs related to administration of the licensing of automotive mobility dealers and enforcement of the regulations. This cost will vary depending on the issues related to each individual dealer or salesman.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The Commission does not anticipate a need for any additional or increased fees or funding related to administration of this regulation.

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

(9) TIERING: Is tiering applied? No, tiering is not applied because all motor vehicle dealers and salesmen affected by this regulation are treated the same.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Motor Vehicle Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 190.030, 190.073.

(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? Revenue to be generated is unknown because the Commission cannot determine how many businesses will apply for the applicable license.

(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? Revenue to be generated is unknown because the Commission cannot determine how many businesses will renew the applicable license.

(c) How much will it cost to administer this program for the first year? The cost of administering this program in the first year is unknown as it will depend upon the number of applicants and the issues which arise with regard to applicants and licensees.

(d) How much will it cost to administer this program for the subsequent years? The cost of administering this program in the subsequent years is unknown as it will depend upon the number of applicants and the issues which arise with regard to applicants and licensees.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**TRANSPORTATION CABINET  
Motor Vehicle Commission  
(Amendment)**

**605 KAR 1:130. Procedures.**

RELATES TO: KRS 190.058, 190.062

STATUTORY AUTHORITY: KRS 190.020, 190.058, 190.062

NECESSITY, FUNCTION, AND CONFORMITY: An absolute necessity for any administrative board is a written code of practice and procedure. The enabling legislation for the adoption of such procedures by [KRS 190.058(11) authorizes] the Motor Vehicle Commission is found in KRS 190.058. [to promulgate administrative regulations.] This administrative regulation establishes the proper form of procedure and practice before [for] the Motor Vehicle Commission.

Section 1. Hearings. Hearings shall be conducted as established in this administrative regulation and KRS Chapter 13B. [

(1) During any hearing, the reason for any objection shall be stated and made a part of the stenographic record.

(2) All testimony shall be transcribed.

Section 2. Appearances. A licensee who is a natural person may appear and be heard in person, or with or by a duly appointed attorney, [and may produce under oath evidence relative and material to matters before the commission.

(1) A licensee that is an artificial entity shall be represented only [by a general partner, managing member, president, or equivalent officer, or] by an attorney licensed or authorized to practice in Kentucky. [

(2) Any attorney, in a representative capacity, appearing before the commission may be required to demonstrate the authority to act in a representative capacity.

Section 3. Argument. All oral arguments shall be succinct and concise. The hearing officer may curtail or establish time limits for oral arguments.]

Section 3. [4.] Additional Hearings. [(1)] The commission may, on its own motion, prior to its determination, require an additional hearing, [if an additional hearing is in the interests of justice.

(2) Notice to all interested parties establishing the date of the hearing shall be given in writing by the executive director.

Section 4. [5.] Briefs. Briefs may be filed as a matter of right. [

(1) All briefs shall be concise and shall [summarizing first the evidence presented at the hearing.

(2) Copies of briefs shall be typewritten or [typed and] printed, [and filed in quadruplicate.

(3) The time allowed for filing briefs shall be designated by the hearing officer, [but shall not be less than five (5) days after the hearing.

(4)(a) Response briefs may be filed by the commission, or filed by any person whose interests are affected.

(b) Reply briefs may be filed only if limited strictly to answering the brief of respondent.

(5) Briefs containing more than ten (10) pages shall contain on the top fly leaves a subject index with page references.]

Section 5. [6.] Continuances. Continuances shall be granted if a continuance is in the interest of justice and if requested at least forty-eight (48) hours in advance of the hearing date.

Section 6. [7.] Depositions. Depositions may be taken only when authorized by the hearing officer. The provisions of the Civil Rules governing the taking of depositions shall be applicable. [The hearing officer may order testimony to be taken by deposition at any stage of the hearing.

(1) Depositions shall be taken before any person having power to administer oaths, or written by the person taking the deposition or under his direction and shall then be subscribed by the deponent and certified in the usual manner by the person taking

the deposition.

(2) The provisions of the Civil Rules governing the taking of depositions shall be applicable.]

Section 7. [8.] Except as otherwise provided by KRS Chapter 13B, [in this administrative regulation,] the rules of evidence governing civil proceedings in the courts of the Commonwealth of Kentucky shall govern hearings before the commission, unless the hearing officer relaxes rules if the ends of justice will be better served by so doing.

(1) Judicial notice.

(a) If called to the attention of the hearing officer, "judicial notice" may be taken of any matter situated in the files of the commission, the Department of Revenue [Cabinet] or the Transportation Cabinet, any action pending that involves the commission or and all other matters of which a court of Kentucky may take judicial notice.

(b) A brief statement recognizing the matter shall be made in the transcript by the hearing officer. [

(2) Additional evidence.

(a) Upon application to the commission, prior to the decision of the commission in the case, the hearing may be reopened for the presentation of additional evidence.

(b) Application for and additional hearing shall establish concisely the nature of this additional evidence. The commission may, on its own motion, require an additional hearing.]

Section 8. [9.] Ex Parte Contacts. A person shall not have ex parte contact with any member of the commission regarding any matter pending before the commission for review prior to final decision. A person in violation of this Section shall be identified on the record to the commission and any information provided through the ex parte contact shall be stricken from the commission's records and disregarded.

Section 9. [10.] Service of Motions, Pleadings. Copies of all motions and pleadings shall be served upon all interested parties, in addition to filing the required copies before the commission. [

Section 11. ~~Reconsideration Hearings. Any party to the proceeding may request in writing a hearing for purposes of reconsideration of a commission decision of any matter formally heard by the commission.~~

(1) The request shall be filed with the executive director within fifteen (15) days from the date the notice of the commission's decision is mailed.

(2) A reconsideration hearing shall be granted only if the request presents significant, relevant information not previously available for consideration, or demonstrates that there have been significant changes in the factors or circumstances relied upon by the commission in reaching its decision, or demonstrates that the commission has materially failed to follow its adopted procedures in reaching its decision.

(3) The commission shall consider requests for reconsideration in a summary manner.

(4) If a hearing for reconsideration is granted by the commission, it shall be conducted in accordance with the requirements of this administrative regulation.

(5) The reconsideration hearing shall be held within thirty (30) days of the decision to grant the request for reconsideration.]

Section 10. [12.] Notices. [(1) Upon the filing of an appeal from an order or decision, the appellant shall serve a copy on all interested parties.

(2) All other hearings except license suspension or revocation hearings shall be held only after notice given at least ten (10) days before the date of the hearing.

(3) A notice of a hearing [license suspension or revocation hearing by registered mail to the licensee,] sent by certified mail to the business address of the licensee shown on the latest application for a license shall be sufficient notice.]

Section 13. Specifications as to Pleadings, Complaints, Briefs,

Motions, Etc. Except if permission is granted by the hearing officer, all papers pursuant to this administrative regulation shall be typewritten or printed.

(1) All copies shall be clearly legible and double spaced, except for quotations.

(2) All motions, complaints, briefs, etc., shall be made on unglazed paper eight and one-half (8 1/2) inches wide and eleven (11) inches long.]

Section 11. [44.] Subpoenas and Subpoena Duces Tecum. (1) The party desiring a subpoena shall make application at least five (5) days before the hearing date with the executive director of the commission.

(2) The application shall be in writing, and shall state the name and address of each witness required.

(3) If evidence other than oral testimony is required, such as documents or written data, the application shall establish the specific matter to be produced and sufficient facts to indicate that such matter is reasonably necessary to establish the cause of action or defense of the applicant.

Section 12. [45.] Costs of Hearing. (1) If the commission, by issuance of a final order, finds that a violation has been committed by a licensee, or upholds the recommendation of the hearing officer in a matter involving an applicant for a motor vehicle dealer license, the commission may assess to the licensee or the applicant the fee charged to the commission for the transcription of the record and the fee charged by the hearing officer.

(2) If the hearing officer or the commission finds that the hearing has been held as a result of an allegation or charge lacking substantial merit, or if the hearing officer or commission finds that a party to the hearing has materially delayed or increased the cost of the hearing through its actions, the commission shall assess to the party bringing the allegation or causing the delay, the fee charged to the commission for transcription of the record and the fee charged by the hearing officer.

(3) The fee assessed for the transcription of the record and for the hearing officer shall be the actual costs charged to the commission for that particular hearing, and may be assessed in addition to any fine levied by the commission.

DOUG DOTSON, Chairman

APPROVED BY AGENCY: May 7, 2021

FILED WITH LRC: May 12, 2021 at 3:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2021 at 9 a.m. local time at the Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601. In the event the declaration of a State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by July 21, 2021, this hearing will be done by video teleconference. Members of the public wishing to attend may utilize the following link: <https://us02web.zoom.us/j/82520305441>, or by telephone at 19292056099, your meeting I.D. to join in is 825 2030 5441. 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 p.m. on July 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: Suzanne Baskett, Executive Staff Advisor, Kentucky Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 227-8082, email [Suzanne.Baskett@ky.gov](mailto:Suzanne.Baskett@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Suzanne Baskett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the practice and procedures used by the Commission in administrative hearings.

(b) The necessity of this administrative regulation: KRS 190.058 requires the Motor Vehicle Commission to conduct hearings on certain matters.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets forth the practice and procedures to be used in administrative hearings.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation sets forth the practice and procedures to be used in administrative hearings.

(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: The majority of the amendments to the regulation delete provisions of the practice and procedures for administrative hearings which were redundant or contradictory to the provisions of KRS Chapter 13B after its enactment in 1994 and subsequent amendment. Section 1 is amended to delete the existing Section 1 and replace it with a provision clarifying that the procedures set forth in KRS Chapter 13B apply along with practice and procedures contained in the regulation. Section 2 is amended to clarify that licensees or artificial entities must generally be represented by attorneys authorized to practice law in Kentucky. Section 3 is deleted as unnecessary because oral argument is allowed in the discretion of the hearing officer. The amendment makes certain grammatical changes to Sections 4, 5, 6, 7 and 8 and renumbers them. Sections 11 and 13 are deleted in their entirety as they are unnecessary given the current provisions of KRS Chapter 13B. Section 12 is renumbered as Section 9 and is modified to remove unnecessary language. Sections 14 and 15 are renumbered.

(b) The necessity of the amendment to this administrative regulation: The amendment to the regulation is necessary to reflect recent court decisions clarifying that companies can only be represented in administrative hearings by attorneys licensed to practice in the Commonwealth. The purpose of the amendment is also to streamline the regulation and eliminate unnecessary, redundant or contradictory provisions.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of authorizing statute by modifying the Commission's procedures to accurately reflect the existing provisions of KRS Chapter 13B.

(d) How the amendment will assist in the effect of administration of the statutes: The amendment will assist the effective administration of the statute by addressing recurrent issues that occur during the Commission's administrative hearing process which are not fully addressed in KRS Chapter 13B.

(3) List the types and numbers of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all individuals or businesses who participate in administrative hearings before the Commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees or other entities involved in administrative hearings before the Commission will be required to follow the procedures contained in the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to each of the identified entities cannot be reasonably ascertained because each administrative hearing varies depending on the issues presented.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): Entities that comply with the regulation will be allowed to participate in administrative hearings before the Commission.

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

(a) Initially: No known costs.

(b) On a continuing basis: There are on-going costs related to administration of the licensing of automotive mobility dealers and enforcement of the regulations. This cost will vary depending on the issues related to each individual dealer.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: 605 KAR 1:215 establishes the associated fees and the Commission does not anticipate a need for any additional or increased fees or funding related to administration of this regulation.

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

(9) TIERING: Is tiering applied? No.

#### 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? Motor Vehicle Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 190.058, 190.073.

(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? Revenue to be generated is unknown because the Commission cannot determine how many administrative hearings it will conduct.

(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? Revenue to be generated is unknown because the Commission cannot determine how many administrative hearings it will conduct.

(c) How much will it cost to administer this program for the first year? The cost of administering this program in the first year is unknown as it will depend upon the number of hearings and the issues which arise with regard to each hearing.

(d) How much will it cost to administer this program for the subsequent years? The cost of administering this program in the first year is unknown as it will depend upon the number of hearings and the issues which arise with regard to each hearing.

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:

#### EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education  
Kentucky Department of Education  
(Amendment)

**707 KAR 1:340. Procedural safeguards and state complaint procedures.**

RELATES TO: KRS 156.035, 157.200, 157.220, 157.224, [157.226-] 157.230, 157.250, 157.260, 157.270, 157.280, 157.285,

157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 C.F.R. 300.1-300.818, 20 U.S.C. 1400-1419

STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 requires the Kentucky Board of Education to adopt rules and administrative regulations for proper administration of these programs. KRS 156.035 authorizes the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of these funds in accordance with state and federal laws. 20 U.S.C. 1407 and 1412 and 34 C.F.R. 300.100 require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes procedural safeguards for children with disabilities and their parents and lists the requirements for filing a written complaint.

Section 1. Parent Participation in Meetings. (1) A parent of a child with a disability shall be afforded an opportunity to:

(a) Inspect and review all education records with respect to identification, evaluation, and educational placement of the child and the provision of FAPE to the child; and

(b) Participate in all ARC meetings concerning his child.

(2) An LEA shall provide parents a written notice of ARC meetings in accordance with this administrative regulation.

(3) A LEA may conduct an ARC meeting without a parent in attendance if the LEA is unable to convince the parent to attend. The LEA shall keep a record of its attempts to arrange a mutually agreed on time and place. These records may include:

(a) Detailed records of telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; or

(c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(4) LEA staff shall not be limited by 707 KAR Chapter 1, from having informal, or unscheduled conversations on issues which may include:

(a) Teaching methodology;

(b) Lesson plans;

(c) Coordination of service provision; or

(d) Preparatory activities that LEA personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later ARC meeting.

Section 2. Independent Educational Evaluation. (1) A parent of a child with a disability shall have a right to obtain an independent educational evaluation of the child.

(2) If a parent requests an independent educational evaluation, the LEA shall provide information to the parent about where an independent educational evaluation may be obtained and the LEA's applicable criteria for independent educational evaluations.

(3) If a parent requests an independent educational evaluation at public expense because the parent disagrees with an evaluation obtained by the LEA, the LEA shall, without unnecessary delay:

(a) Initiate a due process hearing to show that its evaluation is appropriate; or

(b) Ensure that an independent educational evaluation is provided at public expense unless the LEA demonstrates in a due process hearing that the evaluation obtained by the parent did not meet LEA criteria;

(4) The LEA may ask for the parent's reasons why he objects to the LEA's evaluation; however, the parent shall not be required to respond and the LEA shall not delay its action under subsection (3) of this section while waiting for a response from a parent; and

(5) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria that the LEA uses when it initiates an evaluation. Aside from these criteria, the LEA shall

not impose any other conditions or timelines relating to obtaining an independent educational evaluation at public expense.

(6) A parent shall be entitled to only one (1) independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parents disagree.

(7) If the LEA initiates a due process hearing after receiving a request for an independent educational evaluation, and the final decision is that the LEA's evaluation is appropriate, the parent still shall have the right to an independent educational evaluation, but not at public expense.

(8) If the parent obtains an independent educational evaluation at public or private expense and it meets the agency criteria, results of the evaluation shall be considered by the LEA in any decision made with respect to the provision of a free, appropriate public education (FAPE) to the child.

(9) If a due process hearing officer, as part of a hearing, requests an independent educational evaluation, the cost of the evaluation shall be at public expense.

Section 3. ARC Meeting Notice to Parents. (1) Except for meetings concerning a disciplinary change in placement or a safety issue, an LEA shall provide written notice to the parents of a child with a disability at least seven (7) days before an (ARC) [a] meeting [in which the LEA:].

(2) For meetings concerning a safety issue or disciplinary change in placement due to a violation of a student code of conduct, an LEA shall provide written notice to the parents of a child with a disability at least twenty-four (24) hours before an ARC meeting.

(3) The meeting notice described in subsections (1) and (2) of this section shall:

(a) Indicate the purpose, time, and location of the meeting and who will be in attendance;

(b) Inform the parents of the ability to invite other individuals who have knowledge or special expertise regarding the child as appropriate; and

(c) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the ARC, the notice shall indicate:

1. That a purpose of the meeting will be the consideration of postsecondary goals and transition services for the child;

2. That the LEA will invite the student; and

3. Any other agency that will be invited to send a representative.

#### Section 4. Prior Written Notice to Parents.

(1) An LEA shall provide written notice to the parents of a child with a disability within a reasonable time before the LEA implements:

(a) A proposal [Proposes] to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(b) A refusal [Refuses] to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(2) [An LEA shall provide written notice to the parents of a child with a disability at least twenty-four (24) hours before a meeting concerning a safety issue or a change in placement due to a violation of a code of student conduct.

(3)–[The notice required by subsection[s] (1) [and (2)] of this section shall include:

(a) A description of the action proposed or refused by the LEA;

(b) An explanation of why the LEA proposes or refuses to take the action;

(c) A description of any other options that the LEA considered and the reasons why those options were rejected;

(d) A description of each evaluation procedure, assessment [test], record, or report the LEA used as a basis for the proposed or refused action;

(e) A description of any other factors that are relevant to the LEA's proposal or refusal;

(f) A statement that the parents of a child with a disability have protection under the procedural safeguards in 707 KAR Chapter 1

and 34 C.F.R. 300.504, and if this notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained; and

(g) Sources for the parents to contact to obtain assistance in understanding the provisions of this section.

(3) [(4)] The notice required by [subsections (1) and (2) of] this section shall be written in language understandable to the general public and provided in the native language or other mode of communication of the parent unless it is clearly not feasible to do so. If the native language of the parent is not a written language, the LEA shall take steps to ensure that the notice is translated orally or by other means so that the parent understands the content of the notice and that there is written evidence of the translation.

Section 5 [4]. Procedural Safeguards Notice. (1) A copy of the procedural safeguards notice (including, parent's rights) shall be given to the parents of a child with a disability one (1) time a school year. A copy of the notice shall also be provided to the parent:

(a) Upon initial referral or parent request for evaluation;

(b) Upon the receipt of the first state written complaint;

(c) Upon the receipt of the first filing of a due process hearing in a school year;

(d) In accordance with the discipline procedures in which a decision is made to remove a student, which constitutes a change in placement, because of a violation of the code of student conduct; and

(e) Upon request by a parent.

(2) The procedural safeguards notice shall include a full explanation of all the procedural safeguards available under 707 KAR Chapter 1 and 34 C.F.R. 300.504.

Section 6 [5]. Parental Consent. (1) An LEA shall obtain informed parental consent before conducting an initial evaluation or reevaluation and before the initial provision of specially designed instruction and related services.

(2) If the parent of a child with a disability refuses to consent to the initial evaluation or fails to respond to a request to provide consent, the LEA may pursue the initial evaluation by using the procedures in this administrative regulation for mediation, dispute resolution meeting, or a due process hearing. However, the LEA shall still be considered to be in compliance with 707 KAR 1:300, Section 4, and 707 KAR 1:310 if it declines to pursue the evaluation.

(3) If the child is in the custody of the state and is not residing with the child's parent, the LEA is not required to obtain consent from the parent for initial evaluations to determine the eligibility of the child if:

(a) Despite reasonable efforts, the LEA cannot discover the whereabouts of the parent(s);

(b) The rights of the parent(s) have been terminated by a court of competent jurisdiction; or

(c) The rights of the parent(s) to make educational decisions have been subrogated by a court of competent jurisdiction and an individual appointed by the court to represent the child has given consent to the initial evaluation.

(4) In order to document the reasonable efforts taken by the LEA to discover the whereabouts of the parent(s), the LEA shall keep a record of its attempts which may include:

(a) Detailed records of telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; and

(c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(5) If the parent of a child refuses to give consent for the provision of initial specially designed instruction and related services or fails to respond to a request for consent, the LEA shall not provide such services and shall not use a due process hearing or mediation procedures in order to obtain agreement or a ruling that the services may be provided to the child.

(6) The LEA shall obtain consent before conducting a reevaluation of a child with a disability. If the parent refuses to

consent, the LEA may pursue the reevaluation by using the procedures in this administrative regulation for mediation, dispute resolution meeting, or a due process hearing.

(7) Parental consent for reevaluation shall not be required if the LEA can demonstrate that:

(a) It made reasonable efforts to obtain such consent and followed the procedures in subsection (4) of this section of this administrative regulation to show those efforts; and

(b) The parent failed to respond.

(8) Parental consent shall not be required before:

(a) Reviewing existing data as part of an evaluation or reevaluation; or

(b) Administering a test or other evaluation that is administered to all children unless consent is required of all parents before the administration of the test or evaluation.

(9) The LEA shall not be considered to be in violation of the requirements to make a free appropriate public education available to the child if the LEA [IEA] decides not to pursue the consent through due process procedures set out in Sections 9 and 12 [and 44] of this administrative regulation and the LEA shall not be required to convene an ARC meeting or develop an IEP if the parent of the child:

(a) Fails to respond or refuses to consent to a request for evaluation;

(b) Fails to respond or refuses to consent to a request for services; or

(c) Refuses to consent to a reevaluation.

Section 7 [6]. Representation of Children. (1) If the child is a foster child and does not reside with the child's parents, the LEA shall make reasonable efforts to obtain the informed consent of the parent for an initial evaluation. The LEA shall not be required to obtain this consent if:

(a) Despite reasonable efforts, the LEA cannot discover the whereabouts of the parent;

(b) The rights of the parents have been terminated in accordance with state law; or

(c) The rights of the parents to make educational decisions have been subrogated by a court in accordance with state law and the consent for initial evaluation has been given by someone appointed by the court [judge] to represent the child.

(2) The biological or adoptive parent, when attempting to act as the parent and when more than one (1) party meets the definition of parent under 707 KAR 1:280(43), shall be presumed to be the parent for purposes of 707 KAR Chapter 1 unless the biological or adoptive parent does not have the legal authority to make educational decisions for the child. If there is a judicial order that identifies a specific person or persons who meets the definition of "parent" in Section 1(43)(a) through (d) of 707 KAR 1:280 to act as the parent of a child or to make educational decisions on behalf of a child, the order shall prevail.

(3) An LEA shall ensure the rights of a child are protected by appointing a surrogate parent to make educational decisions for the child if:

(a) No individual can be identified as a parent as defined in 707 KAR 1:280;

(b) An LEA, after reasonable efforts, cannot discover the whereabouts of the parents;

(c) The child is a ward of the state; or

(d) The child is an unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431.

(4) The LEA shall keep a record of the reasonable efforts it made to discover the whereabouts of the parents, such as:

(a) Detailed records of the telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; and

(c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(5) An LEA shall have a procedure for determining whether a child needs a surrogate parent and assigning a surrogate parent to the child. The surrogate parent of the child shall have all the rights

afforded parents under Part B of IDEA, 34 C.F.R. Part 300, and 707 KAR Chapter 1, to make decisions about educational issues for a child.

(6) An LEA shall have a procedure for selecting surrogates. A surrogate:

(a) Shall not be an employee of the Kentucky Department of Education, the LEA, or any other agency that is involved in the education or care of the child;

(b) Shall not have any personal or professional interest that conflicts with the interests of the child; and

(c) Shall have knowledge and skills that ensure adequate representation of the child.

(7) A person who is otherwise qualified to be a surrogate parent shall not be considered an employee of the LEA solely because he or she is paid by the LEA to serve as a surrogate parent.

(8) In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to the criteria listed in until a surrogate parent can be appointed that meets all the requirements of this section.

(9) An LEA shall make reasonable efforts to ensure the assignment of a surrogate not more than thirty (30) days after there is a determination by the LEA that the child needs a surrogate.

(10) The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child.

(11) When a child with a disability reaches the age of majority, all rights under 707 KAR Chapter 1 shall transfer from the parents to the child, unless the child has been declared incompetent under KRS Chapter 387 in a court of law. An LEA shall notify the child with a disability and the parents of the transfer of the rights.

Section 8 [7]. State Complaint Procedures. (1) The following procedures shall apply to the Kentucky Department of Education as to written complaints submitted pursuant to 34 C.F.R. 300.151 through 300.153:

(a) The Kentucky Department of Education shall have [øf] sixty (60) days after a complaint is filed to carry out an independent investigation, if necessary;

(b) The complainant and the LEA shall each have an opportunity to submit additional information about any allegation in the complaint;

(c) The LEA shall have an opportunity to respond to the complaint including, at least:

1. A proposal to resolve the complaint; and

2. An opportunity for the parent who has filed the complaint and the LEA to voluntarily engage in mediation;

(d) The department shall review [øf] all relevant information; and

(e) The department shall issue a written decision addressing each allegation in the complaint and containing the findings of fact and conclusions and the reasons for the final decision.

(2) Any organization or individual including someone from outside the state may file a signed written complaint under this administrative regulation.

(3) The complaint shall include:

(a) A statement that the LEA or other public agency providing educational services to identified students has violated a requirement of 707 KAR Chapter 1 or IDEA administrative regulations;

(b) The facts on which the statement is based;

(c) A signature and contact information for the complainant;

(d) Name and residence of the child, or contact information, if the child is homeless under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. Section 11431;

(e) Name of the school the child is attending;

(f) A description of the nature of the problem, including facts related to the problem;

(g) A proposed resolution of the problem to the extent it is known and available to the complainant at the time of the filing; and

(h) Information indicating that the violation did not occur more than one (1) year prior to the date of the receipt of the complaint.

(4) The party filing the complaint shall forward a copy to the LEA.

(5) The complainant, parent, or the LEA shall have a right to appeal the written decision from a complaint to the Commissioner of the Kentucky Department of Education. This appeal shall be filed within fifteen (15) business days of the receipt of the decision.

(6) The Kentucky Department of Education shall allow an extension of the time limit under subsection (1)(a) of this section only if exceptional circumstances exist or if the parent and the LEA agree to extend the time line to engage in mediation or other alternative means of dispute resolution.

(7) The Kentucky Department of Education shall ensure the final decision from a complaint shall be effectively implemented. To achieve compliance, the Department of Education may apply:

- (a) Technical assistance activities;
- (b) Negotiations; or
- (c) Corrective actions.

Section 9 [8]. Right to Mediation and Due Process Hearings.

(1) An LEA and parent of a child with a disability shall have the right to request mediation from the Kentucky Department of Education to resolve any disputes that may arise under 707 KAR Chapter 1.

(2) A parent or an LEA may initiate a due process hearing on any of the matters described in the written notice relating to identification, evaluation, or educational placement of a child with a disability or the provision of FAPE to the child or the refusal to initiate or change the identification, evaluation, or educational placement of the child.

(3) When a hearing is initiated, the LEA shall inform the parent of the availability of mediation to resolve the dispute.

(4) The LEA shall inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or if a parent or LEA initiates a hearing.

Section 10 [9]. Mediation Rights. (1) The mediation process, if chosen, shall:

- (a) Be voluntary;
- (b) Not be used to deny or delay a parent's right to a due process hearing under Sections 9 [8] and 12 [44] of this administrative regulation or 34 C.F.R. 300.507, or to deny any other rights afforded under this administrative regulation or IDEA Subpart E; and
- (c) Be conducted by a qualified and impartial mediator trained in effective mediation techniques.

(2) The Kentucky Department of Education shall maintain a list of qualified mediators who shall:

(a) Not be an employee of the Kentucky Department of Education or the LEA that is involved in the education or care of the child;

- (b) Be chosen at random for the mediation process; and
- (c) Not have a personal or professional conflict of interest.

(3) The Kentucky Department of Education shall bear the cost of the mediation process.

(4) The sessions in the mediation process shall be:

(a) Scheduled in a timely manner not to exceed sixty (60) days; and

(b) Held at a location that is convenient to both parties to the dispute.

(5) In a mediation session in which a resolution is reached by the parties, a legally-binding written agreement shall be executed that:

(a) Sets forth the resolution and a timeline in which it shall be implemented;

(b) States that all discussions that occurred in the mediation process shall be confidential; and

(c) May not be used as evidence in any subsequent due process hearing or civil proceeding.

(6) Both the parent and a representative of the LEA who has the authority to bind the LEA shall sign the agreement. The agreement shall be enforceable in any state court of competent

jurisdiction or in a district court of the United States.

(7) Mediation may address issues surrounding the education of the child, including ongoing alleged violations of IDEA, compensatory education, or any other issue related to the child's enrollment in the school district.

Section 11 [40]. Dispute Resolution. (1) Within fifteen (15) days of receiving notice of parental request for a due process hearing, the LEA shall convene a meeting with the parent and the relevant member or members of the ARC who have specific knowledge of the facts identified in the due process hearing request. The parent and the LEA shall determine the relevant ARC members to attend the resolution session. A representative of the LEA who has decision-making authority on behalf of the LEA shall also attend this meeting. An attorney for the LEA shall not attend the meeting unless an attorney accompanies the parent.

(2) The purpose of this meeting is:

(a) To allow the parents to discuss their due process hearing request;

(b) To discuss the facts that formed the basis of the request; and

(c) To give the LEA an opportunity to resolve the complaint.

(3) This meeting shall not take place if the parents and the LEA agree in writing to waive the meeting or agree to use the mediation process.

(4) If the parties reach a resolution to the dispute, the parties shall execute a legally-binding agreement that is: [;]

(a) Signed by both the parent and a representative of the LEA who has the authority to bind the LEA; and

(b) Is enforceable in any state court of competent jurisdiction or a district court of the United States.

(5) The dispute resolution agreement may be voided by either party within three (3) business days of the agreement's execution.

(6) If the LEA has not resolved the complaint to the satisfaction of the parents within thirty (30) days of the receipt of the due process hearing request, the due process hearing may occur.

(7) The timeline for issuing a final decision pursuant to 34 C.F.R. 300.515 shall begin at the expiration of the thirty (30) day timeline referred to in subsection (6) of this section, except for adjustments allowed in subsections (11) and (12) of this section.

(8) The failure of the parent who filed the due process hearing request to participate in the resolution meeting shall delay the timelines for the resolution process and the due process hearing until the meeting is held unless the parties have jointly agreed to waive the resolution process or use mediation.

(9) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the LEA may request, at the conclusion of the thirty (30) day period, that a hearing officer dismiss the parent's due process hearing request.

(10) The LEA shall keep a record of the reasonable efforts made to obtain the participation of the parents in the resolution meeting such as:

(a) Detailed records of telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; and

(c) Detailed records of any visits made to the parent's home or place of employment and the results of those visits.

(11) If the LEA fails to hold the resolution meeting within fifteen (15) days of receiving the notice of a parent's due process hearing request or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the forty-five (45) day due process hearing timeline in 34 C.F.R. 300.515.

(12) The forty-five (45) day timeline for the due process hearing in 34 C.F.R. 300.515 starts the day after one (1) of the following events:

(a) Both parties agree in writing to waive the resolution meeting;

(b) After either the mediation or resolution meeting starts but before the end of the thirty (30) day period, the parties agree in writing that no agreement is possible; or

(c) If both parties agree in writing to continue the mediation at

the end of the thirty (30) day resolution period, but later the parent or the LEA withdraws from the mediation process.

Section 12 [44]. Hearing Rights. (1) The parent of a child with a disability or the attorney representing the child, or the LEA that files a request for a hearing shall provide notice to the Kentucky Department of Education, to request a hearing. The notice shall contain:

- (a) The name of the child;
- (b) The address of the residence of the child;
- (c) The name of the school the child is attending;
- (d) A description of the nature of the problem; and
- (e) Facts relating to the problem and a proposed resolution to the extent known and available to the parents at the time.

(2) The Kentucky Department of Education shall provide a model form entitled "Request for a Due Process Hearing", that meets these requirements to assist parents in filing a request for a due process hearing.

(3) A party shall not have a due process hearing until the party, or the attorney representing the party, files a notice that contains the information listed in subsection (1) of this section. This notice shall be provided to the other party and to the Kentucky Department of Education.

(4) The procedures included in KRS Chapter 13B and IDEA Subpart E shall apply to a due process hearing.

Section 13 [42]. Appeal of Decision. (1) A party to a due process hearing that is aggrieved by the hearing decision may appeal the decision to members of the Exceptional Children Appeals Board as assigned by the Kentucky Department of Education. The appeal shall be perfected by sending, by certified mail, to the Kentucky Department of Education, a request for appeal, within thirty (30) calendar days of the date of the hearing officer's decision.

(2) A decision made by the Exceptional Children Appeals Board shall be final unless a party appeals the decision to state circuit court or federal district court.

(3) Except as provided in Sections 15 [44] and 16 [45] of this administrative regulation, during the pendency of any administrative or judicial proceeding, including the dispute resolution meeting the child involved in the hearing or appeal shall remain in the child's current educational placement, unless the LEA and the parent agree to another placement. However, the child shall not be required to remain in the child's current educational placement if the complaint involves an application for initial services for a child who is transitioning from the early intervention program into preschool and the child is no longer eligible for the early intervention program due to age. In that case the LEA shall not be required to provide the early intervention services the child had been receiving but would be required to provide any special education and related services that the child is eligible for and that are not in dispute between the parent and the LEA.

(4) If the hearing involves an application for initial admission to public school, and if there is consent of the parents, the child shall be placed in the public school until the proceedings are final.

Section 14 [43]. Discipline Procedures. (1) The ARC may consider any circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

(2) School personnel may remove a student with a disability who violates a code of student conduct from the student's placement to an appropriate interim alternative education setting, another setting, or suspension, for not more than ten (10) consecutive school days (to the extent those alternatives are applied to children without disabilities).

(3) School personnel may remove a student with a disability from the student's current placement for additional periods of time of not more than ten (10) consecutive school days in the same school year for separate incidents of misconduct as long as those removals do not constitute a change in placement because of disciplinary removals.

(4) If the behavior that gave rise to the violation of the school

code is determined not to be a manifestation of the child's disability (as described in Section 15 [44] of this administrative regulation), school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities for removals that would exceed ten (10) consecutive school days.

(5) After a child with a disability has been removed from the child's current placement for ten (10) school days in the same school year, educational services as described in subsection (6)(a) and (b) of this section shall be provided during any subsequent days of removal.

(6) A child with a disability who is removed from the child's current placement for more than ten (10) consecutive school days shall:

(a) Continue to receive a free, appropriate public education so as to enable the child to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(b) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services, and modifications[,] that are designed to address the behavior violation so that it does not recur.

(7) The services described in subsection (6) of this section may be provided in an interim alternative educational setting.

(8) An LEA shall be required to provide educational services to a child with a disability during periods of removal of ten (10) or less school days in the same school year if it provides services to children without disabilities who are similarly removed.

(9) After a child with a disability has been removed from the child's current placement for ten (10) school days in the same school year, and the current removal is for not more than ten (10) consecutive school days and is not a change in placement because of disciplinary removals, school personnel, in consultation with at least one (1) of the child's teachers, shall determine the extent to which educational services explained in subsection (6) of this section are needed.

(10) If a removal is a change in placement because of disciplinary removals, the child's ARC shall convene within ten (10) school days after the change of placement is made and shall determine the appropriate educational services for the child. If the student has been placed in an interim alternative educational setting, the LEA shall invite staff from that alternative setting to the ARC meeting.

Section 15 [44]. Manifestation Determination. (1) Within ten (10) school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the relevant members of the child's ARC, as determined by the LEA and the parent, shall convene a meeting to review all relevant information in the student's file, including the child's IEP, any teacher observations, teacher-collected data, and any relevant information provided by the parents to determine:

(a) If the conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or

(b) If the conduct in question was the direct result of the LEA's failure to implement the IEP.

(2) The conduct shall be determined to be a manifestation of the child's disability if the ARC determines that either of the conditions in subsection (1)(a) or (b) of this section was met.

(3) If the ARC determines that the condition described in subsection (1)(b) of this section was met, the LEA shall take immediate steps to remedy those deficiencies.

(4) If the ARC determines that the conduct was a manifestation of the child's disability, the ARC shall:

(a)1. Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred and had implemented a behavioral intervention plan for the child; or

2. Review the behavioral intervention plan, (if one had already been developed) and modify it, as necessary, to address the behavior; and

(b) Return the child to the placement from which the child was

removed unless the LEA and the parent agree to a change of placement as part of the modification of the behavioral intervention plan or because of the special circumstances explained in subsection (5) of this section.

(5) School personnel may remove a child with a disability to an interim alternative educational setting for not more than forty-five (45) school days without regard to whether the behavior is a manifestation of the child's disability, if the child:

(a) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the Kentucky Department of Education or the LEA;

(b) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of the Kentucky Department of Education or the LEA; or

(c) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the Kentucky Department of Education or the LEA.

(6) On the date on which a decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of the code of student conduct, the LEA shall notify the parents of the decision and provide the parents with a copy of the procedural safeguards in accordance with Section 5 [4] of this administrative regulation.

(7) The ARC of the child shall determine the interim alternative educational setting and the services for any child removed under Sections 14(4), 14(10), and 15(5) [13(4), (10) and 14(5)] of this administrative regulation.

Section 16 [45]. Appeals from Placement Decisions. (1) The parent of a child with a disability who disagrees with any decision regarding placement under Section 14 or 15 [13 or 14] of this administrative regulation or the manifestation determination, or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others may request a hearing by filing using the procedures contained in Sections 9 and 12 [8 and 11].

(2) A hearing officer shall hear and make a determination regarding an appeal requested pursuant to subsection (1) of this section.

(3) In making a determination, the hearing officer may order a change in placement of a child with a disability. The hearing officer may:

(a) Return the child to the placement from which the child was removed; or

(b) Order a change in placement of the child to an appropriate interim alternative educational setting for not more than forty-five (45) school days if the hearing officer determines that maintaining the current placement is substantially likely to result in injury to the child or others.

(4) When an appeal has been requested pursuant to this section, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time provided for in subsection (3)(b) of this section, whichever occurs first, unless the parent and the LEA agree otherwise.

(5) An appeal under this section shall:

(a) Be conducted in an expedited manner;

(b) Shall occur within twenty (20) school days from the date the request is filed; and

(c) Shall result in a determination within ten (10) school days after the hearing.

Section 17 [46]. Basis of Knowledge. (1) An LEA shall be deemed to have knowledge that a child is a child with a disability if:

(a) The parent of the child has expressed concern in writing (or orally if the parent cannot express it in writing) to supervisory or administrative personnel of the appropriate LEA or to the teacher of the child, that the child is in need of special education and related services;

(b) The parent of the child has requested an evaluation pursuant to the requirements in 707 KAR 1:300; or

(c) The teacher of the child, or other personnel of the LEA, has

expressed concern about a pattern of behavior or performance of the child directly to the director of special education or other supervisory personnel of the LEA.

(2) An LEA shall not be deemed to have knowledge that a child is a child with a disability if, after receiving information that the child may have a disability:

(a) The LEA conducted an evaluation and determined the child was not a child with a disability;

(b) The LEA determined an evaluation was not necessary and provided notice to the parents of these determinations; or

(c) The parents refused to consent to an evaluation or refused initial services.

(3) If an LEA does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities.

(4) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the child shall remain in the educational placement determined by school authorities, which may include suspension or expulsion without educational services.

Section 18 [47]. Reporting to Law Enforcement Agencies. (1) Notwithstanding any provisions of 707 KAR Chapter 1, an agency may report a crime committed by a child with a disability to appropriate authorities.

(2) If an LEA reports a crime committed by a child with a disability, it shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to the extent the transmission is permitted by the Family Educational Rights and Privacy Act, 20 U.S.C. Section 1232g.[

~~Section 18. Incorporation by Reference. (1) "Request for a Due Process Hearing", February 2007, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Exceptional Children Services, Department of Education, Capital Plaza Tower, 500 Mero Street, Eighth Floor, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

JASON E. GLASS, ED.D., Commissioner

LU YOUNG, ED.D., Board Chairperson

APPROVED BY AGENCY: April 15, 2021

FILED WITH LRC: April 15, 2021 at 4:18 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 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 July 31, 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 G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation

establishes procedural safeguards for children with disabilities and their parents and lists the requirements for filing an IDEA formal, written complaint as detailed in the Individuals with Disabilities Education Act (IDEA).

(b) The necessity of this administrative regulation: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 requires the Kentucky Board of Education (KBE) to adopt rules and administrative regulations for proper administration of these programs.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 requires the Kentucky Board of Education (KBE) to adopt rules and administrative regulations for proper administration of these programs. 34 C.F.R. 300.500-520 establishes procedural safeguards and due process procedures for parents and children.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation details the procedural safeguards and state complaint procedures as established in 34 C.F.R. 300.500-520.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: Amendments are needed to Sections 3 and 4 in order to clarify the difference between an Admissions and Release Committee (ARC) meeting notice to parents and prior written notice provided to parents, clarify the content of the notices, and also establish the timeframes in which each notice must be provided. In Section 7, the word "judge" is replaced by the word "court". In Section 8, the word "of" appears incorrectly twice and is being removed. Updated section reference numbers are updated throughout. The proposed amendment to Section 18 is to delete this section. Section 18 references the "Request for a Due Process Hearing" and incorporates it by reference. Incorporating this form by reference has been problematic when needing to update information. Examples of updates needed to the form include adding the new KDE logo, changing the KDE address when the KDE offices moved from Mero Street to Sower Boulevard, KDE reorganization leading to a new title of the office to which this form is submitted and a change in employment leading to a change in who receives the form at KDE.

(a) How the amendment will change this existing administrative regulation:

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected by this regulation include: all public schools, school districts and the Kentucky Department of Education as it will provide support related to 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: The amendment will provide clarity of the intent of the provision of prior written notice to parents when a district proposes or refuses changes to the identification, evaluation, or educational placement of the student or the provision of a free, appropriate public education (FAPE) to the student.

(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 does not change the requirements established within the regulation but provides clarification as to the practice of providing prior written notices and ARC meeting notices, clarify the content of the notices, and also establish the timeframes in which each notice must be provided.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment has no budgetary impact to school districts or the KDE.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities in compliance with the requirements of this regulation are eligible for federal special education funding.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: This amendment has no budgetary impact to the entities identified in question (3).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State resources have been utilized to promulgate this regulation.

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

(8) State whether 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 schools and local education agencies.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local education agencies and the Kentucky Department of Education.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 requires the Kentucky Board of Education (KBE) to adopt rules and administrative regulations for proper administration of these programs. KRS 156.035 authorizes the KBE to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of these funds in accordance with state and federal laws. 20 U.S.C. 1407 and 1412 and 34 C.F.R. 300.100 require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. 707 KAR 1:340 established procedural safeguards for children with disabilities and their parents and lists the requirements for filing a written complaint.

(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 will not have any impact on revenue or expenditures for implementation.

(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? No additional expenditures anticipated in the adoption of this amended regulation.

(d) How much will it cost to administer this program for subsequent years? No additional expenditures anticipated in the administration of this amended regulation.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

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

**803 KAR 2:060. Employer responsibility to post notice[Employers' responsibilities].**

RELATES TO: KRS 338.051, 29 C.F.R. Part 1903

STATUTORY AUTHORITY: KRS 338.051, 338.061

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 [by KRS 338.051 to adopt administrative] regulations and authorizes the chairman to reference federal standards 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 employers' responsibility to post notices provided by the Labor Cabinet and availability of safety and health administrative regulations [required by federal law, this administrative regulation identifies the responsibility place upon the employer to post notices furnished by the Occupational Safety and Health Program, Department of Workplace Standards, verify abatement of cited hazards to the department, and also to furnish certain information to employees for their safety and protection. Necessary for effective enforcement of the purposes and policies of the Occupational Safety and Health Act which is to insure so far as is possible, safe and healthful working conditions of Kentucky workers (KRS 338.011)].

Section 1. Definitions. (1) "Employee" is defined by KRS 338.015(2).

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

(3) "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed such as a factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office. ["Abatement" means action by an employer to comply with a cited standard or regulation or to eliminate a recognized hazard identified by Division of Occupational Safety and Health Compliance during an inspection.

(2) "Abatement date" means:

(a) For an uncontested citation item, the later of:

1. The date in the citation for abatement of the violation;

2. The date approved by Division of Occupational Safety and Health Compliance or established in litigation as a result of a petition for modification of the abatement date (PMA); or

3. The date established in a citation by an informal settlement agreement.

(b) For a contested citation item for which the Kentucky Occupational Safety and Health Review Commission (KOSHR) has issued a final order affirming the violation, the later of:

1. The date identified in the final order for abatement; or

2. The date computed by adding the period allowed in the citation for abatement to the final order date;

3. The date established by a formal settlement agreement.

(3) "Affected employees" means those employees who are exposed to the hazard(s) identified as violation(s) in a citation.

(4) "Final order date" means:

(a) For an uncontested citation item, the 15th working day after the employer's receipt of the citation;

(b) For a contested citation item:

1. The 30th day after the date on which a decision or order of a commission hearing officer has been docketed with the commission, unless a member of the commission has directed review; or

2. Where review has been directed, the 30th day after the date on which the commission issues its decision or order disposing of all or pertinent part of a case; or

3. The date on which an appeals court issues a decision

affirming the violation in a case in which a final order of KOSHR has been stayed.

(5) "Movable equipment" means a hand-held or nonhand-held machine or device, powered or unpowered, that is used to do work and is moved within or between worksites.

(6) "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed, (for example: A factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and a separate notice or notices shall be posted in each such establishment, to the extent that such notices have been furnished by the Division of Occupational Safety and Health Compliance. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, the notice or notices required by this section shall be posted at the location to which employees report each day. Where employees do not usually work at, or report to, a single establishment, such as traveling salesmen, technicians, engineers, etc., such notice or notices shall be posted at the location from which the employees operate to carry out their activities. In all cases, such notice or notices shall be posted in accordance with the requirements of Section 2 of this administrative regulation.

Section 2. Posting. [Purpose and Scope. (1) KRS Chapter 338 requires, in part, that every employer shall furnish to his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees. Covered employers shall comply with the occupational safety and health standards promulgated pursuant to KRS Chapter 338. Employees shall comply with standards, rules, administrative regulations and orders issued under KRS Chapter 338 which are applicable to their own actions and conduct.

(2) The Division of Occupational Safety and Health Compliance is authorized to conduct inspections and issue citations and proposed penalties for alleged violations.

Section 3. Posting of Notice, Availability of Act, Administrative Regulations, and Applicable Standards. (1) Each employer shall post and keep posted a notice or notices created [to be furnished] by the Labor Cabinet [Division of Occupational Safety and Health Compliance, Labor Cabinet,] informing employees of the protections and obligations established [provided for] in KRS Chapter 338 including information that [, and that for assistance and information, including health standards,] employees may [should] contact the employer or the Labor Cabinet for occupational safety and health assistance and information [Division of Occupational Safety and Health Compliance].

(2) The notice created by the Labor Cabinet is available on the Labor Cabinet Web site.

(3) The [Such] notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted.

(4) Where distinctly separate activities are performed at a single physical location such as construction activities at the same physical location, each activity shall be treated as a separate physical establishment and a separate notice or notices shall be posted in each such establishment.

(5) Where employers are engaged in activities which are physically dispersed such as agriculture, construction, gas and sanitary services, transportation, communications, and electric services, the notice or notices shall be posted at the location to which employees report each day.

(6) Where employees do not usually work at, or report to, a single establishment, such as traveling salesmen, technicians, and engineers, the notice or notices shall be posted at the location where employees operate to carry out their activities.

(7) In all cases, such notice or notices shall be posted in

accordance with the requirements of this administrative regulation.

(8) Each employer shall take steps to ensure the notice or [that such] notices are not altered, defaced, or obscured [covered by other material that obscures the poster].

Section 3. Availability of Administrative Regulations. (1) All applicable occupational safety and health administrative regulations are available on the Labor Cabinet Web site [(2) Copies of KRS Chapter 338, all administrative regulations filed pursuant thereto, and all applicable standards will be available at the Department of Workplace Standards, Labor Cabinet].

(2) If an employer has [obtained] copies of these materials, she or he shall make them available upon request to any employee or [his] authorized employee representative for review in the establishment where the employee is employed on the same day the request is made or at the earliest time mutually convenient to the employee or [his] authorized employee representative and the employer [:

(3) Any employer failing to comply with the provisions of this section shall be subject to citation and penalty in accordance with the provisions of KRS 338.991.

Section 4. Abatement Verification. (1) Purpose. Inspections by the Division of Occupational Safety and Health Compliance are intended to result in the abatement of violations of KRS Chapter 338. This section sets forth the procedures the Division of Occupational Safety and Health Compliance will use to ensure abatement. These procedures are tailored to the nature of the violation and the employer's abatement actions.

(2) Scope and application. This section applies to employers who receive a citation for a violation of KRS Chapter 338.

(3) Abatement certification.

(a) Within ten (10) calendar days after the abatement date, the employer must certify to the Division of Occupational Safety and Health Compliance (the agency) that each cited violation has been abated, except as provided in paragraph (b) of this subsection.

(b) The employer is not required to certify abatement if the compliance officer, during the on-site portion of the inspection:

1. Observes, within twenty-four (24) hours after a violation is identified, that abatement has occurred; and

2. Notes in the citation that abatement has occurred.

(c) The employer's certification that abatement is complete must include, for each cited violation, in addition to the information required by subsection (8) of this section, the date and method of abatement and a statement that affected employees and their representatives have been informed of the abatement. Note to this subsection: Appendix A (incorporated by reference in Section 5 of this administrative regulation) contains a sample abatement certification letter.

(4) Abatement documentation.

(a) The employer must submit to the agency, along with the information on abatement certification required by subsection (3)(c) of this section, documents demonstrating that abatement is complete for each willful or repeat violation and for any serious violation for which the agency indicates in the citation that such abatement documentation is required.

(b) Documents demonstrating that abatement is complete may include, but are not limited to, evidence of the purchase or repair of equipment, photographic or video evidence of abatement, or other written records.

(5) Abatement plans.

(a) The agency may require an employer to submit an abatement plan for each cited violation (except an other-than-serious violation) when the time permitted for abatement is more than ninety (90) calendar days. If an abatement plan is required, the citation must so indicate.

(b) The employer must submit an abatement plan for each cited violation within twenty-five (25) calendar days from the final order date when the citation indicates that such a plan is required. The abatement plan must identify the violation and the steps to be taken to achieve abatement, including a schedule for completing abatement and, where necessary, how employees will be protected from exposure to the violative condition in the interim

until abatement is complete. Note to this subsection: Appendix B (incorporated by reference in Section 5 of this administrative regulation) contains a sample abatement plan form.

(6) Progress reports.

(a) An employer who is required to submit an abatement plan may also be required to submit periodic progress reports for each cited violation. The citation must indicate:

1. That periodic progress reports are required and the citation items for which they are required;

2. The date on which an initial progress report must be submitted, which may be no sooner than thirty (30) calendar days after submission of an abatement plan;

3. Whether additional progress reports are required; and

4. The date(s) on which additional progress reports must be submitted.

(b) For each violation, the progress report must identify, in a single sentence if possible, the action taken to achieve abatement and the date the action was taken. Note to this subsection: Appendix B (incorporated by reference by Section 5 of this administrative regulation) contains a sample progress report form.

(7) Employee notification.

(a) The employer must inform affected employees and their representative(s) about abatement activities covered by this section by posting a copy of each document submitted to the agency or a summary of the document near the place where the violation occurred.

(b) Where such posting does not effectively inform employees and their representatives about abatement activities (for example, for employers who have mobile work operations), the employer must:

1. Post each document or a summary of the document in a location where it will be readily observable by affected employees and their representatives; or

2. Take other steps to communicate fully to affected employees and their representatives about abatement activities.

(c) The employer must inform employees and their representatives of their right to examine and copy all abatement documents submitted to the agency.

1. An employee or an employee representative must submit a request to examine and copy abatement documents within three (3) working days of receiving notice that the documents have been submitted.

2. The employer must comply with an employee's or employee representative's request to examine and copy abatement documents within five (5) working days of receiving the request.

(d) The employer must ensure that notice to employees and employee representatives is provided at the same time or before the information is provided to the agency and that abatement documents are:

1. Not altered, defaced, or covered by other material; and

2. Remain posted for three (3) working days after submission to the agency.

(8) Transmitting abatement documents.

(a) The employer must include, in each submission required by this section, the following information:

1. The employer's name and address;

2. The inspection number to which the submission relates;

3. The citation and item numbers to which the submission relates;

4. A statement that the information submitted is accurate; and

5. The signature of the employer or the employer's authorized representative.

(b) The date of postmark is the date of submission for mailed documents. For documents transmitted by other means, the date the agency receives the document is the date of submission.

(9) Movable equipment.

(a) For serious, repeat, and willful violations involving movable equipment, the employer must attach a warning tag or a copy of the citation to the operating controls or to the cited component of equipment that is moved within the worksite or between worksites. Note to this paragraph: Attaching a copy of the citation to the equipment is deemed by Division of Occupational Safety and Health Compliance to meet the tagging requirement of paragraph

(a) of this subsection as well as the posting requirement of 803 KAR 2:125.

(b) The employer must use a warning tag that properly warns employees about the nature of the violation involving the equipment and identifies the location of the citation issued. Note to this paragraph: Nonmandatory Appendix C in the material incorporated by reference in Section 5 of this administrative regulation contains a sample tag that employers may use to meet this requirement.

(c) If the violation has not already been abated, a warning tag or copy of the citation must be attached to the equipment:

1. For hand-held equipment, immediately after the employer receives the citation; or
2. For nonhand-held equipment, prior to moving the equipment within or between work sites.

(d) For the construction industry, a tag that is designed and used in accordance with 29 C.F.R. 1926.20(b)(3) (incorporated by 803 KAR 2:402) and 29 C.F.R. 1926.200(h) (incorporated by 803 KAR 2:406) is deemed to meet the requirements of this section when the information required by paragraph (b) of this subsection is included on the tag.

(e) The employer must assure that the tag or copy of the citation attached to movable equipment is not altered, defaced, or covered by other material.

(f) The employer must assure that the tag or copy of the citation attached to movable equipment remains attached until:

1. The violation has been abated and all abatement verification documents required by this administrative regulation have been submitted to the agency;
2. The cited equipment has been permanently removed from service or is no longer within the employer's control; or
3. The commission issues a final order vacating the citation.

Section 5. Incorporation by Reference. (1) The appendices to 29 C.F.R. 1903.19, as published in the Federal Register, Volume 62, pages 15324-15340, March 31, 1997 are incorporated by reference.

(2) This material may be inspected, obtained, and copied at the Kentucky Labor Cabinet, U.S. 427 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: April 26, 2021

FILED WITH LRC: April 27, 2021 at 9:39 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2021 at 10:00 am (ET). The meeting will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at <https://us02web.zoom.us/j/86731399141?pwd=Q2VOcDQ3ZkVBaUtoNERCMDNlKzJZz09>, password 446261; or by telephone at (713) 353-0212, (888) 822-7517 toll free, conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 21, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email [Robin.Maples@ky.gov](mailto:Robin.Maples@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since December 11, 1974, defines, and removes, terms. Section 2 establishes the requirement pursuant to 29 C.F.R. 1902.9 and 29 C.F.R. 1903.2 for employers to post the notice or notices created by the Labor Cabinet informing employees of the protections and obligations established in KRS Chapter 338. This amendment updates existing language. Section 3 updates the language addressing occupational safety and health regulations and employee access to those regulations. The remainder of the amendment strikes abatement related requirements; the language is moved to 803 KAR 2:122, Abatement. Communicating all abatement requirements in 803 KAR 2:122 provides employers and employees a more efficient means to view the requirements. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 2017 from the Regular Session of the 2017 General Assembly.

(b) The necessity of this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1903.2, 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1903.2, 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1903.2, 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since December 11, 1974, defines, and removes, terms. Section 2 establishes the requirement pursuant to 29 C.F.R. 1902.9 and 29 C.F.R. 1903.2 for employers to post the notice or notices created by the Labor Cabinet informing employees of the protections and obligations established in KRS Chapter 338. This amendment updates existing language. Section 3 updates the language addressing occupational safety and health regulations and employee access to those regulations. The remainder of the amendment strikes abatement related requirements; the language is moved to 803 KAR 2:122, Abatement. Communicating all abatement requirements in 803 KAR 2:122 provides employers and employees a more efficient means to view the requirements. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with HB 50 2017 from the Regular Session of the 2017 General Assembly.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1903.2, 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1903.2, 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29

C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1903.2, 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

2. State compliance standards. The Kentucky OSH Program is mandated to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard. This regulation is equivalent.

3. Minimum or uniform standards contained in the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1903.2, 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1903.2, 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(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. None.

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

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

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

#### LABOR CABINET

##### Department of Workplace Standards

##### Division of Occupational Safety and Health Compliance

##### Division of Occupational Safety and Health Education and Training (Amendment)

**803 KAR 2:062. Employer[Employers'] responsibility when employee is [where employees are] exposed to toxic substances or harmful physical agents.**

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS 338.051, 338.061 [KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires [authorizes] 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. This [-and-standards. The purpose and function of the following] administrative regulation establishes [is-to-provide-that-all-employers] employer responsibility when employees are exposed to toxic substances or harmful physical agents [monitor areas and maintain accurate records of such monitoring where their employees are exposed to potentially toxic substances and to make available to those employees the records of such monitoring].

Section 1. Definitions. (1) "Board" is defined by KRS 338.015(6).  
(2) "Employee" is defined by KRS 338.015(2).  
(3) "Employer" is defined by KRS 338.015(1).  
(4) "Occupational safety and health standard" is defined by KRS 338.015(3).

Section 2. General Requirements. (1) Employers shall monitor areas where employees are exposed to potentially toxic substances or harmful physical agents that [which] are required to be monitored or measured pursuant to [those] standards [as] adopted by the board [Kentucky Occupational Safety and Health Standards Board].

(2) Employers shall provide employees or their representatives an opportunity to observe such monitoring or measuring.

(3)(a) Each employer shall promptly notify every [any] employee [or-employees] who was or is [have-been-or-are-being] exposed to toxic materials or harmful physical agents in concentrations or [at] levels that [which] exceed those prescribed by [those] applicable [occupational safety and health] standards adopted by the board [Kentucky Occupational Safety and Health Standards Board].

(b) Where [pursuant to those applicable occupational safety and health standards adopted and promulgated by the Kentucky Occupational Safety and Health Standards Board] it is required that exposure to certain toxic substances or agents is [be] limited or prohibited, each employer shall:

(1) Notify [notify-his] employees who are subject to such exposure; [-]

(2) Inform employees [inform-them] of the corrective action required, if any; [-] and

(3) Notify employees [notify-them] when such action will be, or was, [has-been] taken.

(4)(a) Each employer shall make and maintain records of all monitoring activity required by this administrative regulation and make appropriate provisions whereby each employee, former employee, or a representative of either, has [may-have] access to such records that [which-will] indicate the levels [to-which] the [particular] employee or former employee was [has-been] exposed.

(b) Each employee, former employee, or representative of either, [Said-person] shall [also] be permitted to copy [those] records pertaining to her or his exposure levels or the exposure levels of the employee or former employee she or he is representing.

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: April 26, 2021

FILED WITH LRC: April 27, 2021 at 9:39 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2021 at 10:00 a.m. (ET). The meeting will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at <https://us02web.zoom.us/j/86731399141?pwd=Q2VOcDQ3ZkVBaUtoNERCMDNlKzZJZz09>, password 446261; or by telephone at (713) 353-0212, (888) 822-7517 toll free, conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative

regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since October 6, 1976, defines terms. Section 2 establishes requirements when employees are exposed to potentially toxic substances or harmful physical agents that are required to be monitored or measured pursuant to standards adopted by the Kentucky Occupational Safety and Health (OSH) Standards Board. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(b) The necessity of this administrative regulation: This administrative regulation, effective since October 6, 1976, was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. The regulation establishes requirements when employees are exposed to potentially toxic substances or harmful physical agents.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH administrative regulations. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since October 6, 1976, defines terms. Section 2 establishes requirements when employees are exposed to potentially toxic substances or harmful physical agents that are required to be monitored or measured pursuant to standards adopted by the Kentucky OSH Standards Board. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH administrative regulations. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment promotes employee health and safety throughout Kentucky. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation promotes worker safety and health throughout Kentucky. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Not applicable.

2. State compliance standards. This regulation provides protection to employees exposed to potentially toxic substances or harmful physical agents that are required to be monitored or measured pursuant to standards adopted by the Kentucky OSH Standards Board.

3. Minimum or uniform standards contained in the federal mandate. Not applicable.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal equivalent.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This administrative regulation establishes requirements when employees are exposed to potentially toxic substances or harmful physical agents that are required to be monitored or measured pursuant to standards adopted by the Kentucky OSH Standards Board. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative

regulation affects any unit, part, or division of state or local government covered by KRS Chapter 338.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061

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

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

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This amendment does not impose any additional requirement

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

#### 803 KAR 2:070. Inspections [~~Inspection~~; procedure].

RELATES TO: KRS 338.101

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 standards. [Pursuant to the authority granted the Commissioner of the Department of Workplace Standards by KRS 338.121, the following rules and administrative regulations are adopted, governing the authority to conduct inspections. The function of the] This administrative regulation establishes the [is to identify this] authority for conducting occupational safety and health inspections and the procedure to be followed by the compliance officers during the conduct of the inspections.

Section 1. Definitions. (1) "Commissioner" is defined in KRS 338.015.

(2) "Compliance safety and health officer" means a person authorized by the commissioner to conduct occupational safety and health inspections and investigations.

(3) "Compulsory process" means the institution of any appropriate action, including ex parte application for an inspection, or investigation, warrant or its equivalent.

(4) "Director" means Director, Division of Occupational Safety and Health Compliance.

(5) "Employee" is defined in KRS 338.015(2).

(6) "Employer" is defined in KRS 338.015(1).

Section 2. Authority for Inspections. (1) Compliance safety and health officers [~~Safety and Health Officers of the Division of Occupational Safety and Health Compliance~~] are authorized to conduct inspections pursuant to KRS 338.101 [~~enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by KRS Chapter 338 and administrative regulations issued pursuant thereto, and other records which are directly related to the purpose of the inspection.~~]

(2) Prior to inspecting areas containing information [~~which is~~] classified by an agency of the United States Government [~~;~~] in the interest of national security, compliance safety and health officers shall obtain [~~have obtained~~] the appropriate security clearance.

Section 3 [2]. Objection to Inspection. (1) If an employer refuses [~~Upon a refusal~~] to permit a compliance safety and health officer [~~;~~ in the exercise of his official duties,] to enter without delay and at reasonable times any place of employment [~~or any place therein,~~] to inspect, [~~to~~] review records, [~~or to~~] question any employer, owner, operator, agent, or employee, [~~in accordance with this administrative regulation,~~] or [~~to~~] permit a representative of employees to accompany the compliance safety and health officer during the physical inspection of any workplace [~~in accordance with 803-KAR-2:110~~], the compliance safety and health officer shall terminate the inspection or confine the inspection to [~~other~~] areas, conditions, structures, machines, apparatus, devices, equipment, materials, records, or interviews concerning which no objection is raised.

(2) The compliance safety and health officer shall endeavor to ascertain the reason for the [~~such~~] refusal and [~~;~~ and he shall] immediately report the refusal and [~~the~~] reason [~~therefore~~] to the commissioner [~~Commissioner of the Department of Workplace Standards~~].

(3) The commissioner shall promptly take appropriate action including compulsory process [~~;~~] if necessary.

(4)(a) Compulsory process may be sought in advance of an inspection if, in the judgment of the commissioner, circumstances exist which make such pre-inspection process desirable or necessary.

(b) It may be desirable or necessary to seek compulsory process in advance of an attempt to inspect when:

1. The employer's past practice implicitly or explicitly puts the commissioner on notice that a warrantless inspection will not be allowed;

2. Procuring a warrant prior to conducting the inspection would avoid, in case of refusal, the expenditure of significant time and resources to obtain a warrant and return to the establishment or worksite; or

3. An inspection includes the use of special equipment or the presence of an expert, or experts, is needed to conduct the inspection and procuring a warrant prior an inspection would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

(5) With the approval of the commissioner, the director or other designee may obtain compulsory process.

(6) Ex parte inspection warrants shall be the preferred form of compulsory process when compulsory process is relied upon.

Section 4 [3]. Entry not a Waiver. Any permission to enter, inspect, review records, or question any person, shall not imply or be conditioned upon a waiver of any cause of action, citation, or penalty pursuant to [~~under~~] KRS Chapter 338 [~~Compliance safety and health officers are not authorized to grant any such waiver~~].

Section 5 [4]. Conduct of Inspections. (1) Inspections [~~Subject to the provisions herein, inspections~~] shall take place at [~~such~~] times and [~~in such~~] places [~~of employment~~] as the commissioner or

designee [~~Commissioner of the Department of Workplace Standards or the compliance safety and health officer~~] may direct.

(2) At the beginning of an inspection, or as soon as practical, [~~;~~] the compliance safety and health officer shall: [~~officers shall~~]

(a) Present [~~present~~] her or his [~~their~~] credentials to the owner, operator, or agent in charge at the establishment or worksite. [~~;~~]

(b) Explain [~~explain~~] the nature and purpose of the inspection, [~~;~~ and]

(c) Indicate [~~indicate~~] generally the scope of the inspection and the records she or he wishes [~~specified herein which they wish~~] to review. Such [~~However, such~~] designation of records shall not preclude access to additional records [~~specified herein~~].

(2) Compliance safety and health officers shall

(d) Have [~~have~~] authority to take environmental samples, [~~and to take or obtain~~] photographs, videos, oral recordings, and statements. [~~related to the purpose of the inspection;~~]

(e) Employ [~~employ~~] other reasonable investigative techniques such as [~~;~~ and question privately any employer, owner, operator, agent or employee of an establishment. As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to,] the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges, and other similar devices to employees in order to monitor their exposures.

(3) In taking photographs and samples, compliance safety and health officers shall take reasonable precautions to ensure that such actions with flash, spark-producing, or other equipment is not [~~would not be~~] hazardous.

(4) Compliance safety and health officers shall comply with [~~all~~] employer safety and health rules and practices at the establishment or worksite [~~being inspected,~~] and [~~they shall~~] wear, as well as use, appropriate personal protective equipment [~~and use appropriate protective clothing and equipment~~].

(5) [(4)] The conduct of an inspection shall [~~be such as to~~] preclude unreasonable disruption of [~~the~~] operations at [~~of~~] the employer's establishment or worksite.

(6)(a) [(5)] At the conclusion of an inspection, the compliance safety and health officer shall offer conference [~~confer~~] with the employer [~~or his representative~~] and informally advise her or him of [~~any~~] apparent [~~safety and health~~] violations [~~disclosed by the inspection~~].

(b) The [~~During such conference, the~~] employer shall be afforded an opportunity to bring to the attention of the compliance safety and health officer any pertinent information regarding conditions in the workplace.[

(6) Inspection shall be conducted in accordance with the requirements of this section.]

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: April 26, 2021

FILED WITH LRC: April 27, 2021 at 9:39 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2021 at 10:00 am (ET). The meeting will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at <https://us02web.zoom.us/j/86731399141?pwd=Q2VOcDQ3ZkVBaUtoNERCMDNIkZJJz09>, password 446261; or by telephone at (713) 353-0212, (888) 822-7517 toll free, conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since November 7, 1979, defines terms. Section 2 establishes the authority for conducting occupational safety and health (OSH) inspections and the procedure to be followed by the compliance officers during the conduct of the inspections pursuant to 29 C.F.R. 1903.4, 29 C.F.R. 1904.5, and 29 C.F.R. 1904.7. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 2017 from the Regular Session of the 2017 General Assembly.

(b) The necessity of this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since November 7, 1979, defines terms. Section 2 establishes the authority for conducting occupational safety and health inspections and the procedure to be followed by the compliance officers during the conduct of the inspections pursuant to 29 C.F.R. 1903.4, 29 C.F.R. 1904.5, and 29 C.F.R. 1904.7. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with HB 50 2017 from the Regular Session of the 2017 General Assembly.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(c) How the amendment conforms to the content of the

authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

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

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

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

2. State compliance standards. The Kentucky OSH Program is mandated to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard. This regulation is equivalent.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard. This regulation is equivalent.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects any unit, part, or division of state or local government covered by KRS Chapter 338.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(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. None.
- (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.
- (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.
- (c) How much will it cost to administer this program for the first year? There are no costs associated with this amendment.
- (d) How much will it cost to administer this program for subsequent years? There are no costs associated with this amendment.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

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

#### LABOR CABINET

##### Department of Workplace Standards

##### Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training (Amendment)

#### 803 KAR 2:110. Employer and employee representatives.

RELATES TO: ~~[KRS 338.051]~~ KRS 338.111

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 ~~[by KRS 338.051, the following 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. This administrative regulation establishes employer and employee representation during an inspection ~~[are adopted concerning the employer and employee representatives who may accompany compliance safety and health officers during the course of the inspection].~~

Section 1. Definitions. (1) "Compliance safety and health officer" means a person authorized by the commissioner to conduct occupational safety and health inspections or investigations.

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

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

Section 2. Representatives of Employers and Employees. (1) The compliance [Compliance] safety and health officer[officers] shall be in charge of the inspection [inspections] and questioning of persons.

(2) A representative of the employer and a representative authorized by her or his employees shall be given an opportunity to accompany the compliance safety and health officer.

(3) The compliance safety and health officer may permit additional employer representatives and additional representatives authorized by employees to accompany her or him when she or he [where he] determines it aids [that such additional representatives will further aid] the inspection.

(4) A different employer and employee representative may accompany the compliance safety and health officer during each different phase of an inspection if it does [this will] not interfere with the conduct of the inspection.

(5) [(2)] The compliance [Compliance] safety and health officer[officers] shall have authority to resolve all disputes as to who is the representative authorized by the employer and employees [for the purpose of this section].

(6) If there is no authorized representative of employees, or if the compliance safety and health officer is unable to determine with reasonable certainty who is the [such] representative, she or he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

(7) [(3)] The representative[representative(s)] or representatives authorized by employees shall be an employee[employee(s)] of the employer.

(8) If, [However, if] in the judgment of the compliance safety and health officer, good cause is [has been] shown why accompaniment by a third party, such as a safety professional or industrial hygienist, who is not an employee of the employer [(such as an industrial hygienist or a safety engineer)] is reasonably necessary to [the] conduct [of] an effective and thorough [physical] inspection [of the workplace], the [such] third party may accompany the compliance safety and health officer during the inspection.

(9) A compliance [(4) Compliance] safety and health officer[officers] may consult with employees concerning matters of occupational safety and health [to the extent they deem] necessary for [the conduct of] an effective and thorough inspection.

(10) During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of KRS Chapter 338 which she or he has reason to believe exists in the workplace to the attention of the compliance safety and health officer.

(11) The compliance [(5) Compliance] safety and health officer is [officers are] authorized to deny [the right of] accompaniment [under this section] to any person whose conduct interferes with the [a fair and orderly] inspection.

(12) Accompaniment [The right of accompaniment] in areas containing trade secrets shall be subject to KRS 338.171.

(13) Only persons authorized access to [With regard to] information classified by an agency of the United States Government [in the interest of national security, only persons authorized to have access to such information] may accompany a compliance safety and health officer in areas containing such information.

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: April 26, 2021

FILED WITH LRC: April 27, 2021 at 9:39 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2021 at 10:00 am (ET). The meeting will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at <https://us02web.zoom.us/j/86731399141?pwd=Q2VOcDQ3ZkVBa>

UtoNERCMDNIKzJZz09, password 446261; or by telephone at (713) 353-0212, (888) 822-7517 toll free, conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since December 11, 1974, defines terms. Section 2 establishes the requirements pursuant to 29 C.F.R. 1903.8 relating to representatives of employers and employees. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(b) The necessity of this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky occupational safety and health (OSH) regulations to be as effective as the federal requirements. This regulation is equivalent.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since December 11, 1974, defines terms not used in the federal standard. Section 2 establishes the requirements pursuant to 29 C.F.R. 1903.8 relating to representatives of employers and employees. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are

technical and intended to maintain consistency with other regulations.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act

of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

2. State compliance standards. The Kentucky OSH Program is mandated to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard. This regulation is equivalent.

3. Minimum or uniform standards contained in the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(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. None.

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

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

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

#### LABOR CABINET

##### Department of Workplace Standards

##### Division of Occupational Safety and Health Compliance

##### Division of Occupational Safety and Health Education and Training (Amendment)

**803 KAR 2:122. Abatement [Application for extension of abatement].**

RELATES TO: KRS 338.141

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. [The Commissioner of the Department of Workplace Standards is empowered to extend abatement periods established pursuant to KRS 338.141(2) and 803 KAR 2:120. The function of this] This administrative regulation establishes [is to detail] the form of the application for extension of abatement, steps necessary to make application, content of the application, form and timing for the ruling of the Commissioner of the Department of Workplace Standards on the application, and, appeal available to the parties adversely affected by the decision on the application.

Section 1. (1) "Abatement" means action by an employer to comply with a cited regulation, standard, statute, or order to eliminate a hazard identified by the Division of Occupational Safety and Health Compliance.

(2) "Abatement date" means:

(a) For an uncontested citation item, the later of:

1. The date in the citation for abatement of the violation; or

2. The date approved by Division of Occupational Safety and Health Compliance or established in litigation as a result of a petition for modification of the abatement date (PMA); or

3. The date established in a citation by an informal settlement agreement.

(b) For a contested citation item for which the Kentucky Occupational Safety and Health Review Commission (KOSHRC) has issued a final order affirming the violation, the later of:

1. The date identified in the final order for abatement; or

2. The date computed by adding the period allowed in the citation for abatement to the final order date;

3. The date established by a formal settlement agreement.

(3) "Affected employees" means employees who exposed to a hazard identified as violation in a citation.

(4) "C.F.R." means Code of Federal Regulations.

(5) "Commissioner" is defined by 803 KRS 338.015(7).

(6) "Compliance officer" means a person authorized by the commissioner to conduct occupational safety and health inspections and investigations.

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

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

(9) "Final order date" means:

(a) For an uncontested citation item, the 15th working day after the employer's receipt of the citation;

(b) For a contested citation item:

1. The 30th day after the date a decision or order of a commission hearing officer has been docketed with the commission, unless a member of the commission has directed review; or

2. When review has been directed, the date the commission issues its decision or order disposing of all or pertinent part of a case; or

3. The date an appeals court issues a decision affirming the violation in a case when a final order of the review commission has been stayed.

(10) "Movable equipment" means a hand held or non-hand held machine or device, powered or unpowered, used to do work and moved within a worksite or between worksites.

(11) "Review commission" is defined by KRS 338.015(8).

(12) "Working days" means Monday through Friday and does not include Saturday, Sunday, federal, or state holidays, as well as the day of receipt of notice.

Section 2. Extension or Modification of Abatement. (1) An employer may apply for an [make application for] extension or modification of abatement [date] with the commissioner or designee [Commissioner of the Department of Workplace Standards or his designee the Director of Compliance.] when the employer [has] made a good faith effort to comply with the abatement requirements [of a citation.] but abatement is not [has not been] completed due to factors reasonably beyond the

employer's [his] control.

(2) The [Where] application for extension or modification of abatement [is made, said application] shall be made no [filed not] later than 4:30 p.m. Eastern Time on [the close of] the day [on which] abatement is required [was originally required].

(3) A later filed petition shall be accompanied by the employer's written statement of exceptional circumstances explaining the delay.

(4) The application for extension or modification of abatement shall be posted for ten (10) working days in a conspicuous location where all affected employees have notice or near the location where the violation occurred.

(5) [

Section 2.] An application for extension or modification of abatement shall [may] be in writing or may be made orally when [where] time does not permit a written application [writing].

(6) When an [Where] application for extension or modification of abatement is made orally, a written application shall follow the [said] oral request within three (3) working days.

(7) Every [The] application for extension or modification of abatement shall include [the following information]:

(a) [(1)] All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

(b) [(2)] The specific additional [abatement] time or modification necessary [in order] to achieve compliance.

(c) [(3)] The reason [reasons such] additional time or modification is necessary[, including the unavailability of professional and technical personnel or materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date].

(d) [(4)] All [available] interim steps implemented [being taken] to safeguard [the] employees against the [cited] hazard [during the abatement period].

(e) Certification the application for extension or modification of abatement was posted for ten (10) working days and, if appropriate, provided to the authorized representative of affected employees including the date the posting and service were made.

(8)(a) Affected employees or their representatives may file a written objection to the application with the commissioner within ten (10) working days of the date of posting of such petition or service upon an authorized representative.

(b) Failure to file an objection within ten (10) working days of the date of posting of such petition or service upon an authorized representative, shall constitute a waiver of any further right to object to the application.

(9) [

Section 3.] The commissioner or designee [Commissioner of the Department of Workplace Standards or his designated representative, the Director of Compliance,] shall rule on the application for extension or modification of abatement within three (3) working days of receipt of the application [same].

(10) [(1)] Where extension is granted, amended citation shall issue and the employer shall post the amended citation at or near the same location as the original citation as under 803 KAR 2:125. Adversely affected employees may appeal an extension or modification of abatement pursuant to KRS 338.141[(1)] and rules of the KOSHR.

(11) When an application for extension or modification of abatement [(2) Where extension] is denied, the employer may [adversely affected employers shall have right of] appeal pursuant to [as under] KRS 338.141[(1)] and rules of the KOSHR.

Section 3. Abatement Certification. (1) Within ten (10) calendar days after the abatement date, the employer shall certify to the commissioner that each cited violation is abated, except as provided in paragraph (2) of this section.

(2) The employer is not required to certify abatement if the compliance officer, during the on-site portion of the inspection:

(a) Observes, within twenty-four (24) hours after a violation is identified, that abatement occurred; and

(b) The citation states that abatement occurred.

(3) The employer's certification that abatement is complete shall include, for each cited violation, in addition to the information required by this administrative regulation, the date and method of abatement and a statement that affected employees and their representatives have been informed of the abatement.

Section 4. Abatement Documentation. (1) The employer shall submit documents demonstrating that abatement is complete for each cited violation.

(2) Documents demonstrating that abatement is complete may include evidence of the purchase or repair of equipment, photographic or video evidence of abatement, or other written records.

Section 5. Abatement Plan. (1) The commissioner may require an employer to submit an abatement plan when the time permitted for abatement is more than ninety (90) calendar days.

(2) The citation shall state that an abatement plan is required.

(3)(a) The employer shall submit an abatement plan for each cited violation within twenty-five (25) calendar days from the final order date when the citation indicates that such a plan is required.

(b) The abatement plan shall identify the violation and the steps to be taken to achieve abatement including a schedule for completing abatement and, where necessary, how employees will be protected from exposure to the hazard or violative condition until abatement is complete.

(3) Progress reports.

(a) An employer required to submit an abatement plan may be required to submit periodic progress reports for each cited violation.

(b) If an employer is required to submit periodic progress reports, the citation shall indicate:

1. That periodic progress reports are required and the citation items for which they are required;

2. The date the initial progress report shall be submitted, which may be no sooner than thirty (30) calendar days after submission of an abatement plan;

3. Additional progress reports that are required; and

4. The dates additional progress reports shall be submitted.

(c) For each violation, the progress report shall identify the action taken to achieve abatement and the date the action was taken.

Section 6. Employee Notification. (1) The employer shall inform affected employees and their representative about abatement activities by posting a copy of each document submitted to the commissioner or a summary of the document near the place where the violation occurred.

(2) When posting does not effectively inform employees and their representatives about abatement activities, the employer shall:

(a) Post each document or a summary of the document in a location where it is readily observable by affected employees and their representatives; or

(b) Take other steps to communicate fully to affected employees and their representatives about abatement activities.

(3)(a) The employer must inform employees and their representatives of their right to examine and copy all abatement documents submitted to the commissioner.

(b) An employee or an employee representative must submit a request to the employer to examine and copy abatement documents within three (3) working days of receiving notice that documents were submitted to the commissioner.

(c) The employer shall comply with an employee or employee representative request to examine and copy abatement documents within five (5) working days of receiving the request.

(4)(a) The employer shall ensure that notice to employees and employee representatives is provided at the same time or before the information is provided to the commissioner.

(b) The employer shall ensure that abatement documents are:

1. Not altered, defaced, or covered by other material; and

2. Remain posted for three (3) working days after submission to the commissioner.

Section 7. Transmitting Abatement Documents. (1) The employer shall include in each submission:

(a) The employer's name and address;  
(b) The inspection number;  
(c) The citation and item number;  
(d) A statement that information submitted is accurate; and  
(e) The signature of the employer or the employer's authorized representative.

(2) The postmark date is the date of submission for mailed documents.

(3) For documents transmitted by other means, the date the commissioner receives the document is the date of submission.

Section 8. Moveable Equipment. (1) The employer shall attach a warning tag or a copy of the citation to the operating controls or to the cited component of equipment moved within the worksite or between worksites.

(2) Attaching a copy of the citation meets the tagging requirement of this administrative regulation as well as the posting requirement established in 803 KAR 2:125.

(3) The employer shall attach a warning tag that:

(a) Properly warns employees about the nature of the violation involving the equipment; and

(b) Identifies the location of the citation issued.

(4)(a) If the violation is not abated, a warning tag or copy of the citation must be attached to hand held equipment immediately after the employer receives the citation.

(b) If the violation is not abated, a warning tag or copy of the citation must be attached to non-hand held equipment prior to moving the equipment within or between worksites.

(5) For the construction industry, a tag designed and used in accordance with 29 C.F.R. 1926.20(b)(3) and 29 C.F.R. 1926.200(h) meets the requirements of this section when the information required by this section is included on the tag.

(6) The employer must ensure the tag or copy of the citation attached to movable equipment is not altered, defaced, or covered, or obscured by other material.

(7) The employer shall ensure the tag or copy of the citation attached to movable equipment remains attached until:

(a) The violation is abated and all abatement verification documents required by this administrative regulation are submitted to the commissioner; or

(b) The cited equipment is permanently removed from service or is no longer in the employer's control; or

(c) The review commission issues a final order vacating the citation.

Section 9. The commissioner shall assume authority to modify abatement pursuant to KRS 338.141(2) when review commission jurisdiction expires.

Section 10. Incorporation by Reference. (1) The following nonmandatory appendices to 29 C.F.R. 1903.19 are incorporated by reference:

(a) Appendix A. Sample Abatement Certification Letter;

(b) Appendix B. Sample Abatement Plan or Progress Report;  
and

(c) Appendix C. Sample Warning Tag.[

~~Section 4. Where jurisdiction of the Review Commission has expired, the Commissioner of the Department of Workplace Standards shall again assume authority to modify abatement under KRS 338.141(2).]~~

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: April 26, 2021

FILED WITH LRC: April 27, 2021 at 9:39 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2021 at 10:00 am (ET). The meeting will be conducted by

live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at <https://us02web.zoom.us/j/86731399141?pwd=Q2V0cDQ3ZkVBaUtoNERCMDNlKzZJZz09>, password 446261; or by telephone at (713) 353-0212, (888) 822-7517 toll free, conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since December 11, 1974, defines terms. Section 2 establishes the requirements for an extension or modification of abatement. This amendment updates existing language and articulates 29 C.F.R. 1903.14 requirements. Sections 3, 4, 5, 6, 7, and 8 establish other abatement related requirements pursuant to 29 C.F.R. 1903.19 that were found in 803 KAR 2:060, Employer's responsibilities. Communicating all abatement requirements in a single regulation is more efficient for employers and employees. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 from the Regular Session of the 2017 General Assembly.

(b) The necessity of this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

(2) If this is an amendment to an existing administrative

regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since December 11, 1974, defines terms. Section 2 establishes the requirements for an extension or modification of abatement. This amendment updates existing language and articulates 29 C.F.R. 1903.14 requirements. Sections 3, 4, 5, 6, 7, and 8 establish other abatement related requirements pursuant to 29 C.F.R. 1903.19 that were found in 803 KAR 2:060, Employer's responsibilities. Communicating all abatement requirements in a single regulation is more efficient for employers and employees. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

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

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

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Restructuring to communicate all abatement requirements in one (1) regulation provides employers and employees with a clear understanding of the requirements. This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

2. State compliance standards. The Kentucky OSH Program is mandated to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard. This regulation is equivalent.

3. Minimum or uniform standards contained in the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(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. None.

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

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

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

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

**803 KAR 2:125. Posting of citation[citations].**

RELATES TO: KRS 338.101 [461]

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. KRS 338.061 authorizes the board to establish, modify or repeal standards and reference federal standards. This administrative regulation establishes procedures for [by KRS 338.051, the following rules and administrative regulations are adopted as they pertain to] the posting of citations by the employer.

Section 1. Definitions. (1) "Employee" is defined by KRS 338.015(2).

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

(3) "Review commission" is defined by KRS 338.015(8).

(4) "Working days" means Monday through Friday and does not include Saturday, Sunday, federal, or state holidays, as well as the day of receipt of notice.

Section 2. Posting [of Citations]. (1) Upon receipt of any citation [under KRS Chapter 338], the employer shall immediately post the unedited [such] citation, or a copy of the unedited citation [a copy thereof, unedited], at or near each place the [an] alleged violation [referred to in the citation] occurred, except as provided below.

(2) Where, because of the nature of the employer's operations, it is not practicable to post the unedited citation, or a copy of the unedited citation, at or near each place of alleged violation, the unedited [such] citation, or a copy of the unedited citation, shall be posted [, unedited,] in a prominent place where it is [will be] readily observable by all affected employees such as a [-For example, where employers are engaged in activities which are physically dispersed (see 803 KAR 2:060) the citation may be posted at the] location where [to which] employees report each day.

(3) The unedited citation, or a copy of the unedited citation, may be posted at the location employees carry out their activities if the employees do not primarily work at, or report to, a single location [Where employees do not primarily work at or report to a single location (see 803 KAR 2:060) the citation may be posted at the location from which the employees operate to carry out their activities].

(4) The employer shall [take steps to] ensure [that] the unedited citation or copy of the unedited citation is not altered, defaced, or obscured [covered by other material which would obscure the citation. Notices of de minimis violations need not be posted].

(5)(a) [(2)] Each unedited citation, or copy of the unedited citation [a copy thereof], shall remain posted until the violation is [has been] abated, or for three (3) working days, whichever is later.

(b) The filing by the employer of a notice [of intention] to contest shall not affect the [his] posting responsibility [under this section] unless [and until] the review commission issues a final order vacating the citation.

(3)(a) An employer that receives [to whom] a citation shall [has been issued may] post a notice indicating the citation is contested in the same location where the unedited [such] citation, or copy of the unedited citation, is posted [indicating that the citation is being contested before the review commission, and such].

(b) The notice may explain the reason[reasons] for the [such] contest.

(c) The employer may [also] indicate specific [that specified] steps [have been] taken to abate the violation [-

(4) Any employer failing to comply with the provisions of subsections (1) and (2) of this section shall be subject to citation and penalty of \$100 per first instance per authority of KRS 338.994].

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: April 26, 2021

FILED WITH LRC: April 27, 2021 at 9:39 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2021 at 10:00 am (ET). The meeting will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at <https://us02web.zoom.us/j/86731399141?pwd=Q2V0cDQ3ZkVBaUtoNERCMDNlKzZJZz09>, password 446261; or by telephone at (713) 353-0212, (888) 822-7517 toll free, conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since December 11, 1974, defines terms. Section 2 regulation establishes procedures for the posting of citations pursuant to 29 C.F.R. 1903.16. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 2017 from the Regular Session of the 2017 General Assembly.

(b) The necessity of this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health (OSH) Standards Board to promulgate OSH administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the

federal requirement. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since December 11, 1974, defines terms. Section 2 regulation establishes procedures for the posting of citations pursuant to 29 C.F.R. 1903.16. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with HB 50 2017 from the Regular Session of the 2017 General Assembly.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

2. State compliance standards. The Kentucky OSH Program is mandated to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard. This regulation is equivalent.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard. This regulation is equivalent.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(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. None.

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

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

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

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

**803 KAR 2:127. Failure to correct violation[~~, additional penalty~~].**

RELATES TO: KRS 338.141(1), 338.991(4)

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 ~~[The Commissioner of the Department of Workplace Standards is empowered by KRS 338.141(1) to issue a citation to an employer who has violated any requirement of KRS Chapter 338. KRS 338.991(4) empowers the Commissioner of the Department of Workplace Standards to propose penalties for any employer who fails to correct a violation for which a citation has been issued]. This administrative regulation establishes failure to correct violation procedures followed by the Department of Workplace Standards and employers~~ [is necessary as it prescribes the procedure to be followed by the Division of Occupational Safety and Health Compliance and by cited employers who have been notified of a failure to correct a violation and permits the commissioner to propose penalties according to KRS 338.991(4) for failure to correct a violation. This administrative regulation spells out the procedures to be used by the Division of Occupational Safety and Health Compliance in notifying the employer of a failure to correct an alleged violation stating the time limits within which the employer has to contest the notification of failure to correct].

Section 1. Definitions. (1) "Commissioner" is defined by KRS 338.015.

(2) "Employer" is defined in KRS 338.015(1).

(3) "Review commission" is defined in KRS 338.015(8).

(4) "Working day" means Monday through Friday and does not include Saturday, Sunday, federal or state holidays, and the day of receipt of notice.

Section 2. (1) If an inspection discloses that an employer ~~[has]~~ failed to correct an alleged violation for which a citation ~~was~~ [has been] issued within the period permitted for its correction, the commissioner ~~[district supervisor shall consult with the Director of Compliance who may consult with the general counsel, if appropriate, and he]~~ shall notify the employer ~~[by certified mail or by personal service by the compliance safety and health officer]~~ of the ~~[such]~~ failure and ~~[of]~~ the additional penalty proposed pursuant to ~~[under]~~ KRS 338.991(4) ~~[by reason of such failure]~~.

(2) The period for the correction of a violation ~~[for which a citation has been issued]~~ shall not begin ~~[to run]~~ until the entry of a final order of the review commission in the case of any ~~[review]~~ proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

Section 3 [2]. (1) Any employer receiving a notification of failure to correct a violation and ~~[of]~~ proposed additional penalty pursuant to ~~[authorized by]~~ KRS 338.991(4) may notify the commissioner or designee ~~[Director of Compliance]~~ in writing that she or he contests ~~[intends to contest such notification or proposed additional penalty before the review commission]~~.

(2)(a) The ~~[Such]~~ notice of ~~[intention to]~~ contest shall be transmitted ~~[postmarked]~~ within fifteen (15) working days of ~~[the]~~ receipt ~~[by the employer of the notification of failure to correct a violation and of proposed additional penalty]~~.

~~(b) The commissioner shall~~ [Director of Compliance shall immediately] transmit ~~the~~ [such] notice to the review commission in accordance with the rules of procedure prescribed by the commission.

Section 4[3]. Each notification of failure to correct a violation and ~~[of]~~ proposed additional penalty shall state that it shall be ~~a~~ [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 ~~the~~ [such] notification, the employer notifies the ~~commissioner or designee~~ [Director of Compliance] in writing that she or he contests ~~[he intends to contest]~~ the notification ~~of~~ ~~[or the]~~ proposed additional penalty before the review commission.

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: April 26, 2021

FILED WITH LRC: April 27, 2021 at 9:39 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2021 at 10:00 am (ET). The meeting will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at <https://us02web.zoom.us/j/86731399141?pwd=Q2VOcDQ3ZkVBaUtoNERCMDNIkZjZz09>, password 446261; or by telephone at (713) 353-0212, (888) 822-7517 toll free, conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since June 6, 1979, defines terms. Section 2 establishes the procedure regarding failure to correct a violation pursuant to 29 C.F.R. 1903.18. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 from the Regular Session of the 2017 General Assembly.

(b) The necessity of this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health (OSH) Standards Board to promulgate OSH administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH

regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since June 6, 1979, defines terms. Section 2 establishes the procedure regarding failure to correct a violation pursuant to 29 C.F.R. 1903.18. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 1902.3(d), 1953.1(a), 1953.1(b), and 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 1902.3(d), 1953.1(a), 1953.1(b), and 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement this administrative regulation.

(6) What is the source of the funding to be used for the

implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

2. State compliance standards. The Kentucky OSH Program is mandated to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard. This regulation is equivalent.

3. Minimum or uniform standards contained in the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(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. None.

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

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

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

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

**803 KAR 2:130. Informal conference [conferences].**

RELATES TO: KRS 338.101

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. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes procedures [by KRS 338.051, the following administrative regulation is adopted, identifying the procedure] to be followed in conducting informal conferences requested by the employer, employee or representative of employees.

Section 1. Definitions. (1) Commissioner is defined in KRS 338.015.

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

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

(4) "Working day" means Monday through Friday and does not include Saturday, Sunday, federal or state holidays, and the day of receipt of notice.

Section 2. Informal Conference[Conferences]. (1) At the request of an affected employer, employee or representative of employees, the commissioner or designee [~~Division of Occupational Safety and Health Compliance~~] may hold an informal conference for the purpose of discussing [any] issues raised by an inspection, investigation, citation, notice of proposed penalty, [variance,] or notice [of intention] to contest [~~The settlement of any issue at such conference shall be subject to the rules of procedure prescribed by the review commission.~~].

(2) If the informal conference is requested by the employer, an affected employee, or employee [his] representative may [shall] be afforded an opportunity to participate, at the discretion of the commissioner or designee.

(3) If the informal conference is requested by an employee or representative of employees, the employer may [shall] be afforded an opportunity to participate, at the discretion of the commissioner or designee.

(4) Any party may be represented by counsel [~~at such conference~~].

(5) No informal [such] conference or request for an informal [such] conference serves [shall operate] as a stay or extension of the [any] fifteen (15) working day [working-day] period to file [for filing] a notice of [intention to] contest pursuant to [~~as prescribed in~~] 803 KAR 2:140.

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: April 26, 2021

FILED WITH LRC: April 27, 2021 at 9:39 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2021 at 10:00 am (ET). The meeting will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at <https://us02web.zoom.us/j/86731399141?pwd=Q2VOcDQ3ZkVBAUtoNERCMDNlKzJZJz09>, password 446261; or by telephone at (713) 353-0212, (888) 822-7517 toll free, conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their

intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since December 11, 1974, defines terms. Section 2 establishes the requirements pursuant to 29 C.F.R. 1903.20 regarding informal conference procedures. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(b) The necessity of this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health (OSH) Standards Board to promulgate OSH administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since December 11, 1974, defines terms not used in the federal standard. Section 2 establishes the requirements pursuant to 29 C.F.R. 1903.20 regarding informal conference procedures. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(b) The necessity of the amendment to this administrative

regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

2. State compliance standards. The Kentucky OSH Program is

mandated to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard. This regulation is equivalent.

3. Minimum or uniform standards contained in the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(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. None.

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

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

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

#### LABOR CABINET

##### Department of Workplace Standards

##### Division of Occupational Safety and Health Compliance

##### Division of Occupational Safety and Health Education and

##### Training

##### (Amendment)

**803 KAR 2:140. Contest of citation[Employer and employee contests].**

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS 338.051, 338.061 [KRS Chapter 338]

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 [by KRS 338.051, the following 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. This [are adopted, governing the employer and employee contests before the review commission. The function of this] administrative regulation establishes procedures [is to inform the employer and employees of the proper procedure] to be followed in contesting a citation and/or penalty issued by the Commissioner of the Department of Workplace Standards.~~

Section 1. Definitions. (1) "Commissioner" is defined by KRS 338.015.

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

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

(4) "Review commission" is defined by KRS 339.015(8).

(5) "Working days" means Monday through Friday and does not include Saturday, Sunday, federal or state holidays, and the day of receipt of notice.

Section 2. [Contesting] Procedure. (1)(a) ~~An [Any] employer that receives a citation may [to whom a citation or notice or penalty has been issued may, under KRS Chapter] notify the commissioner [Commissioner of the Department of Workplace Standards] in writing that she or he contests [intends to contest] the citation, proposed penalty, or both [such citation, or notice of proposed penalty before the review commission].~~

~~(b) The [Such] notice of [intention to] contest shall be transmitted by the employer [postmarked] within fifteen (15) working days of [the] receipt of citation [by the employer of the notice of proposed penalty].~~

~~(c) The [Every] notice of [intention to] contest shall specify whether it is directed to the citation, proposed penalty, or both [the proposed penalty, or a variance].~~

~~(d) The commissioner shall immediately transmit the [such] notice to the review commission in accordance with the rules of procedure prescribed by the commission.~~

(2) Any employee or representative of employees of an employer that receives [to whom] a citation [has been issued] may:

(a) Notify [File a written notice with] the commissioner in writing that she or he contests [alleging that] the [period of] time established [fixed] in the citation for the abatement of the violation [is unreasonable].

(b) Notify [File a written notice to] the commissioner in writing that she or he contests [alleging that] the citation, or proposed penalty, or both [and penalties are unreasonable].

(c) The notice [Such notices] shall be postmarked within fifteen (15) working days of the receipt by the employer of the notice of the citation [proposed penalty or notice that no penalty is being proposed].

(d) The commissioner shall immediately transmit the [such] notice to the review commission in accordance with the rules of procedure prescribed by the commission.

~~(3) If any party is adversely affected by a variance issued under KRS 338.151 he may file an appeal to the review commission.]~~

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: April 26, 2021

FILED WITH LRC: April 27, 2021 at 9:39 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2021 at 10:00 a.m. (ET). The meeting will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at <https://us02web.zoom.us/j/86731399141?pwd=Q2VOcDQ3ZkVBaUtoNERCMDNlKzZJZz09>, password 446261; or by telephone at (713) 353-0212, (888) 822-7517 toll free, conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is

open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since December 11, 1974, defines terms. Section 2 establishes the requirements pursuant to 29 C.F.R. 1903.17 to contest a citation. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(b) The necessity of this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health (OSH) Standards Board to promulgate OSH administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since December 11, 1974, defines terms not used in the federal standard. Section 2 establishes the requirements pursuant to 29 C.F.R. 1903.17 to contest a citation. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017

General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

2. State compliance standards. The Kentucky OSH Program is mandated to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as

the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard. This regulation is equivalent.

3. Minimum or uniform standards contained in the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(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. None.

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

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

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

#### LABOR CABINET

##### Department of Workplace Standards

##### Division of Occupational Safety and Health Compliance

##### Division of Occupational Safety and Health Education and Training

##### (Amendment)

#### 803 KAR 2:170. Variance and Interim Order[Variances].

RELATES TO: KRS 338.153

STATUTORY AUTHORITY: KRS 333.051, 338.0161 [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 proceedings

to grant variances and other relief pursuant to KRS Chapter 338 [338.153 authorizes the granting of temporary and general variances from occupational safety and health standards to employers who can show that they are unable to comply with such standards by their effective dates, or they are providing conditions of employment as safe and healthful for those which would result from compliance with the terms of the standards. The following administrative regulation delineates the purpose and scope of the variances and the procedure to be followed when an employer wishes to be granted a variance].

Section 1. Definitions. (1) "Commissioner" is defined by KRS 338.015.

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

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

(4) "Review commission" is defined by KRS 338.015(8).

Section 2. (1) Purpose and Scope. (1) This administrative regulation contains rules or practice for administrative proceedings to grant variances and other relief under the Kentucky Occupational Safety and Health Act of 1972, KRS Chapter 338.

(2) These rules shall be construed to secure a prompt and just conclusion of proceedings subject thereto.

(3) This [The rules of practice in this] administrative regulation does [de] not apply to variances granted pursuant to [the granting of variances under] KRS 338.153(2)(c)].

2. Definitions. As used in this administrative regulation, unless the context clearly requires otherwise:

(1) "Act" means KRS Chapter 338.

(2) "Person" means an individual, partnership, association, corporation, business trust, legal representative, an organized group of individuals, or an agency, authority, or instrumentality of the United States or of a state.

(3) "Party" means a person admitted to participate in a hearing conducted in accordance with Sections 14 and through 24 of this administrative regulation. An applicant for relief and any affected employee shall be entitled to be named parties. The Division of Occupational Safety and Health, represented by the commissioner shall be deemed to be a party without the necessity of being named.

(4) "Affected employee" means an employee who would be affected by the grant or denial of a variance, or any of his authorized representatives, such as his collective bargaining agent.

Section 3. Petitions for Amendments to the Administrative Regulation. Any person may at any time petition the Commissioner of the Department of Workplace Standards in writing to revise, amend, or revoke any provisions of this administrative regulation. The petition shall set forth either the terms or the substance of rule desired, with concise statement of the reasons thereof and the effects thereof.

Section 4. Amendments to this Administrative Regulation. The commissioner may at any time revise, amend, or revoke any provisions of this administrative regulation].

Section 3 [5]. Effect of Variances and Interim Order. (1) All variances and interim orders granted pursuant to this administrative regulation shall have only future effect.

(2) The [In his discretion, the] commissioner may decline [to entertain] a variance or interim order [an] application for [a variance or] a subject or issue when [concerning which] a citation has been issued to the employer involved or a [and] proceeding on a [the] citation or [a] related issue [concerning a proposed penalty or period of abatement] is pending before the review commission, or any other court, [Kentucky Occupational Safety and Health Review Commission] until the completion of the [such] proceeding.

Section 4 [6]. Public Notice of a Granted Variance or Interim Order. Every final action granting a variance or interim order specifying the alternative to the standard the variance permits shall be posted on the Labor Cabinet Web site [under this administrative regulation shall be published in a newspaper of general circulation.

Every such final action shall specify the alternative to the standard involved which the particular variance permits].

Section 5. Applications and [7. Forms of] Documents [; Subscriptions; Copies]. (1) No particular form is prescribed for applications and other documents [papers which may be] filed [in proceedings] for a variance or interim order [under this administrative regulation].

(2) Applications [However, any applications] and other documents [papers] shall be clearly legible. [An original and six (6) copies of any application or other papers shall be filed. The original shall be typewritten. Clean carbon copies, or printed or processed copies are acceptable copies.]

(3)[(2)] Each application or other document [paper which is filed in proceedings under this administrative regulation] shall be signed [subscribed] by the person filing the application or document [same] or by her or his attorney or other authorized representative.

Section 6 [8]. Temporary Variance [Variances Under KRS 338.153(2)(a) (Temporary Variances)]. (1) Application [for variance]. Any employer requesting [or class of employers, desiring] a temporary variance shall [from a standard, or portion thereof, authorized by KRS 338.153(2)(a), may] file a written application with the commissioner [containing the information specified in subsection (2) of this section with the commissioner].

(2) An application [filed pursuant to subsection (1) of this section] shall include:

- (a) The name and address of the applicant;
- (b) The address of the place or places of employment involved;
- (c) The specific [A specification of the] standard [or portion thereof] from which the applicant seeks a variance;
- (d) A representation by the applicant supported by representations from [qualified] persons having firsthand knowledge of:

1. The [the] facts represented; [;]

2. Inability [that he is unable] to comply with the standard; and [or portion thereof by its effective date and]

3. A [a] detailed statement of the reasons therefore, [;]

(e) A statement of the steps the applicant took or [has taken and] will take, with specific dates [where appropriate], to protect employees against the hazard covered by the standard;

(f) A statement of when the applicant will [expects to be able to] comply with the standard and steps taken [of what steps he has taken and will take], with specific dates [where appropriate], to come into compliance with the standard;

(g) A statement of the facts establishing [the applicant would show to establish that]:

1. The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel, or of materials and equipment needed to come into compliance with the standard, or because necessary construction or alteration of facilities cannot be completed by the effective date;

2. The applicant [He] is taking all available steps to safeguard [his] employees against the hazards covered by the standard; and

3. The applicant [He] has an effective program for coming into compliance with the standard as quickly as practicable;

(h) Any request for a hearing [as provided in this administrative regulation];

(i) A statement attesting [that] the applicant:

1. Informed [has informed his] affected employees of application by providing [giving] a copy of the application [thereof] to the employees' [their] authorized representative; and [;]

2. Posted [posting a statement] at the place or places where notices to employees are normally posted, and by other appropriate means, a summary of the application including, [giving a summary of the application and specifying] where a copy of the full application may be examined [at the place or places where notices to employees are normally posted, and by other appropriate means]; and

(j) A description of how affected employees were [have been] informed of the application and [of] their right to petition the commissioner for a hearing [;

(3) Interim order.

(a) Application. An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order may include statements of fact and arguments as to why the order should be granted. The commissioner may rule ex parte upon the application.

(b) Notice of denial of application. If an application filed pursuant to paragraph (a) of this subsection is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by a brief statement of the grounds therefore.

(c) Notice of the grant of an interim order. If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties, and the terms of the order shall be published in a newspaper of general circulation. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

Section 7. Permanent Variance [9. Variances Under KRS 338.153(1) (Permanent Variances)]. (1) Application [for variance]. Any employer requesting [or class of employers desiring] a permanent variance shall [from a standard, or portion thereof, authorized by KRS 338.153(1), may] file a written application with the commissioner [containing the information specified in subsection (2) of this section with the commissioner].

(2) Contents. An application [filed pursuant to subsection (1) of this section] shall include:

(a) The name and address of the applicant;  
(b) The address of the place or places of employment involved;  
(c) A description of the condition, practice, means, method, operation or process [conditions, practices, means, methods, operations, or processes used or] proposed [to be used] by the applicant;

(d) A statement showing how the condition, practice, means, method, operation or process [conditions, practices, means, methods, operations, or processes used or] proposed [to be used would] provide employment and places of employment to employees that [which] are as safe and healthful as [those] required by the standard [from which a variation is sought];

(e) Certification [A certification that] the applicant [has] informed all [his] employees of the [his] application that includes:

1. Providing [Giving] a copy of the application [thereof] to the employees' [their] authorized representative; and

2. Posting at the place or places where notices to employees are normally posted, and by other appropriate means, a summary of the application including where a copy of the full application may be examined [a statement giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted (or in lieu of such summary, the posting of the application itself); and

3. By other appropriate means];

(f) Any request for a hearing [as provided in this administrative regulation]; and

(g) A description of how employees were [have been] informed of the application and [of] their right to petition the commissioner for a hearing.

(3) Interim order.

(a) Application. An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order may include statements of fact and arguments as to why the order should be granted. The commissioner may rule ex parte upon the application.

(b) Notice of denial of application. If an application filed pursuant to paragraph (a) of this subsection is denied, the applicant shall be given prompt notice of denial, which shall include, or be accompanied by a brief statement of the grounds therefore.

(c) Notice of the grant of an interim order. If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties, and the terms of the order shall be

published in a newspaper of general circulation. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.]

Section 8. Interim Order. (1) Application. An application may be made for an interim order in lieu of a variance or an order to be effective until a decision on a temporary or permanent variance application is rendered.

(a) An application made for an interim order in lieu of a temporary or permanent variance shall include the information required in this administrative regulation for a permanent variance.

(b) An application made for an interim order to be effective until a decision on a temporary or permanent variance application is rendered shall include statements of fact why the interim order should be granted.

(c) The commissioner may rule ex parte upon any application for an interim order.

(2) Denial of application. If an interim order application is denied, the commissioner shall provide written notice to the applicant accompanied by a statement of the grounds therefore.

(3) Grant of an interim order.

(a) If an interim order is granted, a copy of the order shall be provided to the applicant and, if necessary, other affected parties.

(b) The applicant shall provide notice within five (5) working days to affected employees by the same means used to inform them of the application.

(c) The interim order shall be published on the Labor Cabinet's Web site until it expires.

Section 9 [40]. Modification, Revocation, and Renewal of a Variance or Interim Order [Rules or Orders]. (1) Modification or revocation. An affected employer or an affected employee may apply in writing to the commissioner for a modification or revocation of a variance [rule] or interim order issued pursuant to [under] KRS 338.153. The application shall contain:

(a) The name and address of the applicant;  
(b) A description of the relief [which is] sought;  
(c) A statement setting forth with particularity the grounds for relief;

(d) If the applicant is an employer, [a] certification [that] the applicant [has] informed [his] affected employees of the application by:

1. Giving a copy [thereof] to the employees' [their] authorized representative;

2. Posting at the place or places where notices to employees are normally posted, and by other appropriate means, a summary of the application including where a copy of the full application may be examined or posting the application in lieu of the summary [Posting at the place or places where notices to employees are normally posted, a statement giving a summary of the application and specifying where a copy of the full application may be examined (or, in lieu of the summary, posting the application itself); and

3. Other appropriate means].

(e) If the applicant is an affected employee, [a] certification that a copy of the application was [has been] furnished to the employer; and

(f) Any request for a hearing [as provided in this administrative regulation].

(2)(a) The commissioner may [on his own motion proceed to] modify or revoke a variance [rule] or interim order [issued under KRS 338.153].

(b) The [In such event, the] commissioner shall:

1. Publish a notice on the Labor Cabinet Web site [cause to be published in a newspaper of general circulation a notice] of her or his intention which affords [affording] interested persons an opportunity to submit written data, views, or arguments regarding the proposal and informing the affected employer and employees of their right to request a hearing, and

2. Take [shall taken such] other appropriate action [as may be appropriate] to provide [give actual] notice to affected employees.

(c) Any request for a hearing shall include a short and plain

statement of:

1. ~~[(a)]~~ How the proposed modification or revocation affects ~~[would affect]~~ the requesting party; and
2. ~~[(b)]~~ What the requesting party seeks ~~[would seek]~~ to show on the subject ~~[subjects]~~ or issue ~~[issues]~~ involved.
- (3) Renewal. Any variance ~~[final rule]~~ or interim order issued pursuant to ~~[under]~~ KRS 338.153 may be renewed or extended ~~[as permitted by the applicable section and in the manner prescribed for its issuance]~~.

Section 10 [14]. Action on Applications. (1) Defective applications.

- (a) If an application ~~[filed pursuant to this administrative regulation]~~ does not conform to this administrative regulation ~~[the applicable section]~~, the commissioner may deny the application.
- (b) The commissioner shall give the applicant prompt written ~~[Prompt]~~ notice of the denial ~~[of an application shall be given to the applicant]~~.
- (c) A notice of denial shall include, or be accompanied by, a brief statement of the grounds for the denial.
- (d) A denial of an application ~~[pursuant to this subsection]~~ shall not prejudice ~~[be without prejudice to]~~ the filing of another application.

(2) Adequate applications.

- (a) If an application is not ~~[has not been]~~ denied ~~[pursuant to subsection (1) of this section]~~, the commissioner shall publish notice of the application on the Labor Cabinet's Web site ~~[cause to be published in a newspaper of general circulation a notice of the filing of the application]~~.
- (b) The ~~[A]~~ notice ~~[of the filing of an application]~~ shall include:
  1. The terms, or an accurate summary, of the application;
  2. An invitation to ~~[interested persons to]~~ submit ~~[within a stated period of time]~~ written data, views, or arguments regarding the application; and
  3. Information to ~~[affected employers and employees of any right to]~~ request a hearing on the application.

Section 11 [42]. Requests for a Hearing on an Application ~~[Hearings on Applications]~~. (1) Request for hearing. Within the time established in the notice of the ~~[allowed by a notice of the filing of an]~~ application, any affected employer or affected employee may file ~~[with the commissioner, in quadruplicate,]~~ a request for a hearing on the application with the commissioner.

(2) Contents of a request for a hearing. A request for a hearing ~~[filed pursuant to subsection (1) of this section]~~ shall include:

- (a) A concise statement of facts showing how the employer or employee is ~~[would be]~~ affected by the relief applied for;
- (b) A specification of any statement or representation in the application which is denied, and a concise summary of the evidence that would be adduced in support of each denial; and
- (c) Any views or arguments on any issue of fact or law presented.

Section 12 [43]. Consolidation of Proceedings. The commissioner ~~[on his own motion or that of any party]~~ may consolidate or contemporaneously consider two (2) or more proceedings involving ~~[which involve]~~ the same or closely related issues.

Section 13 [44]. Notice of Hearing. (1) Service. Upon request for a hearing ~~[as provided in this administrative regulation, or upon his own initiative]~~, the commissioner shall serve a ~~[, or cause to be served, a reasonable]~~ notice of hearing.

(2) Contents. A notice of hearing ~~[served under subsection (1) of this section]~~ shall include:

- (a) The time, place, and nature of the hearing;
- (b) The legal authority under which the hearing is to be held;
- (c) A specification of issues of fact and law; and
- (d) A designation of a hearing examiner as an authorized representative of the commissioner if ~~[is]~~ the commissioner is not conducting ~~[going to conduct]~~ the hearing.

(3) Referral to hearing examiner. A copy of the hearing notice ~~[a notice of hearing served pursuant to subsection (1) of this~~

~~section]~~ shall be provided ~~[referred]~~ to the hearing examiner ~~[designated therein, together]~~ with a copy of the original application and a copy of any written request for a hearing ~~[thereon filed pursuant to this administrative regulation]~~.

Section 14 [45]. Manner of Service. (1) Service of any document upon any party may be made by personal delivery, mail, or other means ~~[of, or by mailing, a copy of the document to the last known address of the party]~~.

(2) If service is by personal delivery, the ~~[The]~~ person serving the document shall certify ~~[to]~~ the manner and ~~[the]~~ date of ~~[the]~~ service.

Section 15 [46]. Hearing Examiners ~~[;]~~ Powers and Duties. (1) Powers. The commissioner or ~~[a]~~ hearing examiner ~~[designated by the commissioner to preside over a hearing]~~ shall have all powers necessary ~~[or appropriate]~~ to conduct a fair, full, and impartial hearing, including the authority to ~~[following]~~:

- (a) Administer ~~[To administer]~~ oaths and affirmations;
- (b) Rule ~~[To rule]~~ upon offers of proof and receive relevant evidence;
- (c) Provide ~~[To provide]~~ for discovery and ~~[to]~~ determine its scope;
- (d) Regulate ~~[To regulate]~~ the course of the hearing and ~~[the]~~ conduct of the parties and their counsel ~~[therein]~~;
- (e) Consider ~~[To consider]~~ and rule upon procedural requests;
- (f) Hold ~~[To hold]~~ conferences for ~~[the]~~ settlement or simplification of the issues by consent of the parties;
- (g) Make ~~[To make]~~, or to cause to be made, an inspection of the employment or place of employment involved;
- (h) Make ~~[To make]~~ decisions in accordance with KRS Chapter 338; and
- (i) Take ~~[To take]~~ any other appropriate action authorized by KRS Chapter 338 or any administrative regulation issued pursuant thereto.

(2) Private consultation. Except to the extent required for the disposition of ex parte matters, a hearing examiner may not consult a person or party on any fact at issue, unless upon notice and opportunity for all parties to participate.

(3) Disqualification.

(a) When a hearing examiner deems herself or himself disqualified to preside over a particular hearing, she or he shall withdraw therefrom by notice on the record directed to the commissioner.

(b) Any party who deems a hearing examiner for any reason to be disqualified to preside, or to continue to preside, over a particular hearing, may file ~~[with the commissioner]~~ a motion with the commissioner to disqualify and remove the hearing examiner supported ~~[, such motion to be supported]~~ by affidavits setting forth all alleged grounds for disqualification.

(c) The commissioner shall rule upon the motion.

(4) Contumacious conduct; failure or refusal to appear or obey the rulings of the ~~[a presiding]~~ hearing examiner.

(a) Contumacious conduct at any hearing before the hearing examiner shall be grounds for conclusion of the hearing.

(b) If a witness or a party refuses to answer a question ~~[after being directed to do so]~~, or refuses to obey an order to provide or permit discovery, the hearing examiner may make such orders with regard to the refusal as are just and appropriate, including an order denying the application of an applicant or regulating the contents of the record of the hearing.

(c) Referral to Kentucky Rules of Civil Procedure. On any procedural question not regulated by this administrative regulation, the ~~[a]~~ hearing examiner shall be guided to the extent practicable by any pertinent provisions of the Kentucky Rules of Civil Procedure.

Section 16 [47]. Prehearing Conferences. (1) Convening a conference. Upon her or his own motion or ~~[the]~~ motion of a party, the hearing examiner may direct the parties or their counsel to meet ~~[with him]~~ for a conference to consider:

- (a) Simplification of the issues;
- (b) Necessity or desirability of amendments to documents for

purposes of clarification, simplification, or limitation;

(c) Stipulations, admissions of fact, and [ef] contents and authenticity of documents;

(d) Limitation of the number of parties or [and-of] expert witnesses; and

(e) Other matters [~~Such other matters as may tend~~] to expedite the disposition of the proceeding, and [te] assure a just conclusion [~~thereof~~].

(2) Record of conference.

(a) The hearing examiner shall make an order which recites the:

1. Action [action] taken at the conference;

2. Amendments [~~the amendments~~] allowed to any documents which have been filed, and the agreements made between the parties as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements. [-]

(b) Such [~~and such~~] order, when entered, controls the subsequent course of the hearing, unless modified at the hearing, to prevent manifest injustice.

Section 17 [48]. Consent Findings and [Rules-of] Orders. (1) General.

(a) At any time before the reception of evidence in any hearing[s], or during any hearing, a reasonable opportunity may be afforded to permit negotiation by the parties of an agreement containing consent findings and an [~~a rule-of~~] order disposing of the whole or any part of the proceeding.

(b) The allowance of such opportunity and the duration thereof shall be in the discretion of the [presiding] hearing examiner, after considering [~~consideration-of~~] the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement which will result in a just disposition of the issues involved.

(2) Contents. Any agreement containing consent findings [~~and rule~~] or order disposing of a proceeding shall include [~~also provide~~]:

(a) That the finding [rule] or order shall have the same force and effect as if made after a full hearing;

(b) That the entire record on which any finding [rule] or order may be based shall consist solely of the application and the agreement;

(c) A waiver of any further procedural steps before the hearing examiner and the commissioner; and

(d) A waiver of any right to challenge or contest the validity of the finding [~~findings and of the rule~~] or order made in accordance with the agreement.

(3) Submission. On or before the expiration of the time granted for negotiations, the parties or their counsel may:

(a) Submit the proposed agreement to the [presiding] hearing examiner for her or his consideration; or

(b) Inform the [presiding] hearing examiner that agreement cannot be reached.

(4) Disposition. In the event an agreement containing consent findings [~~and rule~~] or order is submitted within the time allowed [~~therefore~~], the [presiding] hearing examiner may accept such agreement by issuing her or his decision based upon the agreed findings.

Section 18 [49]. Discovery. (1) Depositions.

(a) 1. For reasons of unavailability or for other good cause shown, the testimony of any witness may be taken by deposition.

2. Depositions may be taken orally or upon written interrogatories before any person designated by the [presiding] hearing examiner and having power to administer oaths.

(b) Application. Any party desiring to take the deposition of a witness shall [~~may~~] make application in writing to the [presiding] hearing examiner, setting forth:

1. The reasons the [~~why such~~] deposition should be taken;

2. The date, time [~~when~~], [~~the~~] place [~~where~~], [~~and the~~] name, and [~~post-office~~] address of the person before whom the deposition is to be taken;

3. The name and [ef] address of each witness; and

4. The subject matter concerning which each witness is

expected to testify.

(c) Notice. Such notice as the [presiding] hearing examiner may order shall be given by the party taking the deposition to every other party.

(d) Taking and receiving in evidence.

1. Each witness testifying upon deposition shall have the right to cross-examine her or him.

2. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, read to the witness, subscribed by him, and certified by the officer before whom the deposition is taken.

3. Thereafter, the officer shall seal the deposition, with two (2) copies thereof, in an envelope and mail the same by registered mail to the [presiding] hearing examiner.

4. Subject to such objections to the questions and answers as were noted at the time of taking the deposition and would be valid were the witness personally present and testifying, such deposition may be read and offered in evidence by the party taking it as against any party who was present, represented at the taking of the deposition or who had due notice thereof.

(e) No part of a deposition shall be admitted in evidence unless there is a showing that the reasons for the taking of the deposition in the first instance exist at the time of hearing.

(2) Other discovery. Whenever appropriate to a just disposition of any issue in a hearing, the [presiding] hearing examiner may allow discovery by any other appropriate procedure, such as by written interrogatories upon a party, production of documents by a party, or by entry for inspection of the employment or place of employment involved.

Section 19 [20]. Hearings. (1) Order of proceeding. Except as may be ordered otherwise by the [presiding] hearing examiner, the party applicant for relief shall proceed first at a hearing.

(2) Burden of proof. The party applicant shall have the burden of proof.

(3) Evidence.

(a) Admissibility.

1. A party shall be entitled to present its [his] case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct cross-examination as may be required for a full and true disclosure of the facts.

2. Any oral or documentary evidence may be received, but the hearing [~~a presiding~~] examiner shall exclude evidence that [~~which~~] is irrelevant, immaterial, or unduly repetitious.

(b) Testimony of witnesses. The testimony of a witness shall be upon oath or affirmation administered by the [presiding] hearing examiner.

(c) Objections.

1. a. If a party objects to the admission or rejection of any evidence, or to the limitation of the scope of any examination or cross-examination, or to the failure to limit such scope, it [he] shall state briefly the grounds for such objection.

b. Rulings on all objections shall appear in the record.

2. Only objections made before the [presiding] hearing examiner may be relied upon subsequently in a proceeding.

(d) Exceptions. Formal exception to an adverse ruling is not required.

(4) Official notice. Official notice may be taken of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice or concerning which the Division of Occupational Safety and Health Compliance by reason of its functions is presumed to be expert[-] provided[-, that] the parties shall be given adequate notice, at the hearing or by reference in the presiding hearing examiner's decision, of the matters so noticed, and shall be given adequate opportunity to show the contrary.

(5) Transcript.

(a) Hearings shall be stenographically reported.

(b) Copies of the transcript may be obtained by the parties upon written application filed with the reporter, and upon the payment of fees at the rate provided in the agreement with the reporter.

Section 20 [24]. Decisions of Hearing Examiner [Examiners]. (1) Proposed findings of fact, conclusions, and [rules or] orders.

(a) Within ten (10) calendar days after receipt of notice that the transcript of the testimony has been filed or such additional time as the [presiding] hearing examiner may allow, each party may file with the hearing examiner proposed findings of fact, conclusions of law, [and rule] or order, together with a supporting brief expressing the reasons for such proposals.

(b) Such proposals and briefs shall be served on all [other] parties, and shall cite [refer] to all portions of the record and to all authorities relied upon in support of each proposal.

(2) Decision of the hearing examiner. Within a reasonable time after the time allowed for the filing of proposed findings of fact, conclusions of law, and [rule or] order, the [presiding] hearing examiner shall make and serve [upon each party] her or his decision upon each party, which shall become final on [upon] the 20th calendar day after service thereof, unless exceptions are filed thereto, as provided in [Section 22 of] this administrative regulation. The decision of the hearing examiner shall include:

(a) A statement of findings and conclusions, with reasons and bases therefore, upon each material issue of fact, law, or discretion presented on the record; and

(b) The appropriate [rule] order, relief, or denial thereof.

(3) The decision of the hearing examiner shall be based upon a consideration of the whole record, and shall state all facts officially noticed and relied upon, and based on [~~It shall be made on the basis of~~] a preponderance of reliable and probative evidence.

Section 21 [22]. Exceptions. (1) Within twenty (20) days after service of the hearing examiner's decision [~~a decision of a presiding hearing examiner~~], any party may file with the hearing examiner written exceptions thereto with supporting reasons.

(2) Such exceptions shall refer to the specific findings of fact, conclusions of law, or terms of the [rule or] order excepted to, the specific pages of transcript relevant to the suggestions, and shall suggest corrected findings of [of] fact, conclusions of law, or terms of the [rule or] order.

(3) Upon receipt of any exceptions, the hearing examiner shall establish [~~fix~~] a time for filing any objections to the exceptions and any supporting reasons.

Section 22 [23]. Transmission of Record. (1) If exceptions are filed, the hearing examiner shall transmit the record of the proceeding to the commissioner for review.

(2) The record shall include:

(a) The [~~the~~] application;[;]

(b) Any [~~any~~] request for hearing thereon;[;]

(c) Motions [~~motions~~] and requests filed in written form;[;]

(d) Rulings [~~rulings~~] thereon;[;]

(e) The [~~the~~] transcript of the testimony taken at the hearing, together with the exhibits admitted in evidence;[;]

(f) All [~~any~~] documents or papers filed in connection with prehearing conference;[;]

(g) Proposed [~~such proposed~~] findings of fact, conclusions of law, [rules] or orders, and supporting reasons, as may have been filed; and.

(h) The [~~the~~] hearing examiner's decision, and such exceptions, statements of objections, and briefs in support thereof, as may have been filed in the proceeding.

Section 23 [24]. Decision of the Commissioner. (1) [Commissioner of the Department of Workplace Standards.] If exceptions to a decision of a hearing examiner are taken pursuant to [Section 22 of] this administrative regulation, the commissioner shall upon consideration thereof, together with the record references and authorities cited in support thereof, and any objections to exceptions and supporting reasons, make her or his decision.

(2) The decision may affirm, modify, or set aside, in whole or part, the findings, conclusions, and the [rule or] order contained in the decision of the presiding hearing examiner, and shall include a statement of reasons or bases for the actions taken on each

exception presented.

Section 24 [25]. Motion for Summary Decision.

(1)(a) Any party may, at least twenty (20) days before the date established [~~fixed~~] for any hearing pursuant to [~~under Sections 14 through 24 of~~] this administrative regulation, move with or without supporting affidavits for a summary decision in his favor on all or any part of the proceeding.

(b) Any other party may, within ten (10) days after service of the motion, serve opposing affidavits or countermove for summary decision.

(c) The presiding examiner may, in her or his discretion, set the matter for argument and call for the submission of briefs.

(2) The filing of any documents pursuant to [~~under subsection (1) of~~] this section shall be with the hearing examiner, and copies of any such documents shall be served in accordance with [Section 15 of] this administrative regulation.

(3)(a) The hearing examiner may grant such motion if the pleadings, affidavits, material obtained by discovery or otherwise obtained, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision.

(b) The hearing examiner may deny such motion whenever the moving party denies access to information by means of discovery to a party opposing the motion.

(4)(a) Affidavits shall set forth such facts as would be admissible in evidence in a Kentucky court of law and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

(b) When a motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of this pleading; her or his response must set forth specific facts showing that there is genuine issue of fact for the hearing.

(5) Should it appear from the affidavits of a party opposing the motion that she or he cannot for reasons stated present by affidavit facts essential to justify his opposition, the hearing examiner may deny the motion for summary decision or may order a continuance to permit affidavits to be obtained or discovery to be had or may make such other order as is just.

(6) The denial of all or any part of a motion for summary decision by the hearing examiner shall not be subject to interlocutory appeal to the commissioner unless the hearing examiner certified in writing that:

(a) The [~~That the~~] ruling involves an important question of law or policy as to which there is substantial ground for difference of opinion; and

(b) An [~~That an~~] immediate appeal from the ruling may materially advance the ultimate termination of the proceeding.

(7) The allowance of such an interlocutory appeal shall not stay the proceeding before the hearing examiner unless the commissioner shall so order.

Section 25 [26]. Summary Decision. (1) No genuine issue of material fact.

(a) Where no genuine issue of [a] material fact is found to have been raised, the hearing examiner may issue an initial decision to become final twenty (20) days after service thereof, unless, within such period of time any party files [~~has filed~~] written exceptions to the decision.

(b) If any timely exception is filed, the hearing examiner shall fix a time for filing any supporting reasons.

(c) Thereafter, the commissioner, after consideration of the exceptions and any supporting briefs filed therewith and of any objections to the exceptions and any supporting reasons, may issue a final decision.

(d) [(b)] An initial decision and a final decision [~~made under this subsection~~] shall include a statement of:

1. Findings and conclusions, and the reasons or bases thereof, on all issues presented; and

2. The terms and conditions of the [rule or] order made.

(2) Hearings on issues of fact, where a genuine material question of fact is raised, the hearing examiner shall, and in any

other case [he] may, set the case for an evidentiary hearing in accordance with [Sections 14 through 24 of] this administrative regulation.

Section 26 [27]. Effect of Appeal of a Hearing Examiner's Decision. A hearing examiner's decision [under this administrative regulation] shall not be final [operative] pending a decision on appeal by the commissioner.

Section 27 [28]. Finality for Purposes of Judicial Review. A [Only a] decision by the commissioner shall be deemed final agency action for purposes of judicial review.

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: April 26, 2021

FILED WITH LRC: April 27, 2021 at 9:39 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2021 at 10:00 am (ET). The meeting will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at <https://us02web.zoom.us/j/86731399141?pwd=Q2V0cDQ3ZkVBaUtoNERCMDNIKzZjZz09>, password 446261; or by telephone at (713) 353-0212, (888) 822-7517 toll free, conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since December 11, 1974, of this administrative regulation defines terms. Sections 2 through 26 establish proceedings to grant variances and other relief pursuant to KRS 338 and 29 C.F.R. Part 1905. More specifically, Section 2 establishes the effect of variances and interim orders. Section 3 requires granted variances or interim orders to be published on the Labor Cabinet's website. Section 4 establishes the requirement that, while there is no required form, documents under this regulation must be legible. Section 5 establishes the procedures for application of a temporary variance. Section 6 establishes the procedures for application of a permanent variance. Section 7 establishes the procedures for application of an interim order. Section 8 establishes the procedures for modification, revocation, and renewal of a variance or interim order. Section 9 establishes procedures for action on applications. Section 10 establishes procedures for requests for a hearing on an application. Section 11 establishes procedures for consolidation of proceedings. Section 12 establishes procedures for notices of hearings. Section 13 establishes the requirements for manner of service. Section 14 establishes powers and duties for a hearing examiner. Section 15 establishes procedures for prehearing conferences. Section 16 establishes procedures for consent findings and orders. Section 17 establishes procedures for discovery. Section 18 establishes procedures for hearings. Section 19 establishes requirements for decisions of hearing examiners. Section 20 establishes procedures

for exceptions to a hearing examiner decision. Section 21 establishes requirements for transmission of the record of proceedings. Section 22 establishes the requirements for the decision of the commissioner. Section 23 establishes the requirements for motions for summary decisions. Section 24 establishes requirements for summary decisions. Section 25 establishes the effect of an appeal on the hearing examiner's decision. Section 26 addresses the finality for purposes of judicial review. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance House Bill (HB) 50 from the Regular Session of the 2017 General Assembly.

(b) The necessity of this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since December 11, 1974, of this administrative regulation defines terms. Sections 2 through 26 establish proceedings to grant variances and other relief pursuant to KRS 338 and 29 C.F.R. Part 1905. More specifically, Section 2 establishes the effect of variances and interim orders. Section 3 requires granted variances or interim orders to be published on the Labor Cabinet's website. Section 4 establishes the requirement that, while there is no required form, documents under this regulation must be legible. Section 5 establishes the procedures for application of a temporary variance. Section 6 establishes the procedures for application of a permanent variance. Section 7 establishes the procedures for application of an interim order. Section 8 establishes the procedures for modification, revocation, and renewal of a variance or interim order. Section 9 establishes procedures for action on applications. Section 10 establishes procedures for requests for a hearing on an application. Section 11 establishes procedures for consolidation of proceedings. Section 12 establishes procedures for notices of hearings. Section 13 establishes the requirements for manner of service. Section 14 establishes powers and duties for a hearing examiner. Section 15 establishes procedures for prehearing conferences. Section 16 establishes procedures for consent findings and orders. Section 17 establishes procedures for discovery. Section 18 establishes procedures for hearings. Section 19 establishes requirements for decisions of hearing examiners. Section 20 establishes procedures for exceptions to a

hearing examiner decision. Section 21 establishes requirements for transmission of the record of proceedings. Section 22 establishes the requirements for the decision of the commissioner. Section 23 establishes the requirements for motions for summary decisions. Section 24 establishes requirements for summary decisions. Section 25 establishes the effect of an appeal on the hearing examiner's decision. Section 26 addresses the finality for purposes of judicial review. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance House Bill (HB) 50 2017 from the Regular Session of the 2017 General Assembly.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

2. State compliance standards. The Kentucky OSH Program is mandated to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard. This regulation is equivalent.

3. Minimum or uniform standards contained in the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(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. None.

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

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

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

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

**803 KAR 2:220. Refusal [Employees' refusal] to work when dangerous condition[conditions] exist.**

RELATES TO: KRS 338.121(3)(a)

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 requirements regarding employee refusal to work when a dangerous condition exists [The Commissioner of the Department of Workplace Standards has the authority and responsibility for promulgating administrative regulations necessary to accomplish the purposes of this chapter. The function of this administrative regulation is to afford employees the right to refuse to be exposed to dangerous conditions without subsequent employer discrimination].

Section 1. Definitions. (1) "Employee" is defined by KRS 338.015(2).

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

Section 2. Employee Refusal to Work. (1) When [Where] an employee is confronted with a choice between not performing assigned tasks or being subjected to death or serious injury or illness arising from a dangerous condition at the workplace, the [such] employee may refuse in good faith to expose herself or himself [himself/herself] to the dangerous condition.

(2) The condition causing the employee's apprehension of death, serious injury, or serious illness [or injury] must be of such a nature that a reasonable person under the same or similar circumstances [then] confronting the employee would conclude [that] there is a real danger of death, serious injury, or serious illness [or serious injury] and [that] there is insufficient time, due to the urgency of the situation, to eliminate the danger through [resort to] regular statutory enforcement channels.

(3) Additionally, [In addition in such circumstances,] the employee, where possible, must [also] have sought corrective action from her or his [his/her] employer [,] and was [been] unable to obtain [a] correction of the dangerous condition.

(4) [(2)] When an employee in good faith refuses to expose herself or himself [himself/herself] to a dangerous condition at the workplace, the employee [he/she] shall not be subjected to subsequent discrimination by the employer.

(5) The [(3) Provided, however, that the] provisions of this administrative regulation shall not apply if an [it is found that the] employee acted unreasonably or in bad faith.

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: April 26, 2021

FILED WITH LRC: April 27, 2021 at 9:39 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2021 at 10:00 am (ET). The meeting will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at <https://us02web.zoom.us/j/86731399141?pwd=Q2VOcDQ3ZkVBAUtoNERCMDNlKzJZJz09>, password 446261; or by telephone at (713) 353-0212, (888) 822-7517 toll free, conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their

intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since August 11, 1989, defines terms. Section 2 establishes requirements regarding employee refusal to work when a dangerous condition exists pursuant to 29 C.F.R. 1977.12. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(b) The necessity of this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since August 11, 1989, defines terms. Section 2 establishes requirements regarding employee refusal to work when a dangerous condition exists pursuant to 29 C.F.R. 1977.12. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

2. State compliance standards. The Kentucky OSH Program is mandated to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard. This regulation is equivalent.

3. Minimum or uniform standards contained in the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(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. None.

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

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

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

#### LABOR CABINET

##### Department of Workplace Standards

##### Division of Occupational Safety and Health Compliance

##### Division of Occupational Safety and Health Education and

##### Training

##### (Amendment)

#### 803 KAR 2:230. Pay during inspection activity[activities].

RELATES TO: KRS 338.111, 338.121(3)

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 [The commissioner has the authority and responsibility for promulgating] 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 this chapter]. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. [Employee participation in walk-around inspections provides a necessary source of information to the representatives of the commissioner concerning the presence of work place hazards. Fear of economic loss through denial of pay during the walkaround inspection is a denial of free exercise of the right of an employee representative to participate in the walkaround inspection. The purpose of this] This administrative regulation establishes employee payment during inspection activity [for is to encourage and to promote employee representative participation in walk-around inspections by providing for pay during the conduct of walk-around inspections and related activity].

Section 1. Definitions. (1) "Commissioner" is defined by KRS 338.015.

(2) "Compliance 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. (1) Employees, when on regular duty time, shall be paid [at] their regular rate of pay during the conduct of the walkaround inspection [walk-around inspections] and other inspection related activities such as responding to compliance officer questions and [of compliance officers, or] participating in an opening and closing conference [conferences].

(2) An employer's failure to pay employees for time engaged in inspection activity [these activities] is discriminatory pursuant to [under] KRS 338.121(3).

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: April 26, 2021

FILED WITH LRC: April 27, 2021 at 9:39 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2021 at 10:00 am (ET). The meeting will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at <https://us02web.zoom.us/j/86731399141?pwd=Q2VOcDQ3ZkVBaUtoNERCMDNlKzZJZz09>, password 446261; or by telephone at (713) 353-0212, (888) 822-7517 toll free, conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since June 6, 1979, defines terms. Section 2 maintains the language regarding employee pay, and discrimination protection, during inspection activity. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 from the Regular Session of the 2017

General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(b) The necessity of this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health (OSH) Standards Board to promulgate OSH administrative regulations. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since June 6, 1979, defines terms. Section 2 maintains the language regarding employee pay, and discrimination protection, during inspection activity. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH administrative regulations. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment promotes employee health and safety throughout Kentucky. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

This administrative regulation promotes worker safety and health throughout Kentucky. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Not applicable.

2. State compliance standards. This regulation addresses employee pay, and discrimination protection, during inspection activity.

3. Minimum or uniform standards contained in the federal mandate. Not applicable.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no direct federal equivalent.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This regulation addresses employee pay, and discrimination protection, during inspection activity. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061

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

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

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

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

#### LABOR CABINET

##### Department of Workplace Standards

##### Division of Occupational Safety and Health Compliance

##### Division of Occupational Safety and Health Education and Training

##### (Amendment)

#### 803 KAR 2:250. Discrimination.

RELATES TO: KRS 338.015[(7)], 338.121, 338.991

#### STATUTORY AUTHORITY: KRS 338.051, 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the 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 the procedure for discrimination complaints pursuant to KRS 338.121.

Section 1. Definitions. (1) "Commissioner" is defined by KRS 338.015(7).

(2) "Complainant" means any person who makes a complaint as defined by subsection (3) of this section.

(3) "Complaint" means any oral or written communication related to an occupational safety and health concern made by an employee to an employer, governmental agency, or made to the commissioner or the commissioner's designee.

(4) "Review commission" is defined by KRS 338.015(8).

(5) [(4)] "Secretary" is defined by KRS 338.015(12).

(6) "Working days" means Monday through Friday and does not include Saturday, Sunday, federal, or state holidays, as well as the day of receipt of notice.

Section 2. Complaint [~~Procedure for Complaint to the Commissioner; Recipient of; Time for Filing; Form of Complaints~~].

(1) An employee or former employee may file an oral or written complaint with the commissioner or commissioner's designee alleging discrimination [~~with the commissioner or the commissioner's designee~~].

(2) A complaint shall be filed no more than 120 days from the occurrence of the alleged discriminatory activity.

(3) A complaint shall provide [state] the name and address of the complainant, name and address of employer, and description of alleged discrimination.

(4) The commissioner or commissioner's designee shall provide the employer notification of the complaint upon initiation of an investigation [~~Notification shall be given to the employer of the receipt by the commissioner of a complaint within five (5) working days~~].

Section 3. Settlement. (1) Settlement is encouraged at any stage of the proceedings if the settlement is consistent with [the provisions and objectives of] KRS Chapter 338.

(2) Primary consideration shall be the reinstatement of a complainant to his or her former position with back pay and assurance of the future protection of the rights of all employees pursuant to [under] KRS Chapter 338.

Section 4. Withdrawal of Complaint to the Commissioner. (1) A request by the complainant to withdraw a complaint filed with the commissioner shall be given careful consideration and substantial weight.

(2) The commissioner or commissioner's designee shall make the final determination if a complaint and subsequent investigation will be terminated.

Section 5. Arbitration or Other Agency Proceedings. (1) A complainant may pursue grievance arbitration proceedings in collective bargaining agreements while requesting relief from other agencies such as the National Labor Relations Board.

(2) The commissioner's jurisdiction to receive KRS 338.121(3) complaints, to investigate, and to determine if discrimination [has] occurred shall be independent of the jurisdiction of other agencies or bodies.

(3) The commissioner or commissioner's designee may investigate and issue citations against any party found in violation regardless of the pendency or determination of other proceedings.

(4) If a complainant is pursuing remedies other than those provided by KRS 338.121, the commissioner's determination [and deferral to the results of the proceedings] may be postponed.

Section 6. ~~[Investigation of Complaint to the Commissioner; Issuance of Citation; Notice to Parties; Right of Review.] (1) Investigation.~~

~~(a) Upon receipt of a complaint [under Section 2 of this administrative regulation], the commissioner or commissioner's designee shall initiate [cause] an investigation [to be instituted].~~

~~(b) The investigation shall be completed and the commissioner's determination issued within ninety (90) days, absent extenuating circumstances.~~

~~(2) Citation.~~

~~(a) [(2)] If the commissioner finds a violation of KRS 338.121, he or she shall issue a citation, with delivery or receipt confirmation, and recommend a penalty pursuant to KRS 338.991.~~

~~(b) The citation shall include a determination by the commissioner as to the merits of the alleged violation.~~

~~(c) The commissioner or commissioner's designee shall provide notice of the determination to all affected parties.~~

~~(d) The citation shall state that it shall be deemed 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 the notice, the employer notifies the commissioner in writing that the employer intends to contest the citation before the review commission.~~

~~(e) The commissioner shall immediately transmit a notice to contest to the review commission in accordance with the rules of procedure prescribed by the commission.~~

~~(3) Penalty.~~

~~(a) The commissioner shall determine the amount of a proposed penalty, based on the appropriateness of the penalty with respect to the:~~

- ~~1. Size of the business of the employer being charged.~~
- ~~2. Gravity of the violation.~~
- ~~3. Good faith of the employer, and~~
- ~~4. History of previous violations.~~

~~(b) Penalties shall be proposed with respect to an alleged discriminatory act even if the employer immediately abates, or initiates steps to abate, the alleged violation.]~~

~~(3) Notice of the determination shall be given to all affected parties.]~~

~~(4)(a) If the commissioner determines there has not been discriminatory action, the complainant shall be notified of his or her rights of review [of the determination].~~

~~(b)[(a)] 1. The complainant may petition the secretary for a review of the determination.~~

~~2. The petition shall be in writing and state reasons why the review is requested.~~

~~(c)[(b)] The secretary shall affirm the determination or remand it to the commissioner for further investigation[.]~~

Section 7. ~~Employer Contest. A citation and notice of proposed penalty shall state that it shall be deemed the final order of the Review Commission and not be subject to review by any court or agency unless, within fifteen (15) working days from the date of receipt of the notice, the employer notifies the Commissioner of the Department of Workplace Standards in writing that the employer intends to contest the citation and notification of proposed penalty before the Review Commission. Within seven (7) days of receipt of contest, the commissioner shall forward copies of the citation and proposed penalty and notice of contest to the Review Commission.~~

Section 8. ~~Proposed Penalties. (1) If a citation is issued, the commissioner shall notify the employer by certified mail of the proposed penalty established in KRS 338.991.~~

~~(2) The commissioner shall determine the amount of a proposed penalty, based on 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.~~

~~(3) Penalties shall be proposed with respect to an alleged discriminatory act even if the employer immediately abates, or initiates steps to abate, the alleged violation[.]~~

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: April 26, 2021

FILED WITH LRC: April 27, 2021 at 9:39 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2021 at 10:00 am (ET). The meeting will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at <https://us02web.zoom.us/j/86731399141?pwd=Q2VOcDQ3ZkVBaUtoNERCMDNlKzZJZz09>, password 446261; or by telephone at (713) 353-0212, (888) 822-7517 toll free, conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email [Robin.Maples@ky.gov](mailto:Robin.Maples@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since February 10, 1987, defines terms. Section 2 establishes procedures for occupational safety and health (OSH) discrimination complaints pursuant to KRS 338.121 and 29 C.F.R. Part 1977. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(b) The necessity of this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since February 10, 1987, defines terms. Section 2 establishes procedures for OSH discrimination complaints pursuant to KRS 338.121 and 29 C.F.R. Part 1977. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

(8) State whether or not this administrative regulation

establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

2. State compliance standards. The Kentucky OSH Program is mandated to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard. This regulation is equivalent.

3. Minimum or uniform standards contained in the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

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 establishes procedures for occupational safety and health (OSH) discrimination complaints pursuant to KRS 338.121 and 29 C.F.R. Part 1977.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(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. None.

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

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

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

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

**803 KAR 2:306. Occupational health and environmental control [controls].**

RELATES TO: KRS Chapter 338, 29 C.F.R. 1910.6, 1910.94-1910.98

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to ~~[adopt and]~~ promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards [necessary to accomplish the purposes of KRS Chapter 338]. This administrative regulation establishes the occupational health and environmental control 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.

(4) "Standard" ~~is [means "occupational safety and health standard"] as]~~ defined by KRS 338.015(3).

(5) "U.S. Department of Labor" means Kentucky Labor Cabinet, Mayo-Underwood Building, 3rd Floor [U.S.-127 South], Frankfort, Kentucky 40601, or the U.S. Department of Labor.

Section 2. Except as modified by the definitions in Section 1 ~~[of this administrative regulation]~~ and the requirements established in Section 3 of this administrative regulation, general industry shall comply with 29 C.F.R. 1910, Subpart G, Occupational Health and Environmental Control [the following federal requirements] published by the Office of the Federal Register, National Archives and the Records Services, General Services Administration[:

(1) 29 C.F.R. 1910.94-1910.98 and Appendices, revised July 1, 2013; and

(2) ~~The amendment to 29 C.F.R. 1910.97 published in the June 13, 2013 Federal Register, Volume 78, Number 114 and corrected and confirmed in the November 6, 2013 Federal Register, Volume 78, Number 215].~~

Section 3. Occupational Noise Exposure. (1)(a)The language relating to audiometric test requirements for occupational noise exposure in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.95(h)(1).

(b) 1. Audiometric tests shall be pure tone, air conduction, hearing threshold examinations with test frequencies including as a minimum 500, 1,000, 2,000, 3,000, 4,000, and 6,000 Hz.

2. Testing at 8,000 Hz shall be included in the audiometric tests for employers using audiometers with that capacity and all audiometric tests shall include 8,000 Hz.

(2)(a) The language relating to audiometric test requirements for occupational noise exposure in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.95(h)(4).

(b) 1. Audiometric examinations shall be administered in a room meeting the requirements listed in 29 C.F.R. 1910.95, Appendix D, [:] Audiometric Test Rooms.

2. If an audiometric test room is located in a mobile test van, background sound pressure level measurements shall be taken at each testing location.

(3)(a) The language relating to audiometric test requirements for occupational noise exposure in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.95(h)(5)(ii).

(b) Audiometer calibration shall be checked acoustically at least annually in accordance with subsection (7)(b) of this section[: ~~Acoustic Calibration of Audiometers~~].

1. Test frequencies below 500 Hz and above 8,000 Hz may be omitted from this check.

2. Deviations of fifteen (15) decibels or greater shall require an exhaustive calibration.

(4)(a)The language relating to audiometric test requirements for occupational noise exposure in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.95(h)(5)(iii).

(b)1. An exhaustive calibration shall be performed at least every two (2) years in accordance with sections 4.1.2; 4.1.3; 4.1.4.3; 4.2; 4.4.1; 4.4.2; 4.4.3; and 4.5 of the American National Standard Specification for Audiometers, S3.6-1969.

2. Test frequencies below 500 Hz and above 8,000 Hz may be omitted from this calibration.

(5)(a)The language relating to access to information and training materials requirements for occupational noise exposure in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.95(l)(1).

(b) The employer shall make available to affected employees or their representatives copies of this standard and shall also post a notice of the availability of this standard in the workplace.

(6)(a) The language relating to exemptions to the administrative regulation for occupational noise exposure requirements in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.95(o).

(b) 29 C.F.R. 1910.95(c) through (n) and subsections (1) through (5) of this section shall not apply to employers engaged in oil and gas well drilling and servicing operations, agriculture, or construction.

(7)(a) The language relating to acoustical calibration of audiometers for occupational noise exposure in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.95, Appendix E.

(b) Acoustic Calibration of Audiometers.

1. Subparagraphs 2 through 5 of this paragraph shall be mandatory.

2. Audiometer calibration shall be checked acoustically, at least annually, according to the procedures established in subparagraphs 2 through 5 of this paragraph.

a. The equipment necessary to perform these measurements shall be a sound level meter, octave-band filter set, and a National Bureau of Standards 9A coupler.

b. In making these measurements, the accuracy of the calibrating equipment shall be sufficient to determine that the audiometer is within the tolerances permitted by American Standard Specification for Audiometers, S3.6-1969.

3. Sound pressure output check.

a. Place the earphone coupler over the microphone of the sound level meter and place the earphone on the coupler.

b. Set the audiometer's hearing threshold level (HTL) dial to seventy (70) dB.

c. Measure the sound pressure level of the tones that each test frequency from 500 Hz through 8,000 Hz for each earphone.

d. At each frequency the readout on the sound level meter should correspond to the levels in Table E-1 or Table E-2 of this administrative regulation, as appropriate for the type of earphone, in the column entitled "sound level meter reading".

4. Linearity check.

a. With the earphone in place, set the frequency to 1,000 Hz and the HTL dial on the audiometer to seventy (70) dB.

b. Measure the sound levels in the coupler at each ten (10) dB decrement from seventy (70) dB to ten (10) dB, noting the sound level meter reading at each setting.

c. For each ten (10) dB decrement on the audiometer the sound level meter shall indicate a corresponding ten (10) dB decrease.

d. This measurement may be made electrically with a voltmeter connected to the earphone terminals.

5.[a:] Tolerances.

a. If any of the measured sound levels deviate from the levels in Table E-1 or Table E-2 of this administrative regulation plus or

minus three (3) dB at any test frequency between 500 and 3,000 Hz, four (4) dB at 4,000 Hz, or five (5) dB at 6,000 Hz and 8,000 Hz, the employer shall consider conducting an exhaustive calibration.

b. The employer shall conduct an exhaustive calibration if the deviations are greater than ten (10) dB at any test frequency.

Frequency, Hz	Reference threshold level for TDH-39 earphones, Db	Sound level meter level meter reading dB
500	11.5	81.5
1000	7.07	77.0
2000	9.07	79.0
3000	10.0	80.0
4000	9.57	79.5
6000	15.5	85.5
8000	13.0	83.0

Frequency, Hz	Reference threshold level for TDH-49 earphones, dB	Sound level meter level meter reading, dB
500	13.5	83.5
1000	7.5	77.5
2000	11.0	81.0
3000	9.5	79.5
4000	10.5	80.5
6000	13.5	83.5
8000	13.0	83.0

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: April 26, 2021

FILED WITH LRC: April 27, 2021 at 9:39 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on July 21, 2021 at 10:00 am (ET). The meeting will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at [https://us02web.zoom.us/j/86731399141?pwd=Q2VOcDQ3ZkVBaUtoNERCMDNIkZzJZz09, password 446261](https://us02web.zoom.us/j/86731399141?pwd=Q2VOcDQ3ZkVBaUtoNERCMDNIkZzJZz09, password 446261;); or by telephone at (713) 353-0212, (888) 822-7517 toll free, conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 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.

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#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since December 15, 1989, defines terms not used in the federal standard. Section 2 adopts the requirements of 29 C.F.R. 1910, Subpart G, Occupational

Health and Environmental Control. Section 3 maintains occupational noise exposure language relating to audiometric test frequency, mobile test van pressure level measurements, audiometer calibration, employee notice of the standard, and the exemption for oil and gas well drilling and servicing operations. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and maintain consistency with other regulations.

(b) The necessity of this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky occupational safety and health (OSH) regulations to be as effective as the federal requirements. This regulation is equivalent.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since December 15, 1989, defines terms not used in the federal standard. Section 2 adopts the requirements of 29 C.F.R. 1910, Subpart G, Occupational Health and Environmental Control. Section 3 maintains occupational noise exposure language relating to audiometric test frequency, mobile test van pressure level measurements, audiometer calibration, employee notice of the standard, and the exemption for oil and gas well drilling and servicing operations. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and maintain consistency with other regulations.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in

Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements. This amendment promotes employee health and safety throughout Kentucky and ensures the state program is as effective as the federal program.

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

2. State compliance standards. The Kentucky OSH Program is mandated to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

3. Minimum or uniform standards contained in the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

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

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

amendment maintains occupational noise exposure language relating to audiometric test frequency, mobile test van pressure level measurements, audiometer calibration, employee notice of the standard, and the exemption for oil and gas well drilling and servicing operations.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(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. None.

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

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

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

#### LABOR CABINET

##### Department of Workplace Standards

##### Division of Occupational Safety and Health Compliance

##### Division of Occupational Safety and Health Education and Training

##### (Amendment)

#### 803 KAR 2:308. Personal protective equipment.

RELATES TO: 29 C.F.R. 1910.132-1910.140

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 [adopt] occupational safety and health [administrative] regulations and authorizes the chairman to reference [of the board to promulgate established] 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. 1910.132 to 1910.140 and Appendices establish the federal requirements relating to personal protective equipment.] This administrative regulation establishes [personal—protective equipment] standards that are [to be] enforced by the Department of Workplace Standards in general industry.

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) "Established federal standard" is defined by KRS 338.015(10).]~~  
 (4) [(6)] "National consensus standard" is defined by KRS 338.015(9).  
 (5) [(6)] "Standard" is defined by KRS 338.015(3).  
~~(7) "U.S. Department of Labor" means Kentucky Labor Cabinet or U.S. Department of Labor.]~~

Section 2. Except as ~~established~~ [modified] by the definitions in Section 1 of this administrative regulation, general industry shall comply with 29 C.F.R. 1910 Subpart I, Personal Protective Equipment [the following federal regulations] published by the Office of the Federal Register, National Archives and Records Administration and the revisions to 29 C.F.R. 1910.134 Appendix A published in the September 26, 2019 Federal Register, Volume 84, Number 187]:

- ~~(1) 29 C.F.R. 1910.132 through 29 C.F.R. 1910.140, and Appendices, revised July 1, 2016; and~~  
~~(2) The amendments to 29 C.F.R. 1910.140 as published in the November 18, 2016 Federal Register Volume 81, Number 223].~~

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: April 26, 2021

FILED WITH LRC: April 27, 2021 at 9:39 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2021 at 10:00 am (ET). The meeting will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at <https://us02web.zoom.us/j/86731399141?pwd=Q2VOcDQ3ZkVBaUtoNERCMDNlKzZjZz09>, password 446261; or by telephone at (713) 353-0212, (888) 822-7517 toll free, conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

- (1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since December 15, 1989, defines terms not used in the federal standard. Section 2 adopts the requirements of 29 C.F.R. 1910, Subpart I, Personal Protective Equipment the revisions to 29 C.F.R. 1910.134 Appendix A published in the September 26, 2019 Federal Register. The Occupational Safety and Health Administration (OSHA) approved two (2) additional quantitative fit testing protocols for inclusion in Appendix A. These protocols are the modified ambient aerosol condensation nuclei counter (CNC) quantitative fit testing protocol for full-facepiece and half-mask elastomeric respirators; and, the modified ambient aerosol CNC quantitative fit testing protocol for filtering facepiece respirators. The protocols apply to employers in general industry, shipyard employment, and the construction industry. Both protocols are abbreviated variations of the original

OSHA-approved ambient aerosol CNC quantitative fit testing protocol (often referred to as the PortaCount protocol), but differ from the test by the exercise sets, exercise duration, and sampling sequence. These protocols serve as alternatives to the four (4) existing quantitative fit testing protocols already listed in Appendix A and maintain safety and health protections for workers while providing additional flexibility and reducing compliance burdens. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 2017 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are also technical and intended to maintain consistency with other regulations.

(b) The necessity of this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. OSHA's September 26, 2019 amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health (OSH) Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky OSH Standards Board adopted the amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health (OSH) administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

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

(a) How this amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since December 15, 1989, defines terms not used in the federal standard. Section 2 adopts the requirements of 29 C.F.R. 1910, Subpart I, Personal Protective Equipment the revisions to 29 C.F.R. 1910.134 Appendix A published in the September 26, 2019 Federal Register. The Occupational Safety and Health Administration (OSHA) approved two (2) additional quantitative fit testing protocols for inclusion in Appendix A. These protocols are the modified ambient aerosol condensation nuclei counter (CNC) quantitative fit testing protocol for full-facepiece and half-mask elastomeric respirators; and, the modified ambient aerosol CNC quantitative fit testing protocol for filtering facepiece respirators. The protocols apply to employers in general industry, shipyard employment, and the construction industry. Both protocols are abbreviated variations of the original OSHA-approved ambient aerosol CNC quantitative fit testing protocol (often referred to as the PortaCount protocol), but differ from the test by the exercise sets, exercise duration, and sampling sequence. These protocols serve as alternatives to the four (4) existing quantitative fit testing

protocols already listed in Appendix A and maintain safety and health protections for workers while providing additional flexibility and reducing compliance burdens. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with HB 50 2017 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. OSHA's September 26, 2019 amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health (OSH) Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky OSH Standards Board adopted the amendment.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to

implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

2. State compliance standards. The Kentucky OSH Program is mandated to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

3. Minimum or uniform standards contained in the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(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. None.

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

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

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

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

**803 KAR 2:310. Medical services and first aid.**

RELATES TO: KRS ~~338.051(3)~~

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. This administrative regulation establishes ~~the~~ medical services and first aid standards ~~that are~~ enforced by the Department of Workplace Standards in [Division of Occupational Safety and Health in the area of] general industry.

Section 1. Definitions. (1) "Employee" is defined by KRS ~~338.015(2).~~

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

Section 2. (1) The employer shall ensure the ready availability of medical personnel for advice and consultation on matters of occupational health.

(2) ~~[(1)]~~ Employers with eight (8) or more employees within the establishment shall have persons adequately trained to render first aid and adequate first aid supplies shall be readily available.

(3) Outside salesmen, truck drivers, seasonal labor, and others who, while performing their duties, are away from the premises more than fifty (50) percent of the time shall not be included in determining the number of employees.

(4)(a) ~~[(2)]~~ All other employers shall, in the absence of an infirmary, clinic, or hospital in near proximity to the workplace which is used for the treatment of all injured employees, have a person or persons adequately trained to render first aid.

(b) Adequate first aid supplies shall be readily available.

Section 3. (1) ~~[(2)]~~ If the eyes or body of any person may be exposed to injurious corrosive material, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use.

(2) The facilities shall comply with the provisions of the ANSI/ISEA Z358.1-2014 "American National Standard for Emergency Eyewash and Shower Equipment" ~~[American National Standards Institute (ANSI) Z-358.1-1990, "Standard for Emergency Eyewash and Shower Equipment"]~~, which is incorporated by reference, with the following exceptions:

(a) ~~[(1)]~~ In a remote area if a person is visibly or audibly separated from coworkers, an audible or visible alarm shall activate to alert appropriate personnel when the unit is in use, or in the alternative, a two (2) way communication device shall be used.

(b) The alarm shall continue until the unit is no longer in use.

(c) ~~[(2)]~~ A facility shall be tested according to the standard monthly.

Section 4 [3]. Incorporation by reference. (1) ANSI/ISEA Z358.1-2014 "American National Standard for Emergency Eyewash and Shower Equipment" ~~[ANSI Z-358.1-1990, "Standards for Emergency Eyewash and Shower Equipment"]~~ is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Labor Cabinet, Mayo-Underwood Building, 3rd Floor ~~[Division of Occupational Safety and Health, 1047 U.S. 427 South]~~, Frankfort, Kentucky 40601, Monday through Friday 8:00 a.m. to 4:30 p.m. EST. The Labor Cabinet Web site is [www.labor.ky.gov](http://www.labor.ky.gov).

(3) The ANSI Web site is [www.ansi.org](http://www.ansi.org).

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: April 26, 2021

FILED WITH LRC: April 27, 2021 at 9:39 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2021 at 10:00 am (ET). The meeting will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at <https://us02web.zoom.us/j/86731399141?pwd=Q2VOcDQ3ZkVBaUtoNERCMDNlKzZJZz09>, password 446261; or by telephone at (713) 353-0212, (888) 822-7517 toll free, conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email [Robin.Maples@ky.gov](mailto:Robin.Maples@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since January 1, 1975, defines terms. Section 2 reflects the federal requirement and maintains language addressing first aid and first aid supplies. Section 3 maintains and updates language addressing quick drenching or flushing of the eyes and body for emergency use. Section 4 updates the incorporation by reference of ANSI Z358.1-1990 "Standard for Emergency Eyewash and Shower Equipment" to ANSI/ISEA Z358.1-2014 "American National Standard for Emergency Eyewash and Shower Equipment." A comparison of the ANSI documents is provided after the FISCAL NOTE ON STATE OR LOCAL GOVERNMENT. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 from the Regular Session of the 2017 General Assembly.

(b) The necessity of this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the

federal requirement. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since January 1, 1975, defines terms. Section 2 reflects the federal requirement and maintains language addressing first aid and first aid supplies. Section 3 maintains and updates language addressing quick drenching or flushing of the eyes and body for emergency use. Section 4 updates the incorporation by reference of ANSI Z358.1-1990 "Standard for Emergency Eyewash and Shower Equipment" to ANSI/ISEA Z358.1-2014 "American National Standard for Emergency Eyewash and Shower Equipment." A comparison of the ANSI documents is provided after the FISCAL NOTE ON STATE OR LOCAL GOVERNMENT. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements. This amendment promotes employee health and safety throughout Kentucky and ensures the state program is as effective as the federal program.

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement.

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

this administrative regulation:

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a)

2. State compliance standards. The Kentucky OSH Program is mandated to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard. This regulation is equivalent.

3. Minimum or uniform standards contained in the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a).

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This administrative regulation reflects the federal requirement and maintains language addressing first aid and first aid supplies. The regulation also maintains and updates language addressing quick drenching or flushing of the eyes and body for emergency use.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(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. None.

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

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

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

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

**803 KAR 2:325. General industry standards.**

RELATES TO: KRS Chapter 338

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 standards] 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 [Consistent with this authority the following administrative regulations contain those standards to be enforced by the Division of Occupational Safety and Health Compliance. The Occupational Safety and Health Standards Board hereby adopts the following administrative regulations applicable to general industry. Necessary for effective enforcement of the purposes and policies of the Occupational Safety and Health Act which is to insure so far as is possible, safe and healthful working conditions of Kentucky workers (KRS 338.011)].

Minimum Clear Distance From Live Parts	
Voltage Phase to Phase (Kilovolts)	Distance Phase to Employee
0.6 to 34.5	2'
34.5 to 46	2 1/2'
46 to 69	3'
69 to 115	3' 4"
115 to 138	3' 6"
138 to 169	3' 8"

Section 1. Definitions. (1) "C.F.R." means Code of Federal Regulations.

(2) "Employee" is defined by KRS 339.015(2).

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

Section 2. Batteries. Changing and charging storage batteries [(for automotive-type battery charging installations, in-vehicle charging of batteries, and battery jump starting of vehicles)].

(1)(a) Facilities shall be provided for flushing electrolyte from the eyes and skin with water when changing or charging storage batteries.

(b) An adequate water supply shall be within twenty-five (25) feet of the work area.

(2)(a) No battery shall be charged or discharged within a closed or unvented container.

(b) The batteries shall be charged:

1. [(a)] In the open; or

2. [(b)] In a mechanically-ventilated space; or

3. [(c)] In a space providing at least twenty (20) cubic feet per

ampere of charging capacity.

(3)(a) A face shield or goggles shall be provided and available at each charging unit.

(b) The use of the face shield or goggles shall be required for connection and disconnection of vehicle or charger leads to the battery terminals and for the addition or pouring of electrolyte.

(4) Employees shall wear face shields or goggles during installation and removal of batteries from vehicles, while connecting and disconnecting battery charger or jumper cable leads, or [and] while handling electrolyte.

(5) Employees shall be instructed to:

(a) Turn off the battery charger to connect or disconnect the battery;

(b) Wash acid spills immediately; and

(c) Flush electrolyte from eyes and skin with water for ten (10) minutes.

Section 3 [2]. [Safety and Testing of Supply Lines in Excess of 600 Volts. (1) Definitions.

(a) ~~Disconnected means disconnected from any electrical source of supply;~~

(b) ~~Guarded: protected by personnel, covered, fenced, or enclosed by means of suitable castings, barrier, rails, screens, mats, platforms, or other suitable devices in accordance with standard barricading techniques designed to prevent dangerous approach or contact by persons or objects. (Note: Wires, which are insulated but not otherwise protected, are not considered as guarded);~~

(c) ~~Hold cards (also called "hold tags"): a card or tag-type device, usually having a predominant color of white or red which warns against or which cautions against the operation of a particular switch, device, circuit, tool, machine, etc.;~~

(d) ~~Near: a distance no closer than that shown in the table in subsection (3)(c) of this section;~~

(e) ~~Qualified person: a person who, because of experience and training is familiar with the construction and operation of the apparatus or equipment and the hazards involved in the performance of the job.~~

(2) Purpose.

(a) The intent and purpose of this administrative regulation is to provide and establish safety procedures for testing equipment to protect electrical workers from hazards resulting from exposure to high voltage;

(b) This administrative regulation shall apply to nonutility electrical workers who are engaged in electrical construction or maintenance of electrical conductors and equipment rated at 600 volts and above.

(3) Energized conductors and equipment.

(a) Only qualified employees shall work on or near high voltage conductors or equipment;

(b) Personal protective equipment shall be provided by the employer and used by the employee when working on or near energized, ungrounded high-voltage conductors or equipment;

(c) No employee shall approach or take any conductive object, without an approved insulating handle, within the minimum distance specified in the table below, unless the energized part is insulated or guarded from the employee, or the employee is effectively insulated from the live parts. Rubber gloves (sleeves if necessary) rated for the voltage involved shall be considered effective insulation of the employee from the energized part.

(4) Deenergized conductor or equipment.

(a) Existing conditions shall be determined before starting work on electrical conductor and/or equipment;

(b) Before any work is performed, all electrical switches, breakers and associated disconnecting devices shall be opened, made inoperable and hold tagged out by the person in charge. Employees shall be trained and thoroughly instructed in the tagging procedure. One (1) qualified person, for example: foreman, general foreman or first class electrician, of each crew shall be responsible for attaching hold tags and/or hold cards to the disconnecting means. When more than one (1) crew is involved in the work, multiple hold tags or hold cards shall be placed in the handle of the disconnecting equipment. The use of such tags must

be respected. Equipment or items so tagged must not be activated or used without full and proper authority of a responsible person whose signature appears on the tag;

(c) Conductors shall be short-circuited and grounded wherever possible;

(d) Capacitors may be components of apparatus of the disconnected electrical system. Before employees are allowed to work, the capacitors shall be discharged, short-circuited and grounded;

(e) When deenergizing conductors and equipment and the means of disconnecting from the energy source is not visibly open, a voltage test shall be made before starting work. An operational check shall be made of the voltage tester prior to and following the voltage test to determine reliability of the testing device. The test device must be handled and used while wearing or using approved protective equipment during the test;

(f) All conductors and equipment shall be treated as energized until tested, short-circuited and effectively grounded except when the circuit involved is isolated from all possible sources of energizing voltage from another circuit, induced voltage or back feed;

(g) The voltage condition of deenergized conductors and/or equipment shall be determined with testing equipment designed for the applicable voltage;

(h) Upon completion of work on deenergized conductors and equipment, the person responsible shall ascertain that all employees under his jurisdiction are clear and that all protective short circuit and grounding lines are removed. The qualified person(s) shall then remove his hold tag(s). Only at this time shall conductors and equipment be reenergized.

**Section 3. Safety Belts, Lanyards and Life Lines.** (1) Employees working from open-sided unguarded floors, pipe racks, and ledges, platforms, walkways, machinery, stock shelves, or similar unguarded working surfaces which are elevated ten (10) feet or more above a lower level shall be secured by safety belts and lanyards, life lines where necessary, or shall be protected by safety nets.

(2) Lanyards shall have a nominal breaking strength of 5,400 lbs. The combination of safety belts and lanyards, life lines where necessary, shall be designed to permit a fall of not more than five (5) feet.

(3) All safety belt and lanyard hardware, except rivets, shall be capable of withstanding a tensile loading of 4,000 lbs. without cracking, breaking or taking a permanent deformation.

(4) Life lines, where necessary, shall be secured above the point of operation to an anchorage of structural member capable of supporting a minimum dead weight of 5,400 lbs.

(5) This standard shall not preempt any applicable standard now in effect.

**Section 4. Off-highway Motor Vehicles and Equipment.** (1) General requirements.

(a) Heavy machinery, equipment, or parts [thereof, which are] suspended or held aloft by use of slings, hoists, or jacks shall be substantially blocked or cribbed to prevent falling or shifting before employees are permitted to work under or between them.

(b) 1. Bulldozers and scraper blades, end-loader buckets, dump bodies, and similar equipment, shall be either fully lowered or blocked when being repaired or when not in use.

2. All controls shall be in a neutral position, with the motors stopped and brakes set, unless work being performed requires otherwise.

(c) [(b)] Whenever the equipment is parked, the parking brake shall be set.

(d) Equipment parked on inclines shall have the wheels chocked and the parking brake set.

(e) [(e)] All cab glass shall be safety glass, or equivalent, that introduces no visible distortion affecting the safe operation of any machine covered by this section [subpart].

(f) [(d)] All equipment covered by this section [subpart] shall comply with the requirements of 29 C.F.R. 1910.333 [1910.480(j)(1)] when working or being moved in the vicinity of

power lines or energized transmitters.

(2) Motor vehicles.

(a) Coverage. Motor vehicles [as] covered by this section [part] are those vehicles that operate within an off-highway job site not open to public traffic. The requirements of this section do not apply to equipment [for which rules are prescribed] in subsection (3) of this section.

(b) General requirements.

1. All vehicles shall have a service brake system, an emergency brake system, and a parking brake system.

2. These systems may use common components, and shall be maintained in operable condition.

(c) Whenever visibility conditions warrant additional light, all vehicles, or combinations of vehicles, in use shall be equipped with at least two (2) headlights and two (2) taillights in operable condition.

(d) All vehicles, or combination of vehicles, shall have brake lights in operable condition regardless of light conditions.

(e) All vehicles shall be equipped with an adequate audible warning device at the operator's station and in an operable condition.

(f) Motor vehicle equipment [No employer] shall not be used [use any motor vehicle equipment] having an obstructed view to the rear unless:

1. The vehicle has a reverse signal alarm audible above the surrounding noise level; or

2. The vehicle is backed [up] only when an observer signals that it is safe to do so.

(g) 1. All vehicles with cabs shall be equipped with windshields and powered wipers.

2. Cracked and broken glass shall be replaced.

3. Vehicles operating in areas or under conditions that cause fogging or frosting of the windshields shall be equipped with operable defogging or defrosting devices.

(h) All haulage vehicles [whose payload is] loaded by means of cranes, power shovels, loaders, or similar equipment, shall have a cab shield or [and/or] canopy adequate to protect the operator from shifting or falling materials.

(i) Tools and material shall be secured to prevent movement when transported in the same compartment with employees.

(j) Vehicles used to transport employees shall have seats firmly secured and adequate for the number of employees [to be] carried.

(k) The employer shall [will] provide and insure the use of seat belts and anchorages meeting the requirements of 49 C.F.R. Part 571, [(Department of Transportation, Federal Motor Vehicle Safety Standards)].

(l) Trucks with dump bodies shall be equipped with positive means of support, permanently attached, and capable of being locked in position to prevent accidental lowering of the body while maintenance or inspection work is being done.

(m) Operating levers controlling hoisting or dumping devices on haulage bodies shall be equipped with a latch or other device that prevents [which will prevent] accidental starting or tripping of the mechanism.

(n) Trip handles for tailgates of dump trucks shall be so arranged that, in dumping, the operator will be in the clear.

(o) 1. Each employer shall assure [that] the following parts, equipment, and accessories are in safe operating condition and free of apparent damage that could cause failure while in use:

a. Service [service] brakes, including trailer brake connections;

b. Parking [parking] system brake [(hand brake)];

c. Brakes [emergency stopping system (brakes)];

d. Tires [tires];

e. Horn [horn];

f. Steering [steering] mechanism;

g. Coupling [coupling] devices;

h. Seat [seat] belts;

i. Operating [operating] controls; and

j. Safety [safety] devices.

2. All defects shall be corrected before the vehicle is placed in service.

3. These requirements also apply to equipment such as lights, reflectors, windshield wipers, defrosters, and fire extinguishers[;

etc., where such equipment is necessary].

(3) Material handling equipment.

(a) General [Equipment; general]. The requirements of this subsection [These rules] apply to [the following types of equipment:] scrapers, loaders, crawler or wheel tractors, bulldozers, off-highway trucks, graders, agricultural and industrial tractors, and similar equipment[. The promulgation of specific rules for compactors and rubber-tired "skid-steer" equipment is reserved pending consideration of standards currently being developed].

(b) Seating and seat belts.

1. Each employer shall insure safe seating with seat belts on all equipment covered by this section, and shall meet the requirement of J386, Society of Automotive Engineers Handbook, 1986, Seat Belts for Construction Equipment.

2. Seat belts for agricultural and light industrial tractors shall meet the seat belt requirements of Society of Automotive Engineers J1194, Society of Automotive Engineers Handbook, 1986, Operator Protection for Agricultural and Light Industrial Tractors.

(c) Seat belts need not be provided for equipment [which is] designed only for stand-up operation.

(d) Seat belts need not be provided for equipment that [which] does not have rollover protective structure [(ROPS)] or adequate canopy protection.

(e) Brakes.

1. All equipment mentioned in subsection (a) of this section shall have a service braking system capable of stopping and holding the equipment fully loaded, as specified in Society of Automotive Engineers SAE J237, Loader Dozer, Society of Automotive Engineers Handbook, 1986, J236, Graders, Society of Automotive Engineers Handbook, 1986, and J319b, Scrapers, Society of Automotive Engineers Handbook, 1986.

2. Brake systems for self-propelled rubber-tired off-highway equipment manufactured after January 1, 1987 shall meet the applicable minimum performance criteria set forth in the following Society of Automotive Engineers Recommended Practices. [.]

Self-propelled Scrapers	SAE J319B, Society of Automotive Engineers Handbook, 1986.
Self-propelled Graders	SAE J236, Society of Automotive Engineers Handbook, 1986.
Trucks and Wagons	SAE J166, Society of Automotive Engineers Handbook, 1986.
Front-end Loaders and Dozers	SAE J237, Society of Automotive Engineers Handbook, 1986.

(f) [Rollover protective structures for off-highway trucks. The promulgation of standards for rollover protective structures for off-highway trucks is reserved pending further study and development.

(g) Audible alarms.

1. a. All bidirectional machines, such as rollers, compactors, front-end loaders, bulldozers, and similar equipment, shall be equipped with a horn, distinguishable from the surrounding noise level, which shall be operated as needed when the machine is moving in either direction.

b. The horn shall be maintained in an operative condition.

2. Material [No employer shall permit material] handling equipment or compacting equipment that [which] has an obstructed view to the rear shall not be used in reverse gear unless the equipment has in operation a reverse signal alarm distinguishable from the surrounding noise level or an employee signals that it is safe to do so.

(g) [(h)] Scissor points. Scissor points on all front-end loaders[.] which constitute a hazard to the operator during normal operation[.] shall be guarded.

Section 4 [5]. Rollover Protective Structures; Overhead Protection. (1) Rollover protective structure (ROPS) for material handling equipment.

(a) Coverage. This section applies to the following types of material handling equipment: To all rubber-tired, self-propelled scrapers, rubber-tired front-end loaders, rubber-tired dozers, wheel-type agricultural and industrial tractors, crawler tractors, crawler-type loaders, and motor graders, with or without attachments, that are used in general industry work. This

requirement does not apply to sideboom pipe-laying tractors.

(b) The promulgation of specific standards for rollover protective structures for compactors and rubber-tired skid-steer equipment is reserved pending consideration of standards currently being developed.

(c) Equipment manufactured on or after January 1, 1987. Material handling machinery described in paragraph (a) of this subsection and manufactured on or after January 1, 1987, shall be equipped with rollover protective structures which meet the minimum performance standards prescribed in subsections (2) and (3) of this section as applicable.

(d) Equipment manufactured before January 1, 1987. All material handling equipment described in paragraph (a) of this subsection and manufactured or placed in service (owned or operated by the employer) prior to January 1, 1987, shall be fitted with rollover protective structures no later than January 1, 1988. Machines manufactured before July 1, 1969: Reserved pending further study, development, and review.

(e) Rollover protective structures and supporting attachment shall meet the minimum performance criteria detailed in subsections (2) and (3) of this section, as applicable or shall be designed, fabricated, and installed in a manner which will support, based on the ultimate strength of the metal, at least two (2) times the weight of the prime mover applied at the point of impact.

(f) The design objective shall be to minimize the likelihood of a complete overturn and thereby minimize the possibility of the operator being crushed as a result of a rollover or upset.

(g) The design shall provide a vertical clearance of at least fifty-two (52) inches from the work deck to the ROPS at the point of ingress or egress.

(h) Remounting. ROPS removed for any reason, shall be remounted with equal quality, or better, bolts or welding as required for the original mounting.

(i) Labeling. Each ROPS shall have the following information permanently affixed to the structure:

1. Manufacturer or fabricator's name and address;

2. ROPS model number, if any;

3. Machine make, model, or series number that the structure is designed to fit.

(j) Machines meeting certain existing governmental requirements. Any machine in use, equipped with rollover protective structures, shall be deemed in compliance with this subsection if it meets the rollover protective structure requirements of the state of California, the U.S. Army Corps of Engineers, or the Bureau of Reclamation of the U.S. Department of the Interior in effect on April 5, 1972. The requirements in effect are:

1. State of California: Construction Safety Orders, issued by the Department of Industrial Relations pursuant to Division 5, Labor Code, sec. 6312, state of California.

2. U.S. Army Corps of Engineers: General Safety Requirements, EM-385-1-1 (March 1967).

3. Bureau of Reclamation, U.S. Department of the Interior: Safety and Health Regulations for Construction. Part II (September 1971).

(2) Minimum performance criteria for rollover protective structures for designated scrapers, loaders, dozers, graders, and crawler tractors.

(a) General. This section prescribes minimum performance criteria for rollover protective structures (ROPS) for rubber-tired self-propelled scrapers; rubber-tired front-end loaders and rubber-tired dozers; crawler tractors, crawler-type loaders, and motor graders. The vehicle and ROPS as a system shall have the structural characteristics prescribed in paragraph (f) of this subsection for each type of machine described in this paragraph.

(b) The static laboratory test prescribed herein will determine the adequacy of the structures used to protect the operator under the following conditions:

1. For rubber-tired self-propelled scrapers, rubber-tired front-end loaders, and rubber-tired dozers: operating between zero and ten (10) miles per hour over hard clay where rollover would be limited to a maximum roll angle of 360 degrees down a slope of thirty (30) degrees maximum.

2. For motor graders: operating between zero and ten (10)

miles per hour over hard clay where rollover would be limited to 360 degrees down a slope of thirty (30) degrees maximum.

3. For crawler tractors and crawler-type loaders: operating between zero and ten (10) miles per hour over hard clay where rollover would be limited to a maximum roll angle of 360 degrees down a slope of forty-five (45) degrees.

(c) Facilities and apparatus:

1. The following material is necessary:

a. Material, equipment, and tie-down means adequate to insure that the ROPS and its vehicle frame absorb the applied energy.

b. Equipment necessary to measure and apply loads to the ROPS. Adequate means to measure deflections and lengths should also be provided.

c. Recommended, but not mandatory, types of test setups are illustrated in Figure W-1 for all types of equipment to which this section applies; and in Figure W-2 for rubber-tired self-propelled scrapers; Figure W-3 for rubber-tired front-end loaders, rubber-tired dozers, and motor graders; and Figure W-4 for crawler tractors and crawler-type loaders.

2. Table W-1 contains a listing of the required apparatus for all types of equipment described in paragraph (a) of this subsection.

TABLE W-1	
Means to Measure	Accuracy
Deflection of ROPS, inches	+5% of deflection measured.
Vehicle weight, pounds	+5% of the weight measured.
Force applied to frame pounds	+5% of force measured.
Dimensions of critical zone	+0.5 inches.

(d) Vehicle conditions. The ROPS to be tested must be attached to the vehicle structure in the same manner as it will be attached during vehicle use. A totally assembled vehicle is not required. However, the vehicle structure and frame which support the ROPS must represent the actual vehicle installation. All normally detachable windows, panels, or nonstructural fittings shall be removed so that they do not contribute to the strength of the ROPS.

(e) Test procedure. The test procedure shall include the following, in the sequence indicated:

1. Energy absorbing capabilities of ROPS shall be verified when loaded laterally by incrementally applying a distributed load to the longitudinal outside top member of the ROPS, as shown in Figure W-1, W-2, or W-3, as applicable. The distributed load must be applied so as to result in approximately uniform deflection of the ROPS. The load increments should correspond with approximately five-tenths (0.5) inches ROPS deflection increment in the direction of the load application, measured at the ROPS top edge. Should the operator's seat be off-center, the load shall be applied on the off-center side. For each applied load increment, the total load (lb.) versus corresponding deflection (in.) shall be plotted, and the area under the load-deflection curve shall be calculated. This area is equal to the energy (in.-lb.) absorbed by the ROPS. For a typical load-deflection curve and calculation method, see Figure W-5. In Figure W-1, incremental loading shall be continued until the ROPS has absorbed the amount of energy and the minimum applied load specified under paragraph (f) of this subsection has been reached or surpassed. (See Figures for this section following the administrative regulation.)

2. To cover the possibility of the vehicle coming to rest on its top, the support capability shall be verified by applying a distributed vertical load to the top of the ROPS so as to result in approximately uniform deflection (see Figure W-1). The load magnitude is specified in paragraph (f)2a of this subsection.

3. The low temperature impact strength of the material used in the ROPS shall be verified by suitable material tests or material certification (see paragraph (f)2d of this subsection).

(f) Performance requirements.

1. General performance requirements.

a. No repairs or straightening of any member shall be carried out between each prescribed test.

b. During each test, no part of the ROPS shall enter the critical zone as detailed in SAE J397b, Society of Automotive Engineers Handbook, 1986. Deformation of the ROPS shall not allow the plane of the ground to enter this zone.

2. Specific performance requirements.

a. The energy requirement for purposes of meeting the requirements of paragraph (e)1 of this subsection is to be determined by referring to the plot of the energy versus weight of vehicle (see Figure W-6 for rubber-tired self-propelled scrapers; Figure W-7 for rubber-tired front-end loaders and rubber-tired dozers; Figure W-8 for crawler tractors and crawler-type loaders; and Figure W-9 for motor graders). For purposes of this subsection, force and weight are measured as pounds (lb.); energy (U) is measured as inch-pounds.

b. The applied load must attain at least a value which is determined by multiplying the vehicle weight by the corresponding factor shown in Figure W-10 for rubber-tired self-propelled scrapers; in Figure W-11 for rubber-tired front-end loaders and rubber-tired dozers; in Figure W-12 for crawler tractors and crawler-type loaders; and in Figure W-13 for motor graders.

c. The load magnitude for purposes of compliance with paragraph (e)2 of this subsection is equal to the vehicle weight. The test of load magnitude shall only be made after the requirements of subparagraph 2a of this paragraph are met.

d. Material used in the ROPS must have the capability of performing at zero degrees Fahrenheit, or exhibit Charpy V notch impact strength of eight (8) foot-pounds at minus twenty (20) degrees Fahrenheit. This is a standard Charpy specimen as described in American Society of Testing and Materials A 370, Methods and Definitions for Mechanical Testing of Steel Products (available at the Central Office of the Kentucky Occupational Safety and Health Program). The purpose of this requirement is to reduce the tendency of brittle fracture associated with dynamic loading, low temperature operation, and stress raisers which cannot be entirely avoided on welded structures.

(g) Definitions. For purposes of this subsection, "vehicle weight" means the manufacturer's maximum weight of the prime mover for rubber-tired self-propelled scrapers. For other types of equipment to which this subsection applies, "vehicle weight" means the manufacturer's maximum recommended weight of the vehicle plus the heaviest attachment.

(h) Source of standard. This standard is derived from, and restates, the following Society of Automotive Engineers Recommended Practices: SAE J1349, Society of Automotive Engineers Handbook, 1986, Minimum Performance Criteria for Rollover Protective Structure for Rubber-tired, Self-propelled Scrapers; SAE J394, Society of Automotive Engineers Handbook, 1986, Minimum Performance Criteria for Rollover Protective Structure for Rubber-tired Front-end Loaders and Rubber-tired Dozers; SAE J395, Society of Automotive Engineers Handbook, 1986, Minimum Performance Criteria for Rollover Protective Structure for Crawler Tractors and Crawler-type Loaders; and SAE J396, Society of Automotive Engineers handbook, 1986, Minimum Performance Criteria for Rollover Protective Structures for Motor Graders. These recommended practices shall be resorted to in the event that questions of interpretation arise. The recommended practices appear in the 1986 SAE Handbook, which may be examined in the Central Office of the Kentucky Occupational Safety and Health Program.

(3) Protective frame (ROPS) test procedures and performance requirements for wheel-type agricultural and industrial tractors used in construction.

(a) General.

1. The purpose of this section is to set forth requirements for frames for the protection of operators of wheel-type agricultural and industrial tractors to minimize the possibility of operator injury resulting from accidental upsets during normal operation. With respect to agricultural and industrial tractors, the provisions of subsections (2) and (4) of this section for rubber-tired dozers and rubber-tired loaders may be utilized in lieu of the requirements of this section.

2. The protective frame which is the subject of this standard is a structure mounted to the tractor that extends above the operator's seat and conforms generally to Figure W-14.

3. If an overhead weather shield is attached to the protective frame, it may be in place during tests; provided, that it does not contribute to the strength of the protective frame. If such an

overhead weather shield is attached, it must meet the requirements of paragraph (i) of this subsection.

4. For overhead protection requirements, see subsection (4) of this section.

5. If protective enclosures are used on wheel-type agricultural and industrial tractors, they shall meet the requirements of Society of Automotive Engineers Standard J1249, Society of Automotive Engineers Handbook, 1986, Protective Enclosures, Test Procedures, and Performance Requirements. This standard appears in the 1986 SAE Handbook and may be examined in the Central office of the Kentucky Occupational Safety and Health Program.

(b) Applicability. The requirements of this subsection apply to wheel-type agricultural tractors used in general industry work and to wheel-type industrial tractors used in general industry work. See paragraph (j) of this subsection for definitions of agricultural tractors and industrial tractors.

(c) Performance requirements.

1. Either a laboratory test or a field test is required in order to determine the performance requirements set forth in this paragraph.

2. A laboratory test may be either static or dynamic. The laboratory test must be under conditions of repeatable and controlled loading in order to permit analysis of the protective frame.

3. A field upset test, if used, shall be conducted under reasonably controlled conditions, both rearward and sideways to verify the effectiveness of the protective frame under actual dynamic conditions.

(d) Test procedures – general.

1. The tractor used shall be the tractor with the greatest weight on which the protective frame is to be used.

2. A new protective frame and mounting connections of the same design shall be used for each test procedure.

3. Instantaneous and permanent frame deformation shall be measured and recorded for each segment of the test.

4. Dimensions relative to the seat shall be determined with the seat unloaded and adjusted to its highest and most rearward latched position provided for a seated operator.

5. If the seat is offset, the frame loading shall be on the side with the least space between the centerline of the seat and the upright.

6. The low temperature impact strength of the material used in the protective structure shall be verified by suitable material tests or material certifications in accordance with subsection (2)(f)2d of this section.

(e) Test procedure for vehicle overturn.

1. Vehicle weight. The weight of the tractor, for purposes of this subsection, includes the protective frame, all fuels, and other components required for normal use of the tractor. Ballast must be added if necessary to achieve a minimum total weight of 130 lbs. (59 kg.) per maximum power takeoff horsepower at rated engine speed. The weight of the front end must be at least thirty-three (33) lb. (15 kg.) per maximum power takeoff horsepower. In case power takeoff horsepower is unavailable, ninety-five (95) percent of net engine flywheel horsepower shall be used.

2. Agricultural tractors shall be tested at the weight set forth in subparagraph 1 of this paragraph.

3. Industrial tractors shall be tested with items of integral or mounted equipment and ballast that are sold as standard equipment or approved by the vehicle manufacturer for use with the vehicle where the protective frame is expected to provide protection for the operator with such equipment installed. The total vehicle weight and front end weight as tested shall not be less than the weights established in subparagraph 1 of this paragraph.

4. The test shall be conducted on a dry, firm soil bank as illustrated in Figure W-15. The soil in the impact area shall have an average cone index in the 0-6 inch (153 mm.) layer not less than 150 according to American Society of Agricultural Engineers Recommendation ASAE R313, Soil Cone Penetrometer (available in the Central Office of the Kentucky Occupational Safety and Health Program). The path of travel of the vehicle shall be  $12^{\circ} \pm 2^{\circ}$  to the top edge of the bank.

5. The upper edge of the bank shall be equipped with an eighteen (18) inch (457 mm.) high ramp as described in Figure W-15 to assist in tipping the vehicle.

6. The front and rear wheel tread settings, where adjustable, shall be at the position nearest to halfway between the minimum and maximum settings obtainable on the vehicle. Where only two (2) settings are obtainable, the minimum setting shall be used.

7. Vehicle overturn test – sideways and rearward.

a. The tractor shall be driven under its own power along the specified path of travel at a minimum speed of ten (10) mph (16 km./hr.) or maximum vehicle speed if under ten (10) mph (16 km./hr.) up the ramp as described in subparagraph 5 of this paragraph to induce sideways overturn.

b. Rear upset shall be induced by engine power with the tractor operating in gear to obtain 3-5 mph (4.8-8 km./hr.) at maximum governed engine r.p.m. preferably by driving forward directly up a minimum slope of two (2) vertical to one (1) horizontal. The engine clutch may be used to aid in inducing the upset.

(f) Other test procedures. When the field upset test is not used to determine ROPS performance, either the static test or the dynamic test, contained in paragraph (g) or (h) of this subsection, shall be made.

(g) Static test.

1. Test conditions.

a. The laboratory mounting base shall include that part of the tractor chassis to which the protective frame is attached including the mounting parts.

b. The protective frame shall be instrumented with the necessary equipment to obtain the required load deflection data at the location and directions specified in Figures W-16, W-17, and W-18.

c. The protective frame and mounting connections shall be instrumented with the necessary recording equipment to obtain the required load deflection data to be used in calculating FSB (see paragraph (j)3 of this subsection). The gauges shall be placed on mounting connections before the installation load is applied.

2. Test procedure.

a. The side load application shall be at the upper extremity of the frame upright at a ninety (90) degree angle to the centerline of the vehicle. This side load "L" shall be applied according to Figure W-16. "L" and "D" shall be recorded simultaneously. The test shall be stopped when:

(i) The strain energy absorbed by the frame is equal to the required input energy ( $E_{is}$ ); or

(ii) Deflection of the frame exceeds the allowable deflection; or

(iii) The frame load limit occurs before the allowable deflection is reached in the side load.

b. The L-D diagram, as shown by means of a typical example in Figure W-19, shall be constructed, using the data obtained in accordance with clause a of this subparagraph.

c. The modified  $L_m$ - $D_m$  diagram shall be constructed according to clause (ii) of this subparagraph and according to figure W-20. The strain energy absorbed by the frame ( $E_u$ ) shall then be determined.

d.  $E_{is}$ , FER, and FSB shall be calculated.

e. The test procedure shall be repeated on the same frame utilizing  $L_r$  (rear input; see Figure W-18) and  $E_{ir}$ . Rear load application shall be uniformly distributed along a maximum projected dimension of twenty-seven (27) inches (686 mm.) and a maximum area of 160 square inches (1,032 sq. cm.) normal to the direction of load application. The load shall be applied to the upper extremity of the frame at the point which is midway between the centerline of the seat and the inside of the frame upright.

(h) Dynamic test.

1. Test conditions.

a. The protective frame and tractor shall meet the requirements of paragraph (e)2 or 3 of this subsection, as appropriate.

b. The dynamic loading shall be produced by use of a 4,410 lb. (2,000 kg.) weight acting as a pendulum. The impact face of the weight shall be twenty-seven (27) plus, or minus one (1) inch by twenty-seven (27) plus or minus one (1) inch (686 + or - 25 mm.) and shall be constructed so that its center of gravity is within one (1) inch (25.4 mm.) of its geometric center. The weight shall be

suspended from a pivot point 18-22 feet (5.5-6.7 m.) above the point of impact on the frame and shall be conveniently and safely adjustable for height. (See Figure W-21).

c. For each phase of testing, the tractor shall be restrained from moving when the dynamic load is applied. The restraining members shall be of 0.5-0.63 inch (12.5-16 mm.) steel cable and points of attaching restraining members shall be located an appropriate distance behind the rear axle and in front of the front axle to provide a 15°-30° angle between a restraining cable and the horizontal. The restraining member shall either be in the plane in which the center gravity of the pendulum will swing or more than one (1) restraining cable shall give a resultant force in this plane. (See Figure W-22).

d. The wheel tread setting shall comply with the requirements of paragraph (e)6 of this subsection. The tires shall have no liquid ballast and shall be inflated to the maximum operating pressure recommended by the tire manufacturer. With specified tire inflation, the restraining cables shall be tightened to provide tire deflection of 6-8 percent of nominal tire section width. After the vehicle is properly restrained, a wooden beam 6 x 6 in. (15 x 15 cm.) shall be driven tightly against the appropriate wheels and clamped. For the test to the side, an additional wooden beam shall be placed as a prop against the wheel nearest the operator's station and shall be secured to the floor so that it is held tightly against the wheel rim during impact. The length of this beam shall be chosen so that when it is positioned against the wheel rim, it is at an angle of 25°-40° to the horizontal. It shall have a length 20-25 times its depth and a width two (2) to three (3) times its depth. (See Figures W-22 and W-23.)

e. Means shall be provided indicating the maximum instantaneous deflection along the line of impact. A simple friction device is illustrated in Figure W-23.

f. No repair or adjustments may be carried out during the test.

g. If any cables, props, or blocking shift or break during the test, the test shall be repeated.

#### 2. Test procedure.

a. General. The frame shall be evaluated by imposing dynamic loading to rear followed by a load to the side on the same frame. The pendulum dropped from the height (see definition "H" in paragraph (j)3 of this subsection) imposes the dynamic load. The position of the pendulum shall be so selected that the initial point of impact on the frame shall be in line with the arc of travel of the center of gravity of the pendulum. A quick release mechanism should be used but, if used, shall not influence the attitude of the block.

b. Impact at rear. The tractor shall be properly restrained according to subparagraphs 1c and d of this paragraph. The tractor shall be positioned with respect to the pivot point of the pendulum such that the pendulum is twenty (20) degrees from the vertical prior to impact, as shown in Figure W-22. The impact shall be applied to the upper extremity of the frame at the point which is midway between the centerline of the seat and the inside of the frame upright of a new frame.

c. Impact at side. The block and restraining shall conform to subparagraphs 1c and d of this paragraph. The point of impact shall be that structural member of the protective frame likely to hit the ground first in a sideways accidental upset. The side impact shall be applied to the side opposite that used for rear impact.

#### (i) Performance requirements.

##### 1. General.

a. The frame, overhead weather shield, fenders, or other parts in the operator area may be deformed but shall not shatter or leave sharp edges exposed to the operator, or violate dimensions as shown in Figures W-16 and W-17 as follows:

D = 2 in. (51 mm.) inside of frame upright to vertical centerline of seat.

E = 30 in. (762 mm.).

F = Not less than 0 in. and not more than 12 in. (305 mm.), measured at centerline front of seat backrest to crossbar along the line of load application as shown in Figure W-17.

G = 24 in. (610 mm.).

b. The material and design combination used in the protective structure must be such that the structure can meet all prescribed

performance tests at zero degrees Fahrenheit in accordance with subsection (2)(f)2d.

2. Vehicle overturn performance requirements. The requirements of this paragraph must be met in both side and rear overturns.

3. Static test performance requirements. Design factors shall be incorporated in each design to withstand an overturn test as prescribed in this paragraph. The structural requirements will be generally met if FER is greater than one (1) and FSB is greater than K-1 in both side and rear loadings.

4. Dynamic test performance requirements. Design factors shall be incorporated in each design to withstand the overturn test prescribed in this paragraph. The structural requirements will be generally met if the dimensions in this paragraph are adhered to in both side and rear loads.

#### (j) Definitions applicable to this section.

1. SAE J1194, Society of Automotive Engineers Handbook, 1986, Operator Protection for Wheel-type Agricultural and Industrial Tractors (1983) defines "agricultural tractor" as a "wheel-type vehicle of more than 20 engine horsepower designed to furnish the power to pull, carry, propel, or drive implements that are designed for agricultural usage." Since this subsection applies only to general industry work, the following definition of "agricultural tractor" is adopted for purposes of this administrative regulation: "agricultural tractor" means a wheel-type vehicle of more than twenty (20) engine horsepower, used in general industry work, which is designed to furnish the power to pull, propel, or drive implements.

2. "Industrial tractor" means that class of wheeled-type tractor of more than twenty (20) engine horsepower (other than rubber-tired loaders and dozers described in subsection (2) of this section) used in operations such as landscaping, loading, digging, grounds keeping, and highway maintenance.

3. The following symbols, terms, and explanations apply to this section:

$E_{is}$  = Energy input to be absorbed during side loading.

$E'_{is}$  =  $723 + 0.4 W \text{ ft.-lb.}$  ( $E'_{is} = 100 + 0.12 W'$ , m.-kg.).

$E_{ir}$  = Energy input to be absorbed during rear loading.

$E'_{ir}$  =  $0.47 W \text{ ft.-lb.}$  ( $E'_{ir} = 0.14 W'$ , m.-kg.).

W = Tractor weight as prescribed in subsection (3)(e)1 and (e)3, in lb. ( $W'$ , kg.). L = Static load, lb. (kg.).

D = Deflection under L, in. (mm.).

L-D = Static load-deflection diagram.

$L_m D_m$  = Modified static load-deflection diagram (Figure W-20).

To account for increase in strength due to increase in strain rate, raise L in plastic range to  $L \times K$ .

K = Increase in yield strength induced by higher rate of loading (1.3 for hot rolled low carbon steel 1010-1030). Low carbon is preferable; however, if higher carbon or other material is used, K must be determined in the laboratory. Refer to Charles H. Norris, et al., Structural Design for Dynamic Loads (1959), p. 3.

$L_{max}$  = Maximum observed static load.

Load = Point on L-D curve where observed static load is Limit 0.8  $L_{max}$  (refer to Figure W-19).

$E_u$  = Strain energy absorbed by the frame, ft.-lb. (m.-kg.) area under  $L_m D_m$  curve.

FER = Factor of energy ratio,  $FER = E_u/E_{is}$  also =  $E_u/E_{ir}$

$P_b$  = Maximum observed force in mounting connection under static load, L, lb. (kg.).

FSB = Design margin for mounting connection  $FSB = (P_b/P_b)-1$ .

H = Vertical height of lift of 4.410 lb. (2,000 kg.) weight, in. (H', mm.). The weight shall be pulled back so that the height of its center of gravity above the point of impact is defined as follows:  $H = 4.92 + 0.00190 W$  or ( $H' = 125 + 0.107 W'$ ) (Figure W-24).

(k) Source of standard. The standard in this section is derived from, and restates, Society of Automotive Engineers Standard J1194, Society of Automotive Engineers Handbook, 1986, Protective Frame Test Procedures and Performance Requirements. This standard shall be resorted to in the event that questions of interpretation arise. The standard appears in the 1986 SAE Handbook, which may be examined in the Central Office of the Kentucky Occupational Safety and Health Program.

(4) Overhead protection for operators of agricultural and

industrial tractors.

(a) General.

1. Purpose. When overhead protection is provided on wheel-type agricultural and industrial tractors, the overhead protection shall be designed and installed according to the requirements contained in this subsection. The provisions of subsection (2) of this section for rubber-tired dozers and rubber-tired loaders may be used in lieu of the standards contained in this subsection. The purpose of the standard is to minimize the possibility of operator injury resulting from overhead hazards such as flying and falling objects, and at the same time to minimize the possibility of operator injury from the cover itself in the event of accidental upset.

2. Applicability. This standard applies to wheel-type agricultural tractors used in general industry work and to wheel-type industrial tractors used in general industry work.

(b) Overhead protection. When overhead protection is installed on wheel-type agricultural or industrial tractors used in general industry work, it shall meet the requirements of this paragraph. The overhead protection may be constructed of a solid material. If grid or mesh is used, the largest permissible opening shall be such that the maximum circle which can be inscribed between the elements of the grid or mesh is 1.5 in. (38 mm.) in diameter. The overhead protection shall not be installed in such a way as to become a hazard in the case of upset.

(c) Test procedures - general.

1. The requirements of subsection (3)(d), (e), and (f) of this section shall be met.

2. Static and dynamic rear load application shall be uniformly distributed along a maximum projected dimension of 27 in. (686 mm.) and a maximum area of 160 in<sup>2</sup> (1,032 cm<sup>2</sup>) normal to the direction of load application. The load shall be applied to the upper extremity of the frame at the point which is midway between the centerline of the seat and the inside of the frame upright.

3. The static and dynamic side load application shall be uniformly distributed along a maximum projected dimension of 27 in. (686 mm.) and a maximum area of 160 in<sup>2</sup> (1,032 cm<sup>2</sup>) normal to the direction of load application. The direction of load application is the same as in subsection (3)(g) and (h) of this section. To simulate the characteristics of the structure during an upset, the center of load application may be located from a point 24 in. (610 mm.) (K) forward to 12 in. (305 mm.) (L) rearward of the front of the seat backrest to best utilize the structural strength. See Figure W-25.

(d) Drop test procedures.

1. The same frame shall be subjected to the drop test following either the static or dynamic test.

2. A solid steel sphere or material of equivalent spherical dimension weighing 100 lb. (45.4 kg.) shall be dropped once from a height 10 ft. (3,048 mm.) above the overhead cover.

3. The point of impact shall be on the overhead cover at a point within the zone of protection as shown in Figure W-26, which is furthest removed from major structural members.

(e) Crush test procedures.

1. The same frame shall be subjected to the crush test following the drop test and static or dynamic test.

2. The test load shall be applied as shown in Figure W-27 with the seat positioned as specified in subsection (3)(d)4 of this section. Loading cylinders shall be pivotally mounted at both ends. Loads applied by each cylinder shall be equal within two (2) percent, and the sum of the loads of the two (2) cylinders shall be two (2) times the tractor weight as set forth in subsection (3)(e)1 of this section. The maximum width of the beam illustrated in Figure W-27 shall be 6 in. (152 mm.).

(f) Performance requirements.

1. General. The performance requirements set forth in subsection (3)(i)2, 3, and 4 of this section shall be met.

2. Drop test performance requirements.

a. Instantaneous deformation due to impact of the sphere shall not enter the protected zone as illustrated in Figure W-25, W-26, and W-28.

b. In addition to the dimensions set forth in subsection (3)(i)1a of this section, the following dimensions apply to Figure W-28:

H = 17.5 in. (444 mm.).

J = 2 in. (50.8 mm.) measured from the outer periphery of the steering wheel.

3. Crush test performance requirements. The protected zone as described in Figure W-28 must not be violated.

(g) Source of standard. This standard is derived from, and restates, the portions of Society of Automotive Engineers Standard J167, Society of Automotive Engineers Handbook, 1986, which pertain to overhead protection requirements. The full title of the SAE standard is: Protective Frame with Overhead Protection-test Procedures and Performance Requirements. The SAE standard shall be resorted to in the event that questions of interpretation arise. The SAE standard appears in the 1986 SAE Handbook, which may be examined in the Central Office of the Kentucky Occupational Safety and Health Program.

Section 6.] Fire Apparatus and Fire Department Facilities. (1) Scope. This section shall apply to industrial fire departments and private, public or contractual type fire departments. This section shall not apply to volunteer fire departments.

(2) Persons riding on fire apparatus. A [Beginning September 1, 1991, a] person riding on fire apparatus shall be secured to the vehicle by seat belts or safety harnesses when the vehicle is in motion.

(3) Inspection, maintenance, and repair of vehicles. [Beginning January 1, 1992:]

(a) All fire department vehicles shall be inspected at least weekly and within twenty-four (24) hours after any use or repair to identify and correct unsafe conditions.

(b) A fire department vehicle found to be unsafe shall be placed out of service until repaired.

(c) After being repaired, the vehicle shall be inspected prior to being placed back in service.

(d) [(e)] The inspection shall include:

1. Tires, brakes, warning lights and devices, headlights and clearance lights, windshield wipers and mirrors;

2. Starting the apparatus, and verification of the operation of pumps and other equipment; and

3. Inspection of the safety equipment carried on fire department vehicles.

(e) [(d)] A fire department shall maintain inspection, maintenance, repair, and service records for all vehicles and equipment used for emergency operations.

(4) Facility safety. [Beginning July 1, 1993:]

(a) Sleeping areas in fire stations shall:

1. Be separated from vehicle storage areas by at least one (1) hour fire resistive assemblies; or

2. Have operable fire suppression or operable smoke detection systems.

(b) A fire station shall have a system capable of ventilating. [

(5) Effective dates.

(a) Subsection (2) of this section shall become effective September 1, 1991.

(b) Subsection (3) of this section shall become effective January 1, 1992.

(c) Subsection (4) of this section shall become effective July 1, 1993.

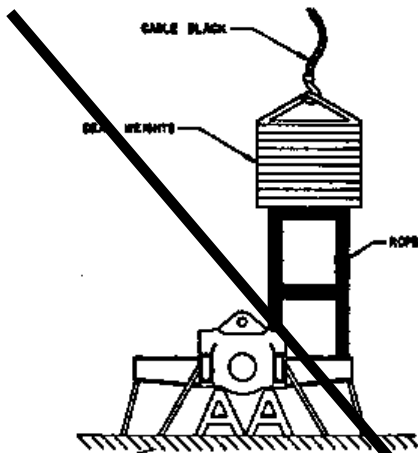


Figure W-1-Vertical loading setup for all types of equipment described in Subsection (2)(a).

Incremental loading shall be continued until the rope has absorbed the amount of energy and the minimum applied load specified under paragraph (f) of this Subsection has been reached or surpassed.

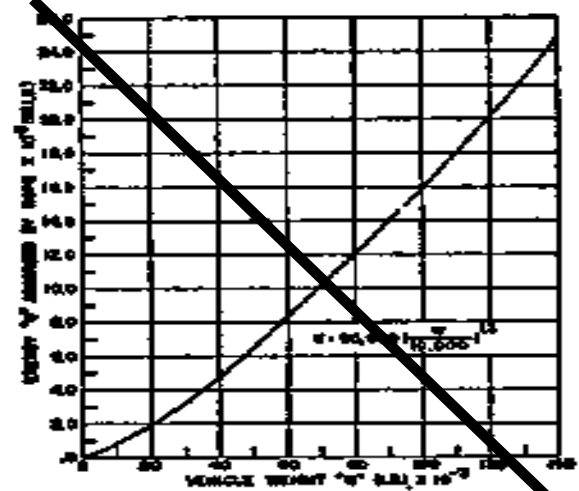


Figure W-6—Energy absorbed versus vehicle weight.

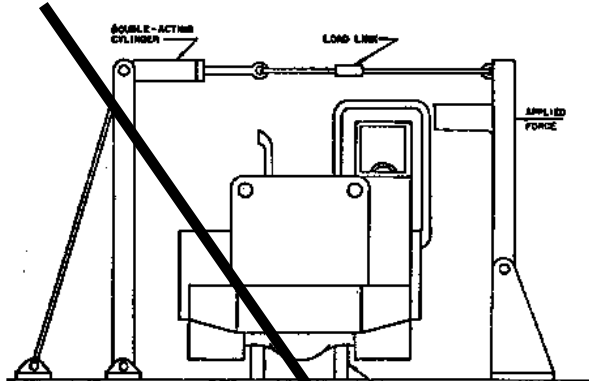


Figure W-2—Test setup for rubber-tired self-propelled scrapers.

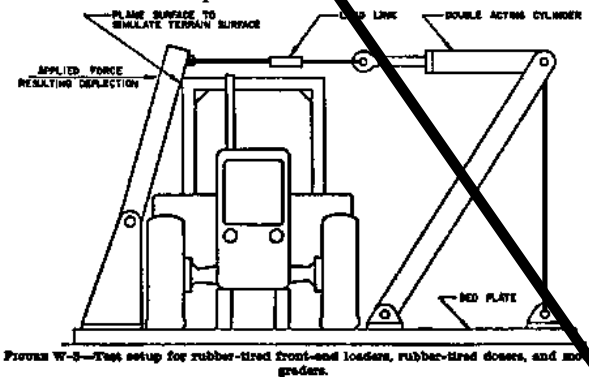


Figure W-3—Test setup for rubber-tired front-end loaders, rubber-tired dozers, and motor graders.

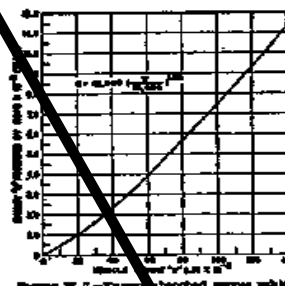


Figure W-7—Energy absorbed versus vehicle weight.

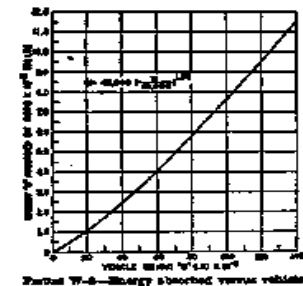


Figure W-8—Energy absorbed versus vehicle weight.

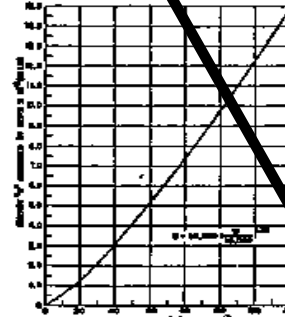


Figure W-9—Energy absorbed versus vehicle weight.

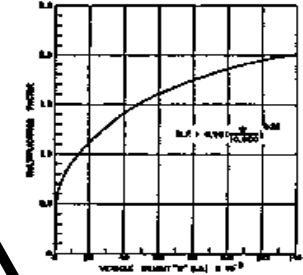


Figure W-10—Minimum horizontal load factor for self-propelled scrapers.

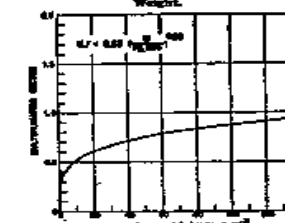


Figure W-11—Minimum horizontal load factor for rubber-tired loaders and dozers.

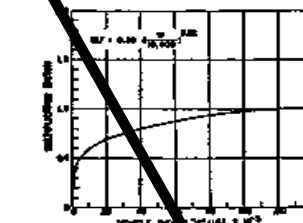


Figure W-12—Minimum horizontal load factor for crawler loaders and motor graders.

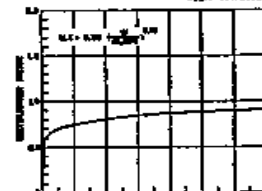


Figure W-13—Minimum horizontal load factor for motor graders.

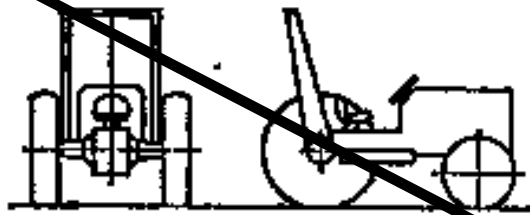


FIGURE W-14—Typical frame configuration.

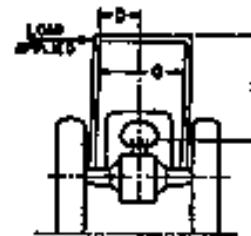


FIGURE W-15—Side load application.

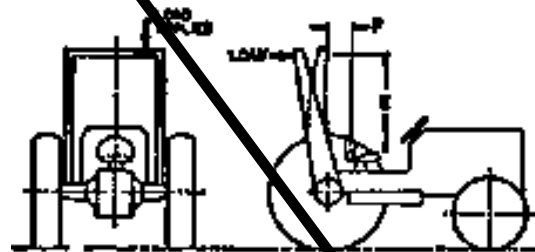


FIGURE W-17—Rear load application.

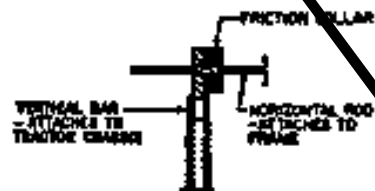


FIGURE W-18—Method of determining instantaneous deflection.

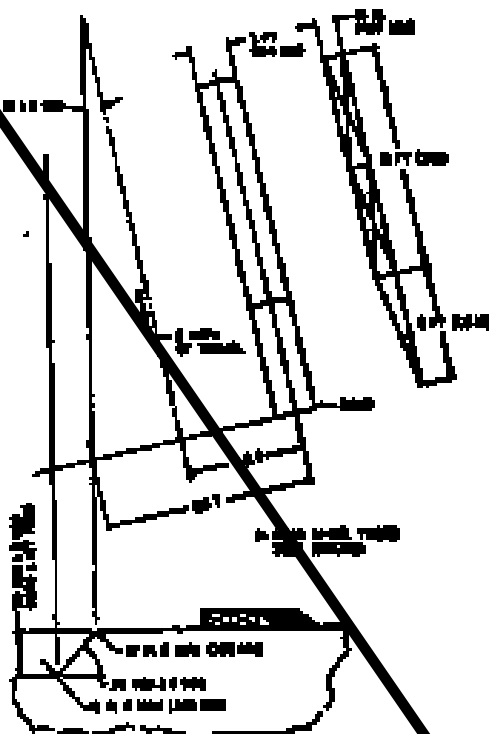
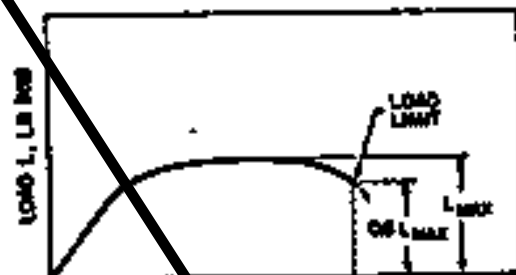
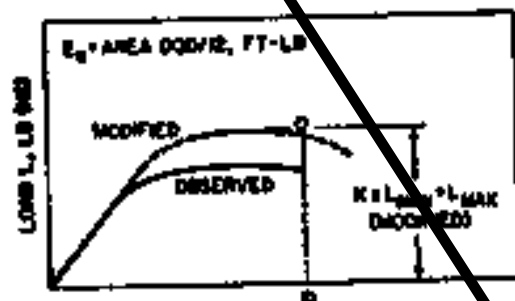


FIGURE W-19.



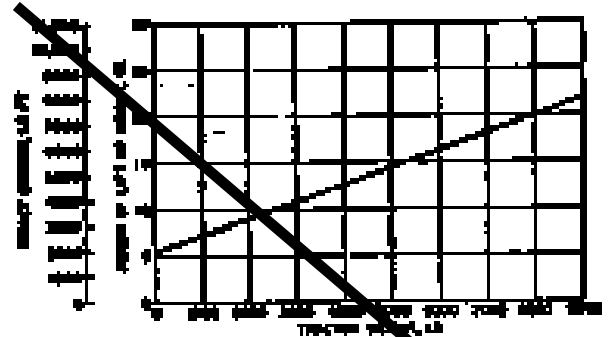
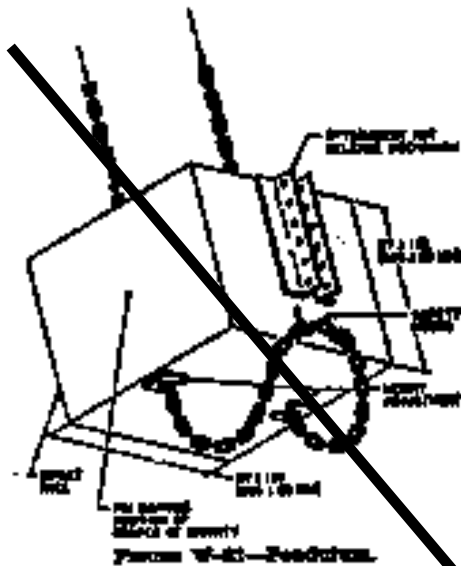
DEFLECTION D, IN (MM)

FIGURE W-19—Typical L-D diagram.



DEFLECTION D, IN (MM)

FIGURE W-20—Typical modified L-D diagram.



IMPACT ENERGY (ft-lb)  
 1000  
 800  
 600  
 400  
 200  
 0  
 0 1000 2000 3000 4000 5000 6000 7000 8000 9000 10000  
 TRACTOR WEIGHT (lb)

FIGURE W-24—Impact energy and corresponding lift height of 4,410 lb. (2,000 kg.) weight.

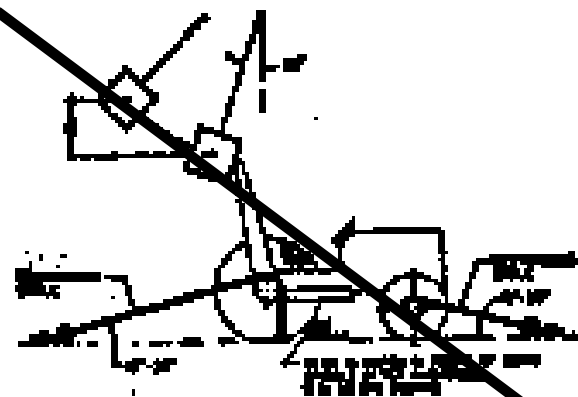


FIGURE W-25—Method of impact from rear.

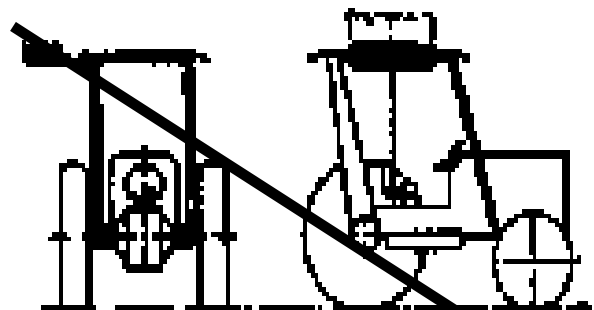


FIGURE W-26—Location for side load.

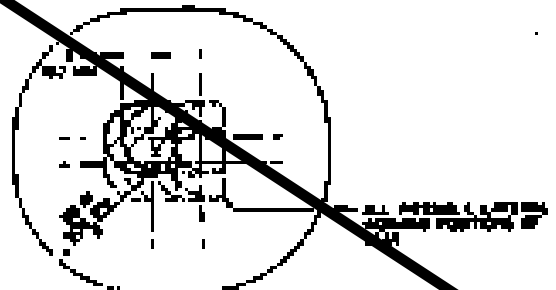


FIGURE W-28—Zone of protection for drop test.

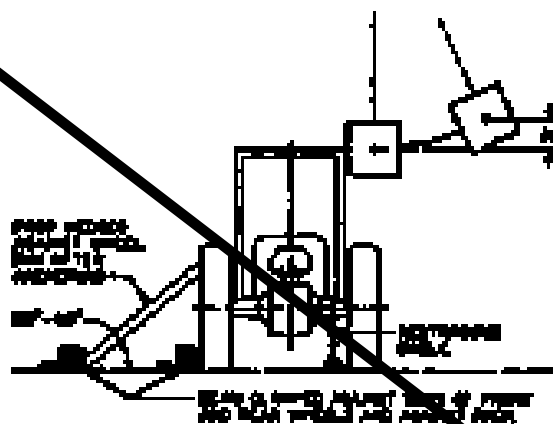


FIGURE W-29—Method of impact from side.

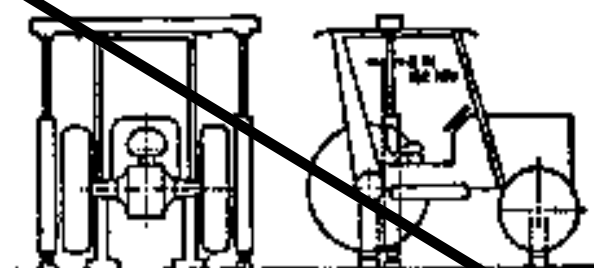
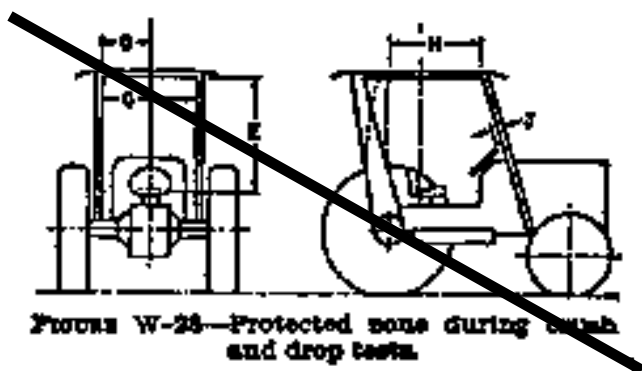


FIGURE W-27—Method of load application for crush test.



LARRY ROBERTS, Secretary of Labor

APPROVED BY AGENCY: April 26, 2021

FILED WITH LRC: April 27, 2021 at 9:39 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on July 21, 2021 at 10:00 am (ET). The meeting will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at <https://us02web.zoom.us/j/86731399141?pwd=Q2V0cDQ3ZkVBaUtoNERCMDNlKzZJZz09>, password 446261; or by telephone at (713) 353-0212, (888) 822-7517 toll free, conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email [Robin.Maples@ky.gov](mailto:Robin.Maples@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since August 3, 1977, defines terms. Section 2 maintains the requirements regarding automotive-type batteries. Section 3 maintains the requirements for off highway motor vehicles and equipment. Section 4 maintains the requirements for fire apparatus and fire department facilities. Amendment to the aforementioned sections are primarily technical and intended to maintain consistency with other regulations. Amendment to this administrative regulation also strikes several requirements; specifically, safety and testing of supply lines in excess of 600 volts, safety belts, lanyards, and lifelines, as well as rollover protective structures and overhead protection. Other occupational safety and health (OSH) standards address the requirements that are removed. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 from the Regular Session of the 2017 General Assembly.

(b) The necessity of this administrative regulation: This administrative regulation maintains employer and employee OSH protections. The regulation promotes employer and employee OSH throughout Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH administrative

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation, effective since August 3, 1977, promotes worker safety and health throughout Kentucky by maintaining employers and employees OSH protections.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since August 3, 1977, defines terms. Section 2 maintains the requirements regarding automotive-type batteries. Section 3 maintains the requirements for off highway motor vehicles and equipment. Section 4 maintains the requirements for fire apparatus and fire department facilities. Amendment to the aforementioned sections are primarily technical and intended to maintain consistency with other regulations. Amendment to this administrative regulation also strikes requirements addressing safety and testing of supply lines in excess of 600 volts, safety belts, lanyards, and lifelines, as well as rollover protective structures and overhead protection. Other OSH standards address the requirements that are removed. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation, effective since August 3, 1977, promotes worker safety and health throughout Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation complies and conforms with the authorizing statutes of KRS 338.051 and 338.061. KRS 338.051(3) and 338.061 authorize the Kentucky OSH Standards Board to promulgate OSH administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides all a clear understanding of the requirements. It promotes employer and employee occupational safety and health throughout Kentucky.

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

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

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection will result from clarification of the regulation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: (a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Not applicable.
2. State compliance standards. This regulation provides OSH protections to employees and employers; OSHA does not have an equivalent standard.
3. Minimum or uniform standards contained in the federal mandate. Not applicable.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: There is no equivalent federal standard. This regulation, effective since August 3, 1977, maintains employer and employee OSH protections.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects any unit, part, or division of state or local government covered by KRS Chapter 338 in general industry.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.
- (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.
- (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.
- (c) How much will it cost to administer this program for the first year? There are no costs associated with this amendment.
- (d) How much will it cost to administer this program for subsequent years? There are no costs associated with this amendment.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

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

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

**803 KAR 2:423. Stairways and ladders [Adoption of 29 C.F.R. Part 1926.1050-1060].**

RELATES TO: KRS Chapter 338, 29 C.F.R. 1926.1050 - 1060  
 STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires ~~[and 338.061—authorize]~~ the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health ~~[rules, administrative]~~ regulations and authorizes the chairman to reference federal standards without approval if necessary to meet federal time requirements ~~[—and standards]. This [The following] administrative regulation establishes [contains those] standards that are [to be]~~ enforced by the Department of Workplace Standards ~~[Division of Occupational Safety and Health Compliance]~~ in ~~[the area of]~~ construction.

Section 1. Definitions. (1) ~~["Assistant Secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.~~

(2) ~~"C.F.R." means Code of Federal Regulations.~~

(2) ~~[(3)]~~ "Employee" is defined by KRS 338.015(2).

(3) ~~[(4)]~~ "Employer" is defined by KRS 338.015(1).

(4) ~~[(5)]~~ "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

Section 2. Except as modified by ~~[the definitions established in]~~ Section 1 of this administrative regulation, the construction industry shall comply with 29 C.F.R. 1926, Subpart X, Stairways and Ladders [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. 1926.1050—1926.1060 as revised July 1, 2013; and~~

(2) ~~The amendments to 29 C.F.R. 1926.1053 as published in the April 11, 2014 Federal Register, Volume 79, Number 70].~~

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: April 26, 2021

FILED WITH LRC: April 27, 2021 at 9:39 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2021 at 10:00 a.m. (ET). The meeting will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at <https://us02web.zoom.us/j/86731399141?pwd=Q2V0cDQ3ZkVBaUtoNERCMDNlKzZJZz09>, password 446261; or by telephone at (713) 353-0212, (888) 822-7517 toll free, conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since December 15, 1989, defines terms not used in the federal standard. Section 2 adopts the requirements of 29 C.F.R. 1926, Subpart X, Stairs and Ladders. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 2017 from the Regular Session of the 2017 General Assembly. Amendments to

this regulation are technical and intended to maintain consistency with other regulations.

(b) The necessity of this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health (OSH) Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since December 15, 1989, defines terms not used in the federal standard. Section 2 adopts the requirements of 29 C.F.R. 1926, Subpart X, Stairs and Ladders. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with HB 50 2017 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

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

employers in the Commonwealth engaged in construction activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

2. State compliance standards. The Kentucky OSH Program is mandated to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

3. Minimum or uniform standards contained in the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84

STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(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. None.

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

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

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

## LABOR CABINET

### Department of Workplace Standards

#### Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training

#### (Amendment)

### **803 KAR 2:435. Supply lines in excess of 600 volts [Construction industry standards].**

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS 338.051(3), KRS 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. This administrative regulation establishes standards that are enforced by the Department of Workplace Standards in construction. [and contains those standards to be enforced by the Division of Occupational Safety and Health Compliance. The Occupational Safety and Health Standards Board hereby adopts the following administrative regulations applicable to the construction industry.]

Section 1. Definitions. (1) "Disconnected" means disconnected from any electrical source or supply.

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

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

(4) "Guarded" means protected by personnel, covered, fenced, or enclosed by means of suitable castings, barrier, rails, screens, mats, platforms, or other suitable devices in accordance with standard barricading techniques designed to prevent dangerous approach or contact by persons or objects but does not include insulated wires not otherwise protected.

(5) "Hold cards" or "hold tags" means a card or tag-type device, usually having a predominant color of white or red that warns against or cautions against the operation of a particular switch, device, circuit, tool, machine, or other piece of equipment.

(6) "Near" means a distance no closer than shown in the table in section 2 of this administrative regulation.

(7) "Qualified person" means a person who, because of experience and training is familiar with the construction and operation of the apparatus or equipment and the hazards involved in the performance of the job.

Section 2. Safety and Testing [of Supply Lines in Excess of 600 Volts]. (1) [Definitions.

(a) ~~Disconnected means disconnected from any electrical source or supply.~~

(b) ~~Guarded: protected by personnel, covered, fenced, or enclosed by means of suitable castings, barrier, rails, screens, mats, platforms, or other suitable devices in accordance with standard barricading techniques designed to prevent dangerous approach or contact by persons or objects. (Note: wires, which are insulated but not otherwise protected, are not considered as guarded.)~~

(c) ~~Hold cards: (also called "hold tags") a card or tag-type device, usually having a predominant color of white or red which warns against or which cautions against the operation of a particular switch, device, circuit, tool, machine, etc.~~

(d) ~~Near: a distance no closer than that shown in the table in subsection (3)(c) of this section.~~

(e) ~~Qualified person: a person who, because of experience and training is familiar with the construction and operation of the apparatus or equipment and the hazards involved in the performance of the job.~~

(2) Purpose.

(a) ~~The intent and purpose of this administrative regulation is to provide and establish safety procedures for testing equipment to protect electrical workers from hazards resulting from exposure to high voltage.~~

(b) ~~This administrative regulation applies [shall apply] to nonutility electrical employees [workers who are] engaged in electrical construction [and/or maintenance] of electrical conductors and equipment rated at 600 volts and above.~~

2. [(3)] Energized conductors and equipment.

(1) [(a)] Only qualified employees shall work on or near high voltage conductors or equipment.

(2) [(b)] Personal protective equipment shall be provided by the employer and used by the employee when working on or near energized, ungrounded high voltage conductors, or equipment.

(3) [(a)] [(e)] No employee shall approach or take any conductive object, without an approved insulating handle, within the minimum distance specified in the Minimum Clear Distance From Live Parts table below, unless the energized part is insulated or guarded from the employee, or the employee is effectively insulated from the energized part [live parts].

(b) ~~Rubber gloves, and sleeves if necessary. [(sleeves if necessary)]~~ rated for the voltage involved shall be considered effective insulation of the employee from the energized part.

Minimum Clear Distance From Live Parts		
Voltage Phase to Phase (Kilovolts)	Distance	Phase to Employee
0.6 to 34.5	2'	
34.5 to 46	2 1/2'	
46 to 69	3'	
69 to 115	3' 4"	
115 to 138	3' 6"	
138 to 169	3' 8"	

Section 3. [(4)] Deenergized conductor or equipment.

(1) [(a)] Existing conditions shall be determined before starting work on an electrical conductor or [and/or] equipment.

(2) [(b)] Before any work is performed, all electrical switches, breakers, and associated disconnecting devices shall be opened, made inoperable and hold tagged out by the person in charge.

(3) Employees shall be trained and thoroughly instructed in the tagging procedure.

(4) One (1) qualified person such as the [for example:] foreman, general foreman, or first class electrician [;] of each crew shall be responsible for attaching hold tags or [and/or] hold cards to the disconnecting means.

(5) When more than one (1) crew is involved in the work,

multiple hold tags or hold cards shall be placed in the handle of the disconnecting equipment.

(6) The use of such tags ~~shall~~ must be respected.

(7) Equipment or items ~~so~~ tagged ~~shall~~ must not be activated or used without full and proper authority of ~~the~~ a responsible person whose signature appears on the tag.

(8) ~~[(e)]~~ Conductors shall be short-circuited and grounded wherever possible.

(9) ~~[(e)]~~ Capacitors may be components of apparatus of the disconnected electrical system.

(10) Before employees are allowed to work, the capacitors shall be discharged, short-circuited, and grounded.

(11) ~~[(e)]~~ When deenergizing conductors and equipment and the means of disconnecting from the energy source is not visibly open, a voltage test shall be made before starting work.

(12) An operational check shall be made of the voltage tester prior to and following the voltage test to determine reliability of the testing device.

(13) The test device ~~shall~~ must be handled and used while wearing or using approved protective equipment during the test.

(14) ~~[(f)]~~ All conductors and equipment shall be treated as energized until tested, short-circuited and effectively grounded except when the circuit involved is isolated from all possible sources of energizing voltage from another circuit, induced voltage or back feed.

(15) ~~[(g)]~~ The voltage condition of deenergized conductors ~~and~~ and/or equipment shall be determined with testing equipment designed for the applicable voltage.

(16) ~~[(h)]~~ Upon completion of work on deenergized conductors and equipment, the person responsible shall ascertain that all employees under ~~her or~~ his jurisdiction are clear and that all protective short-circuit and grounding lines are removed.

(17) The qualified person(s) shall then remove ~~her or~~ his hold tag(s).

(18) Only at this time shall conductors and equipment be reenergized.

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: April 26, 2021

FILED WITH LRC: April 27, 2021 at 9:37 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2021 at 10:00 a.m. The meeting will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at <https://us02web.zoom.us/j/86731399141?pwd=Q2VOcDQ3ZkVBaUtoNERCMDNlKzZJZz09>, password 446261; or by telephone at (713) 353-0212, (888) 822-7517 toll free, conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since August 3, 1977, defines

terms including terms previously found in Section 2. Section 2 updates and maintains the requirements addressing electrical supply lines in excess of 600 volts in construction. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(b) The necessity of this administrative regulation: This administrative regulation provides all employers with specific requirements for supply lines in excess of 600 volts to protect employers and employees. The regulations promotes employer and employee occupational safety and health throughout Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health (OSH) Standards Board to promulgate OSH administrative regulations. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation, effective since August 3, 1977, promotes worker safety and health throughout Kentucky by establishing specific safety requirements for supply lines in excess of 600 volts.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since August 3, 1977, defines terms including terms previously found in Section 2. Section 2 updates and maintains the requirements addressing electrical supply lines in excess of 600 volts in construction. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation, effective since August 3, 1977, promotes worker safety and health throughout Kentucky by establishing specific safety requirements for supply lines in excess of 600 volts in construction.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation complies and conforms with the authorizing statutes of KRS 338.051 and 338.061. KRS 338.051(3) and 338.061 authorize the Kentucky OSH Standards Board to promulgate OSH administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides all a clear understanding of the requirements. It promotes employer and employee occupational safety and health throughout Kentucky.

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection will result from clarification of the regulation.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Not applicable.

2. State compliance standards. This regulation provides protection to employees and employers; OSHA does not have a regulation for supply lines in excess of 600 volts in construction.

3. Minimum or uniform standards contained in the federal mandate. Not applicable.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: There is no equivalent federal standard. This regulation, effective since August 3, 1977, promotes worker safety and health throughout Kentucky by establishing specific requirements for supply lines in excess of 600 volts in construction.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061

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

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

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

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

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

#### 803 KAR 2:440. Cranes and derricks in construction.

RELATES TO: KRS 338.015, 29 C.F.R. Part 1926.1400-1926.1441

STATUTORY AUTHORITY: KRS 338.051(3), 338.061[~~-, E.O. 2018-586~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires [and ~~338.061 authorize~~] the Kentucky Occupational Safety and Health Standards Board to 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 [standards. Executive Order 2018-586 transfers the authority to adopt, amend, or repeal administrative regulations from the Occupational Safety and Health Standards Board to the Secretary of the Kentucky Labor Cabinet]. This administrative regulation establishes the 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) "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) [~~"Established federal standard" is defined by KRS 338.015(10).~~]

(5) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(5) [(6)] "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

Section 2. Except as modified [established] by the definitions in Section 1 and the requirements in Section 3 of this administrative regulation, the construction industry shall comply with 29 C.F.R. 1926, Subpart CC, Cranes and Derricks in Construction [the following established federal standards] published by the Office of the Federal Register, National Archives and Records Services, General Services Administration [:

(1) ~~29 C.F.R. 1926.1400-1926.1441, effective July 1, 2018; and~~

(2) ~~The amendments to 29 C.F.R. 1926.1427 published in the November 9, 2018 Federal Register, Volume 83, Number 218].~~

Section 3. Fall Protection. (1)(a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.1423(e)(1)(iii) [shall be replaced with: "On horizontal lattice booms where the fall distance is ten (10) feet or more."].

(b) On horizontal lattice booms where the fall distance is ten (10) feet or more.

(2)(a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.1423(f) [shall be replaced with: "For assembly — disassembly work, the employer must provide and ensure the use of fall protection equipment for employees who are on a walking — working surface with an unprotected side or edge more than ten (10) feet above a lower level, except when the employee is at or near draw works (when the equipment is running), in the cab, or on the deck."].

(b) For assembly/disassembly work, the employer must provide and ensure the use of fall protection equipment for any

employee who is on a walking/working surface with an unprotected side or edge more than ten (10) feet above a lower level, except when the employee is at or near draw-works (when the equipment is running), in the cab, or on the deck.

(3)(a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.1423(h)(2) [shall be replaced with: "For erecting, climbing, and dismantling work, the employer must provide and ensure the use of fall protection equipment for employees who are on a walking/working surface with an unprotected side or edge more than ten (10) feet above a lower level."].

(b) For erecting, climbing, and dismantling work, the employer must provide and ensure the use of fall protection equipment for any employee who is on a walking/working surface with an unprotected side or edge more than ten (10) feet above a lower level.

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: April 26, 2021

FILED WITH LRC: April 27, 2021 at 9:39 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2021 at 10:00 am (ET). The meeting will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at <https://us02web.zoom.us/j/86731399141?pwd=Q2VOcDQ3ZkVBaUtoNERCMDNlKzZJZz09>, password 446261; or by telephone at (713) 353-0212, (888) 822-7517 toll free, conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since January 1, 2011, defines terms not used in the federal standard. Section 2 adopts the requirements of 29 C.F.R. 1926, Subpart CC, Cranes and Derricks in Construction. Section 3 of this regulation maintains requirements addressing fall protection trigger heights. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance House Bill (HB) 50 from the Regular Session of the 2017 General Assembly.

(b) The necessity of this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health (OSH) Standards Board to

promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since January 1, 2011, defines terms not used in the federal standard. Section 2 adopts the requirements of 29 C.F.R. 1926, Subpart CC, Cranes and Derricks in Construction. Section 3 of this regulation maintains requirements addressing fall protection trigger heights. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance HB 50 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and maintain consistency with other regulations.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

2. State compliance standards. The OSH Program is mandated to be as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

3. Minimum or uniform standards contained in the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The amendment maintains the maximum ten (10) foot fall protection trigger height. The requirement promotes worker safety and health throughout Kentucky.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(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. None.

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

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

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

#### PUBLIC PROTECTION CABINET Department of Insurance (Amendment)

#### 806 KAR 4:010. Fees of the Department [Office] of Insurance.

RELATES TO: KRS 304.2-150, 304.4-010, 304.9-105, 304.9-130, 304.9-140, 304.9-150, 304.9-160, 304.9-260, 304.9-270, 304.9-295, 304.9-300, 304.9-430, [304.9-485], 304.9-505, 304.9-780, 304.10-120, 304.11-020, 304.15-700, 304.38-040, 304.38-060

STATUTORY AUTHORITY: KRS 61.874(4), 304.2-110(1), 304.4-010(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 any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.4-010(1) requires the Commissioner [Executive Director] of Insurance to prescribe those services for which fees shall be charged and the amounts of the fees. KRS 61.874(4) authorizes an agency to charge fees based on costs for public records used for commercial purposes. This administrative regulation shall prescribe [prescribes] these services for which the Department [Office] of Insurance shall [will] charge fees and the amounts of those fees.

Section 1. The commissioner shall collect in advance fees as follows:

(1) Annual statement.

(a) Filing each year, \$100.

(b) Filing additional or supplemental statement in the same year, \$100.

(2) Filing charter documents.

(a) Original charter document, bylaws, and records of organization, or certified copies thereof required to be filed, \$100.

(b) Amended charter documents, bylaws, and records of organization, or certified copies thereof required to be filed, fifty (50) dollars.

(3) Certificate of authority.

(a) Issuance of original certificate, \$500.

(b) Amending, to add a line, fifty (50) dollars.

(c) Renewal, each year, \$100.

(4) Organization of domestic mutual insurers: filing application for solicitation permit and issuance of such permit, \$200.

(5) Self insurer.

(a) Application to become self insurer under KRS Chapter 304 Subtitle 39, \$200.

(b) Notification of self-insurance program under KRS Chapter 304 Subtitle 32, fifty (50) dollars.

(6) Agent license, line of authority, license renewal, appointment, appointment renewal, and late renewal penalty. Each individual agent and each business entity agent.

(a) License and line of authority:

1. Resident individual license, forty (40) dollars and an additional forty (40) dollars for each line of authority;

2. Nonresident individual license, fifty (50) dollars and an

additional fifty (50) dollars for each line of authority;

3. Resident business entity license, \$100 and an additional \$100 for each line of authority; and

4. Nonresident business entity license, \$120 and an additional \$120 for each line of authority.

(b) Temporary license as agent, twenty (20) dollars.

(c) License renewal, biennial:

1. Resident individual license renewal:

(a) If no active appointment, forty (40) dollars; and

(b) If one (1) or more active appointments, zero dollars;

2. Nonresident individual license renewal:

(a) If no active appointment, fifty (50) dollars; and

(b) If one (1) or more active appointments, zero dollars;

3. Resident business entity license renewal:

a. If no active appointment, \$100; and

b. If one (1) or more active appointments, zero dollars; and

4. Nonresident business entity license renewal:

a. If no active appointment, \$120; and

b. If one (1) or more active appointments, zero dollars.

(d) Appointment, per foreign or alien insurer represented:

1. Resident individual appointment, for each form filed:

a. Property, casualty, and personal lines of authority of agent, forty (40) dollars;

b. Life, health, and variable life and variable annuity lines of authority, forty (40) dollars; and

c. All other lines of authority of agent, forty (40) dollars each;

2. Nonresident individual appointment, for each form filed:

a. Property, casualty, and personal lines of authority of agent, fifty (50) dollars;

b. Life, health, and variable life and variable annuity lines of authority, fifty (50) dollars; and

c. All other lines of authority of agent, fifty (50) dollars each;

3. Resident business entity appointment, for each form filed:

a. Property, casualty, and personal lines of authority of agent, \$100;

b. Life, health, and variable life and variable annuity lines of authority, \$100; and

c. All other lines of authority of agent, \$100 each; and

4. Nonresident business entity appointment, for each form filed:

a. Property, casualty, and personal lines of authority of agent, \$120;

b. Life, health, and variable life and variable annuity lines of authority, \$120; and

c. All other lines of authority of agent, \$120 each.

(e) Appointment renewal, biennial, per foreign or alien insurer:

1. Resident individual appointment renewal, forty (40) dollars;

2. Nonresident individual appointment renewal, fifty (50) dollars;

3. Resident business entity appointment renewal, \$100; and

4. Nonresident business entity appointment renewal, \$120.

(f) Appointment and biennial appointment renewal, per fraternal benefit society, KRS Chapter 304 Subtitle 32 corporation, health maintenance organization, or limited health service organization represented:

1. Resident individual, forty (40) dollars;

2. Nonresident individual, fifty (50) dollars;

3. Resident business entity, \$100; and

4. Nonresident business entity, \$120.

(g) Late penalty for license renewal and appointment renewal:

1. Resident individual, forty (40) dollars;

2. Nonresident individual, fifty (50) dollars;

3. Resident business entity, \$100; and

4. Nonresident business entity, \$120.

(7) Pharmacy benefit manager license, or annual license renewal, \$1,000; late renewal penalty \$500.

(8) Portable Electronics Insurance Retailer License, one (1) to twenty (20) locations in Kentucky, \$100 per location; twenty-one (21) or more locations in Kentucky, \$2,500 dollars total.

(9)[7]) Surplus lines broker, consultant, reinsurance intermediary, or managing general agent license, biennial license renewal, or late renewal penalty, \$100 each.

(10)[8])(a) Adjuster license, biennial license renewal, or late

renewal penalty, fifty (50) dollars each.

(b) Temporary license as apprentice adjuster, twenty-five (25) dollars.

(11)[9]) Administrator's license, biennial license renewal, or late renewal penalty, fifty (50) dollars each.

(12)[40])(a) Individual life [viatical] settlement broker license, biennial license renewal, or late renewal penalty, \$250 each.

(b) Business entity life [viatical] settlement broker license, biennial license renewal, or late renewal penalty, \$750 each.

(13)[41])(a) Individual life [viatical] settlement provider license, biennial license renewal, or late renewal penalty, \$500 each.

(b) Business entity life [viatical] settlement provider license, biennial license renewal, or late renewal penalty, \$1,500 each.

(14)[42]) Approval of preclicensing training course, fifty (50) dollars; biennial renewal, fifty (50) dollars.

(15)[43]) Approval of instructors, five (5) dollars per instructor; biennial renewal, five (5) dollars per instructor.

(16)[44]) Filing agent continuing education course for:

(a) Approval, five (5) dollars per hour of continuing education credit in addition to initial fee of ten (10) dollars remitted with filing; and

(b) Biennial renewal, five (5) dollars per hour of continuing education credit; minimum of ten (10) dollars.

(17)[45]) Examination for agents, life settlement [viatical] brokers, adjusters, and consultants, fifty (50) dollars for each examination.

(18)[46]) Annual registration fee of unauthorized insurer under KRS 304.11-020(2), \$500.

(19)[47])(a) Rental vehicle insurance license, biennial license renewal, and late license renewal penalty:

1. Rental vehicle agent, \$100 each; and

2. Rental vehicle managing employee, individual, forty (40) dollars each.

(b) Rental vehicle agent and managing employee appointment, biennial appointment renewal, and late appointment renewal penalty, per insurer represented:

1. Resident individual, forty (40) dollars each;

2. Nonresident individual, fifty (50) dollars each;

3. Resident business entity, \$100 each; and

4. Nonresident business entity, \$120 each.

(c) Rental vehicle location registration or biennial location registration renewal, fifty (50) dollars per location.[]

~~(18)(a) Specialty credit insurance license, biennial license renewal, and late license renewal penalty:~~

~~1. Specialty credit producer, \$750; and~~

~~2. Specialty credit managing employee, forty (40) dollars each.~~

~~(b) Specialty credit producer and managing employee appointment, biennial appointment renewal, and late appointment renewal penalty, per insurer represented:~~

~~1. Resident individual, forty (40) dollars each;~~

~~2. Nonresident individual, fifty (50) dollars each;~~

~~3. Resident business entity, \$100 each; and~~

~~4. Nonresident business entity, \$120 each.~~

~~(c) Specialty credit location registration or biennial location registration renewal, \$250 per location.[]~~

~~(20)[49]) Registration fee of industrial insureds, government entity insureds, and exempt commercial policyholders under KRS Chapter 304 Subtitle 11, \$100.~~

~~(21)[29]) Advisory organizations, statistical agents, and form providers.~~

~~(a) Application for license, \$500.~~

~~(b) Annual renewal, \$100.~~

~~(22)[24]) Rate and form filings.~~

~~(a) Rate level revision filing in a noncompetitive market or other rate level revision filings subject to prior approval by the commissioner [executive director], \$100.~~

~~(b) Credit life or health insurance filing requiring review for compliance with KRS 304.19-080, \$100.~~

~~(c) Other rate and form filings, five (5) dollars per rate and form.~~

~~(23)[22]) Insurance premium finance companies.~~

~~(a) Application for license, \$500.~~

~~(b) Annual renewal, \$100.~~

~~(24)[23]) Cost of administering KRS Chapter 304 Subtitle 32 per membership contract in force on December 31 of each year, except~~

the health insurance contract or contracts for state employees as authorized by KRS 18A.225, ten (10) cents.

(25[24]) Computer printouts of lists, computer printouts of mailing labels, and electronic or digital media:

(a) Agents with lines of authority for:

1. Property, casualty, and personal lines, for computer print-outs of lists or mailing labels, \$300, for electronic or digital media, \$265;
2. Life, health, and variable life and variable annuity for computer print-outs of lists or mailing labels, \$300, for electronic or digital media, \$265;
3. All other lines, \$100;
4. Listing for each ZIP code, fifty (50) dollars; and
5. Appointments (activity) of a specific agent, five (5) dollars.

(b) Adjusters, consultants, managing general agents, surplus lines brokers, reinsurance intermediaries, rental vehicle agents and managing employees, ~~[specialty credit producers and managing employees,]~~ life[viatical] settlement brokers, life[viatical] settlement providers, and administrators, ninety (90) dollars per license classification.

(c) Insurer directories:

1. All authorized insurers, ninety (90) dollars;
2. Insurers by line of insurance, ninety (90) dollars; and
3. Appointments (activity) by a specific insurer, fifty (50) dollars.

(d) Business entity license for agent, adjuster, administrator, managing general agent, reinsurance intermediary, rental vehicle agent, ~~[specialty credit producer,]~~ life [viatical] settlement broker, and lifeviatical settlement provider, per license classification:

1. Business entity directory, ninety (90) dollars;
2. Business entities by line of authority, ninety (90) dollars; and
3. Appointments (activity) of a specific business entity, ten (10) dollars.

(e) Other special requests, printouts, or electronic or digital media not specified in this section, if the request is approved by the commissioner ~~[executive director]~~, the commissioner ~~[executive director]~~ shall establish the cost for the request in accordance with KRS 61.874(4)(c).

(26[25]) Provider agreement filing, twenty-five (25) dollars.

(27[26]) Subcontract agreement filing, twenty-five (25) dollars.

(28[27]) Risk-sharing arrangement filing, fifty (50) dollars.

(29[28]) Miscellaneous services.

(a) Filing other documents, each, five (5) dollars per document.

(b) Commissioner's ~~[Executive Director's]~~ certificate under seal, other than certificates, licenses, and other documents provided for in this section, each, five (5) dollars.

(c) For copies of any document on file with the commissioner ~~[executive director]~~, per page, thirty (30) cents.

(d) Copy of annual statements, per page, one (1) dollar.

Section 2. The biennial appointment renewal fees for agents, including managing general agent, rental vehicle agent, and rental vehicle managing employee, ~~[specialty credit producer, and specialty credit managing employee,]~~ shall be payable as follows:

(1) Life insurers and health insurers, including health maintenance organizations, limited health service organizations, and KRS Chapter 304 Subtitle 32 corporations, shall renew their appointments on or before March 31 in odd numbered years and biennially thereafter; fraternal benefit societies shall renew their appointments on or before March 31, 2005, and biennially thereafter.

(2) All other insurers shall renew their appointments on or before March 31 in even numbered years and biennially thereafter.

(3) Original license and appointment fees shall be the amount stated and not prorated.

(4) Fee for duplicate request of appointment or renewal of appointment may be deemed earned when the appointment or renewal is confirmed.

Section 3. If a statute or administrative regulation requires payment of a fee as provided in KRS 304.4-010, it refers to a fee as specified in this administrative regulation.

SHARON P. CLARK, Commissioner  
KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: April 22, 2021

FILED WITH LRC: April 26, 2021 at 11:33 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on July 23rd, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on July 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: Abigail Gall, Executive Assistant, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-1453, email abigail.gall@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees for the Department of Insurance.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to prescribe the fees charged by the Department of Insurance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.874(4) authorizes an agency to charge fees based on costs for public records used for commercial purposes. KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. KRS 304.4-010 requires the Commissioner of Insurance to prescribe those services for which fees shall be charged and the amounts of the fees. This amendment establishes the fees for the Department of Insurance.

(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 providing the schedule of fees that licensees need to pay in order to obtain and maintain licenses and perform other insurance-related services in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: Establishes the fee for a portable electronics insurance retailer license, a new license created in KRS 304.9-780 and a new line for pharmacy benefit manager licensing/ annual licensing renewals; Revises terminology to reference life settlements rather than viaticals; Removes references to specialty credit insurance producers and managing employees as that license was repealed in statute; amendments to meet the statutory requirements on Chapter 13A. This amendment also requires \$5 fee per form submitted to the Department.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish the fee for a portable electronics insurance retailer license, and pharmacy benefit licensing, conform the fee regulation to the terminology and business practices used in existing statutes and repeal the reference to an obsolete statute.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 61.874(4) authorizes an agency to charge fees based on costs for public records used for commercial purposes. KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. KRS 304.4-010 requires the Commissioner of Insurance to prescribe those services for which fees shall be

charged and the amounts of the fees. This amendment establishes the fee for a portable electronics insurance retailer license, and pharmacy benefit manager license. Additionally, the amendment provides technical changes to conform terminology and business practices to existing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will establish the fee for an entity wanting to apply for portable electronic insurance retailer license as well as pharmacy benefit manager. Conforms the terminology used in the regulation to previous statutory changes, and repeal references to obsolete statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: the updated fees established in this administrative regulation will affect Portable Electronic Insurance Retailers and pharmacy benefit managers in the state. The remaining amendments are technical in nature and do not create new requirements.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: The primary amendment to this administrative regulation relates to portable electronics insurance retailers and pharmacy benefit managers. Any such entity wanting to offer and disseminate insurance on portable electronics will need to be properly licensed in Kentucky and pay the fee established in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Pharmacy benefit manager license, or annual license renewal, \$1,000; late renewal penalty \$500. Portable Electronics Insurance Retailer License, one (1) to twenty (20) locations in Kentucky, \$100 per location; twenty-one or more locations in Kentucky, \$2,500 dollars total. \$5 per form submitted to the Department of Insurance.

(c) As a result of compliance, what benefits will accrue to the entities: The entities will be meeting statutory requirements to obtain the appropriate license, given the entities meet other statutory requirements listed in the Insurance Code.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no cost to implement this 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 establishes a new fee for a portable electronics retailer license and pharmacy benefit managers.

(9) TIERING: Is tiering applied? The amendments to this administrative regulation propose a tiered fee for portable electronics insurance retailers. The tiering sets a fee of \$100 per location for one (1) – (20) locations in Kentucky and a set fee of \$2,500 for twenty-one or more locations in Kentucky. In recognition that the entities obtaining this license could be large corporate entities with numerous locations across the Commonwealth, tiering was applied to establish a maximum fee.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.874, 304.2-110, 304.4-010

(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 is not expected to generate any revenue to the listed entities.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment to this administrative regulation is not estimated to generate revenue in subsequent years as the fee for the portable electronics insurance retailer license is an application fee only.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation:

#### PUBLIC PROTECTION CABINET Department of Insurance Division of Property and Casualty (Amendment)

**806 KAR 12:095. Unfair claims settlement practices for property and casualty insurance.**

RELATES TO: KRS 304.3-200(1)(e), 304.12-010, 304.12-220, 304.12-230, 304.12-235, 304.14-400, 304.20-070, 304.20-150-304.20-180, 342.325

STATUTORY AUTHORITY: KRS 304.2-110[~~304.3-200(1)(e)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner [~~Executive Director~~] of Insurance to make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation establishes unfair property and casualty insurance claims settlement practices, effectuating KRS 304.3-200(1)(e), 304.12-010, and 304.12-230.

Section 1. Definitions. (1) "Agent" means any person authorized to represent an insurer with respect to a claim;

(2) "Claimant" means either a first party claimant, a third-party claimant, or both and includes:

(a) The [the] claimant's designated legal representative, including [such as] an administrator, executor, guardian, or similar person, and

(b) A [includes a] member of the insured's immediate family designated by the claimant;

(3) "Claim file" means any retrievable electronic file, paper file, or both;

(4) "Commissioner" [~~"Executive Director"~~] is defined by KRS 304.1-050(1);

(5) "Days" means any day, Monday through Friday, except holidays;

(6) "First party claimant" means a person asserting a right to payment under an insurance policy, certificate, or contract arising out of the occurrence of the contingency or loss covered by the policy, certificate, or contract;

(7) "Insurer" is defined by KRS 304.1-040;

(8) "Investigation" means all activities of an insurer related to the determination of liabilities under coverages afforded by a policy, certificate, or contract;

(9) "Local market area" means a reasonable distance surrounding the area where a motor vehicle is principally garaged, or the usual location of the article covered by the policy. This area shall not be limited to the geographic boundaries of the Commonwealth;

(10) "Notification of claim" means any notification, whether in writing or by other means acceptable under the terms of the policy, certificate, or contract, to an insurer or its agent, by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim;

(11) "Policy", or "certificate", or "contract" means any contract of insurance or indemnity, except for:

(a) Fidelity, suretyship, or boiler and machinery insurance; or

(b) A contract of workers' compensation insurance unless it satisfies the requirements of Section 2 of this administrative regulation.

(12) "Replacement crash part" means sheet metal or plastic parts which generally constitute the exterior of a motor vehicle, including inner and outer panels; and

(13) "Third-party claimant" means any person asserting a claim against any person under a policy, contract, or certificate of an insurer.

## Section 2. Scope and Purpose of this Administrative Regulation.

(1) This administrative regulation establishes:

(a) Minimum ~~minimum~~ standards for the investigation and disposition of property and casualty insurance claims arising under policies, certificates, and contracts;

(b) Procedures and practices which constitute unfair claims settlement practices; and

(c) Standards for the commissioner in investigations, examinations, and administrative adjudication and appeals.

(2) This administrative regulation shall not cover claims involving:

(a) Fidelity; [-]

(b) Suretyship; [-or]

(c) Boiler and machinery insurance; or

(d) ~~[- This administrative regulation shall not cover claims involving] workers' compensation if those questions arise under KRS Chapter 342 [since those questions shall be resolved by workers' compensation administrative law judges or arbitrators, pursuant to KRS 342.325.]~~

(3) This administrative regulation shall apply to claims for unearned premium refunds under workers' compensation policies ~~[since workers' compensation administrative law judges or arbitrators do not have jurisdiction over those claims. This administrative regulation establishes procedures and practices which constitute unfair claims settlement practices.]~~

(4) ~~[(2)]~~ Statement of enforcement policy. If complaints are filed with the commissioner ~~[executive director]~~, the commissioner ~~[executive director]~~ shall note violations of this administrative regulation after the insurer or agent has been given an opportunity to pay the claim and any interest ~~[thereon]~~.

(5) ~~[(3)] This administrative regulation establishes standards for the executive director in investigations, examinations, and administrative adjudication and appeals therefrom.~~ A violation of this administrative regulation shall be found only by the commissioner ~~[executive director]~~. This administrative regulation shall not create or imply a private cause of action for violation of this administrative regulation.

Section 3. File and Record Documentation. Each insurer's claim files for policies, certificates, or contracts are subject to examination by the commissioner or the commissioner's

designees. To aid in an examination:

(1) The insurer shall maintain claim data that are accessible and retrievable for examination. An insurer shall be able to provide the claim number, line of coverage, date of loss and date of payment of the claim, and date of denial or date closed without payment. This data shall be available for all open and closed files for the current year and the five (5) preceding years.

(2) The insurer shall maintain documentation in each claim file to permit reconstruction of the insurer's activities relative to each claim.

(3) The insurer shall note each relevant document within the claim file as to date received, date processed, or date mailed.

(4) If an insurer does not maintain hard copy files, claim files shall be accessible to examiners electronically ~~[from a computer terminal available to examiners or micrographics]~~ and be capable of duplication to legible hard copy.

Section 4. Misrepresentation of Policy Provisions. (1) Insurers and agents shall not misrepresent or conceal from first party claimants any pertinent benefits, coverages, or other provisions of any insurance policy or insurance contract if the benefits, coverages, or other provisions are pertinent to a claim, pursuant to KRS 304.12-230(1).

(2) Insurers shall not deny a claim on the basis of failure to exhibit property unless there is documentation in the claim file of breach of the policy provisions.

(3) Insurers shall not deny a claim based upon the failure of a first party claimant to give written notice of loss within a specified time limit unless written notice of loss is a written condition in the policy, certificate, or contract and the first-party claimant's failure to give written notice after being requested to do so is so unreasonable as to constitute a breach of the first-party claimant's duty to cooperate with the insurer.

(4) Insurers shall not indicate to a first party claimant on a payment draft, check, or in an accompanying letter that payment is "final" or "a release" of any claim unless:

(a) The policy limit has been paid; or

(b) There has been a compromise settlement agreed to by the first party claimant and the insurer as to coverage and amount payable under the policy, certificate, or contract.

(5) Insurers shall not issue checks or drafts in partial settlement of a loss or claim under a specific coverage which contain language which releases the insurer or its insured from total liability.

## Section 5. Failure to Acknowledge Pertinent Communications.

(1) Every insurer, upon receiving notification of a claim shall, within fifteen (15) days, acknowledge the receipt of the notice unless payment is made within that period of time. If an acknowledgement is made by means other than writing, an appropriate notation of the acknowledgement shall be made in the claim file of the insurer and dated. Notification given to an agent of an insurer shall be notification to the insurer.

(2) If an insurer receives an inquiry from the Department of Insurance respecting a claim, the insurer shall, within fifteen (15) days of receipt of the inquiry, furnish the Department of Insurance with an adequate response to the inquiry in duplicate.

(3) The insurer shall make an appropriate reply within fifteen (15) days on all other pertinent communications from a claimant which reasonably suggest that a response is expected.

(4) Every insurer, upon receiving notification of claim, shall promptly provide necessary claim forms, instructions, and reasonable assistance to first party claimants so that they can comply with the policy conditions and the insurer's reasonable requirements. Compliance with this subsection within fifteen (15) days of notification of a claim shall constitute compliance with subsection (1) of this section.

## Section 6. Standards for Prompt, Fair, and Equitable Settlements Applicable to All Insurers.

(1)(a) Pursuant to KRS 304.12-230(5), an insurer shall, pursuant to KRS 304.12-235(1), affirm or deny any liability on claims within a reasonable time and shall offer any payment due

within thirty (30) calendar days of receipt of due proof of loss. If claims involve multiple coverages, payments which are not in dispute shall be tendered within thirty (30) calendar days of receipt of due proof of loss.

(b) If there is a reasonable basis supported by specific information available for review by the commissioner [executive director] that a claimant has fraudulently caused or contributed to the loss, the insurer shall:

1. Be relieved from the requirements of this subsection; and
2. Advise the first party claimant of the acceptance or denial of the claim within a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.

(2)(a) If the insurer needs more time to determine whether a first party claim should be accepted or denied, it shall [se] notify the first party claimant within thirty (30) calendar days after receipt of the proofs of loss, giving the reasons more time is needed.

(b) If the investigation remains incomplete, the insurer shall, forty-five (45) calendar days from the date of the initial notification and every forty-five (45) calendar days thereafter, send to the first party claimant a letter stating the reasons additional time is needed for investigation.

(3) Insurers shall not fail to settle first party claims on the basis that responsibility for payment should be assumed by others except as may otherwise be provided by policy provisions.

(4) Insurers shall not continue negotiations for settlement of a claim directly with a first party claimant who is not legally represented if the first party claimant's rights may be affected by a statute of limitations or a time limit in a policy, certificate, or contract, unless the insurer has given the first party claimant written notice of the limitation. The notice shall be given to the first party claimant at least thirty (30) calendar days before the date on which the time limit expires.

(5) Insurers shall not make statements which indicate that the rights of a third-party claimant may be impaired if a form or release is not completed within a given period of time unless the statement is given for the purpose of notifying the third-party claimant of the provision of a statute of limitations.

(6) Subject to subsection (1)(a) of this section relating to first party claims, insurers shall affirm or deny liability on claims within a reasonable time and shall tender payment within thirty (30) days of affirmation of liability, if the amount of the claim is determined and not in dispute. If claims involve multiple coverages, and if the payee is known, payments which are not in dispute shall be tendered within thirty (30) calendar days.

(7) Insurers shall not request or require any insured to submit to a polygraph examination unless authorized under the applicable policy, certificate, contract, or applicable law.

Section 7. Standards for Prompt, Fair, and Equitable Settlements Applicable to Motor Vehicle Insurance. (1) If the policy, certificate, or contract provides for the adjustment and settlement of first party motor vehicle total losses on the basis of actual cash value or replacement with another of like kind and quality, one (1) of the following methods shall apply:

(a) The insurer may elect to offer a replacement motor vehicle which is a specific comparable motor vehicle available to the insured, with all applicable taxes, license fees [(if these fees cannot be refunded by the Transportation Cabinet)], and other fees incident to transfer of evidence of ownership of the motor vehicle paid, at no cost other than any deductible provided in the policy. The offer and any rejection thereof shall be documented in the claim file;

(b) The insurer may elect a cash settlement based upon the actual cost, less any deductible provided in the policy, to purchase a comparable motor vehicle including all applicable taxes, license fees [(if these fees cannot be refunded by the Transportation Cabinet)], and other fees incident to transfer of evidence of ownership of a comparable motor vehicle. The actual cost shall be determined by any one (1) of the following:

1. The cost of a comparable motor vehicle in the local market area if a comparable motor vehicle is available in the local market area;
2. If a comparable motor vehicle is not available in the local

market area, one (1) of two (2) or more quotations obtained by the insurer from two (2) or more qualified and licensed dealers which engage in the buying and selling of comparable motor vehicles in the ordinary course of their business located within the local market area; or

3. Any source for determining statistically valid fair market values including nationally-recognized automobile evaluation publications that meet all of the following criteria:

a. The source shall give consideration to the values of vehicles in the local market area and may consider data on vehicles outside the area;

b. The source's data base shall produce values for at least eighty-five (85) percent of all makes and models for the last eight (8) model years taking into account the values of all major options for these vehicles;

c. The source shall produce fair market values based on current data available from the local market area where the insured vehicle was principally garaged or a necessary expansion of parameters such as travel time and area to assure statistical validity;

4. Actual cash value as determined by the use of the source's database shall be adjusted to reflect any value of enhancements to the motor vehicle not accounted for by the database;

5. If the vehicle's condition does not meet the criteria for value used in source's database, the actual cash value amount may be adjusted; and

6. Absent an appraisal provision in the insurance contract, if the insured demonstrates, by presenting two (2) independent appraisals, based on measurable and discernable factors, that the vehicle would have a higher cash value in the local market area than the value reflected in the source's database, the local market value shall be considered when determining the actual cash value;

(c) Right of recourse. If the insurer is notified within thirty-five (35) days of the receipt of the claim draft that the insured cannot purchase a comparable motor vehicle for market value as defined in paragraph (b)3 of this subsection, the insurer shall reopen its claim file and comply with the following procedures:

1. The insurer may locate a comparable motor vehicle by the same manufacturer, same year, similar body style, and similar options and price range for the insured for the market value determined by the insurer at the time of settlement. This vehicle shall be available through licensed motor vehicle dealers;

2. The insurer shall either pay the insured the difference between the market value before applicable deductions and the cost of the comparable motor vehicle of like kind and quality which the insured has located, or negotiate and effect the purchase of this motor vehicle for the insured; or

3. The insurer may conclude the loss settlement as prepared for under the appraisal provision of the insurance contract in force at the time of loss. This appraisal shall be considered as binding against both parties, but shall not preclude or waive any other rights either party has under the insurance contract or law; or

(d) If a first party motor vehicle's total loss is settled on a basis which deviates from the methods described in subsection (1)(a) and (b) of this section, the deviation shall be supported by documentation giving particulars of the motor vehicle's condition. Any deductions from the cost, including deduction for salvage, shall be measurable, discernable, itemized, and specified as to dollar amount and shall be appropriate in amount. The basis for the alternative method of settlement shall be explained fully to the first party claimant.

(2) The measure of damages in a third-party motor vehicle loss shall be the difference between the fair market value of the motor vehicle immediately before and after the loss, proportioned by the third party's contributory negligence, if any. Repair estimates or appraisers' reports may be used to indicate the difference in fair market value. The measure of damages in a first party vehicle loss shall be governed by the policy of insurance issued to the first party and shall not include any measure of damages not specifically provided for in the policy.

(3) If liability and damages are reasonably clear, insurers shall not recommend that third-party claimants make claims under their own policies, certificates, or contracts solely to avoid paying claims

under the insurers' policies, contracts, or certificates.

(4) Insurers shall not require a claimant to travel an unreasonable distance to inspect a replacement motor vehicle.

(5) If requested by the claimant, insurers shall include the first party claimant's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on a proportionate basis with the first party claimant, unless the deductible amount has been otherwise recovered. Deduction for expenses shall not be made from the deductible recovery unless an outside attorney is retained to collect the recovery. The deduction shall then be for only a pro rata share of the allocated loss adjustment expense.

Section 8. Repairs to Motor Vehicles. (1)(a) If losses involving motor vehicle repairs are settled on the basis of a written estimate prepared by or for the insurer, the insurer shall supply the insured a copy of the estimate upon which the settlement is based.

(b) The estimate prepared by or for the insurer shall be reasonable, in accordance with applicable policy provisions, and of an amount which will allow for repairs to be made in a worker-like manner.

(c) If the insured subsequently claims, based upon a written estimate which the insured obtains, that necessary repairs will exceed the written estimate prepared by or for the insurer, the insurer shall pay the difference between the written estimate and a higher estimate obtained by the insured, or promptly provide the insured with the name of at least one (1) repair shop that will make the repairs for the amount of the written estimate. If the insurer designates only one (1) or two (2) repair shops, the insurer shall assure that the repairs are performed in a worker-like manner. The insurer shall maintain documentation of all of these communications.

(2) If the amount claimed is reduced because of betterment or depreciation, all information for the reduction shall be contained in the claim file. These deductions shall be itemized and specified as to dollar amount and shall be appropriate for the amount of deductions.

(3)(a) Betterment deductions shall be allowed only if the deductions reflect a measurable decrease in the market value and general overall condition of the motor vehicle.

(b) The deductions set forth in paragraph (a) of this subsection shall be measurable, itemized, specified as to dollar amount, and documented in the claim file.

(c) Insurers shall not require the insured or claimant to supply parts for replacement.

(4) Insurers shall not require the use of replacement crash parts in the repair of a motor vehicle unless the replacement crash part is at least equal in kind and quality to the part to be replaced in terms of fit, quality, and performance. Insurers specifying the use of replacement crash parts shall consider the cost of any modifications which may be necessary when making the repair.

(5) Insurers shall not require a claimant to travel an unreasonable distance:

(a) To obtain a repair estimate; or

(b) To have the motor vehicle repaired at a specific repair shop.

Section 9. Standards for Prompt, Fair, and Equitable Settlements Applicable to Fire and Extended Coverage Type Policies with Replacement Cost Coverage.

(1) If the policy, contract, or certificate authorizes the adjustment and settlement of first party losses based on replacement cost, the following shall apply:

(a) If a loss requires repair or replacement of an item or part, any consequential physical damage incurred in making the repair or replacement not otherwise excluded by the policy shall be included in the loss. The insured shall not have to pay for betterment nor any other cost to the extent of replacement cost, except for the applicable deductible.

(b) If a loss requires replacement of items and the replaced items do not reasonably match in quality, color, and [or] size, the insurer shall replace all items in the area so as to conform to a reasonably uniform appearance. This applies to interior and exterior losses. The insured shall not bear any cost over the

applicable deductible.

(2) Actual cash value.

(a) If the insurance policy provides for the adjustment and settlement of losses on an actual cash value basis on residential fire and extended coverage, the insurer shall determine actual cash value as follows: replacement cost of property at the time of the loss less depreciation, if any. If provided for in the policy, depreciation may include the costs of goods, materials, labor, equipment, overhead and profit, taxes, fees, and services necessary to replace, repair, or rebuild the damaged property. If requested by the insured, the insurer shall provide a copy of the claim file worksheets showing any and all deductions for depreciation.

(b) If the insured's interest is limited because the property has nominal or no economic value, or a value disproportionate to replacement cost less depreciation, the determination of actual cash value as set forth in paragraph (a) of this subsection shall not be required. If requested by the insured, the insurer shall provide a written explanation of the basis for limiting the amount of recovery along with the amount payable under the policy.

SHARON P. CLARK, Commissioner

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: April 22, 2021

FILED WITH LRC: April 26, 2021 at 11:33 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on July 23rd, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 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: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-1453, email abigail.gall@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes unfair property and casualty insurance claims settlement practices, effectuating KRS 304.3-200(1)(e), 304.12-010, and 304.12-230.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the unfair claims settlement practice regarding property and casualty insurance claims settlement practices.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes that the Commission shall promulgate necessary administrative regulations or as an aid to the effectuation of any provision of the Kentucky Insurance Code.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The responsibility of the Department is to protect consumers. This administrative regulation establishes what claims practices are unfair regarding property and casualty insurance settlement claims.

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

(a) How the amendment will change this existing administrative regulation: The amendments change the existing regulation by including vehicle size in the listing of replacement requirement

determination; this amendment is based on comments made during an ARRS meeting on December 12<sup>th</sup>, 2017. The industry has recommended that labor and goods cost may be included in depreciation cost, this amendment is based on the Advisory Opinion (20-01) adopted by the Department relating to the Hicks v. State Farm case. In addition, the amendments to this administrative regulation are to conform to the statutory draft requirements set forth in Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The primary amendments are necessary to ensure practices are fair and that the regulation is updated to meet recent recommendations from industry and DOI experience with these practices.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes that the Commissioner shall promulgate regulations and thus, amend said regulations if necessary to aid in the effectuation of the Insurance Code. KRS 304.3-200(1)(e) states that the Commissioner may refuse, suspend or revoke and insurers certificate of authority, this administrative regulation and the amendments set the parameters that the commissioner may more specifically act upon property & casualty insurance claims settlements practices.

(d) How the amendment will assist in the effective administration of the statutes: KRS 304.2-110 authorizes that the Commissioner shall promulgate regulations and thus, amend said regulations if necessary to aid in the effectuation of the Insurance Code.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Property and Casualty insurers writing business and handling settlement claims.

(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: The entities must include size in the replacement match processes and depreciation may include the costs of goods, materials, labor, and services necessary to replace, repair, or rebuild the damaged property

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Entities must retain files electronically if not hard copy, include size in consideration for replacement matches, and may now include cost of goods, materials, labor/services to replace property.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no associated cost in complying with this administrative regulations.

(c) As a result of compliance, what benefits will accrue to the entities: Entities will be meeting the requirements to ensure they are following fair claims settlement practices and avoid consequences determined by the commissioner.

(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:

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No this administrative regulation does not establish fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation applies to all property and casualty insurers writing business and processing settlement claims.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The department as the implementer.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, 304.3-200(1)(e), 304.12-010, and 304.12-230

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is expected to be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is expected to be generated.

(c) How much will it cost to administer this program for the first year? No cost is expected.

(d) How much will it cost to administer this program for subsequent years? No cost is expected.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation:

#### PUBLIC PROTECTION CABINET Department of Insurance Division of Property and Casualty (Amendment)

#### 806 KAR 13:150. Property and casualty rate and rule filings.

RELATES TO: KRS 304.1-010, 304.1-050, 304.4-010(2), 304.13-011, 304.13-022, 304.13-031, 304.13-051, 304.13-061, 304.13-081, 304.21-010, 304.22-020, 304.23-010

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the commissioner [~~executive—Director~~] to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, defined in KRS 304.1-010. This administrative regulation establishes rate and rule filing procedures for property, casualty, surety, title, and mortgage guaranty insurance.

Section 1. Definitions. (1) "Advisory organization" is defined in KRS 304.13-011(9).

(2) "Commissioner" [~~"Executive director"~~] is defined in KRS 304.1-050(1).

(3) [(2)] "Department" is defined in KRS 304.1-050(2).

(4) "Loss cost" means the loss cost per unit of exposure excluding all loss adjustment expenses.

(3) "Office" is defined in KRS 304.1-050(2).]

(5) [(4)] "Rate" is defined in KRS 304.13-011(22).

(6) [(5)] "Statistical agent" is defined in KRS 304.13-022(24).

(7) "Supplementary rating information" is defined in KRS 304.13-011(2).

Section 2. (1)(a) Paper filings shall include two (2) full document sets, on 8 1/2" x 11" white paper, with three (3) copies of Form PC TD-1, ["Property & Casualty Transmittal Document"] and a self-addressed stamped envelope. This interactive version of this form is available on the National Association of Insurance Commissioners Web site at [https://content.naic.org/industry\\_rates\\_forms\\_trans\\_docs.htm](https://content.naic.org/industry_rates_forms_trans_docs.htm).

(b) Section 12(1)(f) through (nn) of this administrative regulation shall be used, as appropriate, for guidance in conjunction with filing the Form PC TD-1, [“]Property & Casualty Transmittal Document[“].

(2) A property and casualty insurance company, advisory organization, or statistical agent may file a rate or supplementary rating information on the commissioner's electronic system for rate and form filings via the Web site [www.serff.com](http://www.serff.com). An electronic filing shall be in lieu of a paper filing.

Section 3. (1) Every insurer, other than a life or health insurer, [insurers,] required by law or licensed advisory organization, or statistical agent permitted by law to file rates, loss costs, supplementary rating information, statistical plans, advertising and sales materials, or other documents shall file with these documents a completed and signed Form PC TD-1, [“]Property and Casualty Transmittal Document[“].

(2) If the filing is being made by a third party, a signed letter of authorization from the insurer shall be submitted.

Section 4. (1) A filing may include any number of documents, filed together on a particular date, pertaining to a single type of insurance identified on [from] the [“]Uniform Property and Casualty Product Coding Matrix[“], this form is available electronically on the National Association of Insurance Commissioners Web site at <https://content.naic.org/sites/default/files/inline-files/2021%20PC%20PCM.pdf>.

(2) Rates, loss costs, and supplementary rating information shall be filed separately from forms.

Section 5. All rate, loss cost, or supplementary rating information filings shall be accompanied by Form PC RRFS-1. [“]Rate/Ruling Filing Schedule.[“]

Section 6. (1)(a) Rate filings referencing loss costs formulated by an advisory organization shall be accompanied by Form LC-1 P & C, [“]Calculation of Loss Cost Multiplier[“].

(b) A rate filing referencing loss costs formulated by an advisory organization in which an expense constant is used shall be accompanied by Form LC-2 P & C, [“]Expense Constant Supplement[“], Calculation of Loss Cost Multiplier.

(2) A rate filing to which this section applies shall include separate Forms LC-1 P & C; Calculation of Loss Cost Multiplier; and LC-2 P&C; Expense Constant Supplement, Calculation of Loss Cost Multiplier for each company included in the filing.

Section 7. (1)(a) An insurer filing rates or supplement rating information regarding personal automobile insurance shall submit premium comparison information on-line via the Department [Office] of Insurance Web site, <https://insurance.ky.gov/doeservices/UserRole.aspx>, if any rate or supplementary rating information change impacts the premium information previously submitted.

(b) If there is not an impact to premium information previously submitted, an explanatory statement shall be included in Form PC TD-1, [“]Property and Casualty Transmittal Document.[“]

(2)(a) An insurer filing rates or supplemental rating information regarding homeowners' insurance shall submit premium comparison information on-line via the Department [Office] of Insurance Web Site, <https://insurance.ky.gov/doeservices/UserRole.aspx>, if any rate or supplementary rating information change impacts the premium information previously submitted.

(b) If there is not an impact to premium information previously submitted on-line, an explanatory statement shall be included in Form PC TD-1 [“]Property and Casualty Transmittal Document.[“]

(3) A filing to which this section applies shall include a separate premium comparison information for each company included in the filing.

Section 8. (1) A property and casualty rate or supplementary rating information filing may include rates or supplementary rating information for a particular insurance company or group of

insurance companies.

(2) If the filing is made for a group of insurance companies, Form PC TD-1, [“]Property and Casualty Transmittal Document[“] shall identify all companies included in the filing.

Section 9. (1) Filing fees shall be paid on a per company basis.

(2) Pursuant to KRS 304.4-010(2), all fees and charges payable under the insurance code, KRS Chapter 304, shall ~~be~~ are required to be collected in advance.

(3) The period of time in which the commissioner ~~executive director~~ may affirmatively approve or disapprove the filing shall not begin to run until both the complete filing and appropriate fee are received by the department ~~office~~.

Section 10. (1) An insurer that is a member, subscriber, or service purchaser of an advisory organization or statistical agent may choose to adopt all or some of the loss costs, supplementary rating information, or statistical plans of that advisory organization or statistical agent.

(2) If an insurer chooses to adopt only a specific filing of an advisory organization or statistical agent, it shall do so in accordance with the procedures established in subsection (3) of this section ~~this administrative Regulation~~, and shall clearly identify which filing of the advisory organization or statistical agent it is adopting.

(3)(a) If an insurer chooses to adopt all of the current and future loss costs, supplementary rating information, or statistical plans of an advisory organization or statistical agent, it shall:

1. Provide written authorization to the advisory organization or statistical agent to notify the commissioner ~~executive director~~ that the insurance company shall adopt all of the loss costs, supplementary rating information, or statistical plans that the advisory organization or statistical agent files on its behalf; or

2. File written notice with the commissioner ~~executive director~~ that the insurer is adopting by reference all of the current and future loss costs, supplementary rating information, or statistical plans that the advisory organization or statistical agent files.

(b)1. If required by law to file its rates, an insurer may file a loss cost multiplier, in accordance with this section and Sections 2 through 9 of this administrative regulation, to adopt the prospective loss costs filed by an advisory organization.

2. The insurer shall:

a. Apply its loss cost multiplier to a specific loss cost filing; or

b. Elect to have its multiplier apply to all future loss costs filed by the advisory organization.

(c)1. The advisory organization or statistical agent shall file the written notice of authorization referred to in paragraphs (a) and (b) of this subsection with the commissioner ~~executive director~~ and shall pay the appropriate fee, pursuant to KRS 304.4-010 and 806 KAR 4:010.

2. The fee shall be paid for each company sending a written authorization and on the basis of each line of insurance.

(d)1. If an insurer that previously authorized an advisory organization or statistical agent to file loss costs, supplementary rating information, or statistical plans on its behalf chooses to not adopt certain loss costs, supplementary rating information, or statistical plans as filed on its behalf by the advisory organization or statistical agent, or changes its loss cost multiplier, the insurer shall file a notice of the nonadoption or change of its loss cost multiplier with the commissioner ~~executive director~~ and shall pay the appropriate filing fee, pursuant to KRS 304.4-010 and 806 KAR 4:010.

2.a. If an insurer chooses to delay the effective date of its adoption of an advisory organization or statistical agent filing, it shall submit a letter requesting the revised date upon which it will adopt the filing.

b. The delayed adoption date shall be within six (6) months of the original effective date.

c. If additional time is needed, a second letter shall be submitted, requesting a revised delayed adoption date.

d. All revised delayed adoption dates shall be within one (1) year of the original effective date as filed by the advisory

organization or statistical agent.

3. If an insurer fails to adopt the advisory organization or statistical agent filing within one (1) year of the original effective date as filed by the advisory organization or statistical agent, the insurer shall submit a filing indicating it is not adopting.

Section 11. A property and casualty insurance company, advisory organization and statistical agent may file its prospective loss cost or rate on the commissioners' electronic system for rate and form filings via the Web site [www.serff.com](http://www.serff.com). An electronic filing shall substitute for any physical filing.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Uniform Property and Casualty Product Coding Matrix", 01/2021 [(March 1, 2007)];
- (b) Form PC TD-1, "Property and Casualty Transmittal Document", 01/2020 [(March 1, 2007)];
- (c) Form PC RRF5-1, "Rate/Rule Filing Schedule", 3/2007[(March 1, 2007)];
- (d) LC-1 P&C, "Calculation of Loss Cost Multiplier", 10/2007 [(October 2007)];
- (e) LC-2 P&C, "Expense Constant Supplement, Calculation of Loss Cost Multiplier with Expense Constant", 10/2007: [(October 2007)];
- (f) "~~Kentucky Office of Insurance Review Requirements Checklist, Auto Guaranty and Home Warranty~~", (2nd Edition, 2/2008);
- (g) "~~Kentucky Office of Insurance Review Requirements Checklist, Motor Vehicle Extended Warranty Reimbursement Insurance~~", (2nd Edition, 2/2008);
- (h) "~~Kentucky Office of Insurance Review Requirements Checklist, Aviation~~", (2nd Edition, 02/2008);
- (i) "~~Kentucky Office of Insurance Review Requirements Checklist, Boatowners~~", (2nd Edition, 02/2008);
- (j) "~~Kentucky Office of Insurance Review Requirements Checklist, Boiler & Machinery (Equipment Breakdown)~~", (2nd Edition, 02/2008);
- (k) "~~Kentucky Office of Insurance Review Requirements Checklist, Commercial Auto~~", (2nd Edition, 02/2008);
- (l) "~~Kentucky Office of Insurance Review Requirements Checklist, Commercial Farm~~", (2nd Edition, 02/2008);
- (m) "~~Kentucky Office of Insurance Review Requirements Checklist, Commercial General Liability~~", (2nd Edition, 02/2008);
- (n) "~~Kentucky Office of Insurance Review Requirements Checklist, Commercial Inland Marine~~", (2nd Edition, 02/2008);
- (o) "~~Kentucky Office of Insurance Review Requirements Checklist, Commercial Property~~", (2nd Edition, 2/2008);
- (p) "~~Kentucky Office of Insurance Review Requirements Checklist, Commercial Umbrella (Excess Liability)~~", (2nd Edition, 02/2008);
- (q) "~~Kentucky Office of Insurance Review Requirements Checklist, Credit (Vendor Single/Dual Interest; Unemployment/Layoff; Collateral Protection; Property; GAP)~~", (2nd Edition, 2/2008);
- (r) "~~Kentucky Office of Insurance Review Requirements Checklist, Crime~~", (2nd Edition 2/2008);
- (s) "~~Kentucky Office of Insurance Review Requirements Checklist, Crop~~", (2nd Edition, 2/2008);
- (t) "~~Kentucky Office of Insurance Review Requirements Checklist, Earthquake (monoline)~~", (2nd Edition, Revised 2/2008);
- (u) "~~Kentucky Office of Insurance Review Requirements Checklist, Employment Practices Liability~~", (2nd Edition, Revised 2/2008);
- (v) "~~Kentucky Office of Insurance Review Requirements Checklist, Flood (monoline)~~", (2nd Edition, Revised 2/2008);
- (w) "~~Kentucky Office of Insurance Review Requirements Checklist, Glass (Monoline)~~", (2nd Edition, Revised 2/2008);
- (x) "~~Kentucky Office of Insurance Review Requirements Checklist, Livestock, Equine and Pet Insurance~~", (2nd Edition, 2/2008);
- (y) "~~Kentucky Office of Insurance Review Requirements Checklist, Medical Professional Liability (Physicians & Dentists;~~

- ~~Hospital & Health Facilities; Other Medical)~~", (2nd Edition, 2/2008);
  - (z) "~~Kentucky Office of Insurance Review Requirements Checklist, Mortgage Guaranty~~", (2nd Edition, 2/2008);
  - (aa) "~~Kentucky Office of Insurance Review Requirements Checklist, Motorcycle~~", (2nd Edition, 2/2008);
  - (bb) "~~Kentucky Office of Insurance Review Requirements Checklist, Motor Home~~", (2nd Edition, 2/2008);
  - (cc) "~~Kentucky Office of Insurance Review Requirements Checklist, Personal Dwelling, Homeowners, Mobile homeowners, and Farm owners including primary residence)~~", (2nd Edition, Revised 2/2008);
  - (dd) "~~Kentucky Office of Insurance Review Requirements Checklist, Personal General Liability and Personal Umbrella/Excess~~", (2nd Edition, Revised 2/2008);
  - (ee) "~~Kentucky Office of Insurance Review Requirements Checklist, Personal Inland Marine and Recreational Vehicle not requiring vehicle registration~~", (2nd Edition, Revised 2/2008);
  - (ff) "~~Kentucky Office of Insurance Review Requirements Checklist, Personal Auto~~", (2nd edition, Revised 2/2008);
  - (gg) "~~Kentucky Office of Insurance Review Requirements Checklist, Pollution Legal Liability (Environmental Legal Liability)~~", (2nd Edition, 2/2008);
  - (hh) "~~Kentucky Office of Insurance Review Requirements Checklist, Professional Liability (Directors & Officers; Physicians & Dentists; Other Medical Personnel; (Misc. Professional; Lawyers; Hospital & Health Facilities)~~", (2nd Edition, 2/2008);
  - (ii) "~~Kentucky Office of Insurance Review Requirements Checklist, Service Contract Reimbursement Insurance~~", (2nd Edition, 2/2008);
  - (jj) "~~Kentucky Office of Insurance Review Requirements Checklist, Stop Loss/Excess of Loss (Self-Funded Workers' Compensation; HMO & Managed Care; General Liability; Professional Liability & Misc. Stop Loss) (Stop loss for Self-Funded Health Plans must be filed with the Health Division of KOI even if the filer holds a P&C Certificate of Authority)~~", (2nd Edition, 2/2008);
  - (kk) "~~Kentucky Office of Insurance Review Requirements Checklist, Surety (Fidelity, Suretyship and Financial Institution Bonds)~~", (2nd Edition 2/2008);
  - (ll) "~~Kentucky Office of Insurance Review Requirements Checklist, Title~~", (2nd Edition, 2/2008);
  - (mm) "~~Kentucky Office of Insurance Review Requirements Checklist, Travel & Accident~~", (2nd Edition, 2/2008); and
  - (nn) "~~Kentucky Office of Insurance Review Requirements Checklist, Workers' Compensation~~", (2nd Edition, 2/2008)].
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Department [Office] of Insurance, The Mayo-Underwood Building, 500 Mero Street, 2 SE 11, [245 West Main Street], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Internet Web site at: <http://insurance.ky.gov> [<http://doi.ppr.ky.gov>] or the Web site of the National Association of Insurance Commissioners at [www.naic.org](http://www.naic.org).

SHARON P. CLARK, Commissioner  
KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: April 22, 2021

FILED WITH LRC: April 26, 2021 at 11:38 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on July 23rd, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 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: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-1453, email abigail.gall@ky.gov.

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for filing procedures for rates and supplementary rating information for property, casualty, surety, title and mortgage guaranty insurance.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a uniform procedure for filing rates and supplementary rating information with the Department of Insurance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation establishes the procedure to be followed by an entity requesting approval of a property, casualty, surety, title or mortgage guaranty insurance rates to be used in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Various statutes within the Insurance Code require insurers to receive approval of rates prior to use in Kentucky. This administrative regulation sets forth the procedure to be followed in obtaining approval.

(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 primary amendment to this administrative regulation is the removal of checklists previously incorporated by reference. Also, amending the regulation to meet drafting requirements set forth in the Chapter 13A. The amendments made to the Coding Matrix and Transmittal documents are produced by the NAIC, and these forms are update annually and bi-annually.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are a piece of that national initiative relating to rate filings for property, casualty, surety, title and mortgage guaranty insurance. The reason for removal of the checklists is that this administrative regulation sets forth the process for submitting rate and rule filings for property and casualty insurance products to the Department. The checklists are not required to be included with the rate and rule filings made by an insurer under this regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation establishes the procedure to be followed by an entity requesting approval of a property, casualty, surety, title or mortgage guaranty insurance rate to be used in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will streamline the rate filing process and bring Kentucky's procedure into uniformity with other states.

(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 1245 insurers that are licensed to offer property, casualty, surety, title and mortgage guaranty insurance in Kentucky.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Regulated entities will be required to utilize these new documents in filing rates for

approval in Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The transmittal documents are readily available on the Department's Web site. The cost of printing the documents is minimal. Additionally, this regulation is not establishing or raising fees for filing the products. Therefore, no additional filing fees will be incurred as a result of this regulation. Finally, the process adopted through this administrative regulation is a national standard that insurers currently may be utilizing in other states. This streamlining of Kentucky's process may have a positive fiscal impact on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities: By complying with this regulation, entities will have their filings processed timely and efficiently by the Department of Insurance.

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

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Insurance as the implementer.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is expected to be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is expected to be generated.

(c) How much will it cost to administer this program for the first year? No cost is expected.

(d) How much will it cost to administer this program for subsequent years? No cost is expected.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation:

**PUBLIC PROTECTION CABINET**  
**Department of Insurance**  
**Division of Health and Life Insurance and Managed Care**  
**(Amendment)**

**806 KAR 15:090. Notice of rights as an owner of a life insurance policy.**

RELATES TO: KRS 304.14-120, 304.15-075

STATUTORY AUTHORITY: KRS 304.2-110, 304.15-075(1), (3), (4)

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 provisions of the Kentucky Insurance Code. KRS 304.15-075(1) authorizes [~~requires~~] the commissioner to develop a notice to inform the owner of a life insurance policy [~~policy of life insurance~~] issued in this state of his or her rights as an owner of a life insurance policy. KRS 304.15-075(4) authorizes the commissioner to promulgate administrative regulations that [~~te~~] establish that [~~the~~] notice shall only be made [~~be made only~~] with respect to policies with a net death benefit that is \$100,000 or greater. This administrative regulation establishes the notice that shall be provided to owners of life insurance policies at times specified in KRS 304.15-075(3) and exempts insurers from providing notice to owners whose life insurance policy has a net death benefit that is less than \$100,000.

Section 1. When required by KRS 304.15-075(3), an insurer shall provide the owner of an individual life insurance policy with a net death benefit of \$100,000 or greater with either of the following:

(1) Important Information About Your Life Insurance Policy, Notice 126, 2/2021 [~~8/2010~~]; or (2) A notice developed by the insurer that shall [~~which~~]:

- (a) Meet [~~Meets~~] the requirements of KRS 304.15-075(2); and
- (b) Be [~~Has been~~] approved by the commissioner.

Section 2. Incorporation by Reference. (1) "Important Information About Your Life Insurance Policy", Notice 126, 2/2021 [~~8/2010~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, The Mayo-Underwood Building, 500 Mero St., Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the department Web [~~web~~] site at <http://insurance.ky.gov>.

SHARON P. CLARK, Commissioner

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: April 22, 2021

FILED WITH LRC: April 26, 2021 at 11:38 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on July 23rd, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on July 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: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (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 administrative regulation establishes the notice that must be provided to owners of life insurance policies at specified times and exempts insurers from providing notice to owners whose life insurance policy has a net death benefit that is less than one hundred thousand dollars (\$100,000).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to promulgate the notice required to be sent by insurers to owners of life insurance policies prior to surrendering or lapsing a policy or accelerating a death benefit. Further, this administrative regulation is necessary to allow for an exemption for owners of life insurance policies with net death benefits of less than \$100,000.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. KRS 304.15-075 requires the commissioner to develop a notice to inform the owner of a policy of life insurance issued in this state of his or her rights as an owner of a life insurance policy. KRS 304.15-075 also allows the commissioner to promulgate administrative regulations to establish that the notice be made only with respect to policies with a net death benefit that is one hundred thousand dollars (\$100,000) or greater. This administrative regulation establishes the notice that must be provided to owners of life insurance policies at specified times and exempts insurers from providing notice to owners whose life insurance policy has a net death benefit that is less than one hundred thousand dollars (\$100,000).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide insurers with the notice they are statutorily required to send to owners of life insurance policies. Additionally, this administrative regulation will set forth an exemption to the notice requirement, as permitted by statute.

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

(a) How the amendment will change this existing administrative regulation: The primary amendment to this administrative regulation is to the Notice 126 form and to make any technical changes needed. Also, the regulation has been amended to meet the statutory drafting requirement established by Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendments made to this administrative regulation is to ensure uniformity-drafting requirements are met set forth in Chapter 13A and to update the instructional language listed on the Notice 126 form incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code. KRS 304.15-075 requires the commissioner to develop a notice to inform the owner of a policy of life insurance issued in this state of his or her rights as an owner of a life insurance policy. KRS 304.15-075 also allows the commissioner to promulgate administrative regulations to establish that the notice be made only with respect to policies with a net death benefit that is one hundred thousand dollars (\$100,000) or greater. The amendment to the Notice 126 is to aid in the effectuation of KRS 304.12-075.

(d) How the amendment will assist in the effective administration of the statutes: The technical amendments relative to drafting requirements in Chapter 13A aid in the effectuation of the authorizing statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation could impact the approximately 460 insurers authorized to write life

insurance in Kentucky.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Life insurers will be required to provide the notice promulgated by this administrative regulation to all owners of non-exempt life insurance policies issued by them at specific times identified in statute.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The Department of Insurance requested that affected entities provide an estimate of the costs to implement this administrative regulation. The affected entities reported that the upfront cost associated with compliance and implementation of this regulation would be \$20,000 to \$150,000. The range is dependent upon a number of factors including, but not limited to, the types of products sold, the systems and programming capability and capacity, and the implementation of the necessary procedure and control functions to comply with basic accounting and auditing rules. There will also be basic ongoing administrative costs associated with compliance.

(c) As a result of compliance, what benefits will accrue to the entities: Providing the notice required by this administrative regulation will result in compliance with KRS 304.15-075.

(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:

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all life insurers.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, KRS 304.15-075

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is expected to be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is expected to be generated.

(c) How much will it cost to administer this program for the first year? No cost is expected.

(d) How much will it cost to administer this program for subsequent years? No cost is expected.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation:

#### PUBLIC PROTECTION CABINET

##### Department of Insurance

#### Division of Health and Life Insurance and Managed Care (Amendment)

#### 806 KAR 17:070. Filing procedures for health insurance rates.

RELATES TO: KRS 304.14-120, 304.14-130, 304.17-380

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) [KRS 304.2-110] authorizes [provides that] the Commissioner [Executive Director] of Insurance to promulgate [may make reasonable rules and] 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 through KRS 304.99-154. The purpose of this [This] administrative regulation is to provide [provides] additional filing procedures for health insurance rates.

#### Section 1. Definitions.

(1) "Present value" means the amount of money needed as of the valuation date to produce, when accumulated at interest, a specified amount on a specific future date. The "present value of future benefits" and "present value of future premiums" are the sums of such values that [which] should take into account not only the interest assumption but the assumed persistency and mortality of the business.

(2) "Accumulated value" means the amount of which a sum of money would have increased as of the valuation date, if invested at a specific date in the past, subject to the investment earnings attributable to the policies.

(3) "Loss ratio" means the ratio of the sum of incurred losses and the change in policy reserves divided by the earned premiums.

(4) A "qualified actuary" is a member of the American Academy of Actuaries, a fellow or associate of the Society of Actuaries, the Institute of Actuaries, the Faculty of Actuaries, the Casualty Actuarial Society, or a fellow or member of the Conference of Actuaries in Public Practice that is compliant with continuing professional development in the area of health insurance.

Section 2. Classification of Policies. For the purposes of this administrative regulation, policies are classified by type of benefit, renewal clause and average annual premium.

(1) Types of benefits recognized are:

(a) Medical expense, including hospital indemnity policies, as well as hospital, surgical, major medical, cancer, critical illness, or any other policies providing insurance against the expenses resulting from accident or sickness, as well as indemnity or lump sum benefits payable upon a medical event or diagnosis;

(b) Medicare supplement policies;

(c) Loss of income; and

(d) All other policies that [which may be designated by] the commissioner [executive director] may designate.

(2) Categories of renewal clause are as follows:

OR	Optionally renewable: renewal of individual policies is at the option of the insurance company.
CR	Conditionally renewable: renewal can be declined by the insurance company only for a <u>stated reason [reasons]</u> other than deterioration of health.
GR	Guaranteed renewable: renewal cannot be declined by the insurance company for any reason, but the insurance company can revise rates on a class basis.
NC	Noncancellable: renewal cannot be declined nor can rates be revised by the insurance company.

(3) Recognized categories by average annual premium per policy are:

- (a) Less than \$250 [~~\$400~~];
- (b) A minimum of at [At] least \$250 [~~\$400~~] but no more than [less than] \$500 [~~\$200~~];
- (c) \$500 [~~\$200~~] or more.

Section 3. Filing of Rates. Every policy, rider or endorsement form affecting benefits that are [which is] submitted for approval shall be accompanied by a rate filing unless such rider or endorsement form does not directly or indirectly produce a change in the benefit level. Any subsequent addition to or change in rates applicable to such policy, rider or endorsement shall also be filed.

(1) The following items shall be included in individual health insurance rate filing submissions for rates on a new product:

- (a) Policy form, application, endorsements, "face sheet and verification form" and filing fee.
- (b) Rate sheet.
- (c) Actuarial memorandum.

1. Brief description of the type of policy, benefits, renewability, general marketing method, and issue age limits.

2. A brief [Brief] description of how rates were determined, including the general description and source of each assumption used. If assumptions are materially different from the company's experience on similar policies, the reasons for their choice should be explained. Margins, both implicit and explicit, should be estimated. For expenses, show those that [which] are percent of premium, dollars per policy and/or dollars per unit of benefit, separately, by policy year.

3. Estimated average annual premium per policy.

4. Anticipated loss ratio, including a brief description of how it was calculated, and a projection of year-by-year expected loss ratios.

5. Anticipated loss ratio presumed reasonable according to Section 4 of this administrative regulation.

6. If subparagraph 4 of this paragraph is less than subparagraph 5 of this paragraph, supporting documentation for the use of the proposed premium rates must be filed.

7. An actuarial report signed by a qualified actuary as to whether or not, to the best of the actuary's knowledge and judgment, the rate submission is in compliance with the applicable laws and administrative regulations of the state, the Actuarial Standards of Practice, and that the benefits are: reasonable in relation to the premiums, adequate, not excessive, and not unfairly discriminatory [and the benefits are reasonable in relation to the premiums].

8. A comparison [Comparison] of the rates with those of any similar policies currently or recently issued by the company.

(d) A statement as to the status of the filing in the company's home state, and a statement as to any variations in rates or [and/or] loss ratio assumptions required by or used in other states.

(2) The following items shall be included in individual health insurance rate filing submissions for rate increases on an existing product:

(a) New rate sheet, "face sheet and verification form", and filing fee.

(b) Actuarial memorandum.

1. A brief [Brief] description of the type of policy, benefits, renewability, general marketing method, issue age limits, the first and last year the policy form was issued, and the anticipated loss ratio of its original rates.

2. The scope [Scope] and reason for rate revision including a statement of whether the revision applies only to new business, only to in-force business, or to both, and outline of all past rate increases on this form.

3. The estimated [Estimated] average annual premium per policy, before and after rate increase. Comparison of proposed rate scale with current rate scale.

4. Past experience, [in the format of the "experience reporting form,"] the statistical credibility of the experience data and any other available data the insurer may wish to provide. If policy reserves are other than net level reserves based on the rate assumptions underlying the existing rates, an estimate of the effect

of using such reserves shall [should] be provided.

5. A brief [Brief] description of how revised rates were determined, including the general description and source of each assumption used. For expenses, include percent of premium, dollars per policy, [and/or] dollars per unit of benefit as separate items, and [Also,] the unamortized initial expenses to be recovered from future premiums should be shown.

6. The anticipated future loss ratio described in Section 4(2)(a) of this administrative regulation and a description of how it was calculated.

7. The anticipated loss ratio that [which] combines cumulative and future experience described in Section 4(2)(b) of this administrative regulation, and a description of how it was calculated.

8. Anticipated loss ratio presumed reasonable according to Section 4 of this administrative regulation.

9. If subparagraphs 6 or 7 of this paragraph is less than subparagraph 8 of this paragraph, supporting documentation for the use of such premium rates.

10. An actuarial report signed by a qualified actuary as to whether or not, to the best of the actuary's knowledge and judgment, the rate submission is in compliance with the applicable laws and administrative regulations of the state, the Actuarial Standards of Practice, and that the benefits are: reasonable in relation to premiums, adequate, not excessive, and not unfairly discriminatory [and the benefits are reasonable in relation to the premiums].

11. The number of policies in force in Kentucky and approximate annual premiums.

(c) A statement as to the status of the filing in the company's home state, and a statement as to any variations in rates or [and/or] loss] ratio assumptions required by or used in other states.

Section 4. Reasonableness of Benefits in Relation to Premiums. (1) New forms.

(a) With respect to a new form other than a Medicare supplement form under which the average annual premium, as defined in the table below [(as defined below)] is expected to be at least \$500 [~~\$200~~], benefits shall be deemed reasonable in relation to premiums provided the anticipated loss ratio is at least as great as shown in the following table:

Type of Coverage	Renewal Clause			
	OR	CR	GR	NC
Medical Expense	60%	55%	55%	50%
Loss of Income and Other	60%	55%	50%	45%

(b) For a policy form, including riders and endorsements, under which the expected average annual premium per policy is \$250 [~~\$400~~] or more but less than \$500 [~~\$200~~], subtract five (5) percentage points from the numbers in the table above, or less than \$250 [~~\$400~~], subtract ten (10) percentage points.

(c) The average annual premium per policy shall be computed by the insurer based on an anticipated distribution of business by all applicable criteria having a price difference, such as age, sex, amount, dependent status rider frequency, etc., except assuming an annual mode for all policies (i.e., the fractional premium loading shall not affect the average annual premium or anticipated loss ratio calculation).

(d) The loss ratio for a Medicare supplement policy shall be as provided in 806 KAR 17:570 [~~806 KAR 17:060~~], regardless of renewal clause or average premium.

(2) Rate revisions. Excepting as provided below, with respect to filings of rate revisions for a previously approved form, benefits shall be deemed reasonable in relation to premiums provided that both of the following loss ratios meet the above standards for new forms and meet or exceed the initial filed expected loss ratio.

(a) The anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage;

(b) The anticipated loss ratio derived by dividing "A" by "B" where:

1. "A" is the sum of the accumulated benefits, from the original effective date of the form or the effective date of this administrative regulation, whichever is later, to the effective date of the revision, and the present value of future benefits, and

2. "B" is the sum of the accumulated premiums from the original effective date of the form or the effective date of the administrative regulation, whichever is later, to the effective date of the revision, and the present value of future premiums, such present values to be taken over the entire period ~~that [for which]~~ the revised rates are computed to provide coverage, and such accumulated benefits and premiums, and premiums from the last date ~~that [as of which an]~~ accounting has been made to the effective date of the revision.

(3) Anticipated loss ratios other than those indicated in subsection (1) or (2) of this section will require justification based on the special circumstances that may be applicable.

(a) Examples of coverages for which a lower loss ratio may receive special consideration are as follows:

1. Accident only;
2. Short term nonrenewable, e.g., airline trip, student accident;
3. Specified peril, e.g., common carrier;
4. Other special risks.

(b) Examples of other factors for which lower loss ratios may receive special consideration are as follows:

1. Marketing methods, giving due consideration to acquisition and administration costs and to premium mode;
2. Extraordinary expenses;
3. High risk of claim fluctuation because of the low loss frequency or the catastrophic, or experimental nature of the coverage;
4. Product features such as long elimination periods, high deductibles and high maximum limits;
5. The industrial or debit method of distribution;
6. Forms issued prior to the effective date of these guidelines.

(c) Companies ~~shall [are urged to]~~ review their experience periodically and ~~[to]~~ file rate revisions, as appropriate, in a timely manner to avoid the necessity of later filing of unacceptable large rate increases. Companies will be requested to implement rate increases of more than thirty (30) percent over two (2) or more years.

(d) An example [Examples] of factors for which higher loss ratios may be required:

1. A form [Forms] on which all initial expenses have been amortized.
2. A form [Forms] on which rates have been increased to at least double their original level.
3. A form on which Companies have not filed rate increases in a timely manner pursuant to Section 4(3)(c).

(e) When rates are submitted for new forms, the Department may require subsequent filings to demonstrate that the loss ratio required by Section 4(1)(a) is being met.

Section 5. Miscellaneous Considerations. (1) Additional data ~~that [which]~~ may be included in support of rate filings includes, but is not limited to, substitution of actual claim run-offs for claim reserves and liabilities, in order to avoid the problems of short-term developments, accident-year loss ratios supporting trends, the operation of any experience funds or stabilization reserves, adjustment of premiums to an annual mode basis.

(2) All additional data must be reconciled, as appropriate, to the required data, and any missing data explained.

Section 6. Severability. If any provision of this administrative regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of this administrative regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

SHARON P. CLARK, Commissioner  
KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: April 22, 2021

FILED WITH LRC: April 26, 2021 at 11:33 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on July 23rd, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to

the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 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: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-1453, email abigail.gall@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is to provides additional filing procedures for health insurance rates.

(b) The necessity of this administrative regulation: 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 through KRS 304.99-154. This administrative regulation is to provide additional filing procedures for health insurance rates.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010 through KRS 304.99-154.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

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

(a) How the amendment will change this existing administrative regulation: The amendments made to this administrative regulation are to include cancer, critical illness, as well as indemnity or lump sum benefits payable upon a medical event or diagnosis to the benefit types, to update the recognized categories by annual premium per policy to be less than \$250, a minimum set at \$250 to \$500, and premium exceeding \$500, and to recognize that the Department shall request further documentation to determine loss ratios are being met in Section 4 of this administrative regulation. Aside from the substantive changes to this regulation, the regulation was also amended to meet drafting requirements set forth in Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The increases noted in the annual premium policy amendment is necessary to conform to changing policy limitations. The other amendments, less substantive, are to meet the drafting requirements set forth in Chapter 13A of the Kentucky Revised Statutes.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the Commissioner promulgate any administrative regulations necessary.

(d) How the amendment will assist in the effective administration of the statutes: The amendments set forth requirements for policy categorization and sets forth procedures to properly file health rate filings with the Department.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Health insurers writing business in Kentucky.

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

amendment, including:

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment:

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities:

(c) As a result of compliance, what benefits will accrue to the entities:

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

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

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

(9) TIERING: Is tiering applied?

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

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

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is expected to be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is expected to be generated.

(c) How much will it cost to administer this program for the first year? No cost is expected.

(d) How much will it cost to administer this program for subsequent years? No cost is expected.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation:

#### **PUBLIC PROTECTION CABINET Department of Insurance Division of Health and Life Insurance and Manager Care (Amendment)**

#### **806 KAR 17:085. Minimum standards for short-term nursing home insurance policies.**

RELATES TO: KRS 304.14-650-304.14-675

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.14-660

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner [~~Executive Director~~] 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 as defined in KRS 304.1-010 through KRS 304.99-154 [~~KRS 304.1-040~~]. KRS 304.14-660 authorizes [~~requires~~] the Commissioner [~~Executive Director~~] of Insurance to promulgate administrative regulations to establish the [~~establishing~~] requirements for short-term nursing home insurance policies. The purpose of this [~~This~~] administrative regulation is to establish the [~~establishes~~] minimum standards for short-term nursing home insurance policies.

#### Section 1. Definitions. As used in this administrative regulation:

(1) "Applicant" means:

(a) For an individual short-term nursing home insurance policy, the person who seeks to contract for benefits; and

(b) For a group short-term nursing home insurance policy, the proposed certificate holder.

(2) "Attained age rating" means a schedule of premiums starting from the issue age that [~~which~~] may increase [~~increases~~] at least one (1) percent per year prior to age fifty (50), and at least three (3) percent per year beyond age fifty (50).

(3) "Benefit trigger" means a contractual provision in the insureds policy conditioning the payment of benefits on a determination of the insureds ability to perform activities of daily living and on cognitive impairment.

(4) [(3)] "Certificate" means any certificate issued under a group short-term nursing home insurance policy, which has been delivered or issued for delivery in Kentucky.

(5) [(4)] "Claim" means a request for payment of benefits under an in-force policy regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met.

(6) [(5)] "Commissioner" is defined by KRS 304.1-050.

(7) [(6)] "Compensation" means pecuniary or nonpecuniary remuneration of any kind relating to the sale or renewal of short-term nursing home insurance or certificates, including bonuses, gift, prizes, awards, and finders fees.

(8) [(7)] "Elimination period" means the time that shall elapse before benefits commence under a short-term nursing home insurance policy or certificate.

(9) [(8)] "Insurer" means an entity authorized to issue short-term nursing home insurance in Kentucky.

(10) [(9)] "Maintenance or personal care services" means any care the primary purpose of which is the provision of needed assistance with any of the disabilities as a result of which the individual is a chronically-ill individual (including the protection from threats to health and safety due to severe cognitive impairment).

(11) [(10)] "Policy" means any policy, contract, subscriber agreement, enrollment agreement, rider, or endorsement delivered or issued for delivery in Kentucky.

(12) [(11)] "Short-term nursing home insurance policies" is defined in KRS 304.14-650.

Section 2. Policy Requirements. A short-term nursing home insurance policy delivered or issued for delivery in Kentucky shall not use the terms set forth below unless the terms are defined in the policy as follows:

(1) "Activities of daily living" means at least bathing, continence, dressing, eating, toileting, and transferring.

(2) "Acute condition" means that the individual is medically unstable. The individual requires frequent monitoring by medical professionals, such as physicians and registered nurses, in order to maintain health status.

(3) "Adult day care" means a program for four (4) or more individuals, of social or health-related, or both, services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who can benefit from care in a group setting outside the home.

(4) "Bathing" means washing oneself by sponge bath; or in either a tub or shower, including the task of getting into or out of the tub or shower.

(5) "Cognitive impairment" means a deficiency in a person's short or long-term memory, orientation as to person, place, and time, deductive or abstract reasoning, or judgement as it relates to

safety awareness.

(6) "Continence" means the ability to maintain control of bowel and bladder function; or [if], when unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene (including caring for catheter or colostomy bag).

(7) "Dressing" means putting on and taking off all items of clothing and any necessary braces, fasteners, or artificial limbs.

(8) "Eating" means feeding oneself by getting food into the body from a receptacle (such as a plate, cup, or table) or by a feeding tube or intravenously.

(9) "Hands-on assistance" means physical assistance (minimal, moderate, or maximal) without which the individual would not be able to perform the activity of daily living.

(10) "Home health care services" means medical and nonmedical services, provided to ill, disabled or infirm persons in their residences. The services may include homemaker services, assistance with activities of daily living, and respite care services.

(11) "Medicare" means "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended", or "Title I, Part I of Pub.L. 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof", or words of similar import.

(12) "Mental or nervous disorder" shall not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.

(13) "Personal care" means the provision of hands-on services to assist an individual with activities of daily living.

(14) "Skilled nursing care", "intermediate care", "personal care", "home care", "specialized care", "assisted living" and other services shall be defined in relation to the level of skill required, the nature of the care, and the setting in which care shall be delivered.

(15) "Toileting" means getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.

(16) "Transferring" means moving into or out of bed, chair, or wheelchair.

Section 3. Policy Practices and Provisions. (1) Renewability. The terms "guaranteed renewable" and "noncancellable" shall not be used in any individual short-term nursing home insurance policy without further explanatory language in accordance with the disclosure requirements of Section 5 of this administrative regulation.

(a) A short-term nursing home insurance policy issued to an individual shall not contain renewal provisions other than "guaranteed renewable" or "noncancellable".

(b) The term "guaranteed renewable" may be used only if the insured has the right to continue the short-term nursing home insurance in force by the timely payment of premiums and if the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

(c) The term "noncancellable" may be used only if the insured has the right to continue the short-term nursing home insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the scheduled premium rate.

(d) The term "level premium" may only be used if the insurer does not have the right to change the premium.

(2)(a) Limitations and exclusions. A policy shall not be delivered or issued for delivery in Kentucky as a short-term nursing home insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition, or accident, except as follows:

1. Preexisting conditions or diseases as defined in Section 5(7) through (9) of this administrative regulation;

2. Mental or nervous disorders, but this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's disease;

3. Alcoholism and drug addiction;

4. Illness, treatment, or medical condition arising out of:

a. War or act of war (whether declared or undeclared);

b. Participation in a felony, riot, or insurrection;

c. Service in the armed forces or auxiliary units;

d. Suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury; or

e. Aviation (this exclusion shall apply only to nonfare-paying passengers);

5. Treatment provided in a government facility (unless otherwise required by law), services for which benefits are available under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability, or occupational disease law, services provided by a member of the covered person's immediate family, and services for which no charge is normally made in the absence of insurance;

(b) This subsection shall not prohibit exclusions and limitations by type of provider or territorial limitations.

(3) Continuation or conversion.

(a) Group short-term nursing home insurance issued in Kentucky on or after the effective date of this administrative regulation shall provide:

1. A covered individual with a basis for continuation or conversion of coverage without underwriting upon termination of coverage; and

2. A converted policy or continued coverage including benefits identical to or benefits determined by the Commissioner [executive director] to be substantially similar to or in excess of those provided under the group policy from which conversion or continued coverage is made.

(b) Written application for the converted policy or continued coverage shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than thirty-one (31) days following notice of continuation or conversion rights under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy and shall be renewable annually.

(4) The premium charged to an insured for short-term nursing home insurance shall not increase due to either:

(a) The increasing age of the insured at ages beyond sixty-five (65); or

(b) The duration the insured has been covered under the policy.

(5) Extension of benefits. Termination of short-term nursing home insurance shall be without prejudice to any benefits payable for institutionalization if the institutionalization began while the short-term nursing home insurance was in force and continues without interruption after termination. The extension of benefits beyond the period the short-term nursing home insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefit and may be subject to any policy waiting period, and all other applicable provisions of the policy.

(6) Discontinuance and replacement. If a group short-term policy is replaced by another group short-term policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy shall not:

(a) Result in an exclusion for preexisting conditions that would have been covered under the group policy being replaced; and

(b) Vary or otherwise depend on the individual's health or disability status, claim experience or use of short term care services.

(7) Premium changes.

(a) The premium charged to an insured for short-term nursing home insurance shall not increase due to either:

1. The increasing age of the insured at ages beyond sixty-five (65); or

2. The duration the insured has been covered under the policy.

Section 4. Unintentional Lapse. An insurer offering short-term nursing home insurance shall, as a protection against unintentional lapse, comply with the following:

(1) Notice before lapse or termination. An individual short-term

nursing home policy or certificate shall not be issued until the insurer has received from the applicant either a written:

(a) Designation of at least one (1) person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium; or

(b) Waiver, dated and signed by the applicant, electing not to designate additional persons to receive notice.

(2) Lapse or termination for nonpayment of premium:

(a) An individual short-term nursing home policy or certificate shall not lapse or be terminated for nonpayment of premium unless the insurer, at least thirty (30) days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated pursuant to subsection (1)(a) of this section, at the address provided by the insured for purposes of receiving notice of lapse or termination; and

(b) Notice shall:

1. Be given by first class United States mail, postage prepaid;

2. Not be given until thirty (30) days after a premium is due and unpaid; and

3. Be deemed to have been given as of five (5) days after the date of mailing.

(3) Reinstatement. A short-term nursing home policy shall contain a reinstatement provision as required in KRS 304.17-080.

#### Section 5. Required Information and Disclosure Provisions.

(1) Renewability.

(a) Individual short-term nursing home insurance policies shall contain a renewability provision.

(b) The provision shall:

1. Be appropriately captioned;

2. Appear on the first page of the policy; and

3. State clearly that the coverage is guaranteed renewable and that premium rates are subject to change or that the coverage is noncancellable.

(c) All short-term nursing home policies or certificates issued in the commonwealth of Kentucky shall state in (16) sixteen point bold type print on the front page of the policy the following statement: This is a short-term nursing home product that offers benefits for less than twelve (12) months. This is not a long-term care policy.

(2) Riders and endorsements.

(a) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual short-term nursing home insurance policy, riders or endorsements added to an individual short-term nursing home insurance policy after date of issue, reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured.

(b) After the date of policy issue, a rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law.

(c) If a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy, rider, or endorsement.

(3) Payment of benefits. A short-term nursing home insurance policy or certificate shall clearly define how benefits will be paid.

(4) Limitations. If a short-term nursing home insurance policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations".

(5) Other limitations or conditions on eligibility for benefits. A short-term nursing home insurance policy or certificate containing any limitations or conditions for eligibility including any elimination period shall be clearly defined in the policy or certificate and the paragraph shall be labeled [the paragraph] "Limitations or Conditions on Eligibility for Benefits".

(6) Benefit triggers. Activities of daily living and cognitive impairment shall be used to measure an insured's need for short-term nursing home care, shall be described in the policy or certificate in a separate paragraph, and shall be labeled "Eligibility

for the payment of benefits." Any additional benefit triggers shall also be explained in this section. If these triggers differ for different benefits, explanation of the trigger shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too shall be specified.

~~(7)(6)~~ A provider of service shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. The definition may require that the provider be appropriately licensed or certified.

~~(8)(7)~~ Short-term nursing home policies or certificates shall not use a definition of preexisting condition that [which] is more restrictive than the following: "Preexisting condition means a condition for which medical services or treatment is [was] recommended by, or received from, a provider of health care services within six (6) months preceding the effective date of coverage of an insured person."

~~(9)(8)~~ A short-term nursing home policy or certificate shall not exclude coverage for a loss or confinement which is the result of a preexisting condition unless that loss or confinement begins within six (6) months following the effective date of coverage of the insured person.

~~(10)(9)~~ A short term nursing home policy or certificate shall not exclude or use waivers or riders of any kind to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting conditions or physical conditions beyond the preexisting condition periods described in subsections (7) and (8) of this section.

~~(11)(40)~~ Insurers shall offer an option to purchase [disclose whether or not] inflation protection [is offered] at a minimum of 3% compounded annually with any short-term nursing home policy or certificate.

~~(12)(44)~~ Short-term nursing home policies shall contain on the front page of the policy or certificate the following statement: "Notice to buyer: This policy may not cover all of the costs associated with nursing home care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."

~~(13)(42)~~ An elimination period shall be calculated based upon consecutive calendar days, beginning the first day eligible services are received by the individual, and ending the first day benefits are payable.

Section 6. Prohibition Against Post-claims Underwriting. (1)(a) If an application for short-term nursing home insurance contains a question that [which] asks if [whether] the applicant has had medication prescribed by a physician, it shall also ask the applicant to list all medication that has been prescribed.

(b) If the medications listed in the application are [were] known by the insurer, or should have been known at the time of application, to be directly related to a medical condition that [for which] coverage would otherwise be denied, then the policy or certificate shall not be rescinded for that condition.

(2) The following language, or language substantially similar to the following, shall be set out conspicuously on the short-term nursing home insurance policy or certificate no later than when it is delivered: "Caution: The issuance of this short-term nursing home insurance (policy or certificate) is based upon your responses to the questions on your application. A copy of your (application or enrollment form) [is enclosed or was retained by you when you applied]. If your answers, to the best of your knowledge and belief, are incorrect or untrue, the insurer may have the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the insurer at this address: (insert address)."

(3) A copy of the completed application or enrollment form, whichever is applicable, [(whichever is applicable)] shall be delivered to the insured no later than when the policy or certificate is delivered unless it was retained by the applicant at the time of application.

Section 7. Reserve Standards. (1)(a) If short-term nursing home insurance benefits are provided through the acceleration of benefits under group or individual life policies or riders to these policies, policy reserves for these benefits shall be determined in accordance with KRS 304.6-130 to 304.6-180.

(b) Claim reserves shall also be established if the policy or rider is in claim status.

(c) In the development and calculation of reserves for policies and riders subject to the requirements of this subsection, due regard shall be given to the applicable policy provisions, marketing methods, administrative procedures, and all other considerations that may [which] have an impact on projected claim costs.

(d) Any applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries.

(2) If short-term nursing home benefits are provided other than as described in subsection (1) of this section, reserves shall be determined in accordance with KRS 304.6-070.

#### Section 8. Loss Ratio.

(1) Rate filings shall follow the filing procedures contained in 806 KAR 14:007 and 806 KAR 17:070.

(2) Initial premium rate schedules shall be calculated using [such that] the present value of future projected incurred claims, without the inclusion of active life reserves, shall [will] not be less than the present value of future projected earned premiums times sixty (60) percent.

(3) Premium rate schedule increases shall be calculated using [such that] the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, excluding [without the inclusion of] active life reserves, shall [will] not be less than the sum of the following:

(a) The accumulated value of the initial earned premiums times sixty (60) percent;

(b) Eighty-five (85) percent of the accumulated value of prior premium rate schedule increases on an earned basis;

(c) The present value of future projected initial earned premiums times sixty (60) percent; and

(d) Eighty-five (85) percent of the present value of future projected premiums not described in paragraph (c) of this subsection on an earned basis.

(4) All present and accumulated values used to determine rates shall use the maximum valuation interest rate for contract reserves as specified in 806 KAR 6:080. The actuary shall disclose as part of the actuarial memorandum required by 806 KAR 17:070, Section 3, the use of any appropriate averages.

#### Section 9. Minimum Standards for Home Health and Community Care Benefits in Short-term nursing Insurance Policies.

(1) A short-term nursing home insurance policy or certificate that shall provide benefits for home health care or community care services shall not limit or exclude benefits by:

(a) Requiring that the insured or claimant would need care in a skilled nursing facility if home health care services are not provided;

(b) Requiring that the insured or claimant first or simultaneously shall receive nursing or therapeutic services, or both, in a home, community, or institutional setting before home health care services are covered;

(c) Limiting eligible services to services provided by registered nurses or licensed practical nurses;

(d) Requiring that a nurse or therapist provide services covered by the policy that may be provided by a:

1. Home health aide; or

2. Other licensed or certified home care worker acting within the worker's scope of licensure or certification;

(e) Excluding coverage for personal care services provided by a home health aide;

(f) Requiring that the provision of home health care services be at a level of certification or licensure greater than that required by the eligible service;

(g) Requiring that the insured or claimant have an acute

condition before home health care services are covered;

(h) Limiting benefits to services provided by Medicare-certified agencies or providers; or

(i) Excluding coverage for adult day care services.

(2)(a) A short term nursing insurance policy or certificate that includes home health or community care services shall provide the total home health or community care coverage that is a dollar amount equivalent to at least one-half (1/2) of one (1) year of coverage available for nursing home benefits under the policy or certificate, when covered home health or community care services are received.

(b) The requirement identified in paragraph (a) of this subsection shall not apply to a policy or certificate issued to a resident of a continuing care retirement community.

(3) In determining maximum coverage under the terms of a policy or certificate, home health care coverage may be applied to the non-home health care benefits provided in the policy or certificate.

Section 10 [9]. Prohibition Against Preexisting Conditions and Probationary Periods in Replacement Policies or Certificates. If a short-term nursing home insurance policy or certificate replaces another short-term nursing home or long-term care policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions and probationary periods in the new short-term nursing home insurance policy for similar benefits to the extent that similar exclusions have been satisfied under the original policy.

Section 11. Filing Requirements for Advertising. (1) An insurer providing short term nursing home care insurance or benefits in Kentucky shall provide a copy any advertisement intended for use in Kentucky whether through written, radio, or television medium to the commissioner for review in accordance with this administrative regulation and KRS 304.12-020, 304.14-120, and 806 KAR 12:010, 806 KAR 14:005, 806 KAR 14:007, Section 5(2);

(2) An advertisement shall be retained by the insurer for at least five (5) years from the date the advertisement was first used.

(3) The commissioner may exempt advertising from the requirements of this section pursuant to KRS 304.14-120(4).

Section 12. Standards for Marketing. (1) An insurer marketing short term nursing home insurance coverage in Kentucky, directly or through its agents, shall:

(a) Establish marketing procedures and agent training requirements to assure that:

1. Marketing activities, including policy comparison, by its agent, shall be fair and accurate; and

2. Excessive insurance shall not be sold or issued.

(b) Display prominently by type, stamp, or other appropriate means, on the first page of the outline of coverage and policy, the notice as established in HIPMC-STN-1.

(2) An insurer shall:

(a) Comply with the requirements of KRS Chapter 304.12; and

(b) Not perform the following acts and practices:

1. Twisting;

2. High pressure tactics;

3. Cold lead advertising; and

4. Misrepresentation.

(3)(a) To comply with the requirements of this subsection, an association shall have the primary responsibility of educating members concerning short-term nursing home issues in general:

1. If endorsing or selling short-term nursing home insurance; and

2. To ensure that its members make informed decisions.

(b) An association shall provide objective information regarding short-term nursing home insurance policies or certificates endorsed or sold by the association to ensure that members receive a balanced and complete explanation of the features of the policy or certificate that is endorsed or sold.

(c) An insurer shall file with the department the following:

1. An insurance policy and, if applicable, a certificate;

2. An outline of coverage, which corresponds to the filed policy

or certificate; and

3. Advertisements as requested by the department pursuant to Section 11(1) of this administrative regulation.

(d) An association shall disclose in a short-term nursing home insurance solicitation:

1. The specific nature and amount of the compensation arrangements, including fees, commissions, administrative fees, and other forms of financial support, which the association receives from endorsement or sale of the policy or certificate to its members; and

2. A brief description of the process used to select the policy and the insurer, which issued the policy.

(e) If an association and insurer have interlocking directorates or trustee arrangements, the association shall disclose that fact to the association members.

(f) The board of directors of an association selling or endorsing a short-term nursing home insurance policy or certificate shall review and approve the:

1. Insurance policy; and

2. Compensation arrangements made with the insurer.

(g) Except for a qualified short-term nursing home insurance contract, an association shall:

1. Upon a decision to endorse a short-term nursing home insurance contract, engage the services of a person with expertise in short-term nursing home insurance not affiliated with the insurer to:

a. Conduct an examination of the policy, including its benefits, features, and rates; and

b. Update the examination, if a material change is made to the contract;

2. Actively monitor the marketing efforts of the insurer and agents; and

3. Review and approve:

a. Marketing materials; or

b. Insurance communications other than marketing materials, including communications:

(i) Used to promote sales; or

(ii) Sent to members regarding the policy or certificate.

(h) A group short-term nursing home insurance policy or certificate shall not be issued to an association unless the insurer files with the commissioner the information required in this subsection.

(i) Unless an insurer certifies annually that an association has complied with the requirements established in this subsection, an insurer shall not:

1. Issue a short-term nursing home policy or certificate to the association; or

2. Continue to market the policy or certificate.

(j) Failure to comply with the filing and certification requirements of this section shall constitute an unfair trade practice in violation of KRS 304.12-010.

Section 13. Standard Format and Content of an Outline of Coverage.

(1) An outline of coverage shall:

(a) Be a freestanding document, that shall be printed in no less than ten (10) point type; and

(b) Not contain material of an advertising nature.

(2) Text, shall be capitalized or underscored in the standard format outline of coverage, may be emphasized by using a method, that provides prominence equivalent to the:

(a) Capitalization; or

(b) Underscoring.

(3) Except as indicated, use of the text and sequence of text shall be:

(a) Mandatory; and

(b) Consistent with the Outline of Coverage, HIPMC-STN-1.

(5) The format to be used for the outline of coverage shall be consistent with the Outline of Coverage, HIPMC-STN-1.

Section 14. Standards for Benefit Triggers. (1) A short term nursing home insurance policy shall condition the payment of benefits based upon a determination of the insureds:

(a) Ability to perform activities of daily living; and

(b) Cognitive impairment.

(2) Eligibility for the payment of benefits shall not be more restrictive than requiring:

(a) A deficiency in the ability to perform no more than three (3) activities of daily living; or

(b) The presence of cognitive impairment.

(3)(a) Activities of daily living shall include no less than the activities defined in Section 2(1) of this administrative regulation and the policy; and

(b) To trigger covered benefits, an insurer may use activities of daily living that are:

1. Described in paragraph (a) of this subsection; and

2. In addition to activities identified in paragraph (a) if defined in the policy.

(4)(a) An insurer may use a provision other than activities of daily living as identified in subsection (3) of this section to determine the date benefits are payable under a policy or certificate; and

(b) If a provision, as established in paragraph (a) of this subsection is used by the insurer, the provision shall not:

1. Restrict the requirements identified in subsections (1), (2), and (3) of this section; and

2. Be used in lieu of the requirements of subsections (1), (2), and (3) of this section.

(5) A determination of a deficiency, as identified in this section, shall not be more restrictive than:

(a) Requiring the hands on assistance of another person to perform the prescribed activities of daily living as identified in subsection (3) of this section; or

(b) If the deficiency is due to the presence of a cognitive impairment, supervision or verbal cueing by another person shall be needed in order to protect the insured or others.

(6) An assessment of the insureds activities of daily living and cognitive impairment shall be performed by a licensed or certified professional, including a:

(a) Physician;

(b) Nurse; or

(c) Social worker.

(7) A short-term nursing home insurance policy shall include a clear description of the process for an appeal and resolution of a benefit determination.

Section 15. Incorporation by Reference. (1) "Outline of Coverage, HIPMC-STN-1", 03/2021 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at The Kentucky Department of Insurance, The 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 Department of Insurance Internet Web site at <http://www.insurance.ky.gov>.

SHARON P. CLARK, Commissioner

KERRY B. HARVEY, Secretary

APPROVE BY AGENCY: April 22, 2021

FILED WITH LRC: April 26, 2021 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on July 23rd, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 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: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-1453, email abigail.gall@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides standards for short-term nursing home insurance policies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply KRS 304.14-660, which requires the Commissioner to promulgate administrative regulations establishing requirements for short-term nursing home insurance policies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation provides minimum standards for short-term nursing home insurance policies as required by KRS 304.14-660.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist by providing the minimum standards for short-term nursing home insurance policies as required by KRS 304.14-660.

(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 include new benefit explanations for Home Health and Community Care services; marketing standards and advertisement filing procedures; details regarding benefit triggers, premium charges, discontinuance and replacement policies; a new option to purchase inflation protections at a minimum standard of 3%; the incorporation of a new form HIPMC-STN-1. There are also many technical changes to meet the drafting requirements of Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: the necessity of these amendments is based on the relationship to other administrative regulations and statutes. Previously, the requirements currently being added to this regulation were non-existent and thus, they allow for more efficient regulation of policies concerning Home Health and Community Care benefits.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation provides minimum standards for short-term nursing home insurance policies as required by KRS 304.14-660. Many of these amendments provide the minimum standard for these policies and procedures.

(d) How the amendment will assist in the effective administration of the statutes: These amendments assist in the administration of statutes KRS 304.14-660 and 304.2-110 in order to establish requirements for short-term nursing home insurance policies.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will effect approximately six (6) Kentucky insurers who offer short-term nursing home insurance policies to residents of Kentucky.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: The regulated entities providing short-term nursing home insurance policies must abide by the requirements set forth in the applicable sections of this administrative regulation. More specifically, the amended sections such as the benefit triggers, cancellations stipulations, premium charge requirements, extension of benefit updates, advertising and marketing requirements and standards, and utilizing the HIPMC-STN-1 form when outlining coverage to the consumer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There are no cost associated with this administrative regulation nor the amendments.

(c) As a result of compliance, what benefits will accrue to the entities: Insurers writing short-term nursing home insurance policies will meet the statutory and regulatory requirements.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There is no cost associated with the 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:

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurers offering short-term nursing home policies in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? .The Department as the implementer.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1), 304.14-660

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is expected to be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is expected to be generated.

(c) How much will it cost to administer this program for the first year? No cost is expected.

(d) How much will it cost to administer this program for subsequent years? No cost is expected.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation:

PUBLIC PROTECTION CABINET

Department of Insurance

Division of Financial Standards and Examinations  
(Amendment)

806 KAR 17:100. Certificate of filing for provider-sponsored networks.

RELATES TO: KRS 304.17A-100(6), 304.17A-300, 304.17A-

310

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-300, 304.17A-310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) ~~authorizes [provides that] the commissioner to [executive director may]~~ promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, ~~established in KRS 304.1-010.~~ KRS 304.17A-300 requires that provider sponsored networks shall obtain a certificate of filing before doing business in Kentucky. The purpose of this [This] administrative regulation is to establish [sets forth] the requirements for a provider sponsored network applying for a certificate of filing.

Section 1. Definitions. A provider-sponsored network is a provider sponsored integrated health delivery network as defined in KRS 304.17A-100(6).

Section 2. A provider-sponsored network shall apply for and obtain a certificate of filing from the commissioner [executive director] in order to provide, directly or through arrangements with others, a health benefit plan to consumers voluntarily enrolled with the organization on a per capita or a predetermined, fixed prepayment basis.

Section 3. (1) Each application for a certificate of filing for a provider-sponsored network shall be filed on a Form 996 and verified by an officer or authorized representative of the applicant.

(2) Each application shall set forth or be accompanied by the following:

(a) Name, address, principal place of business, owners, officers, managers, and sponsors of provider-sponsored networks.

(b) Address where books and records of the provider-sponsored network shall [will] be maintained at all times.

(c) The providers who sponsor, own, govern, or manage the provider-sponsored network shall provide a copy of their licenses and affidavit confirming good standing with their licensure board.

(d) A copy of the organizational documents of the applicant including:

1. Articles of incorporation;
2. Articles of association;
3. Partnership agreement;
4. Trust agreement;
5. Bylaws;
6. Organizational chart; and
7. Other applicable documents and amendments.

(e) A copy of the policies, procedures, and other documents explaining how the provider sponsored network will:

1. Administer health plans;
2. Have ability, experience, and structure to arrange for appropriate level and type of health care services;
3. Conduct utilization management activities;
4. Achieve, monitor, and evaluate the quality and cost effectiveness of care provided;
5. Monitor access to its provider network; and
6. Use standardized electronic claims, [and] billing processes, and formats.

(f) Names, addresses, and biographical information of the following:

1. Board of directors;
2. Board of trustees;
3. Executive committee or other governing body;
4. Each owner of five (5) percent or more of the provider-sponsored network;
5. Principal officers;
6. Partners; and
7. Persons responsible for the conduct of the applicants affairs and day to day operations.

(g) Financial statements audited by an independent certified public accountant in conformity with statutory accounting practices prescribed or otherwise permitted by the commissioner [executive director] that reflect the following:

1. Financial position of the applicant;

2. Results of its operation;

3. Cash flows; and

4. Changes in capital and surplus.

(h) If the "as of" date of the financial statements filed pursuant to paragraph (f) of this subsection is more than ninety (90) days from the date of the application, interim financial statements compiled by an independent certified public accountant as of a date less than ninety (90) days from the application containing the same information as the audited financial statements.

(i) List of providers including name, address, license number, and health services provided.

(j) A statement or map reasonably describing the counties to be served and written assurance that health services will be provided to enrollees within fifty (50) miles of their residences.

(k) Proposed contracts and agreements including the following:

1. Applications or individual enrollment forms;
2. Master contract forms for group enrollment;
3. Evidence of coverage or handbook;
4. Riders or endorsements; and
5. Rates with actuarial justifications.

(l) A copy of the following professional agreements:

1. Provider agreements;
2. Third party administrators agreements;
3. Service agreements;
4. Administrative agreements; and
5. Reinsurance agreements.

(m) A copy of grievance procedures to be utilized for the investigation and resolution of enrollee and provider complaints and grievances.

(n) A copy of the applicant's plan for handling insolvency as required by KRS 304.17A-310(6).

(o) Financial program setting forth a three (3) year projection of operations on a quarterly basis which shall include the following:

1. Detailed enrollment projections;
2. Projection of balance sheets;
3. Projection of cash flow statements showing any capital expenditures;
4. Projection of purchase and sale of investments and deposits;
5. Projection of income and expense statements anticipated from the start of operation until the organization has had net income for one (1) year; and
6. Statement of the sources of working capital as well as other sources of funding.

Section 4. If any of the information filed with the office pursuant to Section 3 of this administrative regulation changes or becomes incorrect, then the provider-sponsored network shall immediately notify the office in writing of the change and immediately give the office the correction.

Section 5. Incorporated by Reference. (1) Form 996, 03/2021 is incorporated by reference. [Form numbered "996", revised June 1996, is prescribed by the office and incorporated by reference. Copies may be obtained from the Office of Insurance, P.O. Box 517, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, The Mayo-Underwood Building, 500 Mero St., Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the department Web site at <http://insurance.ky.gov>.

SHARON P. CLARK, Commissioner

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: April 22, 2021

FILED WITH LRC: April 26, 2021 at 12:03 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on July 23rd, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to

the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 30th, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-1453, email abigail.gall@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for a provider sponsored network applying for a certificate of filing.

(b) The necessity of this administrative regulation:

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.17A-300 requires that provider sponsored networks shall obtain a certificate of filing before doing business in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist by providing the requirements for a provider sponsored network applying for a certificate filing.

(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 technical in nature and are due in part to the drafting requirements of Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The necessity of these amendments are set forth in Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: Chapter 13A establishes several specific drafting requirements to ensure conformity and consistency with administrative regulation formatting.

(d) How the amendment will assist in the effective administration of the statutes: These amendments assist in the administration of statutes KRS 304.2-110(1), 304.17A-300, 304.17A-310.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will effect 5 provider sponsored networks in Kentucky.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: A provider-sponsored network shall apply for and obtain a certificate of filing from the commissioner in order to provide, directly or through arrangements with others, a health benefit plan to consumers voluntarily enrolled with the organization on a per capita or a predetermined, fixed prepayment basis. In order to file for this certificate the regulated entity must use a Form 996.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There are no cost associated with this administrative regulation nor the amendments.

(c) As a result of compliance, what benefits will accrue to the entities: A provider-sponsored network applying for a certificate of filing will uphold it's statutory duties in order to obtain said certificate.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There is no cost associated with the 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:

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all provider-sponsored network.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? .The Department as the implementer.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1), 304.17A-300, 304.17A-310

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is expected to be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is expected to be generated.

(c) How much will it cost to administer this program for the first year? No cost is expected.

(d) How much will it cost to administer this program for subsequent years? No cost is expected.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation:

#### PUBLIC PROTECTION CABINET

##### Department of Insurance

##### Division of Health and Life Insurance and Managed Care (Amendment)

#### 806 KAR 17:150. Health benefit plan rate filing requirements.

RELATES TO: KRS 304.1-050, 304.3-270, 304.4-010, 304.17A-005, 304.17A-095, 304.17A-0952, 304.17A-0954, [304.17A-096, 304.17A-132, 304.17A-134, 304.17A-139, 304.17A-149,] 304.17A-410, 304.17A-430, [304.17A-450,] 304.17A-500, 304.17A-750, 304.17A-764, 304.17A-834, 304.17B-021, 304.17B-023(3)

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-095(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner [~~Executive Director~~] 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 [by] KRS 304.1-010 through KRS 304.99-154. KRS 304.17A-095(7) authorizes the commissioner ~~[executive director]~~ to promulgate an administrative regulation to obtain relevant information for health benefit plan rate filings and establish the format of the filing [filings]. The purpose of this [This] administrative regulation is to establish ~~[establishes]~~ the format and procedure for the submission of a health benefit plan rate filing.

Section 1. Definitions. (1) "Base new business rate" means the premium rate for each product benefit plan for each class of business, prior to any adjustment for case characteristics or health status.

(2) "Base new business rate change" means:

(a) For a product benefit plan, the percentage change in the base new business rate measured from the first day of the prior rating period to the first day of the proposed rating period; and

(b) For a product within a market segment class of business, the percentage change equal to the premium weighted average base new business rate change for all of the product benefit plans within that market segment class of business.

(3) "Base premium rate" is defined in KRS 304.17A-005(3).[

(4) ~~"Basic health benefit plan" is defined in KRS 304.17A-005(4).]~~

(4) [(5)] "Class of business" means all or a distinct grouping of small employers or individuals as shown on the records of the small employer or individual insurance carrier.

(5) ~~"Commissioner" is defined in KRS 304.1-050(1). [~~

(6) ~~"Covered person" is defined in KRS 304.17A-500(3).]~~

(6) [(7)] "Date of filing" means the date the department ~~[office]~~ confirms that the appropriate filing fee and all information required by this administrative regulation have been received by the department ~~[office]~~.

(7) "Department" is defined in KRS 304.1-050(2).

(8) "Duration" means a policy year of twelve (12) months, measured from the date of issuance of a policy, with each succeeding twelve (12) month period being a new duration.

(9) "Employer-organized association" is defined in 304.17A-005(12) ~~[KRS 304.17A-095(4)(c)].~~

(10) ~~"Executive director" is defined in KRS 304.1-050(1).]~~

(10) [(11)] "FFS" means a fee for service product type.

(11) [(12)] "Guaranteed Acceptance Program" or "GAP" is defined in KRS 304.17A-005(19).

(12) [(13)] "Health benefit plan" is defined in KRS 304.17A-005(22).

(13) [(14)] "Health benefit plan region" or "geographic region" means each one (1) of the eight (8) allowable rating regions for health benefit plans identified in HIPMC-R33, Health Benefit Plan Regions, ~~which is incorporated by reference in 806 KAR 17:005~~.

(14) [(15)] "HMO" means a health maintenance organization product type.

(15) [(16)] "Index rate" is defined in KRS 304.17A-005(27) ~~[304.17A-005(25)].~~

(16) [(17)] "Insurance purchasing outlet" is defined in KRS 304.17A-750(4).

(17) [(18)] "Large group" is defined in KRS 304.17A-005(32) ~~[304.17A-005(30)].~~

(18) [(19)] "Material change" means any change to a rate filing, except that a change in value of an existing rate factor other than trend shall not be considered a material change.[

(20) ~~"Office" is defined in KRS 304.1-050(2).]~~

(19) [(21)] "POS" means a point of service product type.

(20) [(22)] "PPO" means a preferred provider organization product type.

(21) [(23)] "Small group" is defined in KRS 304.17A-005(45) ~~[304.17A-005(42)].~~

(22) [(24)] "Target loss ratio" means a loss ratio that an insurer files, that ~~[which]~~ projects and guarantees a loss ratio on an annual basis.

Section 2. Scope. (1) A health benefit plan rate filing to which the standards of KRS 304.17A-095 apply, shall include the

information required by Sections 3 through 10 of this administrative regulation.

(2) The period of time that ~~[in which]~~ the commissioner ~~[executive director]~~ shall have to approve or disapprove a filing shall not begin until the date of filing.

(3) An insurer shall not market or use the proposed rates until the date of filing.

(4) A filing and fee shall not be deemed received until the department ~~[office]~~ confirms that:

(a) Information required by Sections 3 through 10 of this administrative regulation has been received; and

(b) The appropriate fee, as set forth in 806 KAR 4:010, has been paid.

Section 3. Health Benefit Plan Rate Filing Procedures. (1) A health benefit plan rate filing shall be submitted electronically through the System For Electronic Rate and Form Filing (SERFF) or an electronic manner approved by the department ~~[to the office]~~ for a:

(a) New rate filing; or

(b) Material change to a previously approved rate filing.

(2) The following shall be included and properly completed in a health benefit plan rate filing submission:

(a) Form HIPMC-R32, the Health Benefit Rate Filing Information Form, ~~which is incorporated by reference in 806 KAR 17:005~~;

(b) The following filing fee or the domiciliary state fee, whichever is greater:

1. \$100 for an original or new filing; or

2. Fifty (50) dollars for an amendment to a filing;

(c) Form HIPMC-F1, Face Sheet and Verification Form, that ~~[which]~~ is incorporated by reference in 806 KAR 14:007 ~~[806 KAR 17:005]~~;

(d) Signed actuarial memorandum prepared in accordance with Sections 6 and 7 of this administrative regulation;[

(e) ~~An Income and Expense Worksheet, which is incorporated by reference in 806 KAR 17:005.]~~

(e) [(f)] Except for large groups, Certification Form HIPMC-R34, ~~which is incorporated by reference in 806 KAR 17:005~~; and[

(g) ~~If a rate for a basic health benefit plan is included, Form HIPMC-RF-25, Basic Health Benefit Plan Summary Sheet-Form and Rate Filings, which is incorporated by reference in 806 KAR 17:005.~~

(3) ~~Two (2) copies of all written material shall be submitted to the office.]~~

(3) [(4)] A ~~[One (1)]~~ copy of all ~~[written]~~ material shall be submitted electronically to the Kentucky Attorney General's Office by the insurer at the same time as the submission to the department ~~[office]~~ and shall include:

(a) An amendment;

(b) An update; or

(c) A response to an inquiry from the department ~~[office]~~.

(4) [(5)] An electronic copy ~~Two (2) copies~~ of all correspondence with the department ~~[office]~~ or other state agency concerning a filing shall be submitted to the department ~~[office]~~. [

(6) ~~A photocopy of the most recent annual financial report shall be attached to the filing as an exhibit].~~

Section 4. Filing Format. (1) A separate health benefit plan rate filing shall be submitted for each market segment as follows:

(a) Individual;

(b) Small group;

(c) Association;

(d) Large group; ~~[and]~~

(e) Except as otherwise authorized pursuant to KRS 304.17A-095(2), each employer-organized association; and

(f) Self-insured employer organized association.

(2) A large group rate filing may include each product type offered as follows:

(a) FFS;

(b) PPO;

(c) POS; and

(d) HMO.[

(3) A rate filing for a market segment other than large group may be submitted separately for each product type listed in subsection (2) of this section or in the following combinations:

- (a) FFS and PPO; or
- (b) POS, HMO, and PPO.]

Section 5. Employer-organized Association Rate Filings for Fully Insured and Self Insured. (1)(a) An employer-organized association rate filing shall include the name of each employer-organized association that generated the rating experience contained in the filing; and

(b) If more than one (1) employer-organized association is named in the filing as identified in paragraph (a) of this subsection and each employer-organized association provides the insurer with written permission to have rates based on experience other than its own, the insurer:

1. May have the experience of all employer-organized associations named in the filing combined for rate determination; and

2. Shall include proposed rates for the combination of associations in one (1) filing.

(2) Each employer-organized association rate filing shall contain documentation demonstrating that the entity is an employer-organized association pursuant to KRS 304.17A-0954(1)(c).

(3) ~~An [If an]~~ insurer [is] proposing to begin marketing a health benefit plan to an employer-organized association, shall file a rate filing [may be based on the standard plan benefits], including appropriate formulas and rate factors within the limitations outlined in KRS 304.17A-0954. The filing shall include:

(a) Factors for all plans to be offered; and

(b) A detailed description of the methodology for incorporating the actual experience of an employer-organized association in determining rates for that association.

(4) If the insurer receives written permission from an employer-organized association regarding combining experience with other employer-organized associations, the insurer shall submit a copy of the [two (2) copies of the written] permission to the commissioner [executive director] with the rate filing. The [written] permission shall include the following:

(a) A statement giving the insurer permission to rate the employer-organized association on experience other than the experience of the employer-organized association [association's own experience];

(b) Name, address, and telephone number of the employer-organized association giving permission to the insurer;

(c) Name, address, and telephone number of the insurer to which permission is given;

(d) Month, day, and year that permission is given to the insurer; and

(e) Number of eligible association members.

Section 6. Actuarial Memorandum. (1) The actuarial memorandum for each rate filing shall be prepared in accordance with the most recent edition of the following located at <http://www.actuarialstandardsboard.org/standards-of-practice/>:

(a) Actuarial Standard of Practice No. 8, Regulatory Filings for Rates and Financial Projections for Health Plans [(Doc. No. 040, 1990 Edition)], American Academy of Actuaries;

(b) Actuarial Standard of Practice No. 26, Compliance with Statutory and Regulatory Requirements for the Actuarial Certification of Small Employer Health Benefit Plans [(Doc. No. 052, adopted October, 1996)], American Academy of Actuaries; and

(c) ~~Actuarial Standard of Practice No. 31, Documentation in Health Benefit Plan Ratemaking (Doc. No. 060, adopted October, 1997), American Academy of Actuaries; and~~

(c) [(d)] Actuarial Standard of Practice No. 41, Actuarial Communication [(Doc. No. 086, adopted March, 2002)], American Academy of Actuaries.

(2) The actuarial memorandum for a rate filing, other than a large group rate filing, shall include the following:

(a) Qualifications of the signing actuary;

(b) A statement identifying the date that the proposed rates shall be used;

(c) A discussion of the rate development, that [which] shall include a detailed explanation of the following:[]

1. The effects of each of the following mandated benefits which shall include the percentage cost and actual dollars attributable to the rates and the number of policyholders who are affected:

a. ~~For benefit plans offering pharmacy benefits, coverage for amino acid modified preparations and low-protein modified food products for the treatment of inherited metabolic disorders in accordance with KRS 304.17A-139(4);~~

b. ~~Hearing aids and related services in accordance with KRS 304.17A-142;~~

c. ~~Anesthesia and hospital or ambulatory surgical facility services in connection with dental procedures in accordance with KRS 304.17A-149; and~~

d. ~~Medical and surgical benefits with respect to mastectomies pursuant to KRS 304.17A-134;]~~

1. [2.] The claim cost development, that [which] shall include an explanation of the following:

a. Methodology;

b. Assumptions including the following:

(i) Trend, including supporting analysis, that [which] supports the trend level selected;

(ii) Benefit change;

(iii) Utilization or cost-per-service change;

(iv) Demographic change;

(v) Change in medical management;

(vi) Change in provider contracts; and

(vii) Any other assumption used by the actuary in the claim cost development; and

c. Experience by month, including exposures or members, earned premium, paid claims, incurred claims, and incurred loss ratio, for the past three (3) years for this product, or for a similar product if the [this] filing is for a new product;

2.a.[3-a:] Development and printout of the following shall be shown by age, gender, and tier combination using the lowest industry factor and the lowest area factor, and separately using the highest industry factor and highest area factor:

(i) Base premium rates;

(ii) Index rates; and

(iii) Corresponding highest premium rates; and

(iv) ~~If offered, any applicable GAP premium rates for the standard plan option.]~~

b. If the filing contains more than one (1) product type, a development and printout as identified and described in clause a of this subparagraph for each product type separately.

c. If the filing contains proposed rates for more than one (1) class of business, a development and printout as identified and described in clauses a. [a] and b. [b] of this subparagraph for each class of business separately;[]

4. ~~For an insurer that has existing GAP enrollees:~~

a. ~~Index rates for the non-GAP classes of business may be set by excluding the experience of the GAP enrollees;~~

b. ~~Index rates for the GAP class of business shall be set by considering the block of experience for the new GAP class of business and the former class of business, which included GAP enrollees; and~~

c. ~~Rates for the GAP class of business may not exceed 150 percent of the index rates established in clause b of this subparagraph;]~~

3. [6-] Factors used for each case characteristic, including age, gender, industry or occupation, and geographic region, with a separate summary of the maximum factor and the minimum factor for each case characteristic.

a. A health benefit plan region other than the eight (8) identified in HIPMC-R33, Health Benefit Plan Regions, [which is incorporated by reference in 806 KAR 17:005;] shall not be used for a geographic region factor adjustment; and

b. Any healthy lifestyle discount factor, if applicable, shall be included and an explanation of the determination of that factor, and the condition for when [under which] that factor is applicable;

4. [6-] The anticipated pricing loss ratio, including a detailed

justification of load factors, including percentages allocated for the:

a. Administrative expense assumption, including an explanation of:

(i) Any change from the factor used for an existing rate [rates]; and

(ii) How these costs are allocated among each benefit plan design, including demonstrative documentation as an exhibit;

b. Commission assumption, including an explanation for any change from the factor used for an existing rate [rates];

c. Federal, state, and local government tax assumptions, including an explanation for a change from the factor used for an existing rate [rates];

d. Investment income assumption, including an explanation for any change from the factor used for an existing rate [rates];

e. Profit and contingency assumption, including an explanation for a change from the factor used for an existing rate [rates];

f. Assessments pursuant to KRS 304.17B-021; and

g. Other identified load factors;

(d) A detailed explanation, including an example of the following:

1. The method for determining a small group composite rate;

2. The conditions under which a small group composite rate is recalculated; and

3. The group size that is eligible for a composite rate calculation;

(e) Each health benefit plan description and the applicable benefit factor adjustment, or other methods of calculating rates for a different benefit plan if the method is not multiplicative, for each benefit plan applicable to the [to which this] filing [applies];

(f) Detailed discussion of the manner in which the projected amount of net assessments and payments under KRS 304.17B-021 and 304.17B-023(3) are to be used in establishing the proposed rates in the filing as required by KRS 304.17A-095;

(g) Information regarding how fees are paid to providers as follows:

1. Justification of fees paid to providers in relation to the rate requested, including any assumption used regarding provider discounts in the rate filing; and

2. Average discount to providers during experience period and average discount for physician payments, hospital payments, laboratory payments, pharmacy payments, mental health payments, and other payments for the rate filing period;

(h) If a trend rate is used, include the time period to which the trend applies, not to exceed twelve (12) months, and the applicable annual trend rate and the periodicity of the factor;

(i) Explanation of the anticipated effect of the requested rates on the current policyholders, subscribers, or enrollees;

(j) Information regarding each class of business, which shall include:

1. Identification of each class of business;

2. Justification of each separate class of business; and

3. A demonstration that each index rate for the class of business with the highest index rates is within ten (10) percent of the corresponding index rate from the class of business with the lowest index rates ~~[excluding a GAP class of business]~~; and

(k) Prospective certification of the following, which shall be filed as an attachment to the actuarial memorandum for a rate filing other than a large group filing, and signed by the qualified actuary who prepared and signed the actuarial memorandum:

1. That the information is prepared in accordance with American Academy of Actuaries Actuarial Standard of Practice No. 26, Compliance with Statutory and Regulatory Requirements for the Actuarial Certification of Small Employer Health Benefit Plans, applicable to the following markets:

a. Individual;

b. Association; and

c. Small group; and

2. That the proposed rates meet the requirements of KRS 304.17A-0952 or 304.17A-0954, as applicable.

Section 7. Large Group Rate Filings. (1) The actuarial memorandum for a large group rate filing shall include the following information:

(a) The information identified in Section 6(2)(a), (b), (c)1, [2-4]6], (f), (g), (h), [and] (i) and (i) of this administrative regulation;

(b) Development of rating basis, including each adjustment for the following:

1. Age;

2. Gender;

3. Family composition;

4. Benefit plan;

5. Industry;

6. Healthy lifestyle; and

7. Any other adjustment included in the development;

(c) A formula for new and renewal business, including a definition of each term used in the formula;

(d) Credibility criteria used in conjunction with experience rating;

(e) Detailed explanation of a change in the manual rating formula or experience rating formula;

(f) Detailed explanation of a change in factors that would be used in a formula;

(g) Any periodic trend rate applied in the formula;

(h) The composite effect of a change in formula and formula factors; and

(i) Detailed explanation of any trend assumption used in experience rating.

(2) Certification Form HIPMC-R34, Certification Form ~~[incorporated by reference in 806 KAR 17:005]~~, shall not be required for a large group rate filing.

Section 8. Guaranteed Loss Ratio Filing for New Products or Products without Credible Experience.

(1) A filing accompanied by a guaranteed loss ratio statement shall meet all requirements of KRS 304.17A-095(6).

(2) Individual, small group, and employer-organized association market filings shall meet the following requirements regarding guaranteed loss ratios by duration:

(a) The guaranteed loss ratio for the first duration shall not be less than sixty (60) percent of the guaranteed lifetime loss ratio specified in the policy.

1. Expected loss ratios may vary by month within the first duration; and

2. The average of the loss ratios for all months shall be equal to the guaranteed loss ratio for the first duration;

(b) The guaranteed loss ratio for a specific duration shall not be less than the guaranteed loss ratio for the previous duration;

(c) The guaranteed loss ratio for the third duration shall not be less than the guaranteed lifetime loss ratio identified in the policy;

(d) The average of the first six (6) guaranteed loss ratios by duration shall not be less than the guaranteed lifetime loss ratio identified in the policy;

(e) The guaranteed lifetime loss ratio shall not be less than that identified in KRS 304.17A-095(6)(a)5; and

(f) The guaranteed loss ratios by duration shall be guaranteed for any policy issued under the policy form and shall be identified in the policy.

(3) A refund shall be calculated pursuant to the following formula:

(a) Refundable premium for any year shall be the sum of the current year's refundable premium for each duration. Each duration's refundable premium shall be calculated by subtracting the three (3) items in subparagraphs 1, 2, and 3 of this paragraph from the current year's earned premium by duration and multiplying the result by the ratio of earned premium by duration and earned premium by duration minus the items identified in subparagraphs 1 and 2 of this paragraph and minus any premium related expenses identified in subparagraph 3 of this paragraph:

1. State and local premium taxes allocated to that duration;

2. Assessments pursuant to KRS 304.17B-021 allocated to that duration; and

3. The sum of incurred claims, preferred provider organization expenses, case management and utilization review expenses, and reinsurance premiums, minus reinsurance recoveries, allocated to that duration, divided by the guaranteed loss ratio in the policy, for that duration;

(b) If the annual earned premium is less than \$2,500,000, the minimum refund shall be calculated by refundable premium multiplied by the annual earned premium, divided by \$2,500,000;

(c) If the annual earned premium is equal to or greater than \$2,500,000, the minimum refund shall be the refundable premium;

(d) The refund to be paid to a policyholder pursuant to KRS 304.17A-095(6)(d) shall be calculated by dividing the earned premium for that policyholder by the total earned premium for the year, and multiplying that percentage of the aggregate refund of the policy form by the aggregate refund; and

(e) The amount of the refund shall include the computation of interest in accordance with KRS 304.17A-095(6)(d) in determining whether payment shall be made to the policyholder or to the Kentucky State Treasurer.

(4) An audit shall be conducted in accordance with KRS 304.17A-095(6)(b), which shall include the following:

(a) Guaranteed lifetime loss ratio;

(b) Guaranteed loss ratios by duration;

(c) Analysis of prior year estimated items, including uncollected premiums and unpaid claim liabilities, and description of method of allocation by duration;

(d) Earned premium by duration and description of method of allocation by duration;

(e) State premium tax by duration and description of method of allocation by duration;

(f) Local premium tax by duration and description of method of allocation by duration;

(g) Assessments by duration and description of the method of allocation by duration;

(h) Incurred claims by duration and description of method of allocation by duration;

(i) Preferred provider organization expenses and description of method of allocation by duration;

(j) Case management and utilization review expenses and description of method of allocation by duration;

(k) Reinsurance premiums less reinsurance recoveries and description of method of allocation by duration;

(l) A description of reinsurance and identity of reinsurer;

(m) A statement that incurred claims do not include administrative expenses, late payment charges, punitive damages, legal fees, or any other related administration expenses;

(n) A statement that incurred claims have been reduced for the full amount of all provider discounts, rebates, coordination of benefits savings, subrogation savings, and any other savings;

(o) A statement of refund checks not being issued before approval of the audit;

(p) Calculation of minimum refundable premium, actual refunded premium, and refund carryover;

(q) Calculation of percent of earned premium that shall be refunded;

(r) Method used to calculate a policyholder's actual refund;

(s) Historical experience for the policy form since inception;

(t) Auditor's certification; and

(u) Actuarial certification.

(5) An initial rate filing shall be a formal filing, and a subsequent rate filing may be submitted by actuarial certification.

Section 9. Minimum Guaranteed Loss Ratio Requirements for an Amended Policy Form or a Previously Filed Minimum Guaranteed Loss Ratio.

(1) If amending a policy form or a previously filed minimum guaranteed loss ratio, a filing accompanied by a guaranteed loss ratio statement shall meet the requirements of KRS 304.17A-095(6).

(2)(a) An insurer shall provide a minimum guaranteed loss ratio statement each time rates are amended for a policy form or if amending a previously filed minimum guaranteed loss ratio. The statement shall identify amounts by which rates are amended and include an actuarial certification verifying that rates continue to meet the requirements of the minimum guaranteed loss ratio; and

(b) Most recently filed with the department [office].

(3) The initial rate filing and subsequent statements shall include an actuarial certification, which includes information to

demonstrate meeting the requirements of KRS 304.17A-0952 and Section 6 of this administrative regulation.

(4)(a) The currently approved loss ratio on file with the department [office] under a prior approval process or a minimum guaranteed loss ratio shall be deemed a reasonable loss ratio for any amended policy forms or amended minimum guaranteed loss ratios; and

(b) Rate filings requesting a change in the previously approved loss ratio shall require documented evidence to demonstrate increased administrative cost or other evidence that the insurer would not be able to achieve previously approved profitability targets.

(5) If experience is filed by duration pursuant to Section 8(2) of this administrative regulation, a refund shall be calculated in accordance with Section 8(3) of this administrative regulation.

(6) If experience is filed by utilizing a target loss ratio and the actual achieved loss ratio is less than the target loss ratio, a refundable premium shall be determined as follows:

(a) Refundable premium shall be equal to the annual earned premium multiplied by the percentage by which the target loss ratio exceeds the actual achieved loss ratio;

(b)1. If the annual earned premium is equal to or greater than \$2,500,000, the minimum re-fundable premium shall be equal to the refundable premium as established in paragraph (a) of this subsection; or

2. If the annual earned premium is less than \$2,500,000, the:

a. Minimum refundable premium shall be equal to the refundable premium multiplied by the ratio of the annual earned premium divided by \$2,500,000;

b. Refund carryover shall be equal to any amount by which the refundable premium exceeds the minimum refundable premium; and

c. Refundable premium in the subsequent year shall be the sum of the refund carryover plus the calculated refundable premium for the subsequent year;

(c) The refund to be paid to a policyholder pursuant to KRS 304.17A-095(6)(d) shall be calculated by dividing the earned premium for that policyholder by the total earned premium for the year, and multiplying that percentage of the aggregate refund of the policy form by the aggregate refund; and

(d) The amount of the refund shall include the computation of interest in accordance with KRS 304.17A-095(6)(d) in determining whether payment shall be made to the policyholder or to the Kentucky State Treasurer.

(7) If experience is filed by duration, an audit shall be conducted in accordance with Section 8(4) of this administrative regulation.

(8) If experience is filed by target loss ratio, an audit shall be conducted in accordance with KRS 304.17A-095(6)(b), which shall include the following:

(a) Guaranteed lifetime loss ratio;

(b) Actual loss ratio;

(c) Analysis of prior year estimated items, including uncollected premiums and unpaid claim liabilities;

(d) Earned premium;

(e) State premium tax;

(f) Local premium tax;

(g) Assessments;

(h) Incurred claims;

(i) Preferred provider organization expenses;

(j) Case management and utilization review expenses;

(k) Reinsurance premiums less reinsurance recoveries;

(l) A description of reinsurance and identity of reinsurer;

(m) A statement that incurred claims do not include administrative expenses, late payment charges, punitive damages, legal fees, or any other related administration expenses;

(n) A statement that incurred claims have been reduced for the full amount of all provider discounts, rebates, coordination of benefits savings, subrogation savings, and any other savings;

(o) A statement of refund checks not being issued before approval of the audit;

(p) Calculation of minimum refundable premium, actual refunded premium, and refund carryover;

- (q) Calculation of percent of earned premium that is to be refunded;
  - (r) Method used to calculate a policyholder's actual refund;
  - (s) Historical experience for the policy form since inception;
  - (t) An auditor's certification; and
  - (u) An actuarial certification.
- (9) An initial rate filing shall be a formal filing, and a subsequent rate filing may be by actuarial certification.
- (10) An initial rate filing shall be required for insurers electing to file under a minimum guaranteed loss ratio pursuant to KRS 304.17A-095(6).

Section 10. Amendments to Previously Approved Rate Filings.

(1) For any change that is not a material change, an insurer shall submit an amendment to a rate filing previously approved by the department [office], which shall include the following:

- (a) Identification of the rate file number assigned and stated in the Order of Approval received by the insurer from the department [office] for the previously approved rate filing;
- (b) Date of approval of the previously approved rate filing;
- (c) The proposed effective date of the amendment;
- (d) A fifty (50) dollar filing fee;
- (e) A copy [Two (2) copies] of a properly completed HIPMC-F1 form, Face Sheet and Verification Form; and, which is incorporated by reference in 806 KAR 17:005;]
- (f) A copy [Two (2) copies] of a properly-completed HIPMC-R32 form, Health Benefit Plan Rate Filing Information Form; which is incorporated by reference in 806 KAR 17:005; and
- (g) If the filing is for a basic health benefit, Two (2) copies of the completed HIPMC-RF-25 Form, Basic Health Benefit Plan Summary Sheet Form and Rate Filings, which is incorporated by reference in 806 KAR 17:005;]

(2) Each amendment filing shall contain documentation to demonstrate the necessity of the amendment, which shall include the following:

- (a) An itemized list of the information to be amended and the reason for the amendment;
- (b) A statement identifying the impact of the amendment in relation to benefits and costs on current and future policyholders; and
- (c) A statement identifying the impact of the amendment on the insurer.

(3) One (1) copy of the amendment filing and written material relating to the filing shall be submitted to the Kentucky Attorney General's department [office] by the insurer at the same time as the submission to the department [office].

(4) The amendment to a previously approved rate filing shall not be deemed received until the department [office] confirms that the information and fifty (50) dollar filing fee required under this section have been received.

(5) Within sixty (60) days of confirmation of receipt of the required information and fee, the department [office] shall notify the insurer in writing of the acceptance or rejection of the amendment.

(6) The sixty (60) day confirmation time shall not begin until the department [office] confirms that the required information and fee have been received.

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

- (a) Actuarial Standard of Practice No. 8, "Regulatory Filings for Rates and Financial projections for Health Plans, originally adopted 1990, newly adopted 03/2014 [(Doc. No. 040, 1990 Edition)]", American Academy of Actuaries;
- (b) Actuarial Standard of Practice No. 26, "Compliance with Statutory and Regulatory Requirements for the Actuarial Certification of Small Employer Health Benefit Plans, originally adopted 10/1997, revised and effective 05/2011 [(Doc. No. 052, adopted October, 1996)]", American Academy of Actuaries; [
- (c) Actuarial Standard of Practice No. 31, "Documentation in Health Benefit Plan Ratemaking (Doc. No. 060, adopted October, 1997)", American Academy of Actuaries;]
- (c) [(d)] Actuarial Standard of Practice No. 41, "Actuarial Communication, originally adopted 03/2002, revised and effective

05/2011 (Doc. No. 086, adopted March, 2002)", American Academy of Actuaries;

(d) HIPMC-R32 Form, Health Benefit Plan Rate Filing Information Form, 04/2021;

(e) HIPMC-F1 Form, Face Sheet and Verification Form, 07/2020;

(f) HIPMC-R33, Health Benefit Plan Regions, 04/2021;

(g) Certification Form HIPMC-R34, Certification Form, 04/2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department [office] of Insurance, The Mayo-Underwood Building, 500 Mero Street [245 West Main Street], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Department of Insurance[office's] internet Web site at http://www.insurance.ky.gov [http://doi.ppr.ky.gov].

SHARON P. CLARK, Commissioner

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: April 22, 2021

FILED WITH LRC: April 26, 2021 at 12:07 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. July 23rd, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. July 30th, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (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 administrative regulation establishes procedures for filing health benefit plan rates so the Commissioner will have relevant information to approve or disapprove a rate filing.

(b) The necessity of this administrative regulation: KRS 304.17A-095 authorizes the Commissioner to promulgate an administrative regulation to obtain relevant information for health benefit plan rate filings and set forth the format for the filings. This administrative regulation is needed to ensure that health benefit plans provide the required information necessary for the commissioner to approve or disapprove rate filings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined by KRS 304.1-010. KRS 304.17A-095(7) authorizes the commissioner to promulgate an administrative regulation to obtain relevant information for health benefit plan rate filings and to set forth the format of the filings. This administrative regulation establishes procedures for filing health benefit plan rates so the commissioner will have relevant information to approve or disapprove the rate filing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will enable the commissioner to receive the information required to approve or disapprove a health benefit plan rate filing as required by KRS 304.17A-095.

(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 filed in this administrative regulation include amending outdated language to meet the statutory requirements on Chapter 13A. Other amendments include incorporating previous materials into the regulation, update market segments, establishing a requirement for forms to be submitted electronically using SERFF system. The amendments also reflect the new adoption dates of the materials incorporated by reference.

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

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined by KRS 304.1-010. KRS 304.17A-095(7) authorizes the commissioner to promulgate an administrative regulation to obtain relevant information for health benefit plan rate filings and to set forth the format of the filings. This administrative regulation establishes procedures for filing health benefit plan rates so the commissioner will have relevant information to approve or disapprove the rate filing.

(d) How the amendment will assist in the effective administration of the statutes: this administrative regulation will continue to enable the commissioner to receive the information required to approve or disapprove a health benefit plan rate filing as required by KRS 304.17A-095

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This will affect licensed insurers writing health insurance in Kentucky.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Insurers will be required to file information in conformity with current law regarding health insurance rates needed by the commissioner to determine whether the rates should be approved or disapproved. The insurers will be responsible for copying and delivery costs. Because insurers are currently required to file information under 806 KAR 17:150, the costs to the insurers for filing under this amendment should not increase significantly, if at all.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The insurer is responsible for the applicable filing fee. Copying and delivery costs.

(c) As a result of compliance, what benefits will accrue to the entities: If the insurer writing the plan meets formatting requirement set in this administrative regulation as well as specified statutes the commissioner shall approve the filing. If the requirements set forth are not met, the commissioner may disapprove the filing.

(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:

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation applied to all insurers licensed to issue, deliver, or renew health benefit plans in Kentucky.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Insurance as the implementer.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1), 304.17A-095(7)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is expected to be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is expected to be generated.

(c) How much will it cost to administer this program for the first year? No cost is expected.

(d) How much will it cost to administer this program for subsequent years? No cost is expected.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation:

## PUBLIC PROTECTION CABINET

### Department of Insurance

#### Division of Health and Life Insurance and Managed Care (Amendment)

#### 806 KAR 17:230. Requirements regarding medical director's signature on health care benefit denials.

RELATES TO: KRS 304.17A-540, 304.17A-545, 304.17A-600 – 304.17A-619

STATUTORY AUTHORITY: KRS 304.2-110(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) provides that the Commissioner [Executive Director] may promulgate reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation establishes the procedure to be followed when a medical director's signature is required on health care benefit denials.

Section 1. Definitions. (1) "Adverse determination" is defined by KRS 304.17A-600(1).

(2) "Coverage denial" is defined by KRS 304.17A-617(1).

(3) "Electronic signature" is defined by KRS 369.102(8).

(4) "Enrollee" is defined by KRS 304.17A-500(5).

(5) "Managed care plan" is defined by KRS 304.17A-500(9).

(6) "Medical director" means a person meeting the requirements of KRS 304.17A-545(1), and includes a medical director of an entity under contract and delegated to perform utilization review on behalf of a managed care plan.

(7) "Notice of coverage denial" means a letter, a notice, or an Explanation of Benefits statement advising of a coverage denial as defined by KRS 304.17A-617(1).

(8) "Signature" means name, title, state of licensure and license number.

(9) "Utilization review" is defined by KRS 304.17A-600(17) [KRS 304.17A-600(18)].

Section 2. Application. This administrative regulation shall apply to all managed care plans authorized by law to engage in managed care in the state of Kentucky and any utilization review entities registered in Kentucky.

Section 3. Appointment of Medical Director. (1) A managed care plan shall submit to the department [office] a:

(a) Completed form HIPMC-MD-1, incorporated by reference in this Administrative regulation; and

(b) Biographical resume of each individual who shall serve as the medical director [of the managed care plan].

(2) A managed care plan shall furnish the department [office] with any change in medical director within thirty (30) days of the change.

(3) A managed care plan shall provide for an alternative medical director to serve in the event of the medical director's absence and furnish the department [office] with information as required in subsection (1) of this section.

Section 4. Letters of Denial for Adverse Determination or Notices of Coverage Denial. (1) Letters of denial for adverse determination or notices of coverage denial shall be sent to an enrollee's last known address with a copy of same sent to the provider.

(2) Letters of denial requiring signature of the medical director [of a managed care plan] pursuant to KRS 304.17A-545(1)(d) and KRS 304.17A-607(1) shall include:

(a) Letters of adverse determination, including denials, limitations, reductions and terminations of services, based on lack of medical necessity; and

(b) Letters of adverse determination, including denials, limitations, reductions and terminations or services, based on lack of medical appropriateness.

(3) Notices of coverage denial shall not require the medical director's signature.

Section 5. Signature of the Medical Director. For purposes of this administrative regulation, the signature of the medical director shall include:

(1) Handwritten and copies of original signature; or

(2) Electronic signature.

Section 6. Incorporation by Reference. (1) Medical Director Report Form HIPMC-MD-1, 03/2021 ~~[(10/2000)]~~ is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department [Office] of Insurance, The 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://www.insurance.ky.gov>.

SHARON P. CLARK, Commissioner

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: April 22, 2021

FILED WITH LRC: April 26, 2021 at 12:11 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on July 23rd, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 30th, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (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 administrative regulation establishes the procedure to be used when a medical director's signature is required on health care benefit denials.

(b) The necessity of this administrative regulation: This administrative regulation clarifies when and what type of medical director's signature is acceptable for purposes of KRS 304.17A-545.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) provides that the Commissioner make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the insurance code. This administrative regulation will aid in implementation of KRS 304.17A-545.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 304.2-110(1) provides that the Commissioner make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the insurance code. This administrative regulation clarifies when and what type of medical director's signature is acceptable for purposes of KRS 304.17A-545.

(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: Several of the amendments to this administrative regulation are technical in nature and are set forth by Chapter 13A's drafting requirements. This administrative regulation was changed to generalized "medical director" instead of solely the "medical director of the managed care plan". The amendments to the form incorporated update the Department's contact information and include 806 KAR 17:280 as an authorizing regulation.

(b) The necessity of the amendment to this administrative regulation: The necessity of these amendments derive from Chapter 13A and to generalize the term medical director, not just applying to the medical director of a managed care plan.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110(1) provides that the Commissioner make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the insurance code.

(d) How the amendment will assist in the effective administration of the statutes: These amendments help to clarify when and what type of medical director's signature is acceptable for purposes of KRS 304.17A-545.

(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 all licensed managed care plans in the state of Kentucky. Currently, there are five (5) licensed managed care plans in this state.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: This administrative regulation establishes the procedure to be used when a medical director's signature is required on health care benefit denials. The Department anticipates that this administrative regulation will have minimal effect upon the costs of complying with the statutory requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no associated cost with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the

entities: If the regulated entities meet the regulatory and statutory guidelines set forth in this administrative regulation, then they will not face potential civil penalty by the Commissioner and the Medical Director will have been properly determined for signature if need be.

(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:

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

(9) TIERING: Is tiering applied? Tiering is not applied since this administrative regulation applies to all managed care plans in the state of Kentucky.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Insurance as the implementer.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is expected to be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is expected to be generated.

(c) How much will it cost to administer this program for the first year? No cost is expected.

(d) How much will it cost to administer this program for subsequent years? No cost is expected.

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

Revenues (+/-): Neutral  
Expenditures (+/-): Neutral  
Other Explanation:

#### PUBLIC PROTECTION CABINET Department of Insurance Division of Property and Casualty (Amendment)

#### 806 KAR 52:030. Workers' compensation self-insured group rate, rule and form filings.

RELATES TO: KRS 304.4-010, 304.13-053, 304.14-120, 304.50-010, 304.50-115

STATUTORY AUTHORITY: KRS 304.4-010, 304.50-010(2), 304.50-115

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.50-010(2), authorizes the Commissioner of the Department [~~Executive Director of the Office~~] of Insurance to promulgate administrative regulations as necessary to govern admission certification and regulation of workers' compensation self-insured groups. KRS 304.50-115, requires workers' compensation self-insured groups to file rates, supplementary rating information and coverage form filings with the commissioner [~~executive director~~]. This administrative regulation establishes workers' compensation self-insured group rate, rule and form filing procedures.

Section 1. Definitions. (1) "Coverage form" is defined by [in] KRS 304.50-015(10).

(2) "Commissioner" is defined by KRS 304.1-050(1). [~~"Executive director" means the Executive Director of the Office of Insurance.~~]

(3) "Department" is defined by KRS 304.1-050(2) [~~"Office" means the Office of Insurance.~~]

(4) "Self-insured group" is defined by [in] KRS 304.50-015(29).

Section 2. General Filing Requirements. (1) Every self-insured group shall file with the commissioner [~~executive director~~] its coverage forms, rates, loss costs, rating plans, rating rules, underwriting rules or guidelines, statistical plans, supporting information, supplementary information and premium payment plans accompanied by a completed and signed Form WC SIG F-1A P&C, "Face Sheet and Verification Form for Workers Compensation Self-Insured Groups".

(2) All filings shall include two (2) full document sets on 8 1/2 in. x 11 in. white paper with three (3) cover letters and a self-addressed stamped envelope.

(3) A filing may include any number of documents, filed together on a particular date. Rates, loss costs, and rules shall be filed separately from coverage forms.

(4) KRS 304.4-010(2) requires all fees and charges payable under the insurance code to be collected in advance. The period of time that the commissioner [~~in which the executive director~~] may affirmatively approve or disapprove the filing shall not begin until a complete filing and the appropriate fee, as set forth in 806 KAR 4:010, Section 1(21), is received.

Section 3. Rate and Rule Filings. (1) Form WC SIG: S-1 P & C, "Filing Synopsis for Rates and or Rules" shall be filed with all rate or rule filings.

(2)(a) Form WC SIG: LC-1 P & C, "Calculation of Loss Cost Multiplier" shall be filed with all rate filings referencing loss costs formulated by any advisory organization.

(b) Form WC SIG LC-2 P & C, "Expense Constant Supplement" shall be filed with all rate filings referencing loss costs formulated by an advisory organization in which an expense constant is used.

(3) Form WC SIG: EMA P & C, "E-Mod Affidavit" shall be filed with all rate or rule filings containing experience modification factors.

(4)(a) All rate or rule filings containing schedule rating plans shall identify the characteristics of the risk not reflected in an experience modification factor.

(b) Any application of the schedule rating plan shall be based on evidence contained in the self-insured group's file at the time it is applied. The schedule rating plan debit or credit factor(s) applied shall be made available to the member upon request.

(c) If the reason for application of any schedule debit is corrected by the member to the satisfaction of the self-insured group, the debit may be removed when evidence of the correction is received by the group.

Section 4. Coverage Form Filings. (1) Form WC SIG: S-2 P & C, "Filing Synopsis Form" and Form WC SIG: F-2 P & C, "Forms Index" shall be filed with all coverage form filings.

(2) A coverage form shall not be used until it has been approved by the commissioner [~~executive director~~]. If the rates pertaining to a coverage form are required by law to be filed with or approved by the commissioner [~~executive director~~], the coverage

form shall not be used until the appropriate rates have been filed or approved as required.

(3) A filing which amends, replaces, or supplements a coverage form previously filed and approved shall include an explanation setting forth all changes contained in the newly filed coverage form, the effect, if any, the changes have upon the hazards purported to be assumed by the policy, and an explanation as to the effect on the rates applicable thereto.

(4) A change of signature of the executing officer on a coverage form shall not, because of this change alone, require a new filing.

Section 5. Advisory Organization Filings. (1) A self-insured group that is a member, subscriber, or service purchaser of an advisory organization, statistical agent or forms provider may choose to adopt coverage forms, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines, or statistical plans of that advisory organization or statistical agent by doing so in accordance with the procedures established in this administrative regulation and shall clearly identify each filing of the advisory organization or statistical agent it is adopting.

(2) If a self-insured group chooses to adopt only a specific filing of an advisory organization, statistical agent, or form provider it shall do so in accordance with the procedures established in this administrative regulation, and shall clearly identify which filing of the advisory organization or statistical agent it is adopting. Loss cost filings shall be specifically adopted.

(3)(a) If a self-insured group chooses to adopt all of the current and future coverage forms, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines and statistical plans, excluding loss costs, of an advisory organization, statistical agent, or forms provider, it may file written notice with the commissioner [executive director] that it is adopting by blanket reference all of the current and future coverage forms, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines and statistical plans, excluding loss costs, as filed by the advisory organization, statistical agent, or forms provider. Loss cost filings shall not be adopted on this blanket reference basis.

(b) If a self-insured group previously notified the commissioner [executive director] of its adoption of all current and future filings, excluding loss cost filings, by the advisory organization, statistical agent, or forms provider and chooses not to adopt certain coverage forms, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines, or statistical plans, the group shall file notice of the nonadoption with the commissioner [executive director] and shall pay the appropriate filing fee, as set forth in 806 KAR 4:010, Section 1(21).

1. If a self-insured group previously notified the commissioner [executive director] of its adoption of all current and future filings, excluding loss cost filings, by the advisory organization, statistical agent, or forms provider and chooses to delay the effective date of its adoption, it shall submit a letter to the commissioner [executive director] requesting the revised date upon which it will adopt the filing.

2. The delayed adoption date shall be within six (6) months of the original effective date.

3. If additional time is needed, a second letter shall be submitted to the commissioner [executive director], requesting a revised delayed adoption date.

4. All revised delayed adoption dates shall be within one (1) year of the original effective date as filed by the advisory organization, statistical agent or forms provider.

5. If a self-insured group fails to adopt the advisory organization, statistical agent, or forms provider filing within one (1) year of the original effective date as filed by the advisory organization, statistical agent or forms provider, the insurer shall submit a filing to the commissioner [executive director] indicating it is nonadopting.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form WC SIG: F-1A P & C, "Face Sheet and Verification Form for Workers Compensation Self Insurance Groups," March 2005, Department [Office] of Insurance;

(b) Form WC SIG: F-2 P & C, "Forms Index," March 2005, Department [Office] of Insurance;

(c) Form WC SIG: S-1 P & C, "Filing Synopsis for Rates and or Rules," March 2005, Department [Office] of Insurance;

(d) Form WC SIG: S-2 P & C, "Filing Synopsis Form," March 2005, Department [Office] of Insurance;

(e) Form WC SIG: LC-1 P & C, "Calculation of Loss Cost Multiplier," March 2005, Department [Office] of Insurance;

(f) Form WC SIG: LC-2 P & C, "Expense Constant Supplement," March 2005, Department [Office] of Insurance; and

(g) Form WC SIG: EMA P & C, "E-mod Affidavit," March 2005, Department [Office] of Insurance.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Department of Insurance [Office of Insurance], The Mayo-Underwood Building, 500 Mero Street [245 West Main Street], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Department's Web site at <http://www.insurance.ky.gov> [Office of Insurance Internet Web site <http://doi.ppr.ky.gov/kentucky>].

SHARON P. CLARK, Commissioner

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: April 22, 2021

FILED WITH LRC: April 26, 2021 at 11:33 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held at 9:00 a.m. July 23rd, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 30th, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (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 administrative regulation prescribes the required forms to be used by workers' compensation self-insured groups for rate, rule and coverage form filings.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of KRS 304.50-010(2), which requires the Commissioner to promulgate administrative regulations to govern admission, certification and regulation of workers' compensation self-insured groups.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 2005 Ky. Acts ch. 7 sec. 2 requires the Commissioner to promulgate administrative regulations as necessary to govern admission, certification and regulation of workers' compensation self-insured groups. Section 23 requires workers' compensation self-insured groups to file rates, supplementary rating information and coverage forms with the Commissioner.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation prescribes the required forms to insure

that standardized information is filed for review and analysis by the Department of Insurance.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation are technical in nature.

(b) The necessity of the amendment to this administrative regulation: The amendments made to this administrative regulation are necessary in the effectuation of Chapter 13A of the Kentucky Revised Statutes.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.50-010(2), which requires the Commissioner to promulgate administrative regulations to govern admission, certification and regulation of workers' compensation self-insured groups.

(d) How the amendment will assist in the effective administration of the statutes: KRS 304.50-010(2) and KRS 304.50-115 allow the Commissioner to promulgate administrative regulation to oversee workers' compensation self-insured groups and the filings for admissions. This amendments assist in the effectuation by meeting the drafting standards required by Chapter 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect seven (7) existing workers' compensation self-insured groups and any entity desiring to file an initial application to become a certified workers' compensation self-insured group.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Workers' compensation self-insured groups will be required to utilize the forms prescribed by this regulation when making the statutorily required filings with the Department of Insurance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no associated cost with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: If the regulated entities meet the standards required by the authorizing statutes and limitations of this administrative regulations they will meet the standards

(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: There will be no increase in fees or funding to implement this new administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not directly establish any new fees. The existing filing fees of \$100 for rate or rule filings requiring prior approval and \$5 for other rate, rule and form filings required by KRS 304.4-010 and 806 KAR 4:010 are applicable to these filings.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all workers' compensation self-insured groups operating in Kentucky.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department as the implementer of this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.4-010, 304.50-010(2), 304.50-115

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is expected to be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is expected to be generated.

(c) How much will it cost to administer this program for the first year? No cost is expected.

(d) How much will it cost to administer this program for subsequent years? No cost is expected.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation:

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

#### 921 KAR 3:060. Administrative disqualification hearings and penalties.

RELATES TO: KRS Chapter 13B, 205.231, 7 C.F.R. 273.15, 273.17, 7 U.S.C. 2015

STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2), 194A.050(1), 7 C.F.R. 271.4, 273.16

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A.050(1) requires the secretary 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 205.231 establishes the appeals process for applicants or recipients of public assistance. 7 C.F.R. 271.4 requires each state to administer a Supplemental Nutrition Assistance Program (SNAP). 7 C.F.R. 273.16 requires the agency administering SNAP to provide a hearing process for individuals accused of intentionally violating a SNAP regulation and to implement penalties and disqualifications for these violations. KRS 13B.170 authorizes the cabinet to promulgate administrative regulations that are necessary to carry out the hearing process to be followed in the Commonwealth. This administrative regulation establishes the procedures used by the cabinet in determining if an intentional program violation (IPV) has occurred and the penalties that shall be applied for an IPV.

Section 1. Administrative Disqualification Hearings. (1) Unless a different procedure is specified in this administrative regulation, an administrative disqualification hearing shall:

(a) Be conducted in accordance with 921 KAR 3:070 and KRS Chapter 13B; and

(b) Include the issuance of an order in accordance with the Correspondence from the Office of the Attorney General dated April 5, 2012.

(2) The cabinet shall retain:

(a) The official record of an administrative disqualification hearing until all appeals have been exhausted; and

(b) A case record with an IPV disqualification indefinitely.

Section 2. Intentional Program Violations. (1) If the cabinet suspects that an individual committed an IPV, as defined in 921 KAR 3:010, the cabinet shall:

(a) Initiate an administrative disqualification hearing; or

(b) If warranted by the facts of the case, refer the suspected IPV claim to the Office of the Inspector General (OIG) for investigation or referral for prosecution.

(2) An administrative disqualification hearing may be initiated regardless of the current eligibility of an individual.

(3) If the OIG determines that the IPV does not warrant investigation or referral for prosecution, the cabinet shall initiate an administrative disqualification hearing as specified in this administrative regulation.

Section 3. Notification. (1) Form FS-80 (EF) or (TR), Notice of SNAP Suspected Intentional Program Violation, shall serve as the notification to a household of the:

(a) Cabinet's suspicion that an IPV has been committed;

(b) Amount and period of the overpayment for the suspected IPV; and

(c) Household's right to an administrative disqualification hearing.

(2) The cabinet shall provide an individual suspected of an IPV a Form FS-80, Supplement A (EF) or (TR), Voluntary Waiver of SNAP Administrative Disqualification Hearing, which allows the individual to waive the right to an administrative disqualification hearing, with or without admitting an IPV was committed.

(3) If the household does not return the FS-80, Supplement A (EF) or (TR), the cabinet shall schedule an administrative disqualification hearing in accordance with 7 C.F.R. 273.16(e)(3) and (4).

(4) In accordance with KRS 13B.050, the administrative disqualification hearing notice shall be sent:

(a) By certified mail, return receipt requested, to the individual; or

(b) By another method, such as electronic or first class mail, if the individual waives his or her right to certified mail delivery under KRS 13B.050.

(5) The administrative disqualification hearing notice shall provide information as specified in 7 C.F.R. 273.16(e)(3)(iii).

(6) In accordance with 7 C.F.R. 273.16(e)(2)(iii), the hearing officer shall advise the household member or representative that they may refuse to answer questions during the hearing.

(7) The cabinet shall provide a household notice regarding the IPV determination in accordance with 7 C.F.R. 273.16(e)(9) and KRS 13B.120.

Section 4. Timeframes. (1) Within the ninety (90) day timeframe specified in 7 C.F.R. 273.16(e)(2)(iv), the cabinet shall:

(a) Conduct an administrative disqualification hearing; and

(b) Issue a final order pursuant to the provisions established in 921 KAR 3:070, Section 14.

(2) In accordance with 7 C.F.R. 273.16(e)(2)(iv), a hearing may be postponed:

(a) One (1) time; and

(b) For no more than thirty (30) days.

(3) If a hearing is postponed, the time limit specified in subsection (1) of this section shall be extended for as many days as the hearing is postponed.

Section 5. Hearing Attendance. (1) An administrative disqualification hearing shall be conducted in accordance with 7 C.F.R. 273.16(e)(4).

(2) If a household member or representative cannot be located or does not appear for the administrative disqualification hearing,

the hearing officer shall:

(a) Conduct the hearing without the household member or representative;

(b) Consider the evidence; and

(c) Determine whether an intentional program violation was committed based on clear and convincing evidence.

(3) In accordance with 7 C.F.R. 273.16(e)(4), the cabinet shall rescind a determination of an intentional program violation and conduct a new hearing upon an order of finding if the:

(a) Household was not represented at the hearing;

(b) Individual was determined to have committed an IPV;

(c) 1. Individual, within ten (10) days of the scheduled hearing, establishes good cause for failure to appear in accordance with 921 KAR 3:070, Section 8(2); or

2. Individual, within thirty (30) days after the date of the notice, establishes good cause for failure to appear in accordance with 921 KAR 3:070, Section 8(2)(f), by showing nonreceipt of the notice of hearing; and

(d) Secretary or the secretary's designee is not considering the same matter.

Section 6. Benefits and Participation. (1) In accordance with 7 C.F.R. 273.16(e)(5), the participation of a household suspected of an IPV shall not be affected by the suspected IPV until a disqualification is implemented based on the:

(a) IPV being substantiated by the final order or a court of appropriate jurisdiction;

(b) Individual waiving the right to an administrative disqualification hearing by completing, signing, and returning the FS-80, Supplement A (EF) or (TR); or

(c) Individual completing, signing, and returning the form FS-111, Supplemental Nutrition Assistance Program [Deferred Adjudication] Disqualification Consent Agreement, pursuant to Section 7 of this administrative regulation.

(2) If the cabinet's determination of an IPV is later reversed, the cabinet shall:

(a) Reinstate the individual, if eligible; and

(b) In accordance with 7 C.F.R. 273.17, restore benefits:

1. That were lost as a result of the disqualification; and

2. For no more than twelve (12) months.

Section 7. Deferred Adjudication. (1) The cabinet shall accept a completed form FS-111 [~~Deferred Adjudication Disqualification Consent Agreement~~] in a case of deferred adjudication pursuant to 7 C.F.R. 273.16(h).

(2) In accordance with 7 C.F.R. 273.16(h), the cabinet shall notify an individual signing an [a] FS-111 of the:

(a) Consequences of consenting to disqualification;

(b) Disqualification; and

(c) Effective date of the disqualification.

Section 8. Penalties. (1) In accordance with 7 C.F.R. 273.16(b), an individual shall be ineligible to participate in SNAP, if the individual has:

(a) Committed an IPV, as determined by:

1. An administrative disqualification hearing; or

2. A court; or

(b) Signed a waiver of right to an administrative disqualification hearing or a disqualification consent agreement.

(2) The time periods for IPV disqualifications shall be implemented in accordance with 7 C.F.R. 273.16(b).

(3) In accordance with 7 C.F.R. 273.16(b)(11), the cabinet shall only disqualify the individual who meets the criteria specified in subsection (1) of this section, not the entire household.

(4) In accordance with 7 C.F.R. 273.16(b)(12), the cabinet shall hold the entire household responsible for making restitution on an overpayment, not just the disqualified individual.

(5) The cabinet shall inform the household in writing of the disqualification penalties for committing an IPV each time the household applies for benefits.

Section 9. Procedures for Appeal. In accordance with 7 C.F.R. 273.16(e)(8)(ii):

(1) Further administrative appeal procedures shall not exist after an:

(a) Administrative disqualification hearing determines that an IPV was committed; or

(b) Individual waives the right to an administrative disqualification hearing;

(2) A cabinet determination of an IPV shall not be reversed by a final order from a subsequent fair hearing; and

(3) An individual determined to have committed an IPV may seek relief in a court having appropriate jurisdiction pursuant to KRS 13B.140.

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

(a) The "Correspondence from the Office of Attorney General dated April 5, 2012", April 5, 2012;

(b) "FS-80 (EF), Notice of SNAP Suspected Intentional Program Violation", 05/21[42/45];

(c) "FS-80 (TR), Notice of SNAP Suspected Intentional Program Violation", 5/21;

(d) "FS-80, Supplement A (EF), Voluntary Waiver of SNAP Administrative Disqualification Hearing", 05/21[42/45];

(e) "FS-80, Supplement A (TR), Voluntary Waiver of SNAP Administrative Disqualification Hearing", 05/21; and

(f)(4) "FS-111, Supplemental Nutrition Assistance Program [Deferred Adjudication] Disqualification Consent Agreement", 05/21[9/44].

(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/dcbcs/Pages/default.aspx>.

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: April 23, 2021

FILED WITH LRC: April 26, 2021 at 12:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 26, 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 July 19, 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 July 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: 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 procedures used by the cabinet in determining if an intentional program violation (IPV) has occurred in the Supplemental Nutrition Assistance Program

(SNAP) and the penalties that shall be applied for an IPV.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for determinations and penalties regarding SNAP IPV's.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms to the content of authorizing statutes by establishing criteria for recipient claims, collections, and additional cabinet administrative provisions for SNAP.

(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 criteria for recipient claims, the hearing process, and additional administrative provisions used by the cabinet in the administration of SNAP.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation revises language in the incorporated material that are used in the fair hearing process based on recommendations from the Office of the Inspector General, Kentucky Legal Aid, the Kentucky Equal Justice Center, and the USDA Food and Nutrition Service. The revised language is more clear and easily understood regarding intentional program violations.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to clearly inform recipients of hearing rights and penalties associated with misusing SNAP benefits.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes through its enhancement of notification of hearing rights and processes, penalties, and additional administrative provisions used by the cabinet in the administration of SNAP.

(d) How the amendment will assist in the effective administration of the statutes: The amendment conforms to the authorizing statutes through its clarification and enhancement of hearing rights, penalty notification, and additional administrative provisions used by the cabinet in SNAP.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of March 2021, there were 289,841 active SNAP households in 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: This amendment will require no new action on the part of SNAP applicants or recipients. The amendment only affects the notices sent out by the cabinet when there is a suspected intentional program violation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of this amendment, communication to SNAP recipients will be clearer and notification of hearing rights and penalties will be provided in easily understood wording.

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

(a) Initially: There will be minor one-time costs in system changes.

(b) On a continuing basis: No ongoing expenses are anticipated as a result of this amendment as the new forms will replace the forms currently used.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative functions are funded at a 50% state and 50%

federal match rate. The funding has been appropriated in the enacted budget.

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

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 273.16

2. State compliance standards. KRS 13B.170, 194A.010, 194A.050

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4, 273.16

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services 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 13B.170, 194A.010, 194A.050, 7 C.F.R. 271.4, 273.16.

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

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

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

(c) How much will it cost to administer this program for the first year? Minor one-time costs will be associated with system changes.

(d) How much will it cost to administer this program for subsequent years? No new or additional costs are necessary to administer this program in 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 1:300. Standards for child-caring facilities.

RELATES TO: KRS 2.015, 13B.050, 17.165(6), 17.500(8), 189.125(3), 198B.050-198B.090, 199.011[(2), (3), (4), (6), (7), (10), (11)], 199.640, 199.650, 199.660, 199.670, 211.350-211.380, 214.034(5), Chapter 271B Subtitle 8, 273.161(7), 600.020(23), 605.080(3), 605.090(1), 610.110(6), 615.010, 615.030, 615.040, 620.020, 620.030, 620.090(2), 620.140(1), 620.230(3), 20 U.S.C. 7183, 42 U.S.C. 677(a)(1)-(6)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.640(5), 199.645, 605.150, 615.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of [Secretary for] the Cabinet for Health and Family Services to promulgate, administer, and enforce administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.640(5) requires the [secretary for the] cabinet to promulgate administrative regulations establishing basic standards of care and service for child-caring facilities and child-placing agencies. KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes basic standards of care and service for child-caring facilities.[]

Section 1. Definitions. (1) "Aftercare" means a service provided to a child after discharge from a child-caring facility.

(2) "Board of directors" is defined by [at] KRS 273.161(8) [(7)].

(3) "Cabinet" is defined by KRS 199.011(3) [means the Cabinet for Health and Family Services].

(4) "Case" means an individual child or family being provided services by a social worker or counselor.

(5) "Chemical restraint" means a drug used as a restraint that is a medication used to control behavior or to restrict the patient's freedom of movement and is not a standard treatment for the patient's medical or psychiatric condition.

(6) "Child" is defined by [at] KRS 199.011(4) and 600.020(9) [(8)] and may include:

(a) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(d); or

(b) A person [child] who meets the exceptions to the age of majority in accordance with KRS 2.015.

(7) "Child-caring facility" is defined by [at] KRS 199.011(5) [(6)].

(8) "Child-placing agency" is defined by [at] KRS 199.011(6) [(7)].

(9) "Child-caring program" means the method of delivering a child-caring service.

(10) "College or university" means:

(a) An institution accredited by one (1) of the [eleven (11)] regional accrediting organizations recognized by the U.S. Department of Education, Office of Postsecondary Education;

(b) For a Kentucky institution, one (1) that is licensed by the Kentucky Council on Postsecondary Education or the Kentucky Board for Proprietary Education; and

(c) For an out-of-state institution, one (1) that is licensed in its home state if licensure is required in that state.

(11) "Community resource" means a service or activity available in the community that supplements those provided by the child-caring facility or child-placing agency in the care and treatment of a child.

(12) "Corporal physical discipline" means reasonable physical discipline in accordance with KRS 199.640(6).

(13) "Crisis intervention unit" means a unit that serves a child in need of short-term intensive treatment, to avoid risk of placement to a higher level of care.

(14) "Direct child-care staff" means an employee or volunteer providing face-to-face care and supervision of a child.

(15) "Discharge" means a planned release of a child from a

program.

(16) "Emergency discharge" means the release of a child from a program as a result of a circumstance that presents a risk to the health or safety of a child.

(17) "Emergency shelter child-caring facility" means a child-caring facility that meets the requirements of 922 KAR 1:380.

(18) "Executive director" means the person employed by the board of directors to be responsible for the administration and management of a child-caring facility.

(19) "Group home" is defined at KRS 199.011(11)(40).

(20) "Independent living services" means services provided to an eligible child, as described in Section 8 of this administrative regulation, to assist the child in the transition from dependency of childhood to living independently.

(21) "Individual treatment plan" or "ITP" means a plan of action developed and implemented to address the needs of a child.

(22) "Indoor living area" means an area in the child-caring facility that is separate from a hallway, bedroom, kitchen, stairway, vestibule, bathroom, closet, unfinished basement, or attic.

(23) "Institution" is defined by [at] KRS 199.011(12)(14).

(24) "Living unit" means a building or part thereof in which a child resides, not exceeding sixteen (16) beds.

(25) "Permanence" is defined by [at] KRS 620.020(9)(8).

(26) "Physical management" means a technique used by a specially-trained staff member for the purpose of restricting a child's freedom of movement in order to maintain a safe environment for the child and others.

(27) "Residential child-caring facility" means a child-caring facility that meets the standards established in 922 KAR 1:390.

(28) "Residential treatment program" means a residential child-caring facility that meets the treatment program requirements of 922 KAR 1:390, Section 4.

(29) "Sex crime" is defined by [at] KRS 17.500(8).

(30) "Social services" means a planned program of assistance to help an individual move toward a mutual adjustment of the individual and his social environment.

(31) "Time-out" means a treatment intervention utilized by child-caring staff to separate a child from others in a nonsecure area for a time-limited period, in order to permit the child to regain control over his behavior.

(32) "Treatment" means individualized management and care of a child, utilizing professionally credentialed and certified staff and a component of the treatment environment to assist the child in resolving his or her emotional conflict or behavioral disorder.

(33) "Treatment team" means a representative group of people who provide services to the child and the child's family.

(34) "Unplanned discharge" means the release of a child from the child-caring facility that is not in accordance with the ITP.

(35) ~~"Youth wilderness camp" means a specific program of a child-caring facility that is designed to provide an outdoor experience consistent with a child's ITP.~~

Section 2. Operations and Services. (1) This administrative regulation establishes standards for the following child-caring facilities:

(a) An emergency shelter child-caring facility, also governed by 922 KAR 1:380;

(b) An emergency shelter child-caring facility with treatment, also governed by 922 KAR 1:380, Section 3;

(c) A residential child-caring facility, also governed by 922 KAR 1:390, including:

1. A group home; and

2. An institution; and[;]

(d) A residential treatment program, also governed by 922 KAR 1:390, Section 4, including:

1. A crisis intervention unit, also governed by 922 KAR 1:390, Section 5;

2. A group home, also governed by 922 KAR 1:390, Section 6; and

3. An institution[; and

~~(e) A youth wilderness camp program, also governed by 922 KAR 1:460].~~

(2) Except for a child-caring facility maintaining a license prior

to October 16, 2000, a child-caring facility shall not be located or operated on the grounds of a psychiatric hospital.

Section 3. Administration and Operation. (1) The licensing procedure for a child-caring facility shall:

(a) Be administered as established in 922 KAR 1:305; and

(b) Based upon the services provided, meet the requirements of this administrative regulation and 922 KAR 1:380 ~~or~~ 922 KAR 1:390 ~~or 922 KAR 1:460].~~

(2) Board of directors.

(a) The child-caring facility shall have a board of directors in accordance with KRS Chapter 271B, Subtitle 8.

(b) The board of directors shall:

1. Consist of at least seven (7) members;

2. Meet at least quarterly;

3. Cause minutes of each meeting to be taken and kept in written form;

4. Have the authority and responsibility to ensure continuing compliance with this administrative regulation and other relevant federal, state, and local law;

5. Have procedures in place to insure that its staff receives ongoing training as defined in subsection (6)(o) of this section;

6. Obtain a criminal records check of prior convictions of the executive director prior to employment; and

7. Approve a mission statement delineating:

a. The purpose;

b. Objective; and

c. Scope of service to be provided.

(3) Executive director.

(a) Duties of the executive director shall be determined by the board of directors.

(b) The executive director shall be responsible for the child-caring facility and its affiliates in accordance with the child-caring facility's written policy.

(c) If the executive director is not on the premises, a designated staff person shall be responsible for the day-to-day operation of the child-caring program.

(d) The executive director shall oversee and report to the board on a quarterly basis, providing an evaluation of program services addressing measurable goals, staff training, and incident reports.

(e) The criteria and process of the quarterly evaluation shall be approved by the board.

(4) Staff qualifications.

(a) A person employed as an executive director after the effective date of this administrative regulation shall possess the following qualifications:

1. A master's degree in business administration or a human services field from a college or university, supplemented by two (2) years of work experience in or management of a human services program related to working with families and children; or

2. A bachelor's degree in a human services field from a college or university, supplemented by four (4) years work experience in management of a human services program related to working with families and children.

(b) A treatment director or person employed by the child-caring facility in a position responsible for supervising, evaluating, or monitoring social work and related activities shall:

1. Hold at least a master's degree in a human service discipline; and

2. ~~Have [Within two (2) years of October 17, 2007, have]~~ at least five (5) years' experience in mental health treatment of children with emotional or behavioral disabilities and their families and be responsible for the:

a. Supervision;

b. Evaluation; and

c. Monitoring of the:

(i) Treatment program;

(ii) Social work; and

(iii) Other treatment staff.

(c) A residential child-caring facility providing a treatment service for more than thirty (30) children shall employ a separate treatment director other than the executive director.

(d) A residential child-caring facility providing a treatment

service for thirty (30) or fewer children may utilize the executive director in a dual role as treatment director, if at least fifty (50) percent of his duties are spent supervising the treatment program. If an employee serves as both executive director and treatment director, the higher staff qualification requirements shall apply.

(e) An employee responsible for social work, counseling, or planning and coordinating these services for a child shall have at least a bachelor's degree in a human services field from a college or university.

(f) A person employed in a position responsible for supervising, evaluating, or monitoring the daily work of direct child-care staff shall possess at least:

1. Two (2) years of education from a college or university and two (2) years of work experience in a child-caring facility; or

2. A high school diploma, or an equivalence certificate, and at least five (5) years of work experience in a child-caring facility.

(g) A person employed in a position responsible for the daily direct care or supervision of a child shall possess at least a high school diploma or equivalency certificate.

(h) If an employee is responsible for varied job responsibilities and falls within more than one (1) of the categories specified, the employee shall meet the more rigorous qualifications.

(i) A child-caring facility contracting for the services of a social worker or treatment director not on the staff of the child-caring facility shall document that the social worker or treatment director meets the qualifications established in paragraphs (b) and (e) of this subsection. An agreement for provision of service shall be on file at the child-caring facility, and shall specify the qualifications of the social worker or social services professional.

(5) Staffing requirements.

(a) The child-caring facility shall have:

1. A written policy describing a child-to-direct-child-care-staff ratio that is consistent with the staff-to-child ratios required in paragraph (b) of this subsection; and

2. An explanation of the assignment of staff in order to:

a. Ensure the health and safety of a child; and

b. Implement the child-caring program.

(b) Staff-to-child ratios for each type of facility shall be as follows:

1. An emergency shelter child-caring facility: one (1) staff member to ten (10) children at all times.

2. An emergency shelter child-caring facility with treatment: one (1) staff member to six (6) children at all times.

3. A residential child-caring facility:

a. One (1) staff member to ten (10) children age six (6) and over; and

b. One (1) staff member to five (5) children under age six (6).

4. A residential child-caring facility with treatment:

a. One (1) staff member to six (6) children; and

b. One (1) staff member to twelve (12) children during sleeping hours.

5. A crisis intervention unit:

a. One (1) staff member to four (4) children; and

b. One (1) staff member to six (6) children during sleeping hours.

6. A group home:

a. One (1) staff member to four (4) children; and

b. One (1) staff member to accompany a child while away from the home.

7. An institution: one (1) staff member to ten (10) children.

~~[8. A youth wilderness camp program to include:~~

~~a. A base camp:~~

~~(i) One (1) staff member to four (4) children age eleven (11) and (12) years old; and~~

~~(ii) One (1) staff member to six (6) children age thirteen (13) and above; and~~

~~b. A field program, for which two (2) staff members shall be on location at all times:~~

~~(i) One (1) staff to three (3) children age eleven (11) and (12) years old;~~

~~(ii) One (1) staff to four (4) children age thirteen (13) and above;~~

~~(iii) Group size, including staff, shall not exceed more than~~

~~twelve (12) at one (1) time;~~

~~(iv) In a mixed gender group, one (1) woman and one (1) man, with one (1) staff member remaining awake during sleeping hours;~~

~~(v) A staff-to-child ratio shall be based on the age of the youngest child; and~~

~~(vi) A volunteer shall not be included in the staff-to-child ratio.]~~

(c) There shall be at least one (1) staff member present in each child-caring facility building if a child is present.

(d) At least one (1) staff member certified in first aid and cardiopulmonary resuscitation shall be on the premises, if a child is present.

(e) The child-caring facility shall have a written work schedule and a policy that provides for utilization of relief staff.

(f) The child-caring facility shall employ an individual who is responsible for the overall planning and coordinating of social services for a family and child.

(g) Social services staff shall not carry a caseload of more than fifteen (15) children and their families.

(6) Personnel policy.

(a) A child-caring facility shall have and comply with a written personnel policy and procedure.

(b) An employee of the child-caring facility shall be at least eighteen (18) years of age and direct care staff shall be at least twenty-one (21) years of age.

(c) The employment of an individual shall be governed by KRS 17.165, with regard to a criminal record check.

(d) A new criminal record check shall be completed at least every two (2) years on each employee or volunteer.

(e) An employee under indictment or legally charged with a violent or sex crime as defined in KRS 17.165 shall be immediately removed from contact with all children [a-child] within the child-caring facility until the employee is cleared of the charge.

(f) Each employee or volunteer shall submit to a check of the central registry pursuant to [described by] 922 KAR 1:470. An individual listed on the central registry shall not be a volunteer at or be employed by a child-caring facility.

(g) Each licensee shall report to the cabinet and each child-caring facility employee or volunteer shall report to the licensee or facility's director, an incident that occurs subsequent to the most recent central registry check, if the employee or volunteer:

1. Is the subject of a cabinet child abuse or neglect investigation;

2. Has been found by the cabinet or a court to have abused or neglected a child; or

3. Has been indicted for or charged with a violent or sex crime as defined in KRS 17.165.

(h) An individual shall not be left alone in the presence of any [a] child if a central registry check has not been completed.

(i) Determination by the cabinet of risk of potential harm by an employee to a child in a child-caring facility shall result in:

1. Investigation of the employee for evidence of child abuse or neglect; and

2. The removal of the employee from direct contact with all children [a-child]:

a. For the duration of the investigation; and

b. Pending completion of the administrative appeal process in accordance with 922 KAR 1:320.

(j) A current personnel record shall be maintained for each employee[-] that includes the following:

1. Name, address, Social Security number, date of employment, and date of birth;

2. Evidence of a current registration, certification, licensure, and college credentials, if required by the position;

3. Record of ongoing participation in an agency staff development program as specified in paragraphs (n) and (o) of this subsection;

4. Record of performance evaluation;

5. Criminal records check as required by [established in] paragraph (c) of this subsection;

6. Documentation of a central registry check completed every two (2) years in accordance with 922 KAR 1:470;

7. Personnel action; and

8. Application for employment, resume, or contract.

(k) A child-caring facility shall retain an employee personnel record for at least five (5) years after termination of employment.

(l) An employee shall document compliance with a requirement for meeting state or national professional standards, as set forth in the job description.

(m) The child-caring facility shall have a record of participation and successful completion of an ongoing staff and volunteer development program.

(n) The staff development program shall be under the supervision of a designated staff member; and

(o) Full-time direct child care staff shall have at least forty (40) hours, and part-time direct child care staff shall have at least twenty-four (24) hours, of training specific to the tasks to be performed and of annual training in the following:

1. Emergency and safety procedure;
2. Principle and practice of child residential care;
3. Behavior management, including de-escalation training;
4. Physical management for a child-caring facility using the technique;

5. First aid; ~~and~~

6. Personnel orientation; and

7. Trauma-informed care.

(p) A volunteer who functions as a professional or direct staff member without compensation shall meet the same general requirements and qualifications.

(q) A child-caring facility using physical management shall:

1. Develop and maintain clearly-written policy and procedure governing the use of physical management of a child, including a requirement for a de-escalation plan, in accordance with 922 KAR 1:390, Section 4;

2. Require a staff member who conducts physical management[,] to complete at least sixteen (16) hours of annual training in approved methods of de-escalation and physical management from a nationally-recognized accreditation organization approved by the cabinet, as part of the annual training required by ~~[established in]~~ paragraph (o) of this subsection, to include:

- a. Assessing physical and mental status, including signs of physical distress;
- b. Assessing nutritional and hydration needs;
- c. Assessing readiness to discontinue use of the intervention; and
- d. Recognizing when medical or other emergency personnel are needed.

(r) The program director shall review and analyze instances of physical management in order to:

1. Assure compliance with Section 5(2)(f) through (h) of this administrative regulation and the child-caring facility policy;
2. Provide documentation of a plan of action to prevent injury to a child or staff as a result of the use of physical management; and

3. Review each incident no later than one (1) working day after its use.

(s) A child-caring facility shall develop and maintain clearly written policies and procedures governing professional boundaries for an employee or volunteer working with children.

(t) A child-caring facility shall develop and maintain clearly written policies and procedures governing smoking prohibitions, in accordance with 20 U.S.C. 7183 and 922 KAR 2:120, Section 3(10)~~[2:110, Section 3(9)]~~.

(7) Interstate placement.

(a) Before accepting a child from another state or placing a child in another state, the child-caring facility shall be in compliance with:

1. Applicable provisions of the Interstate Compact on Placement of Children, KRS 615.030 ~~or~~ and 615.040; and
2. The Interstate Compact ~~for~~ on Juveniles, KRS 615.010.

(b) If a child committed to the cabinet makes a brief visit out of state for age- or developmentally-appropriate activities, not accompanied by child-caring facility personnel, the child-caring facility shall employ reasonable and prudent parenting standards for careful and sensible parental decisions that maintain the health, safety, and best interests of the child prior to determining whether

to allow the child to participate in extracurricular, enrichment, cultural, and social activities ~~[obtain prior consent from the cabinet staff member responsible for the case]~~.

(c) If an emergency placement of a child into a licensed child-caring facility is made, the placement source shall be responsible for compliance with KRS 615.030 to 615.040. If the receiving child-caring facility is aware of noncompliance by the placement source, the child-care facility shall notify the cabinet's interstate compact coordinator.

(8) Record retention. A child-caring facility shall:

(a) Retain ~~[The child-caring facility shall retain]~~ all records, books, and reports related to financial conditions and status for auditing purposes for a minimum of five (5) years; and ~~;~~

(b) Make available all books, records, and financial information for review, inspection, auditing, and photocopying by the cabinet or cabinet designee, authorized federal and state agency reviewers and auditors.

(9) A residential child-caring facility shall become accredited by a nationally recognized accreditation organization within two (2) years of initial licensure.

Section 4. Physical Plant. (1) A child-caring facility shall comply with applicable state and local law relating to:

- (a) Construction;
- (b) Sanitation; and
- (c) Building maintenance.

(2) The child-caring facility shall conform to the Kentucky Standards of Safety in accordance with 815 KAR 10:060.

(3) A climate control system shall be provided as follows:

(a) A minimum temperature of sixty-five (65) degrees Fahrenheit maintained in occupied areas in cold weather conditions;

(b) In warm weather conditions and periods of extreme heat, an occupied area shall be properly ventilated;

(c) If not air-conditioned and the temperature in an occupied area exceeds eighty-five (85) degrees Fahrenheit, the child-caring facility director shall assure that the following occurs:

1. A fan is utilized to circulate air;
2. The child-caring facility is properly ventilated to outside air;
3. Ice water is readily available and served to residents; and
4. Staff frequently monitor residents for a sign or symptom of a heat-related illness.

(4) The water supply shall be from an approved source and easily available from the following:

- (a) Drinking fountain;
- (b) Refrigerator; or
- (c) Cold water tap.

(5) The plumbing and waste disposal systems shall comply with applicable provisions of the Uniform State Building Code, KRS 198B.050, and with laws regarding on-site sewage disposal, KRS 211.350 to 211.380, if applicable.

(6) Housekeeping and maintenance service.

(a) The building and its content shall be maintained in a clean and safe condition and in good repair.

(b) A maintenance plan shall be implemented.

(c) The child-caring facility shall ensure that the grounds and outdoor equipment are well kept and the exterior of the building is in good repair.

(d) The interior of the building and its contents shall be in good repair.

(e) Garbage and trash shall be:

1. Stored in an area separate from those used for the preparation and storage of food;
2. Removed from the premises regularly; and
3. Placed in a container that is cleaned regularly.

(f) Insecticides, pesticides, and chemical poisons shall be plainly labeled and stored in a secure, locked area. Access shall be given to:

1. The facility's maintenance personnel; and
2. A pest control company with which the facility has a contract.

(7) Bedroom.

(a) A bedroom shall be:

1. Of adequate size to permit at least three (3) linear feet between each bed or set of bunk beds; and

2. Constructed to allow no more than four (4) residents per room.

(b) A bedroom for a child above age three (3) shall be equipped with an individual bed for each child that shall be:

1. Long and wide enough to accommodate the child's size;
2. Developmentally appropriate for the child; and
3. Equipped with a support mechanism and a clean mattress.

(c) A bed occupied by a child shall be placed so that the child shall not experience discomfort because of:

1. Proximity to a radiator or heat outlet; or
2. Exposure to drafts.

(d) Except for a sibling indicated in an ITP, there shall be separate sleeping quarters for boys and girls over the age of five (5).

(e) Storage space shall be provided for each child to accommodate his or her personal belongings in a:

1. Closet and drawers; or
2. Closet for the child's exclusive use and shelves within the closet.

(f) A child shall not be housed in a room, detached building, or enclosure that has not previously been inspected and approved for resident use.

(g) A child shall be provided with clean bed linens, laundered at least once a week, and a waterproof mattress covering.

(8) Indoor living area. An indoor living area shall have:

(a) At least thirty-five (35) square feet per child; and

(b) Comfortable furnishings adequate for the number of children served.

(9) Bathroom.

(a) For every six (6) children residing in the living unit, a living unit shall have a minimum of:

1. One (1) wash basin with hot and cold water;
2. One (1) flush toilet; and
3. One (1) bath or shower with hot and cold water.

(b) A child shall be provided with access to:

1. Toilet paper;
2. Towels;
3. Soap; and
4. A wastebasket.

(c) Each bathtub and shower shall have an enclosure or screen for individual privacy. If more than one (1) toilet is located in the same bathroom, each toilet shall:

1. Be partitioned; and
2. Include a door capable of remaining closed.

(d) A bathroom shall contain at least one (1) nondistorting mirror secured to the wall at a convenient height.

#### Section 5. Health, Safety, and Nutritional Requirements. (1) Health.

(a) A child-caring facility shall have written policy and procedure for health and medical care, to include provisions for:

1. The care and disposition of an ill child; and
2. Emergency care.

(b) The service of a physician shall be made available to a child. If the service of a licensed physician is not available in the community, the child-caring facility shall request the assistance of the:

1. County health department; or
2. The Department for Public Health[~~], Division of Adult and Child Health Improvement~~].

(c) Staff shall follow licensed physician orders for:

1. Medicine;
2. Prescription; and
3. Medical care.

(d) Except for a weekend or holiday, within forty-eight (48) hours of admission to a child-caring facility, a child shall have:

1. An initial health screening for illness, injury, and communicable disease or other immediate needs, by a nurse or trained child-care staff;

2. After the initial health screening, a physical examination by a licensed physician or a qualified person under the supervision of a

licensed physician, within two (2) weeks of admission, unless it has been documented that the child has received an examination during the past twelve (12) months; and

3. The examining professional shall report, in writing, observations and findings including:

- a. Developmental history of the child, illnesses, operations, and immunizations if available to the physician;
- b. A limitation the child may have that may prevent participation in an activity scheduled by the child-caring facility;
- c. Visual and auditory examination results;
- d. Recommendation and order for future care, treatment, and examinations;
- e. TB skin test results, unless contraindicated by a qualified person under the supervision of a licensed physician; and
- f. Other tests for communicable disease as indicated by the medical and social history of the child.

(e) An annual physical examination shall be scheduled and documented as required by [established-in] paragraph (d)3<sub>2</sub> of this subsection.

(f) Upon admission, the child-caring facility shall consult with a physician if there is evidence that the child may require medical attention.

(g) The child-caring facility shall develop a procedure for a child requiring a specific provision for an infectious medical condition.

(h) A separate health record shall be maintained for each child, kept on the premises, and be made available to a:

1. Physician;
2. Nurse; or
3. Designated staff member.

(i) The health record shall contain the following:

1. Copy of each physical examination, including any recommendations for treatment;
2. Previous and continuing health and medical history, if available;
3. Record or report of each test, immunization, periodic reexamination, and physician order and instruction;
4. Report and date of each dental examination and treatment;
5. Authorization for regular and emergency medical, dental, and surgical care, signed at admission by the legal custodian;
6. Documentation of medication administered to the child; and
7. Documentation of a special provision made for the child in accordance with a physician's order.

(j) A child's medical need shall be provided for as recommended by a licensed physician.

(k) The facility shall keep an immunization certificate on file for each child, in accordance with KRS 214.034(5).

(l) If a child dies while in the care of a child-caring facility or in a home operated or supervised by the child-caring facility:

1. The child-caring facility shall immediately notify the:
  - a. County coroner;
  - b. Child's parent;
  - c. Guardian or custodian; and
  - d. Cabinet staff;
2. A verbal report of the death shall be made immediately to the Commissioner of the Department for Community[-]Based Services;

3. A written comprehensive report from the executive director outlining the incident shall be forwarded to the Office of the Commissioner, Department for Community[-]Based Services, on the next working day following the verbal report; and

4. If a child's death occurred as a result of alleged abuse or neglect, the executive director of the child-caring facility shall make verbal and written reports as required by KRS 620.030(1) and (2).

(m) Upon discharge, medical information shall follow the child if a release form has been obtained.

(n) Unless a dental examination has been performed in the six (6) months preceding admission, the child-caring facility, within one (1) week after a child's admission, shall schedule an appointment for a dental examination. The facility shall ensure the treatment of emergency dental needs by a licensed dentist as they arise.

(o) A child age two (2) years and above shall be examined at least annually by a licensed dentist.

- (p) The child-caring facility shall:
  1. Document the information required by this subsection; and
  2. Assure the confidentiality of the information.
- (q) The child-caring facility shall maintain a continuous program of personal hygiene.

(2) Safety.

- (a) A child shall be instructed in fire prevention, safety, and fire emergency procedures.

- 1. The child-caring facility shall maintain and post a current, written emergency fire evacuation plan and diagram to include:

- a. An evacuation route and procedure; and
- b. The location of fire extinguishers.

- 2. Emergency drills shall be performed quarterly and documented for each of the following emergency events;

- a. Fire;
- b. Tornado or severe thunderstorm warning; and
- c. Flash flood, if applicable.

- 3. An emergency plan shall designate a suitable shelter in the event of an emergency.

- (b) A child-caring facility with a swimming pool shall be staffed with a certified lifeguard in accordance with 902 KAR 10:120, Section 13.

- (c) Donated home processed foods shall be prohibited.

(d) Transportation.

- 1. If transportation is provided directly, contracted for, or arranged, a child-caring facility shall require:

- a. Compliance with state laws pertaining to vehicles, drivers, and insurance;
- b. A seat for each child and that the child remain seated while the vehicle is in motion;
- c. A seat belt be used to secure the child;
- d. A vehicle used to transport a child off campus to provide a seat for each passenger as manufactured standard equipment;
- e. That a child never be left unattended in a vehicle; and
- f. Compliance with KRS 605.080(3) pertaining to court-ordered transportation.

- 2. The maximum number of children a driver shall supervise alone is four (4).

- 3. A child under the age of eight (8) who is less than fifty-seven (57) inches tall [A child under forty (40) inches tall or forty (40) pounds in weight] shall not be transported unless restrained in a safety seat that meets the requirements established [approved] in [accordance with] KRS 189.125(3).

- 4. A vehicle shall not pick up and deliver a child under the age of six (6) to a location that requires the child to cross a street or highway unless the child is accompanied by an adult.

- 5. If transportation is provided by a means other than licensed public transportation:

- a. The vehicle shall be maintained in a safe mechanical and operable condition;
- b. A thorough inspection of the vehicle shall be made and documented by a qualified mechanic at least annually; and
- c. If the driver is not in his seat, the motor shall be turned off, keys removed, and brake set.

- (e) A child with a history of aggressive behavior or sexual acting-out shall be assessed by the treatment team to ensure the safety of the child and other children in the facility, including sleeping arrangements, with the appropriate safety measures included in the child's ITP.

- (f) If a child-caring facility accepts for placement a child who has been committed to the Department of Juvenile Justice for the commission of a sex crime, the child-caring facility shall have written policies and procedures for the segregation of the child from a child committed to the cabinet in accordance with KRS 605.090(1), 620.090(2), and 620.230(3).

- 1. Segregation shall include sight and sound separation of a child committed to the Department of Juvenile Justice from a child committed to the cabinet for the following functions within the facility or activities supervised by the facility:

- a. Sleeping;
- b. Personal hygiene; and
- c. Toiletry.

- 2. During other functions within the facility or activities

supervised by the facility, segregation shall include separation of a child committed to the Department of Juvenile Justice from a child committed to the cabinet to prohibit any physical contact and verbal communication between the children.

- (g) Physical management shall be used in an emergency or a crisis situation only:

- 1. After attempts to de-escalate the situation have been made;
- 2. By trained staff; and
- 3. To prevent:

- a. A child from injury to self or others; or
- b. Serious property damage ~~[or disruption of the child-caring facility's program]~~.

- (h) Physical management shall not be used for [as]:

- 1. Punishment;
- 2. Discipline; ~~[or]~~
- 3. The [For the] convenience of staff;
- 4. Forced compliance;
- 5. Retaliation; or
- 6. A substitute for appropriate behavioral support.

- (i) Physical management shall be discontinued if a child displays adverse side effects including:

- 1. Illness;
- 2. Severe emotional or physical stress; or
- 3. Physical damage.

- (3) Nutritional requirements.

- (a) A child shall be served meals that:

- 1. Meet the nutritional guidelines of the U.S. Department of Agriculture that include foods from the five (5) basic food groups; and

- 2. Satisfy the quantity required to meet the needs of each child as to age, activity, and prescribed diet or ITP.

- (b) A child shall be encouraged to eat the food served, but shall not be subjected to coercion.

- (c) An order for a modified diet from a licensed physician shall be followed by the child-caring facility.

- (d) A menu shall be planned at least one (1) week in advance, dated, posted, and kept on file for one (1) year.

- (e) With the exception of a child receiving a meal at school, three (3) meals a day shall be provided at regular intervals and, except for weekends and holidays, no more than fourteen (14) hours shall lapse between the evening meal and morning meal.

- 1. A nourishing snack shall be provided and:

- a. May be part of the daily food needs;
- b. Shall not replace a regular meal; and
- c. Shall be recorded on the menu.

- 2. A meal shall be scheduled at set times each day so that at least one (1) hot meal a day is not hurried, allowing time for conversation.

- 3. Food, or withholding of food, shall not be used as a punishment.

- 4. Only pasteurized milk and milk products, and U.S. government inspected meat shall be served to a child.

- 5. Food shall be prepared to preserve nutritive value and heighten flavor and appearance.

- 6. The same food shall be served to children under care and to staff members, unless a food is not suitable for a person because of:

- a. The person's age;
- b. A dietary restriction; or
- c. A religious preference.

- (f) Table service shall be provided for a child capable of eating at a table.

- 1. Tables and chairs shall be:

- a. Of a height that corresponds to the size of the child served; and

- b. Constructed of material that can be easily sanitized.

- 2. A child who has not had an opportunity to learn how to handle food with the usual table service shall be managed in a way that he shall not be embarrassed or subjected to ridicule.

- (g) A written report of a food inspection by municipal, county, or federal authorities shall:

- 1. Be kept on file at the child-caring facility; and
- 2. Meet local, state, and federal regulations.

(h) If a child-caring facility subcontracts a food service, applicable federal and state administrative regulations shall apply.

Section 6. General Requirements. (1) An incident of suspected child abuse or neglect, human trafficking, or female genital mutilation shall be reported as required by KRS 620.030.

(2)(a) The facility shall, with regard to suspected child abuse or neglect by an employee:

1. Document each incident;
2. Keep each incident document on file; and
3. Make the files accessible to the cabinet.

(b) A child shall not be exploited for promotional purposes, or in a manner that shall cause the child or family to suffer discomfort or embarrassment.

(c) Except as indicated in paragraph (d) of this subsection, a child shall not be used personally for a fund-raising purpose for the child-caring facility.

(d) If a picture, slide, recording, or other private, personal effect of a child is used in fund-raising or promotional effort of a child-caring facility, written permission shall be obtained from:

1. A parent or guardian; or
2. An authorized:
  - a. Representative of the cabinet;
  - b. Representative of the Department of Juvenile Justice; or
  - c. Legal representative.

(3) For an activity conducted away from a child-caring facility, the facility shall:

(a) Safeguard the health and safety of the children during the activity;

(b) Have a written policy and procedures governing the activity;

(c) Maintain staff-to-child ratios in accordance with Section 3 of this administrative regulation; and

(d) Provide transportation in a manner that complies with Section 5(2)(d) of this administrative regulation.

(4) Clothing and personal possessions.

(a) Through agreement with the child's legal custodian, the child-caring facility shall provide a child with clothing and footwear that is clean, well-fitting, and seasonal.

(b) A child shall be provided individual articles of personal hygiene.

(c) The child-caring facility shall allow a child to have personal belongings and property consistent with this administrative regulation and child-caring facility policy.

(5) A child's money.

(a) The child-caring facility shall have written policy and procedure relating to money belonging to a child.

(b) A child shall have access to information regarding the balance of the child's fund.

(c) Within thirty (30) days of discharge, funds belonging to a child shall be transferred with or returned to the child.

(6) Visitation and communication shall include:

(a) Written policy on visitation and communication;

(b) An arrangement for visitation that is not in conflict with the ITP;

(c) Documentation of each visit in the case record; and

(d) Access to a telephone to make and receive a telephone call consistent with the child's ITP, current court orders, and the facility's child-caring policy.

(e) Allowing a child to contact cabinet staff by telephone within twenty-four (24) hours of the request of the child.

(7) Religion, culture, and ethnic origin.

(a) Facility policy shall demonstrate consideration for and sensitivity to:

1. The racial, cultural, ethnic, and religious background of a child in care; and
2. Availability of activities appropriate to the child's cultural or ethnic origin.

(b) With the exception of a religious practice that is destructive towards property or places a child or others in physical danger, an opportunity shall be provided for a child to:

1. Practice the religious belief and faith of the child's individual or family preference; and
2. Participate in a religious activity without coercion.

(8) Education.

(a) If a child-caring facility operates its own school program, it shall have written policy and procedure regarding the development and implementation of the educational program. The policy and procedure shall include:

1. School attendance;
2. Teaching staff;
3. School records;
4. Educational supplies and equipment;
5. Individual educational plans; and
6. Use of a community school.

(b) A child-caring facility shall ensure that a child attends an accredited educational program the number of days required by law.

(c) A child shall be enrolled in an accredited educational program within one (1) week of admission.

(d) A school-age child ineligible or unable to attend an accredited school shall have an educational program specific to the individualized need of the child that may include a General Education Diploma or vocational training.

(e) If a child-care facility operates an educational program, maintenance of school records shall comply with state law and administrative regulations of the educational body having jurisdiction.

(f) The child-caring facility shall provide a quiet area and designated time for study.

(9) Work and chore assignment.

(a) An assigned chore or work assignment shall not place the child in physical danger.

(b) A chore assignment shall be posted within the child's living quarters.

(c) A child may be given a job in compliance with child labor laws for which he or she receives payment that shall be clearly differentiated from a chore expected of him to be completed in relation to the routine of daily living.

(d) A work assignment outside of a daily routine chore at the child-caring facility shall not be used as a form of punishment. An additional chore assignment beyond what is regularly assigned to a child may be:

1. Performed as restitution for intentional property damage made by the child; or

2. Given to a child for violation of a child-caring facility rule upon mutual agreement between the child and supervisory child-caring staff without the child being coerced to enter into an agreement.

(e) A child shall be given a rest period of at least ten (10) minutes during each hour worked.

(f) Use of a child to perform a chore or work assignment shall not negate the child-caring facility's ultimate responsibility for the maintenance of the child-caring facility nor the employment of staff sufficient to maintain the child-caring facility.

(10) Discipline.

(a) A child-caring facility shall have written policy and procedure governing disciplinary action.

(b) Discipline shall be:

1. Utilized as an educational tool and be related to the child's actions initiating the disciplinary process; and

2. Consistent with the child's ITP and in response to the child's lack of control or misbehavior.

(c) A group of children shall not be punished due to the misbehavior of one (1) or more individual group members.

(d) The following practices shall not be allowed:

1. Cursing;
2. Screaming;
3. Name calling;
4. Threatening of physical harm;
5. Intimidation;
6. Humiliation;
7. Denial of food or sleep;
8. Corporal physical discipline, except in accordance with KRS 199.640(6);
9. Hitting;
10. Unnecessarily rough handling;

11. Other physical punishment; or
12. Denial of visitation with family or custody holder as punishment.

(e) With the exception of a parent disciplining a child, a child shall not directly discipline another child.

(f) Handcuffs, weapons, mechanical restraints, chemical restraints, or other restraint devices shall not be used.

(g) A child placed in a time-out area shall be:

1. In sight or hearing of staff; and
2. Checked by staff at least every five (5) minutes until it is determined the child is ready to continue normal activity.

Section 7. Child-caring Program Services. (1) Admissions and intake.

(a) The child-caring facility shall have clearly defined written policy and procedure for an admission that identifies the age, sex, and detailed description of the type of child served.

(b) Acceptance of a referral shall be based on the assessment that the child's need is one that:

1. The service of the child-caring facility is designed to address; and
2. Cannot be met in a less restrictive setting.

(c) The child-caring facility shall not accept into care a child for whom a service cannot be provided based on the child-caring program's mission statement and its available resources.

(d) The child-caring facility shall have a written placement agreement with the child's custodian.

(e) The child-caring facility shall conduct a:

1. Preadmission interview with the child; or
2. Screening of the child's available information, if a preadmission interview is not possible due to an emergency placement.

(f) The following information regarding the child shall be obtained by the child-caring facility from the child's custodian during intake, or it shall be documented that the information was requested and not available:

1. Commitment order or signed voluntary admission form;
2. Verification of birth;
3. Immunization record; and
4. Social history and needs assessment that includes medical, educational, developmental, and family history.

(g) A written consent pertaining to the child's care shall be obtained from the child's custodian for:

1. Photograph, video, and audio tape;
2. Emergency and routine medical care; and
3. Release of case record information.

(h) Before admission, the child and custodian shall be informed in writing of their rights and the child-caring facility's responsibilities, including policy pertaining to services offered to the child.

(i) A child shall be informed upon admission of the right to file a grievance.

(j) Upon admission, the child shall be oriented to life at the child-caring facility, including rules and consequences for violation of the rules.

(2) Casework planning.

(a) The child-caring facility shall have written policy and procedure for the ITP process including:

1. Assessment;
2. Assignment;
3. Designation of a case coordinator; and
4. Development, implementation, and evaluation of the ITP and family involvement.

(b) An initial assessment shall be completed by designated staff within twenty-four (24) hours of admission to include:

1. Identifying information;
2. Presenting problem;
3. History (developmental, social, emotional health, education); and
4. Current level of functioning including strengths and weakness.

(c) An initial ITP shall be developed by designated staff and implemented within twenty-four (24) hours of admission.

(3) Comprehensive assessment and treatment plan.

(a) A comprehensive emotional and behavioral assessment of a child shall be completed by the treatment team and entered in the case record within twenty-one (21) days of admission, including the following:

1. A history of previous emotional, behavioral, and substance abuse problems and treatment;
2. The child's current emotional, behavioral, and developmental functioning, including strengths and weakness;
3. A psychiatric or psychological evaluation if recommended by the treatment team;
4. Other functional evaluation of language, self-care, social effectiveness, and visual-motor functioning, if recommended by the treatment team;
5. Social assessment that includes:
  - a. Environment and home;
  - b. Religion;
  - c. Ethnic group;
  - d. Developmental history;
  - e. Family dynamics and composition; and
  - f. Education; and
6. Recommendation for provision of treatment.

(b) A coordinated treatment team approach shall be utilized in the development, implementation, and evaluation of a comprehensive ITP.

(c) A comprehensive ITP shall be developed and implemented, in accordance with KRS 199.640(5)(a)4, to improve child functioning based upon the individual need of the child, and the child's family if appropriate, and shall include at least the following components:

1. Goals and objectives for permanence;
2. Time frame projected for completion of each goal and objective;
3. Method for accomplishing each goal and objective, including utilization of community providers;
4. Person responsible for completion of each goal and objective; and
5. Projected discharge date and placement plan.

(d) The comprehensive ITP shall be developed within twenty-one (21) days of admission.

1. A treatment team review of the child's and family's progress toward meeting each treatment goal shall occur at least monthly.

2. Every effort shall be made to involve the child and his family in the monthly treatment team review.

3. Treatment team evaluation of the comprehensive ITP shall occur at least quarterly.

4. An additional assessment shall be completed upon the recommendation of the treatment team.

5. Evaluation and assessment information shall be documented and maintained in the child's record.

(e) The child shall be offered the opportunity to sign an ITP and ITP review, signifying understanding of the ITP.

1. If the child refuses to sign or is developmentally unable to understand the circumstance, this shall be documented in the record.

2. The child and his family or custodian shall receive a copy of the ITP.

(4) Treatment environment. The daily child-caring program shall be planned in the following manner in order to create an atmosphere conducive to treatment:

(a) The child-caring facility shall have written policy and procedure describing its daily routine, rules, activity, and child and staff interaction.

(b) The daily child-caring program shall be:

1. Planned to provide a framework for daily living; and
2. Reviewed and revised as the needs of the individual child or living group change.

(c) The daily routine shall be written and available to each child.

(d) Each rule shall be clearly stated in language that a child can understand.

(e) Staff shall interact with a child in a warm, supportive, constructive, and confidential manner and shall treat the child with

respect.

(f) Counseling and interviewing a child and the child's family shall be conducted in a private area.

(g) A daily recreational activity shall be available to promote mastery of:

1. Developmental tasks;
2. Development of relationships; and
3. Increase in self-esteem, in accordance with the child's ITP.

(h) The child-caring facility shall provide recreational equipment, maintained in usable and safe condition, to implement the recreational program.

(5) The child-caring facility shall make available a quality program for substance abuse prevention and treatment in compliance with KRS 199.640(5)(a)7.

(6) Discharge and aftercare.

(a) The child-caring facility shall have written policy and procedure that describe the condition under which a child may be discharged, including criteria for an unplanned or emergency discharge and a discharge inconsistent with the ITP.

(b) The approval of the program director shall be required for an unplanned or emergency discharge.

(c) Discharge planning shall begin with the development of the ITP and shall continue throughout subsequent ITP reviews. The treatment team shall consider the following matters related to discharge planning:

1. Identification of placement;
2. Community resources to provide support for youth; and
3. Family services.

(d) When a child is leaving a facility as a planned discharge, a predischarge conference shall be held to ensure that the child and family are prepared for successful transition into placement. The parent, guardian or custodian, the child, and the treatment team shall attend this conference.

(e) The child shall have at least one (1) preplacement visit prior to the planned discharge, or the facility shall document unsuccessful efforts to arrange a visit.

(f) The child-caring facility shall prepare a written discharge summary within fourteen (14) days following the date of discharge. A copy shall be provided to the custody holder. The summary shall include:

1. Information related to progress toward completion of each ITP goal;
2. Each barrier to treatment;
3. Each treatment method used in working with the child;
4. Date of discharge;
5. Reason for discharge; and
6. Name, telephone number, and address of person or child-caring facility to whom the child was discharged.

(g) An aftercare service shall be provided to a child where no other agency has responsibility for the child's transition or adjustment to a new environment. Upon discharge, the following needs of the child shall be assessed and a referral made for needed aftercare service:

1. Educational;
2. Medical;
3. Vocational;
4. Psychological;
5. Legal; and
6. Social.

(7) Case record. The child-caring facility shall:

(a) Maintain, in a confidential and secure manner, a current case record on each child, including:

1. Identifying information on the child to include:
  - a. Name, ethnic origin and gender;
  - b. Date of birth and Social Security number;
  - c. Former residence;
  - d. Name, address, and occupation of each parent, if available;
  - e. Date of admission; and
  - f. Type of commitment;
2. Commitment order or custodian's consent form for admission;
3. Birth and immunization certificates;
4. Education;
5. Medical and dental records that may be maintained

separately from the case record;

6. Assessment data or social history;

7. ITP and each review;

8. Each incident report, with a paper or electronic copy maintained in a centralized location within the licensed facility;

9. Chronological recording;

10. Correspondence with court, family, and custody holder;

11. Discharge summary; and

12. Written consent;

(b) Document, at least weekly, progress made by the child and his family toward meeting the treatment goal;

(c) Record the aftercare service it provides until the service is terminated;

(d) Have a written policy regarding maintenance, security, and disposal of a case record maintained by, or in possession of, the child-caring facility;

(e) Not disclose information concerning a child or his family to a person not directly involved in the case, without the written consent of the custodian of the child;

(f) Forward, within twenty-four (24) hours, a request made by an individual or an agency to review the case record of a committed child, to the:

1. Commissioner, Department for Community Based Services, if the child is committed to the cabinet; or
2. Other legal custodian, if the child is not committed to the cabinet;

(g) With the exception of a sealed adoptive record, release identifying or personal information including a Social Security card, birth certificate, or driver's license to the child at discharge;

(h) After the discharge of a child:

1. Maintain the case record at the child-caring facility for at least three (3) years; and

2. After three (3) years, the child-caring facility may archive the case record ~~and have it transferred to one (1) of the cabinet's designated record centers~~; or

3. Maintain the case record permanently at the child-caring facility;

(i) If the child-caring facility ceases to operate, transfer the case record to the cabinet ~~[Cabinet for Health and Family Services]~~;

(8) The cabinet shall maintain a file on each record transferred to one (1) of its record centers. The file shall include the following information:

(a) The child's name, case number, date of birth; and

(b) Date the case record was sent to the cabinet.

(9) All records maintained by the child-caring facility shall be made available to the cabinet or designee upon request.

Section 8.Independent Living Services. A child-caring facility shall:

(1) Provide independent living services:

(a) To a child:

1. In the custody of a state agency; and
  2. Twelve (12) to twenty-one (21) years of age;
- (b) As prescribed in the child's ITP; and
- (c) In accordance with 42 U.S.C. 677(a); and

(2) Teach independent living:

(a) To a child:

1. In the custody of a state agency; and
2. Sixteen (16) years of age and older; and

(b) Developed in accordance with 922 KAR 1:340, Section 3(1)(e).

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 6, 2021

FILED WITH LRC: May 6, 2021 at 9:35 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 26, 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 July 19, 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 July 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: 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: Laura Begin and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for private child-caring facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure standards for all private child caring facilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 199.640(5) and 199.645 require the cabinet to promulgate administrative regulations relating to standards of care and service for child-caring facilities.

(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 standards for private child-caring facilities.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation makes technical corrections and updates standards to conform with statutory and federal changes relating to reasonable and prudent parenting standards, transportation safety, and the use of physical management. The minimum age of direct care staff is increased from eighteen to twenty-one years of age.

(b) The necessity of the amendment to this administrative regulation: The amendment to the administrative regulation is necessary to make updates to standards consistent with federal and state laws and makes technical corrections. The 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 updates standards of care and service provided by child-caring facilities, as required by the authorizing statutes.

(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 updates relating to prudent parenting standards and physical management.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 30 private child caring facilities licensed in Kentucky that provide residential services to 707 children as of March 2021 (Children's Review Program Private Provider Occupancy Dashboard).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no new action required of the 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 the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will ensure that children placed within a private child-caring facility are provided quality care and services.

(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 has no cost associated, but the administrative regulation is implemented with a mixture of federal and state funds based upon the eligibility of the child placed in the child caring facility.

(b) On a continuing basis: The administrative regulation is implemented with a mixture of federal and state funds based upon the eligibility of the child placed in the residential child-caring facility.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The amendment to this administrative regulation will be implemented with a mixture of federal and state funds based upon the eligibility of the child placed in the child-caring facility.

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

(9) TIERING: Is tiering applied? Tiering does not apply to this administrative regulation, as the requirements for these facilities are the same.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 U.S.C. 7183, 42 U.S.C. 677(a)(1)-(6)

2. State compliance standards. KRS 194A.050(1), 199.640(5), 199.645, 605.150, 615.050

3. Minimum or uniform standards contained in the federal mandate. 20 U.S.C. 7183, 42 U.S.C. 677(a)(1)-(6)

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Community Based Services and Office of the Inspector General, will be impacted as the regulatory and monitoring agencies overseeing these facilities and the services they provide.

(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), 199.640(5), 199.645, 605.150, 615.050

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

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

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

(c) How much will it cost to administer this program for the first year? The administrative body currently administers this program. There will be no new costs to administer this program.

(d) How much will it cost to administer this program for subsequent years? The administrative body currently administers this program. There will be no new costs to administer this program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Community Based Services  
Division of Protection and Permanency  
(Amendment)**

**922 KAR 1:380. Standards for emergency shelter child-caring facilities.**

RELATES TO: KRS 2.015, 199.011, 199.640, 199.645-199.670, 214.034(4), 600.020, 610.110, 620.140 [615.040, 615.030, 615.040]

STATUTORY AUTHORITY: KRS 194A.050(1), 199.640(5); 199.645, 615.050]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.640[–](5) requires the Cabinet for Health and Family Services to promulgate administrative regulations relating to standards of care and service for child-caring facilities. This administrative regulation establishes standards of care and service for emergency service child-caring facilities.

Section 1. Definitions. (1) "Child" is defined by [at] KRS 199.011(4) and[–] 600.020(9)[(8)], and may include:

(a) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(d); or

(b) A person who meets the exceptions to the age of majority in accordance with KRS 2.015 [610.140(6)].

(2) "Crisis intervention unit" means a unit operated to serve a child in need of short-term intensive treatment and to avoid risk of placement to a higher level of care. (3) "Emergency shelter" means a group home or similar homelike facility that provides temporary or emergency care for children and has adequate staff and services to meet the needs of each resident child.

(4) "Treatment" means individualized management and care of a child utilizing professionally credentialed and certified staff and a component of the treatment environment to assist the child in resolving [his] emotional conflict or a behavioral disorder.

Section 2. Administration and Operation. (1) Licensing procedures. Licensing procedures for an emergency child-caring facility shall be administered as established in 922 KAR 1:305.

(2) An emergency shelter child-caring facility shall meet the requirements of 922 KAR 1:300, except for the following:

(a) Section 5(1)(d)2;

(b) Section 5(1)(i)1, 3, and 4;

(c) Section 5(1)(k);

(d) Section 5(1)(n);

(e) Section 5(1)(o);

(f) Section 7(1)(e);

(g) Section 7(2)(a);

(h) Section 7(2)(b)3 and 4;

(i) Section 7(2)(c);

(j) Section 7(3);

(k) Section 7(4)(a);

(l) Section 7(5); and

(m) Section 7(6)(c), (d), (e), and (g).

**Section 3. Emergency Shelter Child-caring Facility Services.**

(1) An emergency shelter child-caring facility that is part of a program offering a treatment service shall maintain [be–in] compliance with 922 KAR 1:390, Section 4.

(2) If an emergency shelter care program is part of a larger organization providing other child-caring or child-placing services in accordance with 922 KAR 1:310, there shall be a person designated to serve as coordinator of the emergency shelter child-caring facility.

(3) The facility shall obtain the following information from a child's custodian during intake:

(a) Commitment order, temporary custody order, or signed voluntary admission form;

(b) Basic identifying information on the child including:

1. Name and birthdate;

2. Address, and name and address of parent or guardian;

3. Last school attended and grade level; and

4. Medical information, if known;

(c) If a child is a walk-in to the program and no custodian is available, a facility shall obtain a placement agreement with the custodian within seventy-two (72) hours.

(4) Discharge.

(a) The facility shall have written policy and procedure describing conditions under which a child may be discharged.

(b) Discharge planning shall begin immediately upon admission of a child.

(c) The facility shall prepare a written discharge summary within five (5) days following the date of discharge. A copy shall be provided to the legal custodian.

Section 4. Crisis Intervention Unit. An emergency service in a crisis intervention unit shall be provided as established in 922 KAR 1:390, Section 5.

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 4, 2021

FILED WITH LRC: May 6, 2021 at 9:34 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 26, 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 July 19, 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 July 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: 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: Laura Begin and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for emergency shelter child-caring facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the standards for emergency shelter child-caring facilities to ensure the safety of the children placed in them and for the secure administration of these necessary services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 199.640(5) requires the Cabinet to promulgate administrative regulations relating to standards of care and service for child-caring facilities, which this administrative regulation does.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the standards for emergency shelter child-caring facilities in a manner that is consistent with federal and state requirements, including eligibility requirements for payment by state and federal funds, and by meeting the standards to ensure services provided meet the needs of the children placed within these facilities.

(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 is necessary to provide clarifying language for approved service providers, update definitions, and make technical corrections.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update regulatory language to ensure compliance with statute and 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 establishing standards of care and service for child-caring facilities.

(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 updating of definitions and technical corrections.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 12 emergency shelter child-caring facilities in Kentucky that housed 82 youth from October 2020 through March 2021.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no new action required by the 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 the regulated entities.

(c) As a result of compliance, what benefits will accrue to 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 amendment to this administrative regulation has no cost associated, but the administrative regulation is implemented with a mixture of federal and state funds based upon the eligibility of

the child placed in the emergency shelter child-caring facility.

(b) On a continuing basis: The administrative regulation is implemented with a mixture of federal and state funds based upon the eligibility of the child placed in the emergency shelter child-caring facility.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation is federal and state funds. Federal funding is from Title IV-E reimbursement for eligible children. Eligible medical and mental health services are paid for through Medicaid.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The administrative regulation 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? Tiering does not apply to this administrative regulation, as the requirements for these facilities are the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Community Based Services and Office of the Inspector General, will be impacted as the regulatory and monitoring agencies overseeing these facilities and the services they provide.

(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) and 199.640(5).

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

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

(c) How much will it cost to administer this program for the first year? The administrative body currently administers this program. There will be no new costs to administer this program.

(d) How much will it cost to administer this program for subsequent years? The administrative body currently administers this program. There will be no new costs to administer this program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Community Based Services  
Division of Protection and Permanency  
(Amendment)**

**922 KAR 1:390. Standards for residential child-caring facilities.**

RELATES TO: KRS 2.015, 199.011, 199.640, 199.645-

199.670, 202B.010(12), [214.034(4),] Chapter 424, 600.020, 610.110(6), [Chapter 615,] 620.140(1)(d), 42 U.S.C. 670-679b

STATUTORY AUTHORITY: KRS 194A.050(1), 199.640(5), 199.645

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.640(5) and 199.645 require the cabinet to promulgate administrative regulations relating to standards of care and service for child-caring facilities. This administrative regulation establishes standards of care and service for residential child-caring facilities.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.011(3)(2).

(2) "Child" is defined by KRS 199.011(4) and 600.020(9)(8), and may include:

(a) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(d); or

(b) A person [child] who meets the exceptions to the age of majority in accordance with KRS 2.015.

(3) "Child-caring facility" is defined by KRS 199.011(5)(6).

(4) "Child-caring program" means the method of delivering a child-caring service.

(5) "Community resources" means a service or activity available in the community that supplements those provided by the child-caring facility in the care and treatment of a child.

(6) "Crisis intervention unit" means a unit operated to serve a child in need of short term intensive treatment and to avoid risk of placement to a higher level of care.

(7) "De-escalation plan" means a treatment method used to decrease the intensity of emotional conflict or aggressive behavior.

(8) "Executive director" means the person employed by the board of directors to be responsible for the administration and management of a child-caring facility.

(9) "Group home" is defined by KRS 199.011(11)(40).

(10) "Individual treatment plan" or "ITP" means a plan of action developed and implemented to address the needs of a child.

(11) "Latching device" means an instrument used to secure a seclusion room door that does not require the use of a key or combination.

(12) "Living unit" means a building or part of a building in which a child resides, containing sixteen (16) or fewer beds.

(13) "Physical management" means a technique used by a specially-trained staff member for the purpose of restricting a child's freedom of movement in order to maintain a safe environment for the child and others.

(14) "Qualified mental health professional" is defined by KRS 600.020(52)(47).

(15) "Qualified [mental retardation] professional in the area of intellectual disabilities" is defined by KRS 202B.010(12).

(16) "Residential child-caring facility" means an institution or group home providing twenty-four (24) hour care.

(17) "Residential treatment program" means an intensive professional treatment-oriented service provided by a residential facility.

(18) "Seclusion" means the temporary placement of a child in a room in a residential treatment facility to prevent harm to the child or others.

(19) "Treatment" means individualized management and care of a child, utilizing professionally credentialed and certified staff and a component of the treatment environment to assist the child in resolving emotional conflict or a behavioral disorder.

(20) "Treatment director" means an individual who oversees the day-to-day operation of the treatment program.

(21) "Treatment professional" means an individual with the following credentials or an individual with a master's degree in a human services field practicing under the direct supervision of an individual with the following credentials:

(a) A licensed psychiatrist;

(b) A certified or licensed clinical psychologist;

(c) A licensed clinical social worker;

(d) A licensed marriage and family therapist; or

(e) A licensed professional clinical counselor.

(22) "Treatment team" means a representative group of people who provide services to the child and the child's family.

Section 2. Administration and Operation. (1) Licensing procedures. Licensing procedures for a residential child-caring facility shall be in compliance with 922 KAR 1:305 for a child-caring facility.

(2) A residential child-caring facility shall meet the requirements of 922 KAR 1:300, Sections 3 through 8.

Section 3. Residential Child-caring Facility Services. (1) The child-caring program services for a residential child-caring facility shall be in compliance with 922 KAR 1:300, Section 7.

(2) Unless a child is a member of a family group placed in a facility, a child under six (6) shall not be placed in the residential child-caring facility unless that facility is also licensed to provide emergency shelter service as established in 922 KAR 1:380.

(3) An exception to subsection (2) of this section may be made for a child age three (3) to six (6), if:

(a)1. For a child who is in the custody of the cabinet, the commissioner or designee and the residential child-caring facility agree that there is no less restrictive placement available to meet the child's mental health, physical, or behavioral needs; or

2. For a child who is not in the custody of the cabinet, a qualified mental health professional or qualified [mental retardation] professional in the area of intellectual disabilities and the child's custodian agree that there is no less restrictive placement available to meet the child's mental health, physical, or behavioral needs; and

(b) The residential child-caring facility provides:

1. Adequate space for the child that is protected from children who are age ten (10) and older;

2. Sight and sound segregation of the child from children who are age ten (10) and older while the child engages in:

- a. Sleeping;
- b. Personal hygiene; and
- c. Toiletry; and

3. Staff supervision that supports the child's ITP.

Section 4. Residential Treatment Program. The additional requirements in subsections (1) through (4) of this section shall apply to a residential child-caring facility providing intensive treatment services.

(1) Professional treatment services.

(a) The facility shall secure needed services for a child who has an assessed need for a psychological, psychiatric, or other professional treatment service not provided by the residential child-caring facility.

(b) The admission decision shall be the responsibility of a treatment team comprised of clinical, social service, and other disciplines designated by the residential child-caring facility's treatment director.

(c)1. After assessment and development of the ITP in accordance with 922 KAR 1:300, Section 7, the treatment team shall identify services to meet the needs of the child and [his] family.

2. The services shall:

a. Be provided by the residential child-caring facility or arranged through contract with another qualified residential child-caring facility or child-placing agency, as established in 922 KAR 1:310, or a treatment professional; and

b. Include, as developmentally appropriate, a minimum of weekly:

(i) Individual therapy [counseling] from a qualified mental health provider [social worker] or other treatment professional; and

(ii) Group therapy [counseling] conducted by a qualified mental health provider [social worker] or other treatment professional, as determined appropriate by the treatment team and under the supervision of the treatment director.

(d) Other services identified after the assessment and

development of the ITP by the treatment team may include:

1. Psychiatric counseling;
2. Specialized therapy recognized by a mental health credentialing authority; or
3. Family counseling.

(2) Staffing requirement.

(a) Staff-to-child ratios shall be in accordance with 922 KAR 1:300, Section 3(5)(b).

(b) The treatment director shall:

1. Hold at least a master's degree in a human service discipline; and
2. Have at least five (5) years' experience in mental health treatment of children with emotional or behavioral disabilities and their families and be responsible for the:

- a. Supervision;
- b. Evaluation; and
- c. Monitoring of the:
  - (i) Treatment program;
  - (ii) Social work; and
  - (iii) Other treatment staff.

(c) A residential child-caring facility providing a treatment service for more than thirty (30) children shall employ a separate treatment director other than the executive director.

(d) 1. A residential child-caring facility providing a treatment service for thirty (30) or fewer children may utilize the executive director in a dual role as treatment director if at least fifty (50) percent of his or her duties are spent supervising the treatment program.

2. If an employee serves as both executive director and treatment director, the higher staff qualification requirements shall apply.

(3) Seclusion.

(a) If [When] seclusion is used, a residential child-caring facility shall:

1. Before a child is placed in seclusion, develop and maintain clearly-written policy and procedures governing the placement of a child in seclusion, including a requirement for a de-escalation plan in the child's ITP that is consistent with accreditation standards;

2. Provide a copy of the policy and procedures to staff members responsible for the placement of a child in[into] seclusion;

3. Require a staff member who uses seclusion to complete at least sixteen (16) hours of training in approved methods of de-escalation, physical management, and the use of seclusion from a nationally-recognized organization approved by the cabinet. This training shall count toward the forty (40) hours of annual training required by 922 KAR 1:300 and shall include the following topics:

- a. Assessing physical and mental status, including signs of physical distress;
- b. Assessing nutritional and hydration needs;
- c. Assessing readiness to discontinue use of the intervention; and

d. Recognizing when medical or other emergency personnel are needed;[-]

4. Use seclusion only in an emergency or crisis situation when:

- a. A child is in danger of harming himself or another; and
- b. The effort made to de-escalate the child's behavior prior to placement was ineffective;

5. Prohibit the use of seclusion for:

- a. Punishment;
- b. Discipline; [or]
- c. Convenience of staff;
- d. Forced compliance;
- e. Retaliation; or
- f. A substitute for appropriate behavioral support;

6. Provide that approval [Approval] from the treatment director or treatment staff designee is obtained prior to or within fifteen (15) minutes of the placement of a child in seclusion;[-]

7. Place no more than one (1) child into the same seclusion room at a time;

8. Remove an object that may be used for self-harm from a child before the child is placed in seclusion;

9. Not remove a child's clothing, except for belt and shoes,

while the child is placed in seclusion;

10. Within a twenty-four (24) hour period of time, not to allow a child to remain in latched seclusion for more than:

a. Fifteen (15) minutes if the child is age nine (9) and younger; and

b. One (1) hour, if the child is age (10) and older;

11. If a child's behavior is stabilized, release the child from seclusion prior to the time period specified in this section;

12. Discontinue seclusion if a child displays adverse side effects including:

- a. Illness;
- b. Severe emotional or physical stress; or
- c. Physical damage to self or items in seclusion;

13. Provide a child in seclusion with food, water, and access to a lavatory; and

14. Use a room for seclusion that is:

- a. Lighted, ventilated, and maintained at a temperature consistent with the rest of the child-care facility;
- b. Internally observable if the door is closed;
- c. At least fifty-six (56) square feet in size; and
- d. Free from an object that allows the child to [do] self-harm.

(b) If a child requires repeated placement in seclusion, the treatment director shall conduct a treatment team meeting to reassess the child's ITP, including referring the child to a higher level of care.

(c) A staff member shall observe visually every five minutes a child who is in seclusion[~~every five (5) minutes~~].

(d) Staff shall have visual contact with a child in latched seclusion at all times.

(e) Staff shall document, in the child's record, the following information regarding seclusion of a child:

1. An intervention to de-escalate the child's behavior prior to placement;
2. Date and time of placement;
3. Date and time of removal;
4. Reason for placement;
5. Name of each staff member involved;
6. Treatment director's or designee's approval;
7. Five (5) minute visual observation by staff of the child's placement; and
8. Intervention provided by treatment staff when the child leaves seclusion.

(f) Immediately upon the child's exit from seclusion, treatment staff shall provide therapeutic intervention.

(4) Incident report.

(a) Exclusive of weekends and holidays, within twenty-four (24) hours of the physical management of a child, including a child's placement in seclusion, designated treatment staff shall complete an incident report that shall:

1. Undergo an administrative review no later than seventy-two (72) hours after the use of physical management;
2. Document an assessment by the treatment director or designee that shall include consideration of the:
  - a. Necessity of the physical management or seclusion;
  - b. Congruence of the physical management or seclusion with the residential child-caring facility's policy and procedures; and
  - c. Need for a corrective action;
3. Contain documentation of written feedback provided by the treatment director or designee to all treatment staff involved in the incident; and
4. Be signed by the treatment director or designee and the program director or designee.

(b) The residential child-caring facility shall establish a system to track the frequency, location, and type of critical incidents involving physical management of a child that occurs, including seclusion.

Section 5. Crisis Intervention Unit. (1) An emergency service provided in a crisis intervention unit shall include the following:

- (a) A mental status evaluation and physical health questionnaire of the child upon admission;
- (b) A treatment planning process;
- (c) Procedure for crisis intervention; and

(d) Discharge and aftercare planning processes.  
(2) A program shall have a written policy concerning the operation of a crisis intervention unit.

(a) Staffing.

1. At least one (1) direct-care staff member shall be assigned direct-care responsibility for:

- a. Four (4) children during normal waking hours; and
- b. Six (6) children during normal sleeping hours.

2. Administrative oversight of the program shall be provided by a staff member who shall be a:

- a. Treatment director; or
- b. Person qualified to be executive director.

(b) A licensed psychiatrist shall be available to evaluate, provide treatment, and participate in the treatment planning.

(c) Intake and service.

1.a. Upon admission, the crisis intervention program shall provide the child and [his] parent, guardian, or other legal representative with a clearly written and legible statement of rights and responsibilities; or

b. If unable to read the statement of rights and responsibilities, the statement shall be read to the child and [his] parent, guardian, or other legal representative.

2. Written policy and procedure developed in consultation with professional and direct-care staff shall provide:

a. For behavior management of a child, including the use of time-out; and

b. An explanation of behavior management techniques to a child and [his] parent, guardian, or other legal representative.

(3) The crisis intervention unit shall prohibit the use of:

- (a) Seclusion; or
- (b) Mechanical restraints.

Section 6. Group Home. The following additional requirements shall apply to a group home program:

(1) Documentation of evidence of publication of a "notice of intent" in an area newspaper, in accordance with KRS Chapter 424, advertising that:

(a) A public hearing shall be held if requested by citizens in the community or an appropriate local governmental entity; and

(b) Information obtained at the hearing shall be made available to the public and the cabinet;

(2) A staff-to-child ratio in accordance with 922 KAR 1:300, Section 3(5)(b); and

(3) Documentation of the use of community resources and efforts to encourage a child to participate in community activities.

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 4, 2021

FILED WITH LRC: May 6, 2021 at 9:34 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 26, 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 July 19, 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 July 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: 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: Laura Begin and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for residential child-caring facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the standards for residential child-caring facilities to ensure the safety of the children placed in them and for the secure administration of these necessary services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 199.640(5) and 199.645 require the cabinet to promulgate administrative regulations relating to standards of care and service for child-caring facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the standards for residential child-caring facilities in a manner that is consistent with federal and state requirements, including eligibility requirements for payment by state and federal funds and by meeting the standards to ensure services provided meet the needs of the children placed within these facilities.

(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 is necessary to provide clarifying language for service providers, better define limitations for the use of seclusion, clarify and update the qualifications required for a treatment provider and qualified mental health professional (consistent with HB 448 from the 2021 Regular Session (Ky. Acts. Ch. 61)), and make technical corrections.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to provide clarification for the qualification of mental health providers, the use of restriction and seclusion, and make technical corrections. The 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 and updates for mental health providers and making technical corrections.

(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 updates and clarification relating to qualifying service providers, in alignment with the statutory definition for qualified mental health providers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 30 private child-caring agencies licensed in Kentucky that provide residential services to 707 children as of March 2021 (Children's Review Program Private Provider Occupancy Dashboard).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no new action required by the 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 the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this

administrative regulation will ensure that children placed within a private child-caring facility are provided quality care and services.

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

(a) Initially: This amendment has no cost associated, but the administrative regulation is implemented with a mixture of federal and state funds based upon the eligibility of the child placed in the residential child-caring facility.

(b) On a continuing basis: The administrative regulation is implemented with a mixture of federal and state funds based upon the eligibility of the child placed in the residential child-caring facility

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation is federal and state funds. Federal funding is from Title IV-E reimbursement for eligible children. Eligible medical and mental health services are paid for through Medicaid.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The administrative regulation 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? Tiering does not apply to this administrative regulation, as the requirements for these facilities are the same.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 670-679b

2. State compliance standards. KRS 194A.050(1), 199.640(5), 199.645

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 670-679b

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 different, stricter, or additional requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose different, stricter, or additional requirements than those required by the federal mandate.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Community Based Services and Office of the Inspector General, will be impacted as the regulatory and monitoring agencies overseeing these facilities and the services they provide.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 670-679b, KRS 194A.050(1), 199.640(5), and 199.645.

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

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

(b) How much revenue will this administrative regulation

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

(c) How much will it cost to administer this program for the first year? The administrative body currently administers this program. There will be no new costs to administer this program.

(d) How much will it cost to administer this program for subsequent years? The administrative body currently administers this program. There will be no new costs to administer this program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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](#).

**TRANSPORTATION CABINET  
Motor Vehicle Commission  
(New Administrative Regulation)**

**605 KAR 1:035 Facilities Requirements.**

RELATES TO: KRS 190.010 (19), 190.035

STATUTORY AUTHORITY: KRS 190.020, 190.035, 190.073

NECESSITY, FUNCTION AND CONFORMITY: KRS 190.035

provides for dealers to have an established place of business with sufficient space and attributes consistent with the activity of the license applied for as established by regulations issued by the Commission. This administrative regulation establishes those requirements and standards.

Section 1. In addition to those requirements of KRS 190.010(19), the established place of business of a dealership shall have the following:

(1) A business office which:

(a) Is underpinned and on a permanent foundation. The dealership business office need not be a separate walled enclosure;

(b) Has electricity;

(c) Has adequate facilities for the physical or electronic storage of business records;

(d) Has a working business telephone used exclusively for the sale of motor vehicles;

(e) Has a desk and chairs for the use of the business;

(f) Has at least 100 square feet of floor space;

(g) Shall be located on or immediately adjacent to the vehicle storage or display lot;

(h) Is not part of a residence;

(i) Is used exclusively as a licensee business office and has a separate postal street address.

(2) A vehicle storage or display lot which:

(a) Has a hard surface lot (gravel, asphalt, concrete or other suitable covering);

(b) Is at least 2,000 square feet in size;

(c) Is used exclusively for the display and showing of vehicles for sale and licensee customer parking; and

(d) Is a distinctively defined area from that which surrounds it.

Section 2. A location otherwise meeting the requirements of this administrative regulation may be used by more than one business or licensee, provided that each licensee he has sufficient rights to suitable space and adequate facilities to conduct the separate business of a motor vehicle dealer. Notwithstanding the provisions of this section, not more than one (1) licensee for the same licensed activity shall be licensed from a single place of business if the licensee must share any of the facilities listed in Section 1 with another licensee or business in order to meet the minimum facility requirements.

Section 3. A motor vehicle dealer, other than a wholesale dealer, shall display on his premises a sign with lettering not less than nine (9) inches in height, which is clearly visible from the nearest roadway, and which specifically identifies his business. The business name on the sign must be the same as that on the license application.

Section 4. Every licensee who conducts an automobile salvage or junk business on the same premises shall be in compliance with all state administrative regulations regarding junkyard operations. The licensee shall have an area for the display of vehicles for sale and an office separate and apart from the area where junk cars or parts are stored or situated.

Section 5. If a licensee operates a garage for the repair or rebuilding of wrecked or disabled vehicles, an office and area for the display of vehicles separate and apart from the area where the repairs are made shall be allocated for the licensed activity.

Section 6. The requirement in this administrative regulation shall not apply to a non-profit motor vehicle dealer.

DOUG DOTSON, Chairman

APPROVED BY AGENCY: May 7, 2021

FILED WITH LRC: May 12, 2021 at 3:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2021 at 9 a.m. local time at the Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601. In the event the declaration of a State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020- 243 are not rescinded by July 21, 2021, this hearing will be done by video teleconference. Members of the public wishing to attend may utilize the following link: <https://us02web.zoom.us/j/82520305441>, or by telephone at 19292056099, your meeting I.D. to join in is 825 2030 5441. 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 July 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: Suzanne Baskett, Executive Staff Advisor, Kentucky Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 227-8082, email [Suzanne.Baskett@ky.gov](mailto:Suzanne.Baskett@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Suzanne Baskett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for licensee facilities and renewal of the license to be a nonprofit motor vehicle dealer in Kentucky.

(b) The necessity of this administrative regulation: KRS 190.035 requires the Motor Vehicle Commission to establish requirements for a licensed place of business which must include attributes consistent with the activity of the license applied for.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets forth the facility requirements to be met by licensees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation sets forth the facility requirements to be met by licensees.

(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:

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

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

(d) How the amendment will assist in the effect of administration of the statutes:

(3) List the types and numbers of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all individuals or businesses who wish to become retail motor vehicle dealers in Kentucky. The number of such entities is unknown.

(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 establishes facility requirements for retail motor vehicle dealers and the entities identified in question (3) will have to demonstrate compliance via the application process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to each of the identified entities cannot be reasonably ascertained as there are many options for compliant facilities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities that comply with the regulation will be allowed to operate as nonprofit motor vehicle dealers in Kentucky.

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

(a) Initially: No known costs.

(b) On a continuing basis: There are on-going costs related to administration of the licensing of dealers and enforcement of the regulations. This cost will vary depending on the issues related to each individual dealer.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: KRS 190.030 establishes the associated fees and the Commission does not anticipate a need for any additional or increased fees or funding related to administration of this regulation.

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

(9) TIERING: Is tiering applied? No, tiering is not applied because all nonprofit motor vehicle dealers affected by this regulation are treated the same.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Motor Vehicle Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 190.035, 190.073.

(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? Revenue to be generated is unknown because the commission cannot determine how many businesses will apply for the applicable license.

(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? Revenue to be generated is unknown because the commission cannot determine how many businesses will renew for

the applicable license.

(c) How much will it cost to administer this program for the first year? The cost of administering this program in the first year is unknown as it will depend upon the number of applicants and the issues which arise with regard to applicants and licensees.

(d) How much will it cost to administer this program for the subsequent years? The cost of administering this program in the subsequent years is unknown as it will depend upon the number of applicants and the issues which arise with regard to applicants and licensees.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### TRANSPORTATION CABINET Motor Vehicle Commission (New Administrative Regulation)

#### 605 KAR 1:215. Licensing fees.

RELATES TO: KRS 190.030

STATUTORY AUTHORITY: KRS 190.030, 190.073

NECESSITY, FUNCTION AND CONFORMITY: KRS 190.030(6)(a) requires the Motor Vehicle Commission to promulgate administrative regulations in accordance with KRS Chapter 13A to establish fees for licenses issued by the Motor Vehicle Commission. This administrative regulation establishes the fees associated with acquiring and renewing licenses.

Section 1. Licensing Fees. The license fee for a calendar year, or part thereof, shall be as follows:

(1) For new motor vehicle dealers, \$200 for each office or branch or agent thereof, plus \$200 for a supplemental license for each used car lot not immediately adjacent to the office or to a branch;

(2) For used motor vehicle dealers, \$200 for each office or branch or agent thereof;

(3) For motor vehicle leasing dealers, \$200 for each office or branch or agent thereof;

(4) For restricted motor vehicle dealers, \$200 for each office or branch or agent thereof;

(5) For motorcycle dealers, \$200 for each office, branch, or agent thereof;

(6) For motor vehicle manufacturers, \$200; and for each factory branch in this state, \$200;

(7) For distributors, motor vehicle auction dealers or wholesalers, \$200;

(8) For motor vehicle or recreational vehicle salespersons, forty dollars (\$40), to be paid by the licensed dealer for every salesperson the dealer employs;

(9) For factory representatives, or distributor branch representatives, \$200;

(10) For automotive mobility dealers, \$200;

(11) For nonprofit motor vehicle dealers, \$200;

(12) For nonprofit motor vehicle dealer salespersons, a license fee shall not be imposed;

(13) For recreational vehicle manufacturers or distributors, \$200; and

(14) For new recreational vehicle dealers, \$200.

Section 2. Renewal and Renewal Fees. (1) Pursuant to KRS 190.030(5) all licenses expire December 31 of the calendar year for which they are granted. Licenses in good standing and which have no outstanding fines or charges owed to the commission may be renewed by the licensee for the next calendar year by submitting a renewal application and the appropriate fee to the Motor Vehicle Commission prior to December 31. Licenses that have outstanding fines or charges owed to the commission, have been revoked, suspended, or are not in good standing may not be

renewed.

(2) The fee for a license renewal shall be the fee set forth in Section 1 for the applicable license type being renewed.

(3) A license may not be renewed for a new calendar year if events described KRS 190.030(7)(a) (change of location) or 605 KAR 1:070 (change of ownership) have occurred which have not been approved by the commission. In such case, the licensee must submit a new application reflecting the changes in order to obtain a license for the new calendar year.

DOUG DOTSON, Chairman

APPROVED BY AGENCY: May 7, 2021

FILED WITH LRC: May 12, 2021 at 3:50 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on July 21, 2021 at 9 a.m. local time at the Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601. In the event the declaration of a State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020- 243 are not rescinded by July 21, 2021, this hearing will be done by video teleconference. Members of the public wishing to attend may utilize the following link: <https://us02web.zoom.us/j/82520305441>, or by telephone at 19292056099, your meeting I.D. to join in is 825 2030 5441. 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 July 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:** Suzanne Baskett, Executive Staff Advisor, Kentucky Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 227-8082, email [Suzanne.Baskett@ky.gov](mailto:Suzanne.Baskett@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Suzanne Baskett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees for licenses issued by the Kentucky Motor Vehicle Commission.

(b) The necessity of this administrative regulation: KRS 190.030(6)(a) requires the Motor Vehicle Commission to promulgate administrative regulations in accordance with KRS Chapter 13A to establish license fees for licenses issued by the Motor Vehicle Commission.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes the fees associated with the licenses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation establishes the fees to be charged to applicants and renewing licensee for the licenses required to do business as motor vehicle dealers, manufacturers, distributors and salespeople in Kentucky.

(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:

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

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

(d) How the amendment will assist in the effect of administration of the statutes:

(3) List the types and numbers of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all individuals or businesses who wish to become licensed dealers, manufacturers, distributors and salespeople in Kentucky. The number of such entities is unknown.

(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 establishes the fees for licenses issued by the Motor Vehicle Commission and the entities identified in question (3) will have to submit the required fees in order to obtain the applicable license.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities that comply with the regulation will be allowed to operate as motor vehicle dealers, manufacturers, distributors or salespeople in Kentucky.

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

(a) Initially: No known costs.

(b) On a continuing basis: There are on-going costs related to administration of the licensing of dealers and enforcement of the regulations. These costs will vary depending on the issues related to each individual dealer.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: KRS 190.030 authorizes the increase in fees and the Commission does not anticipate a need for any additional or increased funding related to administration of this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. It increases fees consistent with the statutory authority.

(9) TIERING: Is tiering applied? No, tiering is not applied because the regulation maintains the license categories established by the original statutory language and licensees affected by this regulation are treated the same.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Motor Vehicle Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 190.030.

(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? Revenue to be generated is unknown because the commission cannot determine how many businesses will apply for the applicable licenses.

(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? Revenue to be generated is unknown because the commission cannot determine how many businesses will apply for the applicable licenses.

(c) How much will it cost to administer this program for the first year? The cost of administering this program in the first year is unknown as it will depend upon the number of applicants and the issues which arise with regard to applicants and licensees.

(d) How much will it cost to administer this program for the subsequent years? The cost of administering this program in the subsequent years is unknown as it will depend upon the number of applicants and the issues which arise with regard to applicants and licensees.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**LABOR CABINET  
Office of Unemployment Insurance  
(New Administrative Regulation)**

**787 KAR 1:360. Overpayment waivers.**

RELATES TO: 2021 SB 7, Section 2

STATUTORY AUTHORITY: KRS 341.115(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of KRS Chapter 341. For unemployment insurance claims between January 27, 2020 and December 31, 2020, 2021 SB 7, Section 2 allows the secretary to waive overpayments of unemployment insurance benefits if the Secretary, upon an alleged overpayment recipient's waiver request, the secretary finds the overpayment was made (a) without fault on the part of the recipient, and (b) recovery of would be contrary to equity and good conscience. This regulation establishes definitions and procedures for waiving overpayments pursuant to KRS Chapter 341 and 2021 SB 7, Section 2.

Section 1. Definitions. (1) "Benefits" means benefits as defined in KRS 341.020(4).

(2) "Financial hardship" means an individual or that individual's immediate family has experienced at least a fifty (50) percent reduction in gross earned income or loss of employment.

(3) "Office" means the Office of Unemployment Insurance within the Kentucky Labor Cabinet.

(4) "Office error" means:

(a) Errors in computing the benefit rate;

(b) Incorrect weekly payment due to a failure to consider a deductible amount that was properly reported by a claimant;

(c) Payment beyond the expiration of the benefit year;

(d) Payment in excess of the maximum benefit amount;

(e) Payment under an incorrect program;

(f) Retroactive notice of nonmonetary determinations, except that a determination that the claimant has committed fraud shall not be considered office error;

(g) Monetary redeterminations;

(h) Payment during a period of disqualification;

(i) Payment to a wrong claimant; or

(j) Erroneous payments resulting from human error in the data entry process.

(5) "Secretary" means the Secretary of the Kentucky Labor Cabinet.

Section 2. Waiver Request. An individual shall make a request for waiver of a determined overpayment within thirty (30) days of the Secretary's mailing of the notification that the individual has been overpaid unemployment insurance benefits.

Section 3. Waivers. Upon receipt of an overpayment recipient's request for an overpayment waiver, the secretary shall issue a waiver of the alleged overpayment if he or she determines the following:

(1) The overpayment was made without fault on the part of the

recipient; and

(2) Recovery would be contrary to equity and good conscience.

Section 4. No Fault Determination. For purpose of Section 3(1) of this administrative regulation, the secretary shall make a determination that the alleged overpayment was made without fault on the part of the recipient when the overpayment of benefits resulted from the following:

(1) "Office error" as defined in Section 1 and 787 KAR 1:190, Section 1; or

(2) Auto-payment of benefits.

Section 5. Equity and Good Conscience Determination. For purposes of Section 3(2) of this administrative regulation, the secretary shall make a finding that a recovery of an alleged overpayment is contrary to equity and good conscience when an individual demonstrates any of the following:

(1) Recovery would cause financial hardship to the person from whom it is sought. An individual demonstrates financial hardship where he or she can show that, as a result of the recovery, he or she is unable to meet daily living expenses, including expenses for food, clothing, rent, utilities, insurance, job or job search-related transportation expenses, and medical expenses.

(2) The alleged overpayment recipient can show, regardless of his or her financial circumstances, that due to the notice that such payment would be made or because of the incorrect payment either he or she has relinquished a valuable right or changed positions for the worse. This can be shown where the recipient has made substantial necessary purchases related to daily living expenses, expended substantial necessary funds on daily living expenses, or failed to seek other benefits in reliance upon the receipt of benefits.

(3) Recovery could be unconscionable, unjust, or unfair under the circumstances.

BUDDY HOSKINSON, Executive Director

LARRY L. ROBERTS, Secretary

APPROVED BY AGENCY: May 3, 2021

FILED WITH LRC: May 4, 2021 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2021 at 2:00 (ET). This hearing will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph 8(b) (R.S. 2020) and the continuing state of emergency due to the novel coronavirus pandemic. Public access to the meeting will be available at <https://us02web.zoom.us/j/86355398638?pwd=R3E5ZE4rSld2ZGF1YXFWWStUUXNTdz09>, password 891436 or by telephone at (713) 353-0212 or (888) 822-7517 (toll free), conference code 278497. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2021. Send notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email [buddy.hoskinson@ky.gov](mailto:buddy.hoskinson@ky.gov).

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Buddy Hoskinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This

administrative regulation provides the procedures for waiving unemployment insurance claims overpayments.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out 2021 SB 7, Section 2.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary promulgate administrative regulation necessary or suitable for the proper administration of KRS Chapter 341.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides definitions and procedures for waiving unemployment insurance claims overpayments pursuant to KRS Chapter 341 and 2021 SB 7, Section 2.

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

(a) How this amendment will change this existing administrative regulation:

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects unemployment insurance benefit recipients in the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This emergency regulation allows the Labor Cabinet Secretary to waive overpayments of unemployment insurance benefits.

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

(a) Initially: \$194,560.

(b) On a continuing basis: \$93,600.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this emergency administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. All unemployment insurance benefit overpayment recipients are treated equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Office of Unemployment Insurance within the Kentucky Labor Cabinet.

(2) Identify each state or federal statute or regulation that

requires or authorizes the action taken by the administrative regulation. 2021 Senate Bill 7 (R.S.), Section 2.

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

(a) How much revenue will the 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 the 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.

(c) How much will it cost to administer this program for subsequent years? \$93,600.

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

Revenues (+/-): Unknown

Expenditures (+/-): Unknown

Other explanations: This amendment does not impose any additional expenditures to employers.

#### LABOR CABINET

##### Department of Workplace Standards

##### Division of Occupational Safety and Health Compliance

##### Division of Occupational Safety and Health Education and Training (Repealer)

#### 803 KAR 2:011. Repeal of 803 KAR 2:018.

RELATES TO: KRS 338.015

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation repeals 803 KAR 2:018.

Section 1. 803 KAR 2:018, Refuse collection and compaction equipment standards, is hereby repealed.

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: April 26, 2021

FILED WITH LRC: April 27, 2021 at 9:39 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2021 at 10:00 am (ET). The meeting will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at <https://us02web.zoom.us/j/86731399141?pwd=Q2VOcDQ3ZkVBaUtoNERCMDNlKzJZz09>, password 446261; or by telephone at (713) 353-0212, (888) 822-7517 toll free, conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation repeals 803 KAR 2:018 related to the use of refuse collection and compaction equipment.

(b) The necessity of this administrative regulation: 803 KAR 2:011 is necessary to repeal 803 KAR 2:018, an antiquated regulation that is poorly suited for regulatory purposes of workplace safety.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation repeals 803 KAR 2:018 is an antiquated regulation that is poorly suited for regulatory purposes of workplace safety.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Not applicable.

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment, but the repeal of an administrative regulation.

(b) The necessity of the amendment to this administrative regulation: 803 KAR 2:011 is necessary to repeal 803 KAR 2:018 is an antiquated regulation that is poorly suited for regulatory purposes of workplace safety.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation repeals 803 KAR 2:018 is an antiquated regulation that is poorly suited for the regulatory purposes of workplace safety.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

There are no compliance requirements associated with this repeal.

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

(a) Initially: There is no cost to the OSH Program related to this repeal.

(b) On a continuing basis: There is no continuing cost to the OSH Program related to this repeal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this repeal.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This repeal neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Not applicable.

2. State compliance standards. 803 KAR 2:018 is an antiquated regulation that is poorly suited for the regulatory purposes of workplace safety.

3. Minimum or uniform standards contained in the federal mandate. 803 KAR 2:430 is an unnecessary informational appendix.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061

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

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

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

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

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and

Training

(Repealer)

803 KAR 2:041. Repeal of 803 KAR 2:040.

RELATES TO: KRS 338.015

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet

federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation repeals 803 KAR 2:040.

Section 1. 803 KAR 2:040, Definitions, is hereby repealed.

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: April 26, 2021

FILED WITH LRC: April 27, 2021 at 9:39 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2021 at 10:00 am (ET). The meeting will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at <https://us02web.zoom.us/j/86731399141?pwd=Q2VOcDQ3ZkVBaUtoNERCMDNlKzZJZz09>, password 446261; or by telephone at (713) 353-0212, (888) 822-7517 toll free, conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email [Robin.Maples@ky.gov](mailto:Robin.Maples@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation repeals 803 KAR 2:040 defining two terms.

(b) The necessity of this administrative regulation: 803 KAR 2:041 is necessary to repeal 803 KAR 2:040 which contains definitions now found in each applicable regulation for easier navigation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 803 KAR 2:040 is unnecessary as the terms it defines are found in each applicable regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Not applicable.

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment, but a repeal an administrative regulation.

(b) The necessity of the amendment to this administrative regulation: 803 KAR 2:041 is necessary to repeal 803 KAR 2:040 which contains two definitions that are now incorporated in the regulations which they appear.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

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

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this

administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation repeals 803 KAR 2:040, which is no longer necessary as the two terms defined were moved to the each applicable regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no compliance requirements associated with this repeal.

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

(a) Initially: There is no cost to the OSH Program related to this repeal.

(b) On a continuing basis: There is no continuing cost to the OSH Program related to this repeal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this repeal.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This repeal neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Not applicable.

2. State compliance standards. 803 KAR 2:041 is necessary to repeal 803 KAR 2:040 which contains definitions now found in each applicable regulation for easier navigation.

3. Minimum or uniform standards contained in the federal mandate. 803 KAR 2:041 is necessary to repeal 803 KAR 2:040 which is no longer necessary as the definitions it contains are now found in each applicable regulation.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061

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

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

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

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

**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and Health Education and Training**  
**(New Administrative Regulation)**

**803 KAR 2:181. Recordkeeping and reporting occupational injuries and illnesses.**

RELATES TO: KRS 338.015(1), (2), 338.121(3), 338.161, 29 C.F.R. Part 1904

STATUTORY AUTHORITY: KRS 338.061, 338.161

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.161(1) requires the Department of Workplace Standards to promulgate administrative regulations for the collection, compilation, and analysis of occupational safety and health statistics. 29 C.F.R. Part 1904 authorizes requirements for the recording and reporting of occupational illnesses and injuries. This administrative regulation establishes recordkeeping and reporting requirements for employers pursuant to KRS Chapter 338.

Section 1. Definitions. (1) "Amputation" means an injury in which a portion of the body including bone tissue is removed.

(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) "Hospitalization" means formal admission to a hospital or clinic for care or treatment.

(6) "Loss of eye" means the physical removal of an eye from the socket.

(7) "Occupational Safety and Health Act" or "OSHA" means KRS Chapter 338.

(8) "Secretary of Labor" means the Secretary of the United States Department of Labor or the Secretary of the Labor Cabinet.

(9) "Section 11(c) of the Act" means KRS 338.121(3).

(10) "Work-related" means "work-related" or "work-relatedness" as established in 29 C.F.R. 1904.

Section 2. Except as modified by the definitions in Section 1 and the requirements in Sections 3 and 4 of this administrative regulation, an employer shall comply with 29 C.F.R. Part 1904, Recording and Reporting Occupational Injuries and Illnesses, published by the Office of the Federal Register, National Archives and Records Administration.

Section 3. Reporting Fatalities, Amputations, Hospitalizations, or Loss of Eye. (1) The reporting requirements established in this section shall apply in lieu of 29 C.F.R. 1904.39.

(2) An employer shall orally report to the Kentucky Labor Cabinet, Department of Workplace Standards, Division of Occupational Safety and Health Compliance, at (502) 564-3070, the death of an employee as a result of a work-related incident, including death resulting from a heart attack.

(3) The report required pursuant to subsection (2) of this section shall be made within eight (8) hours from when the death is

reported to the employer, the employer's agent, or another employee.

(4) An employer shall orally report to the Kentucky Labor Cabinet, Department of Workplace Standards, Division of Occupational Safety and Health Compliance, at (502) 564-3070, any of the following that occurs as a result of a work-related incident:

(a) Amputation suffered by an employee;

(b) Employee's loss of an eye; or

(c) Hospitalization of an employee, including hospitalization resulting from a heart attack.

(5) The report required pursuant to subsection (4) of this section shall be made within seventy-two (72) hours from when the amputation, loss of an eye, or hospitalization is reported to the employer, the employer's agent, or another employee.

Section 4. If the employer cannot speak with someone in the Frankfort office, the employer shall make the report required pursuant to Section 3 of this administrative regulation to the OSHA toll-free, central telephone number, 1-800-321-OSHA (1-800-321-6742).

KIMBERLEE PERRY, Commissioner

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: May 13, 2021

FILED WITH LRC: May 13, 2021 at 3:08 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2021 at 10:00 a.m. (ET). The hearing will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at <https://us02web.zoom.us/j/85600323632?pwd=Z3lwcWtDdVBETit2OGVHVmhYSEZRQT09>, passcode 739212; or by telephone at (713) 353-0212, or (888) 822-7517 toll free, conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation defines terms. Section 2 requires employers to comply with the requirements of 29 C.F.R. Part 1904 except as modified by the definitions in Section 1 and requirements of Sections 3 and 4 of this administrative regulation. Sections 3 and 4 establish the reporting criteria for an employee death, amputation, in-patient hospitalization, or loss of eye.

(b) The necessity of this administrative regulation: The Administrative Regulation Review Subcommittee, at its May 11, 2021 meeting, requested the Department of Workplace Standards refile 803 KAR 2:180E as a new regulation to meet the requirement established in Senate Bill 65 of the 2021 General Session. This emergency regulation fulfills the subcommittee's request. This administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH

Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i) which all require the Kentucky OSH Program to be as effective as OSHA.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.161(1) requires the Department of Workplace Standards to promulgate administrative regulations for the collection, compilation, and analysis of occupational safety and health statistics.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i) which all require the Kentucky OSH Program to be as effective as OSHA. This administrative regulation ensures the state is as effective as the federal requirement.

(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: This administrative regulation affects employers in the Commonwealth engaged in all activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation promotes employee safety and health throughout Kentucky and ensures the state program as effective as the federal program.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There are no new costs associated with this emergency administrative regulation.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18(c)(2), 29 U.S.C. 667

2. State compliance standards. The Kentucky OSH Program is mandated to be at least as effective as OSHA. This emergency administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i).

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated to be at least as effective as OSHA. This emergency administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i).

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 differs from the federal requirement and allows employers greater reporting flexibility.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This administrative regulation allows employers greater reporting flexibility.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.061, Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), 29 C.F.R. 1956.10(i)

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

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

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This administrative regulation does not impose any additional expenditures to employers.

**LABOR CABINET**  
**Department of Workers' Claims**  
**(New Administrative Regulation)**

**803 KAR 25:165. Electronic Data Interchange Vendor Approval**

RELATES TO: KRS 342.0011(1), (6), (7), (22), (26), 342.038, 342.039, 342.260, 342.340

STATUTORY AUTHORITY: KRS 342.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 requires the commissioner to promulgate administrative regulations necessary to carry on the work of the department. KRS 342.038 requires an employer to keep a record of all injuries received by the employer's employees and to report to the department any injury causing the employee's absence from more than one day of work. KRS 342.039 requires insurance carriers, each self-insured group, and each employer authorized to carry its own risk to file detailed claim information with the department. KRS 342.340 requires information to be filed when a workers' compensation policy is issued, modified, cancelled, lapsed, or terminated. The department requires approved vendors to communicate the required data. This administrative regulation establishes the procedure to become an approved vendor.

**Section 1. Definitions.**

(1) "Approved vendor" means a vendor approved and certified by the commissioner of the Department of Workers' Claims in accordance with this administrative regulation.

(2) "Electronic Data Interchange" or "EDI" means the electronic transmission of data to and from the Department of Workers' Claims by use of EDI Claims Release, 3.0 version, and Proof of Coverage Release, 2.1 version, of the International Association of Industrial Accident Boards and Commissions.

(3) "Vendor" means an entity that transcribes information into an electronic format, accepts data transmissions, and sorts the resulting data for delivery to and from the Department of Workers' Claims.

**Section 2. Application and Qualifications.**

(1) An application for approval as an EDI vendor shall be submitted to the commissioner on Form EDIVEN-01, EDI Vendor Application.

(2) An applicant shall meet all of the following qualifications:

(a) The applicant shall submit EDI transactions from trading partners and claim administrators to the Department of Workers' Claims using only EDI Claims Release, 3.0 version, and Proof of Coverage Release, 2.1 version, of the International Association of Industrial Accident Boards and Commissions ("IAIABC"). Kentucky-specific edits for EDI may be found at <http://www.labor.ky.gov/workersclaims/Pages/EDI.aspx>;

(b) The applicant shall be capable of transmitting and receiving data through secure file transfer protocol ("SFTP").

(c) The applicant shall be able to send and receive data on a daily basis.

(d) The applicant shall provide and identify a contact person capable of providing quick resolution of issues that arise during attempted data delivery. The contact information shall include the contact's name, phone number, email address, and physical address.

(f) The applicant shall submit a list of all insurance carriers for which it will be delivering and receiving data. The list shall include the name of the insurance carrier, the insurance carrier's federal employer identification number, the name of a contact person for the insurance carrier, that person's email, phone number and mailing address.

(g) The applicant shall submit data for no less than ten (10) insurance carriers;

(h) The applicant shall be and remain a member of the IAIABC.

(i) The applicant shall comply with the provisions of KRS Chapter 342 and the administrative regulations promulgated by the commissioner of the Department of Workers' Claims.

**Section 3. Application Process.**

(1) Upon notification that the application has been accepted, the applicant shall contact the Data Management Branch of the Division of Information Technology and Support Services of the Kentucky Labor Cabinet to schedule two (2) test data transmissions.

(2) If both transmissions are successfully completed, trading partner information from the vendor will be added to the database of the Department of Workers' Claims. The vendor may begin submission of data once notified that it has been certified as an approved EDI vendor by the Department of Workers' Claims.

**Section 4. Certification.**

(1) A person or entity shall not act as or hold itself out as an approved EDI vendor unless that person or entity has been approved by the commissioner of the Department of Workers' Claims in accordance with this administrative regulation.

(2) Certification that a vendor has been approved by the commissioner shall remain in effect until revoked by the commissioner pursuant to Section 5 of this administrative regulation or voluntarily surrendered. A vendor that voluntarily surrenders its certificate shall notify the commissioner in writing.

(3) When a vendor desires to deliver and receive data for an insurance carrier not previously reported to the Department an email shall be sent to the Department seeking approval to deliver and send data for the new insurance carrier. The email shall contain the name and FEIN of the new insurance carrier. Attached to the email shall be an updated carrier list that includes that new insurance carrier. Upon receipt of an email confirmation from the Department of Workers' Claims approving the transmittal of data for the new insurance carrier, the vendor may begin transmitting data for the new carrier.

**Section 5. Revocation of Certification.** The commissioner may revoke a vendor's certification as an approved EDI vendor when one or more of the following occur:

(1) The vendor resigns or is removed from membership in the IAIABC;

(2) The vendor is unable to be contacted for resolution of transmission issues;

(3) The vendor is unable to resolve transmission issues within ten (10) days of discovery;

(4) The vendor no longer meets the requirements contained in subsection 2(2) of this administrative regulation.

**Section 6. Incorporation by Reference.** (1) The following material is incorporated by reference:

(a) "Electronic Data Interchange Vendor Application", EDIVEN-1, March 1, 2021 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, Mayo-Underwood Building, 3<sup>rd</sup> Floor, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and may also be found at <https://labor.ky.gov/comp/Forms/Pages/default.aspx>.

ROBERT L. SWISHER, Commissioner

APPROVED BY AGENCY: April 29, 2021

FILED WITH LRC: April 29, 2021 at 6:14 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 29, 2021, at 10:00 a.m. (EDT) by video teleconference pursuant to KRS 61.800, et seq. In keeping with KRS 13A.270, individuals interested in attending or being heard at this hearing shall notify this agency in writing of their intent to attend no later than five (5) workdays prior to the hearing along with contact information. Upon notification of intent to attend, individuals will be provided information necessary to attend the video teleconference. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written

request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person

CONTACT PERSON: B. Dale Hamblin, Jr., Assistant General Counsel, Department of Workers' Claims, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-4404, fax (502) 564-0681, email Dale.Hamblin@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: B. Dale Hamblin, Jr

(1) Provide a brief summary of:

(a) What this administrative regulation does: The function of this administrative regulation is to establish the approval procedure for electronic data interchange ("EDI") vendors.

(b) The necessity of this administrative regulation: To provide guidance to entities desiring to be approved EDI vendors.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 342.038 requires an employer to keep a record of all injuries received by the employer's employees and to report to the department any injury causing the employee's absence from more than one day of work. KRS 342.039 requires insurance carriers, each self-insured group, and each employer authorized to carry its own risk to file detailed claim information with the department. KRS 342.340 requires information to be filed when a workers' compensation policy is issued, modified, cancelled, lapsed, or terminated. The department uses approved vendors to communicate the required data. This administrative regulation establishes the procedure to become an approved vendor.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the procedure for becoming an approved EDI vendor.

(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: Electronic data interchange vendors.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities will apply to the Department to be an approved vendor.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will know the process to be approved as an electronic data interchange vendor.

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

(a) Initially: None

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal budget is the source of

funding.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied; the administrative regulation applies to all parties equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Workers' Claims and those parts of state and local government that use a vendor to report data to the Department.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.038, 342.039, 342.260, 342.340.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The Department does not anticipate this administrative regulation to have any effect on the expenditures and revenues of a state or local government agency.

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? It does not appear there will be additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There should be no increase or decrease in the cost to administer this administrative regulation.

#### PUBLIC PROTECTION CABINET

##### Department of Insurance

##### Division of Health and Life Insurance and Managed Care (Repealer)

**806 KAR 017:511. Repeal of 806 KAR 17:005, 806 KAR 17:095, 806 KAR 17:170, 806 KAR 17:180, and 806 KAR 17:510.**

RELATES TO: KRS 304.17A-149, 304.14-120, 304.14-190, 304.17A-095, 304.17A-096, 304.17A-600-304.17A-629, 304.12-085(2), (3), (4), 304.17A-200(1)(f), 304.17A-220(8)(d), 304.17A-230(3), 304.17A-080, 304.17A-250, 304.12-080(3), 304.14-120(1), 304.17A-250(10), 304.17A-505, 304.17A-540, 304.17A-600 - 304.17A-633, 304.17B-015, 304.38-050

STATUTORY AUTHORITY: KRS 13A.310, 304.2-110(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to promulgate regulations to aid in the effectuation of any provision of the Insurance Code, as defined in KRS 304.1-010. KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no

longer be effective. The intent of this administrative regulation is to repeal 806 KAR 17:005, 806 KAR 17:095, 806 KAR 17:170, 806 KAR 17:180, and 806 KAR 17:510. 806 KAR 17:005, Health insurance forms and reports, because the forms incorporated in the regulation are currently being incorporated into the corresponding regulation to which they apply. 806 KAR 17:095, Reimbursement for general anesthesia and facility charges for dental procedures, shall be repealed because KRS 304.17A-149 prescribes the same or similar requirements. 806 KAR 17:170, Genetic testing, shall be repealed because the administrative regulation is now obsolete, as when it was originally promulgated the terms defined in the regulation were emerging, and now they are considered of common dictionary meaning. 806 KAR 17:180, Standard health benefit plan, shall be repealed as the statute no longer requires the standard plan to be issued by insurers. 806 KAR 17:510, Health benefit plan exclusionary rider requirements, shall be repealed because exclusionary riders are no longer permitted due to the federal law requirements related to essential health benefits that must be covered under all plans.

Section 1. The following administrative regulations are hereby repealed:

- (1) 806 KAR 17:005, Health insurance forms and reports;
- (2) 806 KAR 17:095, Reimbursement for general anesthesia and facility charges for dental procedures;
- (3) 806 KAR 17:170, Genetic testing;
- (4) 806 KAR 17:180, Standard health benefit plan; and
- (5) 806 KAR 17:510, Health benefit plan exclusionary rider requirements.

SHARON P. CLARK, Commissioner  
KERRY HARVEY, Secretary

APPROVED BY AGENCY: April 21, 2021

FILED WITH LRC: April 26, 2021 at 11:33 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on July 23rd, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. July 30th, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Abigail Gall, Executive Assistant, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-1453, email Abigail.gall@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Abigail Gall

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: 806 KAR 17:511 repeals 806 KAR 17:005, 806 KAR 17:095, 806 KAR 17:170, 806 KAR 17:180, and 806 KAR 17:510.
  - (b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal administrative regulation 806 KAR 17:005, 806 KAR 17:095, 806 KAR 17:170, 806 KAR 17:180, and 806 KAR 17:510.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of the Department of Insurance to promulgate regulations to aid in the effectuation of any provision of the Insurance Code, as defined in KRS 304.1-010. KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be

effective

- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By repealing 806 KAR 17:005, the Department is incorporating the previously incorporated forms into the corresponding administrative regulations. By repealing 806 KAR 17:095, the Department is removing any limitations of provider's rights under statute KRS 304.17A-149. 806 KAR 17:170 removes definitions that were once emerging and are now readily available and understood outside of the Insurance Code. KRS 304.17A-250(1) no longer requires the Commissioner to define standard health benefit plan, and thus the repeal of 806 KAR 17:180 is necessary. The repeal of 806 KAR 17:510 shall remove the requirements of a health benefit plan exclusionary rider.

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

- (a) How the amendment will change this existing administrative regulation: This is not an amendment to an existing administrative regulation.

- (b) The necessity of the amendment to this administrative regulation: This is not an amendment to an existing administrative regulation.

- (c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment to an existing administrative regulation.

- (d) How the amendment will assist in the effective administration of the statutes: This is not an amendment to an existing administrative regulation.

- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department as the implementer.

- (4) Provide an analysis of how the entities identified in the previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

- (a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: There are no necessary actions to comply with the regulation.

- (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost associated with this administrative regulation.

- (c) As a result of compliance, what benefits will accrue to the entities: There will be less limitation on providers.

- (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: It will cost no money to implement this repealer.

- (a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

- (b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase of fees will not be necessary because additional personnel is likely unnecessary.

- (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees.

- (9) TIERING: Is tiering applied? Tiering is not necessary to this administrative regulation, as its purpose is only to repeal the listed regulations.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

- (1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.310, KRS 304.2-110

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The administrative regulation will not generate any revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The administrative regulation will not generate any revenue for state or local government.

(c) How much will it cost to administer this program for the first year? The cost to administer the program is indeterminable.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the program is indeterminable.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: The program including receipt and review of annual audited financial statements will be handled by internal personnel. At this point, the Department anticipates all duties will be handled by current personnel.

**PUBLIC PROTECTION CABINET  
Department of Insurance  
Division of Health and Life Insurance and Managed Care  
(New Administrative Regulation)**

**806 KAR 17:580. Definition of Health Care Provider**

RELATES TO: KRS 304.17A-005(23)

STATUTORY AUTHORITY: KRS 304.2-110, 304.17A-005(23)(j)

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 304.17A-005(23)(j) authorizes the Department to promulgate an administrative regulation to determine other health care practitioners to be added to the definition of "health care provider" or "provider" for use in KRS Chapter 304, Subtitle 17A.

Section 1. In addition to the health care practitioners listed in KRS 304.17A-005(23)(a) – (j), the definition of "health care provider" or "provider" in KRS 304.17A-005(23) shall include a pharmacy licensed under the provisions of KRS Chapter 315.

SHARON P. CLARK, Commissioner

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: April 22, 2021

FILED WITH LRC: April 26, 2021 at 11:33 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on July 23rd, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who

wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 30th, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-1453, email abigail.gall@ky.gov.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation defines that health care provider or provider in KRS 304.17A-005(23) will also include a pharmacy that is licensed under KRS Chapter 315.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to include that any pharmacy licensed under the provisions of KRS Chapter 315 shall also be included in the definition of "health care provider" or "provider".

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes that the Commissioner may promulgate administrative regulations relative to the Kentucky Insurance Code. More specifically, KRS 304.17A-005(23)(j) authorizes the Department to promulgate an administrative regulation to determine other what health care practitioners shall be added to the definition "health care provider" or "provider".

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effectuation of KRS 304.17A-005(23)(j) by determining that pharmacies licensed under KRS Chapter 315 are included in the definition of "health care provider" or "provider".

(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: Any pharmacy licensed under KRS Chapter 315.

(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: Acknowledgement of pharmacies licensed under Chapter 315 to be recognized as a "health care provider" or "provider".

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no associated cost with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: A pharmacy licensed under KRS Chapter 315 shall be recognized under the definition of "health care provider" or "provider".

(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: There will be no increase in fees or funding to implement this new administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees that will be established.

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation relates to all "health care providers", "providers", or pharmacies licensed under Chapter 315.

#### 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 is the implementer of this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, KRS 304.1-010, KRS 304.17A-005(23)(j)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is expected to be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is expected to be generated.

(c) How much will it cost to administer this program for the first year? No cost is expected.

(d) How much will it cost to administer this program for subsequent years? No cost is expected.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Neutral  
Expenditures (+/-): Neutral  
Other Explanation:

#### ENERGY AND ENVIRONMENT CABINET Public Service Commission (New Administrative Regulation)

#### 807 KAR 5:015. Access and attachments to utility poles and facilities.

RELATES TO: KRS Chapter 278, 47 U.S.C.A. 224(c)

STATUTORY AUTHORITY: KRS 278.030(1), 278.040(2), 278.040(3), HB 320 (2021)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.040(2) requires the commission to have exclusive jurisdiction over the regulation of rates and service of

utilities. KRS 278.030(1) authorizes utilities to demand, collect, and receive fair, just, and reasonable rates. KRS 278.030(2) requires every utility to furnish adequate, efficient, and reasonable service. House Bill 320 from the 2021 Regular Session of the General Assembly requires the commission to promulgate administrative regulations regarding pole attachments under its jurisdiction, including those necessary for the provision of broadband. 47 U.S.C.A. § 224(c) requires that state regulation of pole attachments shall only preempt federal regulation of poles under federal jurisdiction if the state regulates the rates, terms, and conditions of access to those poles, has the authority to consider and does consider the interest of the customers of attachers and the pole owning utilities, has effective rules and regulations governing attachments; and addresses complaint's regarding pole attachments within 360 days. This administrative regulation establishes the process by which the commission regulates the rates, terms, and conditions of utility pole attachments and access to other utility facilities, establishes specific criteria and procedures for obtaining access to utility poles within the commission's jurisdiction, and establishes a process by which the complaints of those seeking to access utility facilities shall be addressed within the period established by federal law.

#### Section 1. Definitions.

(1) "Attachment" means any attachment by a cable television system operator, telecommunications carrier, broadband internet provider, or governmental unit to a pole owned or controlled by a utility.

(2) "Broadband internet provider" means a person who owns, controls, operates, or manages any facility used or to be used to offer internet service to the public with download speeds of at least twenty-five (25) megabits per second and upload speeds of at least three (3) megabits per second.

(3) "Communication space" means the lower usable space on a utility pole, which is typically reserved for low-voltage communications equipment.

(4) "Complex make-ready" means any make-ready that is not simple make-ready, such as the replacement of a utility pole; splicing of any communication attachment or relocation of existing wireless attachments, even within the communications space; and any transfers or work relating to the attachment of wireless facilities.

(5) "Existing attacher" means any person or entity with equipment lawfully on a utility pole.

(6) "Governmental unit" means an agency or department of the federal government; a department, agency, or other unit of the Commonwealth of Kentucky; or a county or city, special district, or other political subdivision of the Commonwealth of Kentucky.

(7) "Macro cell facility" means a wireless communications system site that is typically high-power and high-sited, and capable of covering a large physical area, as distinguished from a distributed antenna system, small cell, or WiFi attachment, for example.

(8) "Make-ready" means the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional facilities on the utility pole.

(9) "New attacher" means a cable television system operator, telecommunications carrier, broadband internet provider, or governmental unit requesting to attach new or upgraded facilities to a pole owned or controlled by a utility, except that a new attacher does not include a utility with an applicable joint use agreement with the utility that owns or controls the pole to which it is seeking to attach or a person seeking to attach macro cell facilities.

(10) "Red tagged pole" means a pole that a utility that owns or controls the pole:

(a) Designated for replacement based on the poles non-compliance with an applicable safety standard;

(b) Designated for replacement within two (2) years of the date of its actual replacement for any reason unrelated to a new attacher's request for attachment; or

(c) Would have needed to replace at the time of replacement even if the new attachment were not made.

(11) "Telecommunications carrier" means a person who owns,

controls, operates, or manages any facility used or to be used for or in connection with the transmission or conveyance over wire, in air, or otherwise, any message by telephone or telegraph for the public, for compensation.

(12) "Simple make-ready" means make-ready in which existing attachments in the communications space of a pole could be rearranged without any reasonable expectation of a service outage or facility damage and does not require splicing of any existing communication attachment or relocation of an existing wireless attachment.

#### Section 2. Duty to Provide Access to Utility Poles and Facilities.

(1) Except as established in paragraphs (a), (b), and (c) of this subsection, a utility shall provide any cable television system operator, telecommunications carrier, broadband internet provider, or governmental unit nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.

(a) A utility may deny access to any pole, duct, conduit, or right-of-way on a non discriminatory basis where there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering purposes;

(b) A utility shall not be required to provide access to any pole that is used primarily to support outdoor lighting; and

(c) A utility shall not be required to secure any right-of-way, easement, license, franchise, or permit required for the construction or maintenance of attachments or facilities from a third party for or on behalf of a person or entity requesting access pursuant to this administrative regulation to any pole, duct, conduit, or right-of-way owned or controlled by the utility.

(2) A request for access to a utility's poles, ducts, conduits or rights-of-way shall be submitted to a utility in writing, either on paper or electronically, as established by a utility's tariff or a special contract between the utility and person requesting access.

(3) If a utility provides access to its poles, ducts, conduits, or rights-of-way pursuant to an agreement that establishes rates, charges, or conditions for access not contained in its tariff:

(a) The rates, charges, and conditions of the agreement shall be in writing; and

(b) The utility shall file the written agreement with the commission pursuant to 807 KAR 5:011, Section 13.

#### Section 3. Pole Attachment Tariff Required.

(1) A utility that owns or controls utility poles located in Kentucky shall maintain on file with the commission a tariff that includes rates, terms, and conditions governing pole attachments in Kentucky that are consistent with the requirements of this administrative regulation and KRS Chapter 278.

(2) The tariff may incorporate a standard contract or license for attachments if its terms and conditions are consistent with the requirements of this administrative regulation and KRS Chapter 278.

(3) Standard contracts or licenses for attachments permitted by subsection (2) of this section shall prominently indicate that the contracts or licenses are based wholly on the utility's tariff and that the tariff shall control if there is a difference.

(4) The tariff may include terms, subject to approval by the commission, that are fair, just, and reasonable and consistent with the requirements of this administrative regulation and KRS Chapter 278, such as certain limitations on liability, indemnification and insurance requirements, and restrictions on access to utility poles for reasons of lack of capacity, safety, reliability, or engineering standards.

(5) The tariff shall not prohibit overloading except if doing so is justified by lack of capacity, safety or reliability concerns, or applicable engineering standards.

(6) Signed standard contracts or licenses for attachments permitted by subsection (2) of this section shall be submitted to the commission but shall not be filed pursuant to 807 KAR 5:011, Section 13.

(7) Tariffs conforming to the requirements of this administrative regulation and with a proposed effective date no later than March 31, 2022, shall be filed by February 28, 2022.

#### Section 4. Procedure for New Attachers to Request Utility Pole Attachments.

(1) All time limits established in this section shall be calculated according to 807 KAR 5:001, Section 4(7).

(2) Application review and survey.

(a) Application completeness.

1. A utility shall review a new attacher's pole attachment application for completeness before reviewing the application on its merits and shall notify the new attacher within ten (10) business days after receipt of the new attacher's pole attachment application if the application is incomplete.

2. A new attacher's pole attachment application shall be considered complete if the application provides the utility with the information necessary under its procedures, as established in the utility's applicable tariff or a special contract regarding pole attachments between the utility and the new attacher, to begin to survey the affected poles.

3. If the utility notifies a new attacher that its attachment application is not complete, then it must specify all reasons for finding it incomplete.

4. If the utility does not respond within ten (10) business days after receipt of the application, or if the utility rejects the application as incomplete but fails to state any reasons in the utility's response, then the application shall be deemed complete.

(b) Survey and application review on the merits.

1. A utility shall complete a survey of poles for which access has been requested within forty-five (45) days of receipt of a complete application to attach facilities to its utility poles (or within sixty (60) days in the case of larger orders as established in subsection (7) of this section) for the purpose of determining if the attachments may be made and identifying any make-ready to be completed to allow for the attachment.

2. Participation of attachers in surveys conducted by a utility.

a. A utility shall allow the new attacher and any existing attachers on the affected poles to be present for any field inspection conducted as part of a utility's survey conducted pursuant paragraph (b)1. of this subsection.

b. A utility shall use commercially reasonable efforts to provide the affected attachers with advance notice of not less than five (5) business days of any field inspection as part of the survey and shall provide the date, time, and location of the inspection, and name of the contractor, if any, performing the inspection.

3. If a new attacher has conducted a survey pursuant to subsection (10)(c) of this section, or a new attacher has otherwise conducted and provided a survey, after giving existing attachers notice and an opportunity to participate in a manner consistent with subsection (10)(c), a utility may elect to satisfy survey obligations established in this paragraph by notifying affected attachers of the intent to use the survey conducted by the new attacher and by providing a copy of the survey to the affected attachers within the time period established in subparagraph 1. of this paragraph.

4. Based on the results of the applicable survey and other relevant information, a utility shall respond to the new attacher either by granting access or denying access within forty-five (45) days of receipt of a complete application to attach facilities to its utility poles (or within sixty (60) days in the case of larger orders as described in subsection (7) of this section).

5. A utility's denial of a new attacher's pole attachment application shall be specific, shall include all relevant evidence and information supporting the denial, and shall explain how the evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards.

6. Payment of survey costs and estimates.

a. A utility's tariff may require prepayment of the costs of surveys made to review a pole attachment application, or some other reasonable security or assurance of credit worthiness, before a utility shall be obligated to conduct surveys pursuant to this section.

b. If a utility's tariff requires prepayment of survey costs, the utility shall include a per pole estimate of costs in the utility's tariff and the payment of estimated costs shall satisfy any requirement that survey costs be prepaid.

c. The new attacher shall be responsible for the costs of surveys made to review the new attacher's pole attachment application even if the new attacher decides not to go forward with the attachments.

(3) Payment of make-ready estimates.

(a) Within fourteen (14) days of providing a response granting access pursuant to subsection (2)(b)4. of this section, a utility shall send a new attacher whose application for access has been granted a detailed, itemized estimate in writing, on a pole-by-pole basis if requested and reasonably calculable, and consistent with subsection (6)(b) of this section, of charges to perform all necessary make-ready.

(b) A utility shall provide documentation that is sufficient to determine the basis of all estimated charges, including any projected material, labor, and other related costs that form the basis of the estimate.

(c) A utility may withdraw an outstanding estimate of charges to perform make-ready beginning fourteen (14) days after the estimate is presented.

(d) A new attacher may accept a valid estimate and make payment any time after receipt of an estimate, except a new attacher shall not accept the estimate after the estimate is withdrawn.

(4) Make-ready. Upon receipt of payment for survey costs owed pursuant to the utility's tariff and the estimate specified in subsection (3)(d) of this section, a utility shall, as soon as practical but in no case more than seven (7) days, notify all known entities with existing attachments in writing that could be affected by the make-ready.

(a) For make-ready in the communications space, the notice shall:

1. State where and what make-ready will be performed;
2. State a date for completion of make-ready in the communications space that is no later than thirty (30) days after notification is sent (or up to seventy-five (75) days in the case of larger orders as established in subsection (7) of this section);
3. State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date established for completion;
4. State that, if make-ready is not completed by the completion date established by the utility in subparagraph 2. of this paragraph, the new attacher may complete the make-ready specified pursuant to subparagraph 1 of this paragraph; and
5. State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.

(b) For make-ready above the communications space, the notice shall:

1. State where and what make-ready will be performed;
2. State a date for completion of make-ready that is no later than ninety (90) days after notification is sent (or 135 days in the case of larger orders, as established in subsection (7) of this section).
3. State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date established for completion;
4. State that the utility may assert the utility's right to fifteen (15) additional days to complete make-ready;
5. State that if make-ready is not completed by the completion date established by the utility in subparagraph 2. of this paragraph (or, if the utility has asserted its fifteen (15) day right of control, fifteen (15) days later), the new attacher may complete the make-ready specified pursuant to subparagraph 1 of this paragraph; and
6. State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.

(c) Once a utility provides the notices required by this subsection, the utility shall provide the new attacher with a copy of the notices and the existing attachers' contact information and address where the utility sent the notices. The new attacher shall be responsible for coordinating with existing attachers to encourage completion of make-ready by the dates established by the utility pursuant to paragraph (a)2. of this subsection for

communications space attachments or paragraph (b)2. of this subsection for attachments above the communications space.

(5) A utility shall complete its make-ready in the communications space by the same dates established for existing attachers in subsection (4)(a)2 of this section or its make-ready above the communications space by the same dates for existing attachers in subsection (4)(b)2 of this section (or if the utility has asserted its fifteen (15) day right of control, fifteen (15) days later).

(6) Final invoice.

(a) Within a reasonable period, not to exceed ninety (90) days after a utility completes the utility's make-ready, the utility shall provide the new attacher:

1. A detailed, itemized final invoice of the actual survey charges incurred if the final survey costs for an application differ from any estimate previously paid for the survey work or if no estimate was previously paid; and

2. A detailed, itemized final invoice, on a pole-by-pole basis if requested and reasonably calculable, of the actual make ready costs to accommodate attachments if the final make-ready costs differ from the estimate provided pursuant to subsection (3)(d) of this section.

(b) Limitations on make ready costs.

1. A utility shall not charge a new attacher, as part of any invoice for make-ready, to bring poles, attachments, or third-party or utility equipment into compliance with current published safety, reliability, and pole owner construction standards if the poles, attachments, or third-party or utility equipment were out of compliance because of work performed by a party other than the new attacher prior to the new attachment.

2. A utility shall not charge a new attacher, as part of any invoice for make ready, the cost to replace any red tagged pole with a replacement pole of the same type and height.

3. If a red tagged pole is replaced with a pole of a different type or height, then the new attacher shall be responsible, as part of any invoice for make ready, only for the difference, if any, between the cost for the replacement pole and the cost for a new utility pole of the type and height that the utility would have installed in the same location in the absence of the new attachment.

4. The make ready cost, if any, for a pole that is not a red tagged pole to be replaced with a new utility pole to accommodate the new attacher's attachment shall be charged in accordance with the utility's tariff or a special contract regarding pole attachments between the utility and the new attacher.

(7) For the purposes of compliance with the time periods in this section:

(a) A utility shall apply the timeline as established in subsections (2) through (4) of this section to all requests for attachment up to the lesser of 300 poles or zero and five-tenths (0.5) percent of the utility's poles in the state;

(b) A utility may add up to fifteen (15) days to the survey period established in subsection (4) of this section to larger orders up to the lesser of 1,000 poles or 1.50 percent of the utility's poles in Kentucky.

(c) A utility may add up to forty-five (45) days to the make-ready periods established in subsection (4) of this section to larger orders up to the lesser of 1,000 poles or 1.50 percent of the utility's poles in Kentucky.

(d) A utility shall negotiate in good faith the timing of all requests for attachment larger than the lesser of 1,000 poles or 1.50 percent of the utility's poles in Kentucky.

(e) A utility may treat multiple requests from a single new attacher as one request if the requests are submitted within thirty (30) days of one another; and

(f) As soon as reasonably practicable, but no less than sixty (60) days before the new attacher expects to submit an application in which the number of requests exceed the lesser of the amounts identified in paragraph (a) of this subsection, a new attacher shall provide written notice to a utility in the manner and form stated in the utility's tariff that the new attacher expects to submit a high volume request.

(8) Deviations from make-ready timeline.

(a) A utility may deviate from the time limits specified in this section before offering an estimate of charges if the new attacher

failed to satisfy a condition in the utility's tariff or in a special contract between the utility and the new attacker.

(b) A utility may deviate from the time limits established in this section during performance of make-ready for good and sufficient cause that renders it infeasible for the utility to complete make-ready within the time limits established in this section. A utility that so deviates shall immediately notify, in writing, the new attacker and affected existing attackers and shall identify the affected poles and include a detailed explanation of the reason for the deviation and a new completion date. The utility shall deviate from the time limits established in this section for a period no longer than necessary to complete make-ready on the affected poles and shall resume make-ready without discrimination once the utility returns to routine operations.

(c) An existing attacker may deviate from the time limits established in this section during performance of complex make-ready for reasons of safety or service interruption that renders it infeasible for the existing attacker to complete complex make-ready within the time limits established in this section. An existing attacker that so deviates shall immediately notify, in writing, the new attacker and other affected existing attackers and shall identify the affected poles and include a detailed explanation of the basis for the deviation and a new completion date, which shall not extend beyond sixty (60) days from the completion date provided in the notice described in subsection (4) of this section is sent by the utility (or up to 105 days in the case of larger orders described in subsection (6)(b) and (c) of this section). The existing attacker shall not deviate from the time limits established in this section for a period for longer than necessary to complete make-ready on the affected poles.

(9) Self-help remedy.

(a) Surveys. If a utility fails to complete a survey as established in subsection (2)(b) of this section, then a new attacker may conduct the survey in place of the utility by hiring a contractor to complete a survey as specified in Section 5 of this administrative regulation.

1. A new attacker shall allow the affected utility and existing attackers to be present for any field inspection conducted as part of the new attacker's survey.

2. A new attacker shall use commercially reasonable efforts to provide the affected utility and existing attackers with advance notice of not less than five (5) business days of a field inspection as part of any survey the attacker conducts.

3. The notice shall include the date and time of the survey, a description of the work involved, and the name of the contractor being used by the new attacker.

(b) Make-ready. If make-ready is not complete by the applicable date established in subsection (4) of this section, then a new attacker may conduct the make-ready in place of the utility and existing attackers by hiring a contractor to complete the make-ready as specified in Section 5 of this administrative regulation.

1. A new attacker shall allow the affected utility and existing attackers to be present for any make-ready.

2. A new attacker shall use commercially reasonable efforts to provide the affected utility and existing attackers with advance notice of not less than seven (7) days of the impending make-ready.

3. The notice shall include the date and time of the make-ready, a description of the work involved, and the name of the contractor being used by the new attacker.

(c) The new attacker shall notify an affected utility or existing attacker immediately if make-ready damages the equipment of a utility or an existing attacker or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacker.

(d) Pole replacements. Self-help shall not be available for pole replacements.

(10) One-touch make-ready option. For attachments involving simple make-ready, new attackers may elect to proceed with the process established in this subsection in lieu of the attachment process established in subsections (2) through (6) and (9) of this section.

(a) Attachment application.

1. A new attacker electing the one-touch make-ready process shall elect the one-touch make-ready process in writing in its attachment application and shall identify the simple make-ready that it will perform. It is the responsibility of the new attacker to ensure that its contractor determines if the make-ready requested in an attachment application is simple.

2. Application completeness.

a. The utility shall review the new attacker's attachment application for completeness before reviewing the application on its merits and shall notify the new attacker within ten (10) business days after receipt of the new attackers attachment application whether or not the application is complete.

b. An attachment application shall be considered complete if the application provides the utility with the information necessary under its procedures, as established in the utility's applicable tariff or a special contract regarding pole attachments between the utility and the new attacker, to make an informed decision on the application.

c. If the utility notifies the new attacker that an attachment application is not complete, then the utility shall state all reasons for finding the application incomplete.

d. If the utility fails to notify a new attacker in writing that an application is incomplete within ten (10) business days of receipt, then the application shall be deemed complete.

3. Application review on the merits. The utility shall review on the merits a complete application requesting one-touch make-ready and respond to the new attacker either granting or denying an application within fifteen (15) days of the utility's receipt of a complete application (or within thirty (30) days in the case of larger orders as established in subsection (7)(b) of this section or within a time negotiated in good faith for requests equal to or larger than those established in (7)(d)).

a. If the utility denies the application on its merits, then the utility's decision shall be specific, shall include all relevant evidence and information supporting its decision, and shall explain how the evidence and information relate to a denial of access.

b. Within the fifteen (15) day application review period (or within thirty (30) days in the case of larger orders as established in subsection (7)(b) of this section or within a time negotiated in good faith for requests equal to or larger than those established in (7)(d)), a utility or an existing attacker may object to the designation by the new attacker's contractor that certain make-ready is simple.

c. An objection made pursuant to clause b. of this subparagraph shall be specific and in writing, include all relevant evidence and information supporting the objection, be made in good faith, and explain how the evidence and information relate to a determination that the make-ready is not simple.

d. If the utility's or the existing attacker's objection to the new attacker's determination that make-ready is simple complies with clause c. of this subparagraph, then the make-ready shall be deemed to be complex.

(b) Surveys.

1. The new attacker shall be responsible for all surveys required as part of the one-touch make-ready process and shall use a contractor as established in Section 5(2) of this administrative regulation to complete surveys.

2. The new attacker shall allow the utility and any existing attackers on the affected poles to be present for any field inspection conducted as part of the new attacker's surveys.

3. The new attacker shall use commercially reasonable efforts to provide the utility and affected existing attackers with advance notice of not less than five (5) business days of a field inspection as part of any survey and shall provide the date, time, and location of the surveys, and name of the contractor performing the surveys.

(c) Make-ready. If the new attacker's attachment application is approved and if the attacker has provided fifteen (15) days prior written notice of the make-ready to the affected utility and existing attackers, the new attacker may proceed with make-ready using a contractor in the manner established for simple make-ready in Section 5(2) of this administrative regulation.

1. The prior written notice shall include the date and time of the make-ready, a description of the work involved, the name of the

contractor being used by the new attacher, and provide the affected utility and existing attachers a reasonable opportunity to be present for any make-ready.

2. The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher.

3. In performing make-ready, if the new attacher or the utility determines that make-ready classified as simple is complex, then all make-ready on the impacted poles shall be halted and the determining party shall provide immediate notice to the other party of its determination and the impacted poles. All remaining make-ready on the impacted poles shall then be governed by subsections (2) through (9) of this section, and the utility shall provide the notices and estimates required by subsections (2)(a), (3), and (4) of this section as soon as reasonably practicable.

(d) Post-make-ready timeline. A new attacher shall notify the affected utility and existing attachers within fifteen (15) days after completion of make-ready on a one-touch make ready application.

#### Section 5. Contractors for Survey and Make-ready.

(1) Contractors for self-help complex and above the communications space make-ready. A utility shall make available and keep up-to-date a reasonably sufficient list of contractors the utility authorizes to perform self-help surveys and make-ready that is complex and self-help surveys and make-ready that is above the communications space on the utility's poles. The new attacher must use a contractor from this list to perform self-help work that is complex or above the communications space. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in subsection (3) of this section and the utility shall not unreasonably withhold its consent.

(2) Contractors for surveys and simple work. A utility may keep up-to-date a reasonably sufficient list of contractors the utility authorizes to perform surveys and simple make-ready. If a utility provides this list, then the new attacher shall choose a contractor from the list to perform the work. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in subsection (3) of this section and the utility shall not unreasonably withhold its consent.

(a) 1. If the utility does not provide a list of approved contractors for surveys or simple make-ready or no utility-approved contractor is available within a reasonable time period, then the new attacher may choose its own qualified contractor that shall meet the requirements in subsection (3) of this section.

2. If choosing a contractor that is not on a utility-provided list, the new attacher shall certify to the utility that the attacher's contractor meets the minimum qualifications established in subsection (3) of this section upon providing notices required by Section 4(9)(a)2., (9)(b)2., (10)(b)3., and (10)(c) of this administrative regulation.

(b) 1. The utility may disqualify any contractor chosen by the new attacher that is not on a utility-provided list, but a disqualification shall be based on reasonable safety or reliability concerns related to the contractor's failure to meet any of the minimum qualifications established in subsection (3) of this Section or to meet the utility's publicly available and commercially reasonable safety or reliability standards.

2. The utility shall provide notice of the utility's objection to the contractor within the notice periods established by the new attacher in Section 4 (9)(a)2, (9)(b)2, (10)(b)3, and (10)(c) of this administrative regulation and in the utility's objection must identify at least one available qualified contractor.

(3) Contractor minimum qualification requirements. Utilities shall ensure that contractors on a utility-provided list, and new attachers shall ensure that contractors selected pursuant to subsection (2)(a) of this section, meet the minimum requirements established in paragraphs (a) through (e) of this subsection.

(a) The contractor has agreed to follow published safety and operational guidelines of the utility, if available, but if unavailable, the contractor shall agree to follow National Electrical Safety Code (NESC) guidelines.

(b) The contractor has acknowledged that the contractor knows how to read and follow licensed-engineered pole designs for make-ready, if required by the utility.

(c) The contractor has agreed to follow all local, state, and federal laws and regulations including the rules regarding Qualified and Competent Persons under the requirements of the Occupational and Safety Health Administration (OSHA) rules.

(d) The contractor has agreed to meet or exceed any uniformly applied and reasonable safety and reliability thresholds established by the utility, if made available.

(e) The contractor shall be adequately insured or shall establish an adequate performance bond for the make-ready the contractor will perform, including work the contractor will perform on facilities owned by existing attachers.

(4) A consulting representative of an electric utility may make final determinations, on a nondiscriminatory basis, if there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

#### Section 6. Notice of Changes to Existing Attachers

(1) Unless otherwise established in a joint use agreement or special contract, a utility shall provide an existing attacher no less than 60 days written notice prior to:

(a) Removal of facilities or termination of any service to those facilities if that removal or termination arises out of a rate, term, or condition of the utility's pole attachment tariff or any special contract regarding pole attachments between the utility and the attacher; or

(b) Any modification of facilities by the utility other than make-ready noticed pursuant to Section 4 of this administrative regulation, routine maintenance, or modifications in response to emergencies.

(2) Stays from removals, terminations, and modifications noticed pursuant to subsection (1) of this section.

(a) An existing attacher may request a stay of the action contained in a notice received pursuant to subsection (1) of this section by filing a motion pursuant to 807 KAR 5:001, Section 4 within fifteen (15) days of the receipt of the first notice provided pursuant to subsection (1) of this section.

(b) The motion shall be served on the utility that provided the notice pursuant to 807 KAR 5:001, Section 5(1).

(c) The motion shall not be considered unless it includes the relief sought, the reasons for such relief, including a showing of irreparable harm and likely cessation of cable television system operator or telecommunication service, a copy of the notice, and a certification that service was provided pursuant to paragraph (b) of this subsection.

(d) The utility may file a response within ten (10) days of the date the motion for a temporary stay was filed.

(e) No further filings under this subsection shall be considered unless requested or authorized by the commission.

#### (3) Transfer of Attachments to New Poles.

(a) Unless an applicable tariff or special contract or Section 4 of this administrative regulation establishes a different timeframe, existing attachers shall transfer their attachments within 60 days of receiving written notice from the utility pole owner.

(b) Existing attachers may deviate from the time limit established in paragraph (a) of this subsection for good and sufficient cause that renders it infeasible for the existing attacher to complete the transfer within the time limit established. An existing attacher that requires such a deviation shall immediately notify, in writing, the utility and shall identify the affected poles and include a detailed explanation of the reason for the deviation and the date by which the attacher shall complete the transfer. An existing attacher shall deviate from the time limits established in paragraph (a) of this subsection for a period no longer than is necessary to complete the transfer.

(c) If an existing attacher fails to transfer its attachments within the timeframe established in paragraph (a) of this subsection and the existing attacher has not notified the utility of good and sufficient cause for extending the time limit pursuant to paragraph (a) of this subsection, a utility pole owner may transfer attachments at the existing attacher's expense.

(d) A utility pole owner may transfer an existing attacher's attachment prior to the expiration of any period established by paragraph (a) or (b) of this subsection if an expedited transfer is necessary for safety or reliability purposes.

Section 7. Complaints for Violations of This Administrative Regulation.

(1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall establish the names of the complainant and the defendant, and shall state:

- (a) The full name and post office address of the complainant;
- (b) The full name and post office address of the defendant;
- (c) Fully, clearly, and with reasonable certainty, the act or omission, of which complaint is made, with a reference, if practicable, to the law, order, or administrative regulation, of which a failure to comply is alleged, and other matters, or facts, if any, as necessary to acquaint the commission fully with the details of the alleged failure; and
- (d) The relief sought.

(2) Signature. The complainant or his or her attorney, if applicable, shall sign the complaint. A complaint by a corporation, association, or another organization with the right to file a complaint, shall be signed by its attorney.

(3) How filed.

(a) Complaints shall be filed in accordance with the electronic filing procedures in 807 KAR 5:001, Section 8.

(b) Notwithstanding 807 KAR 5:001, Section 8(3), the filing party shall file two (2) copies in paper medium with the commission in the manner required by 807 KAR 5:001, Section 8(12)(a)2.

(4) Procedure on filing of complaint.

(a) Upon the filing of a complaint, the commission shall immediately examine the complaint to ascertain if it establishes a prima facie case and conforms to this administrative regulation.

1. If the commission finds that the complaint does not establish a prima facie case or does not conform to this administrative regulation, the commission shall notify the complainant and provide the complainant an opportunity to amend the complaint within a stated time.

2. If the complaint is not amended within the time or the extension as the commission, for good cause shown, shall grant, the complaint shall be dismissed.

(b) If the complaint, either as originally filed or as amended, establishes a prima facie case and conforms to this administrative regulation, the commission shall serve an order upon the person complained of, accompanied by a copy of the complaint, directed to the person complained of and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of the order. The commission may require the answer to be filed within a shorter period if the complaint involves an emergency situation or otherwise would be detrimental to the public interest.

(5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he or she shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief that the defendant is willing to give. Upon the acceptance of this offer by the complainant and with the approval of the commission, pursuant to KRS Chapter 278 and this administrative regulation, the case shall be dismissed.

(6) Answer to complaint. If the complainant is not satisfied with the relief offered, the defendant shall file an answer to the complaint within the time stated in the order or the extension as the commission, for good cause shown, shall grant.

(a) The answer shall contain a specific denial of the material allegations of the complaint as controverted by the defendant and also a statement of any new matters constituting a defense.

(b) If the defendant does not have information sufficient to answer an allegation of the complaint, the defendant may so state in the answer and place the denial upon that ground.

(7) Burden of proof.

(a) The complainant has the burden of establishing it is entitled to the relief sought.

(b) The commission may presume that a pole replaced to accommodate a new attachment was a red tagged pole if:

1. There is a dispute regarding the condition of the pole at the time it was replaced; and

2. The utility failed to document and maintain records that inspections were conducted pursuant to 807 KAR 5:006 and that no deficiencies were found on the pole or poles at issue, or if inspections of poles are not required pursuant to 807 KAR 5:006, the utility failed to periodically inspect and document the condition of its poles.

(8) Time for final action.

(a) The commission shall take final action on a complaint alleging that a person or entity was unlawfully denied access to a utility's pole, duct, conduit, or right-of-way within 180 days of a complaint establishing a prima facie case being filed, unless the commission finds it is necessary to continue the proceeding for good cause for up to 360 days from the date the complaint establishing a prima facie case is filed.

(b) The period within which final action shall be taken may be extended beyond 360 days upon agreement of the complainant and defendant and approval of the commission.

This is to certify that the Public Service Commission approved promulgation of this administrative regulation, pursuant to KRS 278.040(3), on May 13, 2021.

LINDA BRIDWELL, Executive Director

MICHAEL J. SCHMITT, Chairman

APPROVED BY AGENCY: May 13, 2021

FILED WITH LRC: May 14, 2021 at 8:44 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A virtual public hearing on this administrative regulation shall be held on July 29, 2021, at 9:00 a.m. eastern standard time at the Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public and instructions on how to attend and participate virtually will be published on the commission's website at [psc.ky.gov](http://psc.ky.gov). Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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 July 31, 2021. Written notification of intent to be heard at the public hearing and written comments on the proposed amendment should be sent or delivered to the contact person listed below.

CONTACT PERSON: John E.B. Pinney, Acting General Counsel, Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-2587, mobile (502) 545-6180, fax (502) 564-7279, email [Jeb.Pinney@ky.gov](mailto:Jeb.Pinney@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: J.E.B. Pinney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the process by which the commission regulates the rates, terms, and conditions of utility pole attachments and access to other utility facilities, establishes specific criteria and procedures for obtaining access to utility poles within the Kentucky Public Service Commission's (PSC) jurisdiction, and establishes a process by which the complaints of those seeking to access utility facilities shall be addressed within the period established by federal law.

(b) The necessity of this administrative regulation: House Bill 320 from the 2021 Regular Session of the General Assembly requires the PSC to promulgate administrative regulations regarding pole attachments under its jurisdiction, including those necessary for the provision of broadband by December 31, 2021. Further, pursuant to 47 U.S.C.A. § 224(c), if a state does not

regulate the rates, terms, and conditions of access to utility poles in a manner proscribed therein, then poles owned by investor owned utilities are subject to regulation by the Federal Communications Commission (FCC). Finally, various state and federal efforts to expand broadband access, as well as changes in technology, have or are likely to result in increased interest in new pole attachments, and there is a need for a clear process to govern pole attachments to avoid delays that may slow or prevent broadband deployment in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.040(3) provides that the PSC may promulgate administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.040(2) states that the PSC has exclusive jurisdiction over the regulation of rates and services of utilities. KRS 278.030(1) provides that all rates received by a utility shall be fair, just, and reasonable. KRS 278.030(2) provides that every utility shall furnish adequate, efficient, and reasonable service. In *Kentucky CATV Ass'n v. Volz*, 675 S.W.2d 393 (Ky. App. 1983), the Court of Appeals held that utility pole attachments are a service that is provided for a rate. House Bill 320 from the 2021 Regular Session of the General Assembly requires the PSC to promulgate administrative regulations regarding pole attachments under its jurisdiction, including those necessary for the provision of broadband. This administrative regulation creates a uniform process with specific timelines and self-help remedies by which cable television providers, telecommunications carriers, broadband internet providers, and government units may seek to make new attachments, while minimizing burdens placed on utilities and considering the fair allocation of costs between attachers and the traditional utility customers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation creates a uniform process with specific timelines and self-help remedies, including one-touch make-ready, by which cable television providers, telecommunications carriers, broadband internet providers, and government units may seek to make new attachments, while minimizing burdens placed on utilities and considering the fair allocation of costs between attachers and traditional utility customers.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation will primarily affect regulated utilities in Kentucky that own or control utility poles, including investor owned electric utilities, rural electric cooperatives, and incumbent local exchange carriers. There are currently four investor owned electric utilities, 21 rural electric cooperatives, and 20 incumbent local exchange carriers, which include investor owned telephone utilities and telephone cooperatives, operating in 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: Currently, utilities process pole attachment requests pursuant to utility specific pole attachment tariffs. The PSC reviews the pole attachment tariffs when they are filed or modified to determine if they meet the requirements of KRS Chapter 278, such as whether service provided is adequate, efficient, and reasonable and whether rates charged are fair, just, and reasonable. Further, under the current process, if a new

attacher or existing attacher contends that the terms of a pole attachment tariff or its implementation violates KRS Chapter 278 or PSC regulations, then they may file a complaint, which must be addressed within 360 days, and request relief from the alleged violation. When setting pole attachment rates under the current process, the PSC has applied the same principles it applies when establishing rates for other customers—that each customer classification should pay for the cost of the service they are being provided. This administrative regulation creates a uniform process with specific timelines and self-help remedies, including one-touch make-ready, by which cable television providers, telecommunications carriers, broadband internet providers, and government units may seek to make new attachments, while minimizing burdens placed on utilities and considering the fair allocation of costs between attachers and the traditional utility customers based on cost causation principals traditionally applied by the PSC. To comply with this administrative regulation, utilities will have to update their pole attachment tariffs so the tariffs are consistent with this regulation and process pole attachment requests and make-ready in a manner consistent with this administrative regulation. Costs will still be allocated pursuant to the principles the PSC applies when establishing rates for other customers, though this administrative regulation does specifically address make ready and survey costs, where practical, to avoid future disputes and delays in the pole attachment process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The regulated entities will incur some initial costs in updating their tariffs to comply with this administrative regulation. The costs of such a process are likely to vary depending on the size and complexity of the utility involved and whether and the extent to which potential attachers or other customer groups object to the proposed tariff. An estimate of the costs regulated entities might incur to update their tariffs would be between \$25,000 and \$200,000 per regulated entity. However, such costs could likely be mitigated if similarly situated utilities worked together to draft tariffs that comply with this regulation. Further, the adoption of a uniform process should reduce potential conflicts in the future that would have to be resolved through the potentially costly complaint process. Finally, a number of the utilities periodically update their pole attachment tariffs in the absence of this regulation. The regulated entities will also incur costs in processing pole attachment applications and performing make ready, and such costs will be based on the size and frequency of new attachment projects. However, like the federal regulation, and consistent with the cost causation principles the PSC applies when setting rates for other customers, utilities are able to recover the costs of processing pole attachment applications and completing make-ready from the attaching entities that caused them to be incurred, so the timelines for reviewing applications and completing make-ready should not result in the regulated entities incurring uncompensated costs. Further, while attaching entities will bear those costs, the process outlined in this regulation should actually reduce their overall costs by reducing or eliminating costly disputes and delays in the pole attachment process. Thus, this administrative regulation is expected to result in a net reduction in costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The adoption of a uniform process should reduce potential conflicts in the future that would have to be resolved through the complaint process. This should reduce the overall cost of pole attachments by reducing or eliminating costly delays.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Zero dollars; no fiscal impact.

(b) On a continuing basis: Zero dollars; no fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The PSC does not anticipate this amendment increasing its enforcement cost. The PSC currently funds enforcement of regulations through its general operating budget funded through annual assessments paid by regulated utilities pursuant to KRS

278.130, et. seq., and this amendment has no effect on that funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fiscal impact.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees are established and existing fees will not be affected.

(9) TIERING: Is tiering applied? Yes. The speed at which utilities are required to process applications and complete make ready is tiered based on the number of poles owned the utility. Tiering the regulation in this manner, which is consistent with how the federal regulation is tiered, will allow smaller utilities to process pole attachment applications at slower rates, while maintaining a relatively consistent attachment speed throughout the state.

#### 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? Government units will be affected to the extent that they are seeking to attach to poles owned or controlled by regulated utilities. As with other attachers, it is expected that costly delays will be reduced or eliminated.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.040; HB 320 (2021).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Zero Dollars; no fiscal impact.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Zero Dollars; no fiscal impact.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Zero Dollars; no fiscal impact.

(c) How much will it cost to administer this program for the first year? Zero Dollars; no fiscal impact.

(d) How much will it cost to administer this program for subsequent years? Zero Dollars; no fiscal impact.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate: 47 U.S.C.A. § 224 does not mandate action but allows states to preempt federal regulation by adopting their own regulation. If states do not preempt federal regulation, then the federal standards in 47 C.F.R. § 1.1401 through 47 C.F.R. § 1.1415 would apply within Kentucky.

(2) State compliance standards: N/A

(3) Minimum or uniform standards contained in the federal mandate: 47 U.S.C.A. § 224(c) governs the minimum standards necessary to preempt federal regulation. Generally, it requires that state regulation of pole attachments shall only preempt federal regulation of poles under federal jurisdiction if the state regulates the rates, terms, and conditions of access to those poles, has the authority to consider and does consider the interest of the customers of attachers and the pole owning utilities, has effective rules and regulations governing attachments; and addresses complaint's regarding pole attachments within 360 days.

(4) Will this administrative regulation impose stricter

requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The PSC would not need to assert jurisdiction over access to facilities owned or controlled by cooperatives in order to preempt federal regulation. The rural electric and telephone cooperatives subject to the jurisdiction of the PSC would be regulated under this administrative regulation. Thus, this administrative regulation does extend the regulation of pole attachments beyond what would be required to preempt federal regulation pursuant to 47 U.S.C.A. § 224(c). With respect to the specific obligations imposed on regulated parties, 47 U.S.C.A. § 224(c) is not specific in the nature of the regulation required to preempt federal regulation. The PSC potentially could continue to regulate pole attachment rates and access primarily through the utility tariffs and the complaint process. However, various state and federal efforts to expand broadband access, as well as changes in technology, have or are likely to result in increased interest in new pole attachments, and the PSC feels that there is a need for a clear process to govern pole attachments to avoid delays that may slow or prevent broadband deployment in Kentucky. The PSC further felt that such a process would promote investment in broadband infrastructure in Kentucky. This administrative regulation does differ from FCC regulation on which it is based to fit within the PSC's regulator frame work; to address circumstances specific to Kentucky; and to address issues that have been identified in the federal regulation. Most notably, this administrative regulation: (1) Adds broadband internet providers and governmental units to the entities entitled to non-discriminatory access to ensure that there is no confusion regarding such entities ability to obtain access; (2) Reduces the number of poles that may be filed as part of a single application pursuant to Section 4(7)(c) and (d) from the lesser of 3,000 and 5.0% in the federal regulation to the lesser of 1,000 and 1.5% to better reflect realities regarding the speed at which pole attachment requests have been made in Kentucky in circumstances where utilities have allowed high volume applications; (3) Adds a requirement that new attachers provide utilities sixty (60) days-notice before they begin submitting applications larger than the lesser of 300 or 0.5 percent of the utility's poles in the state to provide the utilities time to put the resources in place to address larger applications; (4) Requires a utility to file a tariff pursuant to KRS Chapter 278 governing the rates, terms, and conditions of pole attachments; (5) Requires any standard license agreement for attachments made pursuant to the tariff to be based on the terms of the utility tariff or incorporated therein instead of negotiating license agreements on an ad-hoc basis before the attachment process begins to comply with KRS Chapter 278 and avoid delays that arise under the federal regulation when parties negotiate agreements; (6) Explicitly states utilities' obligations with respect to underlying easements and right of ways in a manner consistent with how the FCC regulation has been interpreted after litigation between utilities and attachers to avoid such litigation regarding this regulation; (7) Provides that new attachers shall pay survey costs to ensure that costs are properly allocated and to avoid an ambiguity in the FCC regulation; (7) Addresses the allocation of the cost of replacing poles in a manner consistent with a recent FCC order regarding the same and the PSC's traditional cost allocation methodology to ensure that costs are properly allocated and to avoid an ambiguity in the FCC regulation; (8) Sets a specific timeline for utilities to bill make-ready costs to address an issue under the FCC regulation in which such bills are sometimes sent years after work is completed, which potentially prevents the attacher from determining the validity of the bill; (9) Allows utilities to include general prohibitions against attachments to certain poles in the utilities tariff, for reasons specified in the regulation, instead of excluding transmission poles from the access provisions in the regulation due to the fact specific and technical nature of such determinations; (10) Establishes make-ready deadlines based on the location of the make-ready instead of the location of the attachment to better reflect industry practice and match deadlines to the nature of the work involved; and (11) Sets a process governing the transfer of attachments to new poles installed by utilities in Section 6(3) to address an issue in which some attachers fail or refuse to transfer their attachments

in a timely manner when utilities install new poles.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Many of the state and federal efforts to expand broadband access have focused more on areas served by the cooperatives, because they are more likely to be in rural areas that often have less access to broadband internet service than urban and suburban areas. The PSC has also received many informal written comments from legislators and members of the public regarding the need to facilitate the deployment of broadband in rural areas. Thus, the PSC felt it was important that cooperatives be subject to this regulation, because there is a need for a clear process to govern pole attachments in areas served by the cooperatives to facilitate the deployment of broadband internet service. Further, while 47 U.S.C.A. § 224(c) does not require the PSC to regulate cooperatives to preempt federal regulation, the Court of Appeals previously held that utility pole attachments are a service that is provided for a rate. See *Kentucky CATV Ass'n v. Volz*, 675 S.W.2d 393 (Ky. App. 1983). KRS 278.030 requires that rates received by a utility be fair, just, and reasonable and that a utility furnish adequate, efficient, and reasonable service. This administrative regulation will serve that statutory purpose for cooperatives as it does investor owned utilities. Thus, the PSC felt it was appropriate that cooperatives be subject to this administrative regulation. As noted above, this administrative regulation differs from FCC regulation to fit within the PSC's regulatory framework; to address circumstances specific to Kentucky; and to address issues that have been identified in the federal regulation.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of May 11, 2021

**Call to Order and Roll Call**

The May meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, May 11, 2021 at 1 p.m. In Room 149 of the Capitol Annex. Senator West, Co-Chair, called the meeting to order, the roll call was taken. The minutes from the April 2021 meeting were approved.

**Present were:**

**Members:** Senator Stephen West, Co-Chair; Representative David Hale, Co-Chair; Senators Julie Raque Adams, and David Yates; Representatives Randy Bridges, Deanna Frazier, and Mary Lou Marzian.

**LRC Staff:** Sarah Amburgey, Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Carrie Nichols, and Christy Young.

**Guests:** Sarah Levy, Travis Powell, Council on Postsecondary Education; Mary Elizabeth Bailey, Rosemary Holbrook, Personnel Cabinet; Cary Bishop, Brian C. Thomas, Finance and Administration Cabinet; Joe Donohue, Board of Accountancy; Eden Davis, Larry Hadley, Board of Pharmacy; Jeff Allen, Board of Dentistry; Jessica Estes, Morgan Ransdell, Board of Nursing; Chuck Stribling, Kimberlee Perry, Sam Flynn, Morgan Eaves, Labor Cabinet; Dale Hamblin, Robert Swisher, Department of Workers' Claims; Abigail Gall, DJ Wasson, Department of Corrections; Kara Daniel, Adam Mather, Office of Inspector General; Julie Brooks, Erica Brakefield, Clay Hardwick, Department for Public Health; Lisa Lee, Veronica Judy-Cecil, Leslie Hoffman, Pam Smith, Jonathan Scott, Department for Medicaid Services; Laura Begin, Rachael Ratliff, Veronica Jordan Sears, David Gutierrez, Department for Community Based Services; Kelli Rodman, Wes Duke, Sarah Cooper, Cabinet for Health and Family Services; Dr. Whitney Jones, Colon Cancer Prevention Project; Caroline Ruschell, Laura Kretzer, Children's Advocacy Centers.

**The Administrative Regulation Review Subcommittee met on Tuesday, May 11, 2021, and submits this report:**

**Administrative Regulations Reviewed by this Subcommittee:  
COUNCIL ON POSTSECONDARY EDUCATION: Nonpublic  
Colleges**

13 KAR 1:020. Private college licensing. Sarah Levy, executive director, and Travis Powell, vice president and general counsel, represented the council.

In response to questions by Representative Marzian, Mr. Powell stated that, prior to this version of this administrative regulation, fees brought in approximately \$263,000 per year. The council needed sufficient fee revenue to provide for three (3) full-time staff positions. The council's goal was oversight to prevent bad actors and maintain a high quality of education. At least two (2) private, for-profit institutions had closed. The council worked closely with closing institutions to assist with student transfers.

In response to questions by Representative Frazier, Mr. Powell stated that the council regulated public and private educational institutions; however, oversight was different for public institutions, which were statutorily established and not licensed. Academic programs were approved and reviewed for both public and private institutions. Tuition rates were regulated at public, but not private, institutions. Licensure fees were used to fund oversight of private institutions, while General Fund money was typically the funding source for oversight for public institutions. Licensure renewal was \$500 for most private institutions, although fees were higher for large institutions. Initial licensure fees for new private institutions were increasing significantly because the council had more work on the front end to help institutions commence operation.

In response to questions by Co-Chair Hale, Mr. Powell stated that examples of new private institutions included Summit Christian University in Mayfield, Kentucky College of Art and Design, and possibly the University of Somerset. There was an exemption process for religious institutions that solely provided education for religious purposes. Usually, those were smaller institutions with limited requirements. Co-Chair Hale stated that fee increases seemed significant.

In response to questions by Co-Chair West, Mr. Powell stated that there were no comments received during the public hearing and public comment period. The fees supported salaries and benefits for staff who provided oversight for the private institutions. The program collected approximately \$263,000 from fees annually and was expected to collect \$440,000 after the fee increases. The previous fee level did not adequately support these staff. Expenses did not include technology and other types of costs. The council believed that it was appropriate to use fees

to support the oversight of private institutions and General Fund monies to support oversight of public institutions because it did not seem appropriate to use public monies to fund oversight of private institutions. Most private institutions were non-profit entities.

In response to a question by Representative Bridges, Mr. Powell stated that two (2) full-time employees worked exclusively with licensure of private institutions. Two (2) other employees each worked part-time with this program; therefore, there was a total of three (3) full-time staff.

A motion was made and seconded to approve the following amendments: to amend Sections 3 and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Interstate Reciprocity Agreements**

13 KAR 4:010. State Authorization Reciprocity Agreement.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**PERSONNEL CABINET: Personnel Cabinet, Classified**

101 KAR 2:095 & E. Classified service general requirements. Mary Bailey, commissioner, and Rosemary Holbrook, assistant general counsel, represented the cabinet.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 4, and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**FINANCE AND ADMINISTRATION CABINET: Office of the Secretary: Travel Expense and Reimbursement**

200 KAR 2:006 & E. Employees' reimbursement for travel.

Cary Bishop, executive director, Office of General Counsel, and Brian Thomas, assistant general counsel, represented the office.

In response to a question by Co-Chair West, Mr. Thomas stated that these changes established flexibility regarding travel reimbursement due to work station changes that resulted from the coronavirus (COVID-19) pandemic.

**BOARDS AND COMMISSIONS: State Board of Accountancy**

201 KAR 1:100. Continuing professional education requirements. Joe Donohue, executive director, represented the

board.

A motion was made and seconded to approve the following amendments: to amend Sections 2 through 5 and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Board of Pharmacy**

201 KAR 2:380. Board authorized protocols. Eden Davis, general counsel, and Larry Hadley, executive director, represented the board. Dr. Whitney Jones, founder, Colon Cancer Prevention Project, appeared in support of this administrative regulation.

In response to a question by Co-Chair West, Mr. Hadley stated that this administrative regulation was being amended to add additional disease states to the list of those covered by board-authorized protocols, which established very specific requirements for treating each disease state. These represented treatment agreements between physicians and pharmacists. Outcomes were reported by the pharmacist back to the physician.

In response to a question by Representative Marzian, Mr. Hadley stated that HCV and HIV testing was through saliva samples.

In response to a question by Co-Chair West, Dr. Jones stated that cancer screening had reduced by as much as ninety (90) percent due to the coronavirus (COVID-19) pandemic. Pharmacists provided a range of screening options, and this administrative regulation added colorectal screening opportunities. Approximately thirty (30) percent of Kentucky's applicable population remained unscreened for colorectal cancer. Increasing use of stool-based screening meant that state requirements needed to keep up. This screening only applied to those at average risk, not those at high risk or those experiencing symptoms.

In response to a question by Co-Chair Hale, Dr. Jones stated that the screening stool test called Cologuard was ninety-three (93) percent effective in detecting cancer. The other commonly used test, FIT, was approximately seventy-six (76) percent effective. Serial sensitivity increased effectiveness.

In response to a question by Representative Marzian, Dr. Jones stated that the ten (10) year colonoscopy was still recommended. Stool-based screening was every three (3) years for those of average risk. Those who are at higher risk or having symptoms should use the colonoscopy screening. Stool testing would lead to colonoscopy in the event of a detection.

A motion was made and seconded to approve the following amendment: to amend Section 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Board of Dentistry**

201 KAR 8:505E. Administration of COVID-19 Immunizations. Jeff Allen, executive director, represented the board.

In response to questions by Co-Chair West, Mr. Allen stated that dentists administering immunizations was new to Kentucky but was already in place in some other states. When this emergency administrative regulation was initially filed, there was still an underlying need for providers who could administer immunizations for coronavirus (COVID-19). That need was less now. The board did not intend to file an ordinary administrative regulation at this time; therefore, these provisions would expire.

In response to a question by Representative Bridges, Mr. Allen stated that there had been many logistical and storage-related issues related to immunization distribution. People tended to visit their dentists more frequently than their physicians. Representative Bridges stated that his personal physician had participated in an immunization access program but was unable to provide coronavirus (COVID-19) immunizations in his practice. Representative Frazier stated that it was her understanding that physicians were not allowed to administer these immunizations in their own practices. Co-Chair West stated that this inconsistency seemed troubling. Co-Chair Hale stated that it seemed odd for dentists to be able to provide these immunizations while physicians were unable.

#### **Board of Nursing**

201 KAR 20:065. Professional standards for prescribing Buprenorphine-Mono Product or Buprenorphine-Combined-with-Naloxone by APRNs for medication assisted treatment for opioid use disorder. Jessica Estes, executive director, and Morgan Ransdell, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to add a new Section 8 to establish consultation requirements. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:370. Applications for licensure.

A motion was made and seconded to approve the following amendment: to amend Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:660. Licensed certified professional midwives duty to report.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2, 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.

#### **LABOR CABINET: Department of Workers' Claims**

803 KAR 25:092. Workers' compensation pharmacy fee schedule. Dale Hamblin, assistant general counsel, and Robert Swisher, commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Department of Insurance: Insurance Contract**

806 KAR 14:121. Minimum standards for the readability and intelligibility of insurance contracts. Abigail Gall, regulation coordinator, and DJ Wasson, deputy commissioner, represented the department.

In response to a question by Co-Chair West, Ms. Wasson stated that readability and intelligibility requirements applied to all types of policies except commercial policies.

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 3 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Life Insurance and Annuity Contracts**

806 KAR 15:050. Reporting and general requirements for settlement providers and brokers.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1, 2, 4, 5, and 7 through 10 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: Office of the Inspector General: Certificate of Need**

900 KAR 6:030. Certificate of need expenditure minimums. Kara Daniel, deputy inspector general; Adam Mather, inspector general; and Kelli Rodman, legislative government relations director, represented the office. Senator Michael Nemes and Representative Russell Webber appeared in support of these administrative regulations.

In response to questions by Co-Chair West, Mr. Mather stated that the office was endeavoring to align the State Health Plan levels of care. An existing outpatient care center in Shepherdsville, Bullitt County, was becoming an acute-care hospital, with beds transferring from an existing University of Louisville hospital within the same Area Development District.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to retain provisions regarding 2013 and 2015 expenditure minimums. Without objection, and with agreement of the agency, the amendments were approved.

900 KAR 6:055. Certificate of need forms.

A motion was made and seconded to approve the following amendments: to amend Section 2(13) to clarify that the notice shall be filed for relocations or redistributions to outpatient health care centers operated by the hospital and licensed pursuant to 902 KAR 20:074. Without objection, and with agreement of the agency, the amendments were approved.

900 KAR 6:060. Timetable for submission of certificate of need applications.

900 KAR 6:065. Certificate of need application process.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to define "person"; and (2) to amend Section 2(3) to prohibit: (a) project locations and service areas outside the Commonwealth of Kentucky; and (b) persons located and residing solely outside the Commonwealth of Kentucky from qualifying as affected persons for the purpose of opposing an application. Without objection, and with agreement of the agency, the amendments were approved.

900 KAR 6:080. Certificate of need emergency circumstances.

900 KAR 6:090. Certificate of need filing, hearing, and show cause hearing.

A motion was made and seconded to approve the following amendments: to amend Section 3(4) to: (1) add procedures for an applicant to challenge the standing of any person requesting a hearing or to participate in a hearing; and (2) prohibit participation by a person located and residing solely outside the Commonwealth of Kentucky or acting as a surrogate for another disqualified person. Without objection, and with agreement of the agency, the amendments were approved.

900 KAR 6:095. Certificate of need administrative escalations.

**Certificate of Need**

900 KAR 6:100. Certificate of need standards for implementation and biennial review.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

900 KAR 6:105. Certificate of need advisory opinions.

900 KAR 6:110. Certificate of need notification requirements.

A motion was made and seconded to approve the following amendments: to amend Sections 4 and 5 to specify that the notification requirement for relocation and redistribution of beds to another hospital shall include an outpatient health care center

operated by the hospital and licensed pursuant to 902 KAR 20:074. Without objection, and with agreement of the agency, the amendments were approved.

900 KAR 6:115. Certificate of need requirements for critical access hospitals, swing beds, and continuing care retirement communities.

**Department for Public Health: Maternal and Child Health**

902 KAR 4:150E. Enhanced HANDS services in response to declared national or state public health emergency. Julie Brooks, regulation coordinator, represented both departments.

**Department for Public Health: Kentucky Early Intervention System**

902 KAR 30:210E. Enhanced early intervention services in response to declared national or state public health emergency.

**Radon**

902 KAR 95:040. Radon Contractor Registration Program. Julie Brooks, regulation coordinator, and Clay Hardwick, Environmental Health Inspection Program, represented the department.

In response to questions by Co-Chair West, Ms. Brooks stated that fees were not increasing. Fees appeared to be being doubled; however, because they were going from annual to biannual, they were actually remaining the same but with a longer renewal period. The radon contractor registration fee varied from state-to-state. Kentucky's fee was \$500 for two (2) years.

In response to questions by Co-Chair Hale, Ms. Brooks stated that there were a variety of concerns raised during the public comment period. Many who submitted public comments did not approve of the operation of the program; however, the program had not been fully operational due to litigation. A couple of the commenters were opposed to the fee and the cost estimate for the database system. There were questions regarding the required background check; however, there was statutory authority to support the background check. Several commenters submitted duplicate comments. Mr. Hardwick stated that the late renewal fee was increasing. Out-of-state contractors were able to perform inspections in Kentucky if they complied with requirements. There was not a formal reciprocity process.

A motion was made and seconded to approve the following amendments: to amend Section 2 to specify that both the "initial registration" and the "inactive registration" period shall be valid for two (2) years, clarifying that the fee for those registrations was a biennial fee and not an annual fee.

**Department for Medicaid Services: Certified Provider Requirements**

907 KAR 7:020. 1915(c) Home and community based services waiting list placement appeal process. Dave Gutierrez, branch manager, Clinical Services Branch; Leslie Hoffman, chief behavioral health officer; Jonathan Scott, regulatory and legislative advisor; and Pam Smith, division director, Community Alternatives, represented the department.

In response to questions by Co-Chair West, Mr. Scott stated that some waivers did not have waiting lists. This administrative regulation proactively established a process if waiting lists became necessary. Appeals were available for a denied person. This was primarily for the Supports for Community Living waiver. The current waiting list system was not codified. Ms. Hoffman stated that there were three (3) levels within the waiting list system for a Supports for Community Living waiver.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Department for Community Based Services: Protection and Permanency: Child Welfare**

922 KAR 1:490E. Background checks for foster and adoptive parents and relative and fictive kin. Laura Begin, regulation

coordinator; Rachael Ratliff, regulation coordinator; and Veronica Sears branch manager, Adoptions Branch, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 11 and form DPP-157 to clarify two (2) of the checkbox categories for requesting a background check. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 1:540. Registration of a foreign adoption.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 2 and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Child Welfare**

922 KAR 1:580. Standards for children's advocacy centers.

A motion was made and seconded to approve the following amendments: to amend: (1) Section 3(5)(a)3.a. to specify the following fields of study for the doctorate or master's degree requirement for a forensic interviewer: education, human services, or criminal justice field; (2) Section 3(5)(a)3.c. to change the experience requirement from "three (3) years of experience interviewing children" to "three (3) years of experience working with children"; and (3) Section 4 to correct a citation. Without objection, and with agreement of the agency, the amendments were approved.

**Other Business:** In response to questions by Co-Chair West, Laura Begin, regulation coordinator, Department for Community Based Services, stated that the emergency administrative regulation pertaining to coronavirus (COVID-19) child care facility requirements was revised in accordance with Senate Bill 148 from the 2021 Regular Session of the General Assembly to provide for combining of classes. That version had since been withdrawn. The Department for Public Health administrative regulation governing face coverings remained in effect, as did the child care facility requirements promulgated by the Department for Community Based Services.

In response to questions by Representative Frazier, Ms. Begin stated that there had been restrictions prohibiting combining classes at child care facilities. This was in order to prevent the spread of coronavirus (COVID-19). Those requirements had been eased in accordance with Senate Bill 148 from the 2021 Regular Session of the General Assembly. Because that emergency administrative regulation had now been withdrawn, requirements reverted to pre-pandemic requirements. The department had recently issued guidance to child care facilities regarding public health safety and had a call center to answer questions from providers.

Co-Chair West stated that some of the guidance child care facilities were getting from the department were in conflict with Senate Bill 148 from the 2021 Regular Session of the General Assembly. Co-Chair West requested that the department ensure that the guidance being distributed was in compliance with Senate Bill 148.

In response to questions by Co-Chair West, Julie Brooks, regulation coordinator, Department for Public Health, stated that the face covering emergency administrative regulation was still in effect, including for child care facilities. Staff and students of child care facilities were required to wear face coverings, except for children under five (5) years of age, those with medical exemptions, and in certain circumstances outdoors and related to eating. Some facilities were requiring waivers related to things such as the choking hazards of child mask wearing; however, those waivers were never directly required by the department. Limited-duration child care centers were operational and requirements in effect in the summer of 2020 and were not currently in effect.

In response to a question by Co-Chair West, staff stated that it was the current understanding that, during the interim, off-campus members appearing by videoconference were able to vote.

The following administrative regulations were deferred or removed from the May 11, 2021, subcommittee agenda:

**FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Sales and Use Tax; Service and Professional Occupations**

103 KAR 26:131. Landscaping Services.

**GENERAL GOVERNMENT CABINET: Kentucky Infrastructure Authority**

200 KAR 17:100. Guidelines for Broadband Deployment Account.

**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.

**Board of Alcohol and Drug Counselors**

201 KAR 35:010E. Definitions for 201 KAR Chapter 035.

201 KAR 35:020E. Fees.

201 KAR 35:025E. Examinations.

201 KAR 35:040E. Continuing education requirements.

201 KAR 35:050E. Curriculum of study.

**Board of Alcohol and Drug Counselors**

201 KAR 35:055E. Temporary registration or certification.

201 KAR 35:070E. Supervision experience.

201 KAR 35:075E. Substitution for work experience for an applicant for certification as an alcohol and drug counselor.

201 KAR 35:080E. Voluntary inactive and retired status.

**TRANSPORTATION CABINET: Administration**

601 KAR 2:231. Repeal of 601 KAR 002:030.

**LABOR CABINET: Department of Workplace Standards: Occupational Safety and Health**

803 KAR 2:180E. Recordkeeping, reporting, and statistics. Sam Flynn, general counsel, and Chuck Stribling, federal – state coordinator, represented the department.

In response to a question by Co-Chair West, Mr. Stribling stated that this administrative regulation was being amended in response to Senate Bill 65 from the 2021 Regular Session of the General Assembly. Revisions to this administrative regulation were to address concerns of the subcommittee that led to this administrative regulation being found deficient in 2020.

In response to questions by Co-Chair Hale, Mr. Stribling stated that this administrative regulation was different from the version found deficient in 2020. This version changed the definition for "hospitalization", by removing observation and diagnostics from the definition. This version also clarified that these requirements only applied to work-related incidents and reduced the reporting deadline for hospitalization of three (3) or more employees to seventy-two (72), rather than eight (8) hours. Mr. Flynn stated that this matter was refiled under the same administrative regulation number, rather than by filing a new administrative regulation under a new number, after meeting with Co-Chair West and the Chamber of Commerce at which Co-Chair West expressed support for filing this matter as an emergency administrative regulation.

Co-Chair West thanked the cabinet for making the policy changes and stated concern regarding procedural matters. This administrative regulation should be filed under a new administrative regulation number. In response to a question by

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Co-Chair West, Mr. Stribling and Mr. Flynn agreed to defer consideration of this administrative regulation to the June subcommittee meeting. A motion was made and seconded to defer this administrative regulation to the June meeting. Without objection, and with agreement of the agency, this administrative regulation was deferred.

Co-Chair West stated that the cabinet had time to repeal this administrative regulation and file a new version under a new number before the federal deadline.

Co-Chair Hale thanked the cabinet for cooperating.

### **Department of Workers' Claims**

803 KAR 25:091. Workers' compensation hospital 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.

### **PUBLIC PROTECTION CABINET: Horse Racing Commission: General**

810 KAR 2:001E. Definitions for 810 KAR Chapter 002.

### **Licensing**

810 KAR 3:001E. Definitions for 810 KAR Chapter 003.

### **Flat and Steeplechase Racing**

810 KAR 4:001E. Definitions for 810 KAR Chapter 004.

### **Standardbred Racing**

810 KAR 5:001E. Definitions for 810 KAR Chapter 005.

### **Pari-Mutuel Wagering**

810 KAR 6:001E. Definitions for 810 KAR Chapter 006.

810 KAR 6:010E. Exotic wagering.

810 KAR 6:030E. Pari-mutuel wagering.

### **Harness Racing**

811 KAR 1:251E. Repeal of 811 KAR 001:250.

### **Department for Public Health: Communicable Diseases**

902 KAR 2:211E. Covering the face in response to declared national or state public health emergency.

### **Department for Medicaid Services: Payment and Services**

907 KAR 3:005. Coverage of physicians' services.

907 KAR 3:010. Reimbursement for physicians' services.

### **Department for Community Based Services: Protection and Permanency: Child Welfare**

922 KAR 1:490. Background checks for foster and adoptive parents and relative and fictive kin caregivers.

### **Daycare**

922 KAR 2:415E. Enhanced requirements for certified and licensed child care and limited duration child care programs as a result of a declare state of emergency.

**The subcommittee adjourned at 2:35 p.m. The next meeting of this subcommittee is tentatively scheduled for June 8, 2021, at 10 a.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**

**L - 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**

**L - 17**

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**

**L - 34**

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this *Register* year.

### **Technical Amendment Index**

**L - 35**

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**

**L - 35**

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](#).

201 KAR 035:025E	47 Ky.R.	1878	3-5-2021
Am Comments		2542	5-13-2021
201 KAR 035:040E	47 Ky.R.	1880	3-5-2021
Am Comments		2544	5-13-2021
201 KAR 035:050E	47 Ky.R.	1884	3-5-2021
Am Comments		2547	5-13-2021
201 KAR 035:055E	47 Ky.R.	1886	3-5-2021
201 KAR 035:070E	47 Ky.R.	1889	3-5-2021
Am Comments		2550	5-13-2021
201 KAR 035:075E	47 Ky.R.	1893	3-5-2021
Am Comments		2554	5-13-2021
201 KAR 035:080E	47 Ky.R.	1895	3-5-2021
Am Comments		2556	5-13-2021
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
605 KAR 001:215E	47 Ky.R.	2526	5-12-2021
702 KAR 001:190E	47 Ky.R.	503	8-12-2020
702 KAR 003:270E	47 Ky.R.	254	7-14-2020
Expired			4-10-2021
702 KAR 007:125E	47 Ky.R.	258	7-14-2020
Expired			4-10-2021
702 KAR 007:140E	47 Ky.R.	505	8-12-2020
Expired			5-9-2021
787 KAR 001:350E	46 Ky.R.	2867	5-1-2020
Withdrawn			7-22-2020
787 KAR 001:360E	47 Ky.R.	2527	5-4-2021
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
Withdrawn			5-13-2021
803 KAR 002:181E	47 Ky.R.	2529	5-13-2021
803 KAR 002:182E(r)	47 Ky.R.	2531	5-13-2021
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 002:090E	46 Ky.R.	2779	3-20-2020
Replaced		319	8-25-2020
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
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(r)	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

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
902 KAR 002:020E	47 Ky.R. 12	6-15-2020	Amended	47 Ky.R. 94	11-18-2020
Replaced	1039	12-15-2020	012 KAR 001:120		
902 KAR 002:190E	47 Ky.R. 266	7-10-2020	Amended	47 Ky.R. 95	
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902 KAR 002:210E	47 Ky.R. 508	8-10-2020	012 KAR 001:125		
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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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200.650-200.676	902 KAR 030:210E	211.360	902 KAR 010:140
	902 KAR 030:210	211.375	902 KAR 010:140
200.700	902 KAR 004:140E	211.684	922 KAR 001:330
	902 KAR 004:150E	211.689	902 KAR 004:140E
	902 KAR 004:150	211.090	902 KAR 004:030
202A.011	922 KAR 001:330		902 KAR 004:110
	922 KAR 001:580		902 KAR 004:150E
	922 KAR 005:020		902 KAR 004:150
202A.241	902 KAR 020:160		902 KAR 050:050
202A.400	922 KAR 005:020		902 KAR 050:090
202B.010	922 KAR 001:390	211.1751	902 KAR 008:160
204.1-050	806 KAR 009:370	211.180	902 KAR 002:211E
205.010	910 KAR 001:151		902 KAR 004:030
205.2005	921 KAR 003:025		902 KAR 004:110
205.201	910 KAR 001:151		902 KAR 004:150E
205.203	910 KAR 001:151		902 KAR 004:150
205.204	910 KAR 001:151	211.220	902 KAR 010:160
205.231	921 KAR 003:060	211.3103	902 KAR 095:040
205.455	910 KAR 001:151	211.350	815 KAR 035:015
205.460	910 KAR 001:151	211.350-211.380	922 KAR 001:300
205.465	910 KAR 001:151		922 KAR 002:120
205.510	907 KAR 003:005	211.357	902 KAR 010:110
205.520	907 KAR 001:038	211.360	902 KAR 010:110
	907 KAR 003:005		902 KAR 010:150
	907 KAR 003:250		902 KAR 010:160
	907 KAR 007:020	211.370	902 KAR 010:110
	907 KAR 015:070E	211.375	902 KAR 010:110
	907 KAR 015:080	211.380	902 KAR 010:110
205.560	907 KAR 001:604	211.684	922 KAR 001:490
	907 KAR 003:005	211.689	902 KAR 004:150E
	907 KAR 003:010		902 KAR 004:150
205.5601	907 KAR 003:060	211.840-211.852	902 KAR 100:012
205.5602	907 KAR 003:060	211.9101	902 KAR 095:040
205.5603	907 KAR 003:060	211.9107	902 KAR 095:040
205.5605	907 KAR 003:250	211.9119	902 KAR 095:040
	907 KAR 007:020	211.970	902 KAR 010:010
205.5606	907 KAR 003:250		902 KAR 010:110
	907 KAR 007:020		902 KAR 010:140
205.5607	907 KAR 003:250		902 KAR 010:150
	907 KAR 007:020		902 KAR 010:160
205.565	907 KAR 003:010		902 KAR 010:170
205.622	907 KAR 001:038	211.972	902 KAR 010:160
	907 KAR 003:005		902 KAR 010:170
	907 KAR 015:080	211.974	902 KAR 010:150
205.6312	907 KAR 001:604		902 KAR 010:160
205.6485	907 KAR 001:604		902 KAR 010:170
205.712	601 KAR 002:232	211.976	902 KAR 010:110
	601 KAR 002:233		902 KAR 010:150
	601 KAR 002:233E		902 KAR 010:160
205.8451	907 KAR 001:038	211.981	902 KAR 010:150
	907 KAR 001:604		902 KAR 010:160
	907 KAR 003:005		902 KAR 010:170
205.950	910 KAR 001:151	211.990	902 KAR 010:010
205.955	910 KAR 001:151		902 KAR 010:110
209.030	908 KAR 001:400		902 KAR 010:140
	910 KAR 001:151		902 KAR 100:012
	922 KAR 005:020	211.995	902 KAR 010:170

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212.025	902 KAR 008:170		900 KAR 006:115
212.120	902 KAR 008:170		902 KAR 020:160
212.230	902 KAR 008:160	217	922 KAR 002:120
212.240	902 KAR 008:160	217.005-217.205	902 KAR 045:160
212.245	902 KAR 008:160	217.005-217.215	902 KAR 050:032
	902 KAR 008:170	217.015	201 KAR 002:225
212.890	902 KAR 008:160		201 KAR 005:140
	902 KAR 008:170		902 KAR 045:110
213.046	201 KAR 020:660		902 KAR 045:180
213.056	922 KAR 001:540		902 KAR 045:190
213.101	901 KAR 005:120		902 KAR 050:010
213.106	901 KAR 005:120		902 KAR 050:031
214.010	902 KAR 002:020	217.025	902 KAR 045:110
	902 KAR 002:211E		902 KAR 045:180
	902 KAR 002:220		902 KAR 045:190
214.020	902 KAR 002:220		902 KAR 050:010
214.034	922 KAR 001:300		902 KAR 050:033
	922 KAR 001:380		902 KAR 050:090
214.036	922 KAR 001:330	217.035	902 KAR 045:110
214.155	902 KAR 004:030		902 KAR 045:180
214.610	201 KAR 009:360		902 KAR 045:190
214.620	201 KAR 009:360		902 KAR 050:010
214.645	902 KAR 002:020		902 KAR 050:080
	902 KAR 002:211E	217.037	902 KAR 045:110
215.520	902 KAR 002:020		902 KAR 045:180
216.787	910 KAR 001:151		902 KAR 045:190
216B.010	902 KAR 020:160		902 KAR 050:080
216B.010-216B.130	900 KAR 005:020	217.045	902 KAR 050:033
216B.015	802 KAR 003:010	217.085	902 KAR 045:110
	900 KAR 006:030		902 KAR 045:180
	900 KAR 006:055	217.095	902 KAR 045:110
	900 KAR 006:060		902 KAR 045:180
	900 KAR 006:065	217.125	902 KAR 045:110
	900 KAR 006:080	217.155	902 KAR 045:110
	900 KAR 006:090		902 KAR 045:180
	900 KAR 006:095		902 KAR 045:190
	900 KAR 006:100	217.182	201 KAR 005:140
	900 KAR 006:105	217.215	201 KAR 002:171
	900 KAR 006:115		902 KAR 045:160
	902 KAR 002:020	217.216	201 KAR 002:171
	902 KAR 020:160	217.290-217.390	902 KAR 045:160
216B.020	900 KAR 006:080	217.811	902 KAR 045:110
	900 KAR 006:090	217.990-217.992	902 KAR 045:160
	900 KAR 006:105	217B	302 KAR 050:021
	900 KAR 006:115		302 KAR 050:045
216B.040	900 KAR 006:060		302 KAR 050:056
	900 KAR 006:065	217C	902 KAR 050:120
	900 KAR 006:090	217C.010-217C.990	902 KAR 050:032
216B.050	902 KAR 020:440		902 KAR 050:033
216B.061	900 KAR 006:080		902 KAR 050:040
	900 KAR 006:095	217C.010	902 KAR 050:031
	900 KAR 006:105		902 KAR 050:050
	900 KAR 006:110	217C.020	902 KAR 050:031
	900 KAR 006:115	217C.030	902 KAR 050:010
216B.062	900 KAR 006:060		902 KAR 050:080
	900 KAR 006:065	217C.050	902 KAR 050:071
	900 KAR 006:090	217C.060	902 KAR 050:031
216B.065	900 KAR 006:110		902 KAR 050:071
216B.066	900 KAR 006:110		902 KAR 050:080
216B.085	900 KAR 006:065		902 KAR 050:090
216B.095	900 KAR 006:060	217C.070	902 KAR 050:050
	900 KAR 006:065	217C.100	902 KAR 050:031
	900 KAR 006:090		902 KAR 050:090
216B.105	803 KAR 025:091	217C.990	902 KAR 050:031
	902 KAR 020:160		902 KAR 050:050
	902 KAR 020:440		902 KAR 050:080
216B.332	900 KAR 006:115	218A.010	201 KAR 020:065
216B.400	201 KAR 020:411	218A.170	201 KAR 020:065
	802 KAR 003:010	218A.172	201 KAR 009:260
216B.990	900 KAR 006:080	218A.202	201 KAR 009:230
	900 KAR 006:090		902 KAR 020:160
	900 KAR 006:095	218A.205	201 KAR 002:061
	900 KAR 006:105		201 KAR 009:081
	900 KAR 006:110		201 KAR 009:200

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	201 KAR 009:210		810 KAR 008:020
	201 KAR 009:240		810 KAR 008:025
	201 KAR 009:260		810 KAR 008:040
	201 KAR 009:270		811 KAR 002:120
	201 KAR 009:360	230.240	810 KAR 002:020
	201 KAR 020:161		810 KAR 004:030
	201 KAR 025:011		810 KAR 008:010
	201 KAR 025:021		810 KAR 008:020
	201 KAR 025:031		810 KAR 008:025
222.005	908 KAR 001:400		810 KAR 008:040
	922 KAR 005:020		810 KAR 008:060
222.211	908 KAR 001:381	230.260	810 KAR 002:260
222.215	908 KAR 001:390		810 KAR 003:020
222.221	908 KAR 001:400		810 KAR 004:030
223.010	902 KAR 010:030		810 KAR 005:001E
223.020	902 KAR 010:030		810 KAR 005:001
223.030	902 KAR 010:030		810 KAR 005:080
	902 KAR 010:036		810 KAR 006:020
223.060	902 KAR 010:030		810 KAR 008:010
223.080	902 KAR 010:030		810 KAR 008:020
223.990	902 KAR 010:030		810 KAR 008:025
224.1-400	401 KAR 039:060		810 KAR 008:030
224.10	401 KAR 039:060		810 KAR 008:040
224.10-100	401 KAR 060:005		810 KAR 008:060
	401 KAR 061:036	230.265	810 KAR 008:010
	401 KAR 063:002		810 KAR 008:020
224.20-100	401 KAR 060:005		810 KAR 008:025
	401 KAR 061:036		810 KAR 008:030
	401 KAR 063:002		810 KAR 008:060
224.20-110	401 KAR 060:005	230.280	810 KAR 003:020
	401 KAR 061:036		810 KAR 005:080
	401 KAR 063:002	230.290	810 KAR 003:020
224.20-120	401 KAR 060:005		810 KAR 004:030
	401 KAR 061:036		810 KAR 005:080
	401 KAR 063:002		810 KAR 008:010
224.40-310	401 KAR 039:060		810 KAR 008:020
224.46	401 KAR 039:060		810 KAR 008:025
224.50-868	103 KAR 001:160		810 KAR 008:030
224.60-145	103 KAR 001:160		810 KAR 008:040
224.99	401 KAR 039:060		810 KAR 008:060
224A.011	200 KAR 017:100	230.300	810 KAR 003:020
224A.112	200 KAR 017:100		810 KAR 006:010
224A.11121	200 KAR 017:100		810 KAR 006:030
227.450	815 KAR 035:015		810 KAR 008:030
227.480	815 KAR 035:015		810 KAR 008:040
227.489	815 KAR 035:015		811 KAR 001:251E
227.491	815 KAR 035:015	230.310	810 KAR 003:020
227.492	815 KAR 035:015		810 KAR 004:030
227.495	815 KAR 035:015		810 KAR 005:080
230	810 KAR 002:001		810 KAR 008:030
	810 KAR 003:001E		810 KAR 008:040
	810 KAR 003:001	230.320	810 KAR 003:020
	810 KAR 004:001E		810 KAR 004:030
	810 KAR 004:001		810 KAR 008:010
	810 KAR 006:001E		810 KAR 008:020
	810 KAR 006:001		810 KAR 008:025
230.210	810 KAR 005:001E		810 KAR 008:030
	810 KAR 005:001		810 KAR 008:040
	810 KAR 006:020		810 KAR 008:060
230.215	810 KAR 002:020	230.330	810 KAR 003:020
	810 KAR 003:020		811 KAR 002:120
	810 KAR 004:010	230.361	810 KAR 006:010
	810 KAR 004:030		810 KAR 006:020
	810 KAR 005:001E		810 KAR 006:030
	810 KAR 005:001		810 KAR 008:030
	810 KAR 005:080		811 KAR 001:251E
	810 KAR 006:020	230.3615	810 KAR 005:001E
	810 KAR 008:010		810 KAR 005:001
	810 KAR 008:020		810 KAR 006:010
	810 KAR 008:025		810 KAR 006:020
	810 KAR 008:030		810 KAR 006:030
	810 KAR 008:040		811 KAR 001:251E
	810 KAR 008:060	230.370	810 KAR 006:010
230.225	810 KAR 008:010		810 KAR 006:030

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	810 KAR 008:010	257.080	302 KAR 022:150
	810 KAR 008:020	257.990	302 KAR 022:150
	810 KAR 008:025	258.005	902 KAR 008:160
	810 KAR 008:040	258.065	902 KAR 002:020
230.804	811 KAR 001:251E	258.990	902 KAR 002:020
230.398	811 KAR 002:120	260	302 KAR 050:013
	810 KAR 005:080		302 KAR 060:010
	810 KAR 006:010	260.775-260.845	012 KAR 005:010
	810 KAR 006:030		012 KAR 005:020
	811 KAR 001:251E		012 KAR 005:030
230.750	810 KAR 006:010E		012 KAR 005:040
	810 KAR 006:010		012 KAR 005:050
	810 KAR 006:030		012 KAR 005:060
	811 KAR 001:251E		012 KAR 005:070
230.990	810 KAR 006:020	260.813	902 KAR 050:050
234.320	103 KAR 001:160	260.850-260.869	302 KAR 050:021
238.545	820 KAR 001:050		302 KAR 050:031
238.550	820 KAR 001:050		302 KAR 050:045
243.027	804 KAR 004:415		302 KAR 050:056
243.028	804 KAR 004:415		302 KAR 050:080
243.029	804 KAR 004:415	260.992	012 KAR 005:010
243.030	804 KAR 004:415		012 KAR 005:020
244.050	804 KAR 004:415		012 KAR 005:030
244.440	804 KAR 004:415		012 KAR 005:040
244.585	804 KAR 004:415		012 KAR 005:050
246	302 KAR 004:010		012 KAR 005:060
246.030	302 KAR 022:150		012 KAR 005:070
247.4453	902 KAR 050:010	271	202 KAR 007:601
247.453	902 KAR 050:010	271B	922 KAR 001:300
250.021	012 KAR 001:116	273.161	922 KAR 001:300
	012 KAR 001:140	273.401	739 KAR 002:050
	012 KAR 001:155	273.405-273.453	922 KAR 006:010
250.031	012 KAR 001:116	278	807 KAR 005:015
	012 KAR 001:140		807 KAR 005:056
250.041	012 KAR 001:116	281.010	601 KAR 001:113
	012 KAR 001:140	281.600	601 KAR 001:005
250.051	012 KAR 001:116		601 KAR 001:113
	012 KAR 001:140	281.630	601 KAR 001:113
250.061	012 KAR 001:116	281.6301	601 KAR 001:113
	012 KAR 001:140	281.631	601 KAR 001:113
250.071	012 KAR 001:116	281.640	601 KAR 001:113
	012 KAR 001:140	281.650	601 KAR 001:113
250.081	012 KAR 001:116	281.655	601 KAR 001:113
	012 KAR 001:120	281.656	601 KAR 001:113
	012 KAR 001:125	281.730	601 KAR 001:005
	012 KAR 001:130	281.750	601 KAR 001:005
	012 KAR 001:140	281.880	601 KAR 001:005
	012 KAR 001:160	281.990	601 KAR 001:113
	012 KAR 001:170	281A	601 KAR 001:005
	012 KAR 001:175	281A.170-281A.175	702 KAR 005:080
250.091	012 KAR 001:116	286.3-030	806 KAR 009:190
	012 KAR 001:140	304	900 KAR 010:115
250.101	012 KAR 001:116		900 KAR 010:120
	012 KAR 001:140		900 KAR 010:125
250.111	012 KAR 001:116	304.1-010	806 KAR 012:010
	012 KAR 001:140		806 KAR 012:020
	012 KAR 001:155		806 KAR 013:020
250.366	012 KAR 004:075		806 KAR 013:150
	012 KAR 004:080		806 KAR 014:007
	012 KAR 004:091	304.1-040	806 KAR 012:120
	012 KAR 004:100		806 KAR 012:180
	012 KAR 004:130	304.1-050	806 KAR 003:170
	012 KAR 004:170		806 KAR 009:360
250.371-250.451	012 KAR 004:080		806 KAR 012:020
	012 KAR 004:091		806 KAR 013:150
250.371-250.461	012 KAR 004:075		806 KAR 014:007
250.391	012 KAR 004:130		806 KAR 017:150
250.396	012 KAR 004:130		806 KAR 046:040
	012 KAR 004:140		900 KAR 010:111
250.401	012 KAR 004:130	304.1-070	806 KAR 010:030
250.406	012 KAR 004:110	304.1-110	900 KAR 010:111
250.411	012 KAR 004:170	304.2-065	806 KAR 003:170
257.020	302 KAR 022:150	304.2-205	806 KAR 007:035
257.030	302 KAR 022:150	304.2-140	806 KAR 047:010

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	806 KAR 038:100		806 KAR 009:370
304.2-160	806 KAR 002:060	304.9-270	806 KAR 004:010
304.2-210-304.2-290	806 KAR 003:170		806 KAR 009:025
304.2-250	806 KAR 038:100	304.9-295	806 KAR 004:010
304.2-260	806 KAR 038:100		806 KAR 009:025
304.2-270	806 KAR 038:100	304.9-300	806 KAR 004:010
304.2-290	806 KAR 006:010	304.9-320	806 KAR 009:025
304.2-310	806 KAR 009:360	304.9-390	806 KAR 012:120
	806 KAR 012:020	304.9-430	806 KAR 004:010
	900 KAR 010:125		806 KAR 009:025
304.3-050	806 KAR 014:110		806 KAR 009:030
304.3-070	601 KAR 001:113	304.9-440	806 KAR 012:020
304.3-120	806 KAR 003:170	304.9-432	806 KAR 009:030
304.3-125	806 KAR 003:170	304.9-440	806 KAR 009:030
304.3-200	806 KAR 012:095	304.9-505	806 KAR 004:010
304.3-240	806 KAR 003:170	304.9-780	806 KAR 004:010
	806 KAR 006:100	304.10-010	601 KAR 001:113
	806 KAR 012:010	304.10-030	806 KAR 010:030
304.3-241	806 KAR 003:170	304.10-040	806 KAR 009:360
304.3-270	806 KAR 014:007		806 KAR 010:030
	806 KAR 017:150	304.10-050	806 KAR 010:030
304.4-010	806 KAR 002:095	304.10-070	601 KAR 001:113
	806 KAR 004:010	304.10-120	806 KAR 004:010
	806 KAR 009:025	304.10-170	806 KAR 010:030
	806 KAR 009:370	304.10-180	806 KAR 010:030
	806 KAR 013:150	304.11-020	806 KAR 004:010
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	806 KAR 052:030		806 KAR 012:120
304.5-020	806 KAR 012:180		806 KAR 012:150
304.5-030	806 KAR 012:120		806 KAR 012:170
	806 KAR 012:180		806 KAR 012:180
304.6-070	806 KAR 006:080		806 KAR 014:110
	806 KAR 006:100	304.12-020	806 KAR 012:010
304.6-120	806 KAR 015:060		806 KAR 012:020
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304.6-140	806 KAR 015:060		806 KAR 012:170
304.6-145	806 KAR 015:060		806 KAR 015:050
304.6-150	806 KAR 006:100		900 KAR 010:115
	806 KAR 015:060	304.12-030	806 KAR 012:120
304.6-155	806 KAR 006:100		806 KAR 012:180
304.6-171	806 KAR 006:100	304.12-040	806 KAR 012:020
304.6-180	806 KAR 006:100	304.12-060	806 KAR 012:010
304.7-360	806 KAR 007:090	304.12-080	806 KAR 014:090
304.7-361	806 KAR 007:035		806 KAR 014:110
304.8-030	806 KAR 039:050		806 KAR 017:511
304.8-040	806 KAR 008:010	304.12-085	806 KAR 017:511
304.8-120	806 KAR 008:010	304.12-110	806 KAR 012:020
304.9-020	806 KAR 009:030		806 KAR 014:110
	806 KAR 009:370	304.12-120	806 KAR 012:010
	806 KAR 012:120	304.12-130	806 KAR 012:010
	806 KAR 012:180		806 KAR 012:020
	900 KAR 010:111	304.12-220	806 KAR 012:095
	900 KAR 010:115	304.12-230	803 KAR 025:240
304.9-040	806 KAR 012:120		806 KAR 012:095
	900 KAR 010:111		806 KAR 012:150
304.9-053	806 KAR 009:360		806 KAR 012:170
304.9-054	806 KAR 009:360	304.12-235	806 KAR 012:095
304.9-105	806 KAR 004:010	304.12-240	806 KAR 009:370
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304.9-133	806 KAR 009:360	304.13-031	806 KAR 013:150
304.9-135	806 KAR 009:190	304.13-051	806 KAR 013:020
304.9-140	806 KAR 004:010		806 KAR 013:150
304.9-150	806 KAR 004:010		806 KAR 014:090
	806 KAR 009:025	304.13-053	806 KAR 052:030
304.9-160	806 KAR 004:010	304.13-061	806 KAR 013:150
	806 KAR 009:025	304.13-081	806 KAR 013:150
304.9-230	806 KAR 009:025	304.13-100	806 KAR 013:020
	806 KAR 009:370	304.13-390	806 KAR 014:110
304.9-260	806 KAR 004:010	304.14-030	900 KAR 010:111

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304.14-120	806 KAR 012:020		900 KAR 010:111
	806 KAR 014:005	304.17A-505	806 KAR 017:511
	806 KAR 014:007	304.17A-515	900 KAR 010:115
	806 KAR 014:090	304.17A-540	806 KAR 017:230
	806 KAR 014:110		806 KAR 017:511
	806 KAR 015:050	304.17A-545	806 KAR 017:230
	806 KAR 015:060	304.17A-590	900 KAR 010:115
	806 KAR 015:070	304.17A-600	806 KAR 017:230
	806 KAR 015:090		806 KAR 017:511
	806 KAR 017:070	304.17A-607	806 KAR 009:360
	806 KAR 017:511	304.17A-619	806 KAR 017:230
	806 KAR 052:030	304.17A-629	806 KAR 017:511
304.14-130	900 KAR 010:115	304.17A-633	806 KAR 017:511
	806 KAR 014:121	304.17A-750	806 KAR 017:150
	806 KAR 017:070	304.17A-764	806 KAR 017:150
304.14-180	806 KAR 012:020	304.17A-820	806 KAR 003:170
304.14-190	806 KAR 014:005	304.17A-834	806 KAR 017:150
	806 KAR 014:007	304.17B-015	806 KAR 017:511
	806 KAR 017:511	304.17B-021	806 KAR 017:150
304.14-400	806 KAR 012:095	304.17B-023	806 KAR 017:150
304.14-420	806 KAR 014:121	304.17C	900 KAR 010:115
304.14-450	806 KAR 014:121	304.17C-010	806 KAR 014:007
	806 KAR 015:050		900 KAR 010:111
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304.14-650	806 KAR 017:085	304.19-080	806 KAR 019:050
304.14-675	806 KAR 017:085		806 KAR 019:060
304.15-020	806 KAR 014:005	304.19-120	806 KAR 019:050
	806 KAR 015:050	304.20-020	601 KAR 001:113
304.15-035	806 KAR 015:050	304.20-070	806 KAR 012:095
304.15-040	806 KAR 015:060	304.20-150	806 KAR 012:095
304.15-075	806 KAR 015:090	304.20-180	806 KAR 012:095
304.15-300	806 KAR 015:060	304.21-010	806 KAR 013:150
304.15-310	806 KAR 012:180	304.22-020	806 KAR 013:150
	806 KAR 015:060	304.23-010	806 KAR 013:150
304.15-340	806 KAR 015:060	304.24-250	806 KAR 014:110
304.15-342	806 KAR 015:060	304.24-310	806 KAR 014:110
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	806 KAR 014:005	304.30-030	806 KAR 030:010
	806 KAR 015:050	304.30-060	806 KAR 030:070
304.15-725	806 KAR 015:050	304.32-140	806 KAR 038:100
304.17-380	806 KAR 014:007	304.32-210	806 KAR 003:170
	806 KAR 017:070	304.35-040	806 KAR 003:170
	900 KAR 010:115	304.36-140	806 KAR 003:170
304.17A-005	806 KAR 014:007	304.37-010	806 KAR 003:170
	806 KAR 017:150	304.37-020	806 KAR 003:170
	806 KAR 017:580	304.38-040	806 KAR 004:010
304.17A-080	900 KAR 010:111	304.38-050	806 KAR 017:511
304.17A-095	806 KAR 017:511	304.38-060	806 KAR 004:010
	806 KAR 014:007	304.38-070	806 KAR 038:100
	806 KAR 017:150	304.38A-080	806 KAR 038:100
	806 KAR 017:511	304.38A-110	806 KAR 038:100
	900 KAR 010:115	304.39-020	601 KAR 001:113
304.17A-0952	806 KAR 017:150		806 KAR 039:050
304.17A-0954	806 KAR 017:150	304.39-040	601 KAR 001:113
304.17A-096	806 KAR 014:007	304.39-080	806 KAR 039:050
	806 KAR 017:511	304.39-170	806 KAR 039:050
304.17A-100	806 KAR 017:100	304.39-290	806 KAR 039:050
304.17A-125	900 KAR 010:120	304.39-320	601 KAR 001:113
304.17A-149	806 KAR 017:511	304.40-075	806 KAR 040:020
304.17A-165	806 KAR 009:360	304.42-150	806 KAR 003:170
304.17A-200	806 KAR 017:511	304.45-030	806 KAR 003:170
304.17A-220	806 KAR 017:511	304.45-040	806 KAR 003:170
304.17A-230	806 KAR 017:511	304.47-010	806 KAR 047:010
304.17A-240	900 KAR 010:115	304.47-020	806 KAR 047:010
304.17A-243	900 KAR 010:120	304.47-040	806 KAR 047:010
304.17A-245	900 KAR 010:115	304.47-050	806 KAR 047:010
	900 KAR 010:120	304.47-055	806 KAR 047:010
304.17A-250	806 KAR 017:511	304.47-080	806 KAR 047:010
304.17A-300	806 KAR 017:100	304.48-020	806 KAR 046:040
304.17A-310	806 KAR 017:100	304.48-050	806 KAR 046:040
304.17A-410	806 KAR 017:150	304.48-070	806 KAR 046:040
304.17A-430	806 KAR 017:150	304.48-110	806 KAR 003:170

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304.48-230	806 KAR 046:040	309.0841	201 KAR 035:020E
304.49	806 KAR 049:020		201 KAR 035:020
	806 KAR 049:030		201 KAR 035:050E
304.49-070	806 KAR 003:170		201 KAR 035:050
304.49-080	806 KAR 003:170		201 KAR 035:070E
304.49-090	806 KAR 003:170		201 KAR 035:070
304.50	806 KAR 052:010	309.0842	201 KAR 035:020E
304.50-010	806 KAR 052:030		201 KAR 035:020
304.50-060	806 KAR 003:170		201 KAR 035:050E
304.50-075	806 KAR 003:170		201 KAR 035:050
304.50-115	806 KAR 052:030		201 KAR 035:070E
304.99-020	806 KAR 012:120		201 KAR 035:070
	806 KAR 015:050	309.085	201 KAR 035:010E
304.99-085	806 KAR 010:030		201 KAR 035:010
309.080	201 KAR 035:010E		201 KAR 035:020E
	201 KAR 035:010		201 KAR 035:020
	902 KAR 020:160		201 KAR 035:040E
	902 KAR 020:440		201 KAR 035:040
309.080-309.089	922 KAR 005:020	309.086	201 KAR 035:010E
309.0805	201 KAR 035:010E		201 KAR 035:010
	201 KAR 035:010	309.087	201 KAR 035:010E
309.081	201 KAR 035:010E		201 KAR 035:010
	201 KAR 035:010	309.089	201 KAR 035:010E
309.0813	201 KAR 035:010E		201 KAR 035:010
	201 KAR 035:010	309.130	902 KAR 020:160
	201 KAR 035:080E		902 KAR 020:440
	201 KAR 035:080	309.130-1399	922 KAR 001:580
309.0814	201 KAR 035:070E		922 KAR 005:020
	201 KAR 035:070	309.1315	201 KAR 034:070
309.083	201 KAR 035:020E	309.337	201 KAR 045:130
	201 KAR 035:020	309.339	201 KAR 045:130
	201 KAR 035:025E	310.021	902 KAR 020:160
	201 KAR 035:025	311	922 KAR 005:020
	201 KAR 035:050E	311.571	902 KAR 020:440
	201 KAR 035:050	311.840-311.862	902 KAR 020:440
	201 KAR 035:055E		907 KAR 003:005
	201 KAR 035:055	311.282	902 KAR 002:020
	201 KAR 035:070E	311.420	201 KAR 025:011
	201 KAR 035:070	311.450	201 KAR 025:021
	201 KAR 035:075E		201 KAR 025:031
	201 KAR 035:075	311.480	201 KAR 025:011
309.0831	201 KAR 035:020E		201 KAR 025:021
	201 KAR 035:020	311.530-311.620	201 KAR 009:081
	201 KAR 035:025E		201 KAR 009:260
	201 KAR 035:025		201 KAR 009:270
	201 KAR 035:055E	311.550	201 KAR 009:016
	201 KAR 035:055	311.560	902 KAR 020:160
	201 KAR 035:070E	311.565	201 KAR 009:200
	201 KAR 035:070		201 KAR 009:210
	201 KAR 035:075E		201 KAR 009:230
	201 KAR 035:075		201 KAR 009:240
	902 KAR 020:160		201 KAR 009:360
	902 KAR 020:440	311.571	201 KAR 009:200
	907 KAR 015:080		201 KAR 009:210
309.0832	201 KAR 035:020E		902 KAR 002:020
	201 KAR 035:020		902 KAR 020:160
	201 KAR 035:025E	311.591	201 KAR 009:240
	201 KAR 035:025	311.592	201 KAR 009:230
	201 KAR 035:070E		201 KAR 009:240
	201 KAR 035:070	311.593	201 KAR 009:240
	201 KAR 035:075E	311.595	201 KAR 009:016
	201 KAR 035:075		201 KAR 009:200
309.0833	201 KAR 035:020E		201 KAR 009:210
	201 KAR 035:020		201 KAR 009:230
	201 KAR 035:025E		201 KAR 009:240
	201 KAR 035:025		901 KAR 005:120
	201 KAR 035:070E	311.597	201 KAR 009:016
	201 KAR 035:070		201 KAR 009:230
	201 KAR 035:075E	311.601	201 KAR 009:360
	201 KAR 035:075	311.646	922 KAR 002:120
309.084	201 KAR 035:010E	311.720	901 KAR 005:120
	201 KAR 035:010		902 KAR 004:110
	201 KAR 035:020E	311.725	902 KAR 004:110

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311.781	901 KAR 005:120		201 KAR 021:045
311.782	901 KAR 005:120		201 KAR 021:055
311.783	901 KAR 005:120		201 KAR 021:061
311.840	907 KAR 003:010		201 KAR 021:065
311.840-311.862	201 KAR 009:081		201 KAR 021:085
	201 KAR 009:260	312.021	201 KAR 021:045
	201 KAR 009:270		201 KAR 021:065
	902 KAR 020:160	312.055	201 KAR 021:025
311.842	201 KAR 009:016	312.085	201 KAR 021:041
	201 KAR 009:200		201 KAR 021:042
	201 KAR 009:230		201 KAR 021:055
	201 KAR 009:360		201 KAR 021:085
311.844	201 KAR 009:360	312.095	201 KAR 021:041
311.850	201 KAR 009:016		201 KAR 021:042
	201 KAR 009:200	312.145	201 KAR 021:041
	201 KAR 009:210		201 KAR 021:042
	201 KAR 009:230	312.150	201 KAR 021:051
	201 KAR 009:360		201 KAR 021:052
311.852	201 KAR 009:230		201 KAR 021:053
	201 KAR 009:240	312.160	201 KAR 021:051
	201 KAR 009:360	312.163	201 KAR 021:051
311.901	201 KAR 009:290		201 KAR 021:053
311.903	201 KAR 009:290	312.175	201 KAR 021:041
311.990	201 KAR 009:081		201 KAR 021:042
	201 KAR 009:260		201 KAR 021:095
	201 KAR 009:270	312.200	201 KAR 021:075
311A.010	202 KAR 007:201		201 KAR 021:095
	202 KAR 007:301	312.991	201 KAR 021:065
	202 KAR 007:330	312.200	201 KAR 021:001
311A.020	202 KAR 007:330	313.060	201 KAR 008:505E
	202 KAR 007:540	314.011	201 KAR 020:065
311A.025	202 KAR 007:201		201 KAR 020:161
	202 KAR 007:301		201 KAR 020:320
	202 KAR 007:330		201 KAR 020:411
	202 KAR 007:401		201 KAR 020:390
311A.030	202 KAR 007:201		902 KAR 020:160
	202 KAR 007:401		907 KAR 003:005
311A.035	202 KAR 007:540		922 KAR 001:580
311A.045	202 KAR 007:540		922 KAR 002:120
311A.050	202 KAR 007:330	314.021	201 KAR 020:320
	202 KAR 007:601	314.025	201 KAR 020:390
311A.060	202 KAR 007:201	314.026	201 KAR 020:390
	202 KAR 007:301	314.027	201 KAR 020:390
	202 KAR 007:540	314.031	201 KAR 020:161
311A.080	202 KAR 007:401	314.041	201 KAR 020:085
311A.090	202 KAR 007:330		201 KAR 020:320
311A.095	202 KAR 007:201		201 KAR 020:370
	202 KAR 007:301	314.042	201 KAR 020:065
	202 KAR 007:330		201 KAR 020:370
311A.100	202 KAR 007:330		902 KAR 020:160
311A.110	202 KAR 007:330		902 KAR 020:440
	202 KAR 007:601	314.051	201 KAR 020:085
311A.115	202 KAR 007:601		201 KAR 020:370
311A.120	202 KAR 007:601	314.071	201 KAR 020:085
311A.127	202 KAR 007:330		201 KAR 020:161
311A.130	202 KAR 007:301		201 KAR 020:370
	202 KAR 007:601	314.073	201 KAR 020:085
311A.135	202 KAR 007:401	314.091	201 KAR 020:161
311A.140	202 KAR 007:201		201 KAR 020:370
	202 KAR 007:301	314.103	201 KAR 020:370
	202 KAR 007:330		201 KAR 020:411
311A.145	202 KAR 007:201	314.107	201 KAR 020:161
	202 KAR 007:301	314.111	201 KAR 020:320
	202 KAR 007:330	314.131	201 KAR 020:320
311A.150	202 KAR 007:330	314.142	201 KAR 020:411
311A.155	202 KAR 007:540		922 KAR 001:580
311A.160	202 KAR 007:201	314.400-314.414	201 KAR 020:660
311A.165	202 KAR 007:301	314.475	201 KAR 020:161
311A.170	202 KAR 007:401		201 KAR 020:370
311A.190	202 KAR 007:540		201 KAR 020:411
311A.195	202 KAR 007:330		201 KAR 020:506
312.015	201 KAR 021:001	314.991	201 KAR 020:161
312.019	201 KAR 021:015	315.010	201 KAR 002:040

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	201 KAR 002:225	318.130	815 KAR 020:150
	201 KAR 002:320		902 KAR 045:160
	201 KAR 002:380	318.134	815 KAR 020:150
	201 KAR 002:410E	318.140	815 KAR 020:150
	902 KAR 002:020	318.160	815 KAR 020:150
315.020	201 KAR 002:040	318.170	815 KAR 020:150
	201 KAR 002:205	319	922 KAR 001:580
	201 KAR 002:225		922 KAR 005:020
	201 KAR 002:320	319.005	201 KAR 026:130
	201 KAR 002:410E	319.010	201 KAR 026:115
315.035	201 KAR 002:106		201 KAR 026:121
	201 KAR 002:225	319.015	201 KAR 026:121
	201 KAR 002:240	319.032	201 KAR 026:121
315.0351	201 KAR 002:205		201 KAR 026:130
315.036	201 KAR 002:106		201 KAR 026:171
	201 KAR 002:320		201 KAR 026:180
315.050	201 KAR 002:040		201 KAR 026:185
	201 KAR 002:410E		201 KAR 026:230
315.065	201 KAR 002:410E		201 KAR 026:250
315.121	201 KAR 002:061		201 KAR 026:300
315.131	201 KAR 002:061	319.050	201 KAR 026:121
315.135	201 KAR 002:410E		201 KAR 026:125
315.191	201 KAR 002:040		201 KAR 026:155
	201 KAR 002:061		201 KAR 026:171
	201 KAR 002:171		201 KAR 026:185
	201 KAR 002:205		201 KAR 026:190
	201 KAR 002:225		201 KAR 026:200
	201 KAR 002:311		201 KAR 026:230
	201 KAR 002:320		902 KAR 020:160
	201 KAR 002:380		902 KAR 020:440
	201 KAR 002:390	319.053	201 KAR 026:190
315.205	201 KAR 002:410E		201 KAR 026:200
315.300	201 KAR 002:205		201 KAR 026:230
315.335	201 KAR 002:205		201 KAR 026:290
315.340	201 KAR 002:106	319.056	201 KAR 026:171
315.342	201 KAR 002:106		201 KAR 026:190
315.350	201 KAR 002:105		902 KAR 020:160
	201 KAR 002:106		902 KAR 020:440
315.351	201 KAR 002:106	319.064	201 KAR 026:171
315.400	201 KAR 002:320		201 KAR 026:190
	201 KAR 002:390		201 KAR 026:200
315.402	201 KAR 002:105		201 KAR 026:230
	201 KAR 002:106		201 KAR 026:250
315.404	201 KAR 002:320		201 KAR 026:280
315.406	201 KAR 002:105		902 KAR 020:160
315.4102	201 KAR 002:106		902 KAR 020:440
	201 KAR 002:390	319.082	201 KAR 026:130
315.4104	201 KAR 002:390		201 KAR 026:171
315.4106	201 KAR 002:390	319.092	201 KAR 026:171
315.4108	201 KAR 002:390	319.118	201 KAR 026:130
315.4110	201 KAR 002:390		201 KAR 026:171
315.500	201 KAR 002:410E	319.140	201 KAR 026:310
317.400	201 KAR 014:035	319.990	201 KAR 026:130
317.410	201 KAR 014:035	319A.010	907 KAR 001:604
	201 KAR 014:100	319C.010	902 KAR 020:160
	201 KAR 014:105		902 KAR 020:440
	201 KAR 014:130	320.210	201 KAR 005:140
317.440	201 KAR 014:035		902 KAR 020:160
	201 KAR 014:095	321	302 KAR 022:150
	201 KAR 014:100	323.010	201 KAR 019:275
	201 KAR 014:105	323.020	201 KAR 019:250
	201 KAR 014:130		201 KAR 019:270
	201 KAR 014:135	323.050	201 KAR 019:215
	201 KAR 014:140		201 KAR 019:220
317.450	201 KAR 014:035		201 KAR 019:225
	201 KAR 014:070	323.060	201 KAR 019:235
	201 KAR 014:100		201 KAR 019:240
	201 KAR 014:105	323.080	201 KAR 019:255
	201 KAR 014:135	323.090	201 KAR 019:230
	201 KAR 014:140	323.095	201 KAR 019:260
317.540	201 KAR 014:135		201 KAR 019:265
	201 KAR 014:140	323.100	201 KAR 019:245
318	922 KAR 002:120	323.110	201 KAR 019:255

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323.210	201 KAR 019:230	335.320	201 KAR 032:035
	201 KAR 019:235		201 KAR 032:110
	201 KAR 019:245	335.325	201 KAR 032:110
323.215	201 KAR 019:220	335.330	201 KAR 032:030
	201 KAR 019:225		201 KAR 032:035
323.230	201 KAR 019:275	335.332	201 KAR 032:035
323.400-323.416	201 KAR 019:440	335.340	201 KAR 032:030
	201 KAR 019:445		201 KAR 032:060
323.400	201 KAR 019:415	335.342	201 KAR 032:030
	201 KAR 019:420	335.380	201 KAR 032:110
	201 KAR 019:425	335.399	201 KAR 032:110
	201 KAR 019:430	335.500	902 KAR 020:160
	201 KAR 019:435		902 KAR 020:440
323.402	201 KAR 019:430	335.500-335.599	922 KAR 005:020
	201 KAR 019:450	335.625	201 KAR 038:070
323.406	201 KAR 019:410	335.640	201 KAR 038:070
	201 KAR 019:420	335.650	201 KAR 038:070
	201 KAR 019:435	338	803 KAR 002:021
	201 KAR 019:450		803 KAR 002:062
323.408	201 KAR 019:410		803 KAR 002:120
	201 KAR 019:415		803 KAR 002:140
	201 KAR 019:420		803 KAR 002:306
	201 KAR 019:430		803 KAR 002:310
	201 KAR 019:450		803 KAR 002:314
	201 KAR 019:455		803 KAR 002:325
323.410	201 KAR 019:410		803 KAR 002:408
	201 KAR 019:415		803 KAR 002:409
	201 KAR 019:420		803 KAR 002:413
	201 KAR 019:425		803 KAR 002:423
	201 KAR 019:430		803 KAR 002:435
323.412	201 KAR 019:455	338.015	803 KAR 002:011
323.414	201 KAR 019:450		803 KAR 002:041
323.416	201 KAR 019:435		803 KAR 002:096
324A.010	201 KAR 030:190		803 KAR 002:180E
324A.030	201 KAR 030:190		803 KAR 002:181E
324A.035	201 KAR 030:040		803 KAR 002:182E
	201 KAR 030:190		803 KAR 002:180
324A.040	201 KAR 030:190		803 KAR 002:181
324A.045	201 KAR 030:190		803 KAR 002:250
324A.047	201 KAR 030:190		803 KAR 002:320
324A.050	201 KAR 030:040		803 KAR 002:417
324A.052	201 KAR 030:190		803 KAR 002:440
324A.065	201 KAR 030:190	338.021	803 KAR 002:050
324A.075	201 KAR 030:190	338.031	803 KAR 002:320
324.330	201 KAR 001:100	338.051	803 KAR 002:010
327.010	907 KAR 001:604		803 KAR 002:019
327.300	201 KAR 022:170		803 KAR 002:060
333.020	902 KAR 002:020		803 KAR 002:309
333.130	902 KAR 002:020		803 KAR 002:401
	902 KAR 002:190E		803 KAR 002:405
	902 KAR 002:211E		803 KAR 002:410
334.010	907 KAR 001:038		803 KAR 002:414
334A.020	907 KAR 001:038		803 KAR 002:415
	907 KAR 001:604		803 KAR 002:416
334A.030	907 KAR 001:038		803 KAR 002:420
335	922 KAR 001:580		803 KAR 002:424
335.010	201 KAR 023:070		803 KAR 002:600
335.030	201 KAR 023:150	338.061	803 KAR 002:019
335.070	201 KAR 023:150		803 KAR 002:309
335.080	201 KAR 023:070		803 KAR 002:401
	902 KAR 020:160		803 KAR 002:405
	902 KAR 020:440		803 KAR 002:410
	922 KAR 005:020		803 KAR 002:414
335.100	201 KAR 023:070		803 KAR 002:415
	902 KAR 020:160		803 KAR 002:416
	902 KAR 020:440		803 KAR 002:420
	922 KAR 005:020		803 KAR 002:424
335.300	201 KAR 032:035		803 KAR 002:600
	201 KAR 032:060	338.101	803 KAR 002:070
	902 KAR 020:160		803 KAR 002:125
	902 KAR 020:440		803 KAR 002:130
335.300-335.399	922 KAR 005:020	338.111	803 KAR 002:110
335.305	201 KAR 032:110		803 KAR 002:230

KRS SECTION	REGULATION	KRS SECTION	REGULATION
338.121	803 KAR 002:090	424	922 KAR 001:390
	803 KAR 002:180E	424.110-424.150	902 KAR 008:170
	803 KAR 002:181E	431.17	907 KAR 003:005
	803 KAR 002:181	431.600	922 KAR 001:330
	803 KAR 002:180		922 KAR 001:580
	803 KAR 002:220	431.600-431.660	201 KAR 020:411
	803 KAR 002:230	438.2	907 KAR 003:005
	803 KAR 002:240		907 KAR 003:010
	803 KAR 002:250	439	501 KAR 006:070
338.131	803 KAR 002:100		501 KAR 006:080
338.141	803 KAR 002:115		501 KAR 006:120
	803 KAR 002:122	439.3401	902 KAR 020:440
	803 KAR 002:127	440.40	907 KAR 003:005
338.153	803 KAR 002:170	440.50	907 KAR 003:005
338.161	803 KAR 002:180E		907 KAR 003:010
	803 KAR 002:181E	441.20	907 KAR 003:005
	803 KAR 002:181	441.200-441.208	907 KAR 003:005
	803 KAR 002:180	441.250-441.259	907 KAR 003:005
338.991	803 KAR 002:080	446.010	103 KAR 001:160
	803 KAR 002:115	447.10	907 KAR 003:010
	803 KAR 002:127	447.200-447.205	907 KAR 003:010
	803 KAR 002:250	447.26	907 KAR 003:005
342	803 KAR 025:092	447.325	907 KAR 003:010
	803 KAR 025:190	455.410	907 KAR 003:005
	803 KAR 025:300	456	922 KAR 005:020
342.0011	803 KAR 025:021	457.310	907 KAR 001:038
	803 KAR 025:089	503.110	922 KAR 001:330
	803 KAR 025:165	506	922 KAR 005:020
	803 KAR 025:175	507	922 KAR 005:020
	803 KAR 025:185	507A	922 KAR 005:020
342.019	803 KAR 025:089	508	922 KAR 005:020
342.020	803 KAR 025:089	508.125	922 KAR 001:330
	803 KAR 025:091	509	922 KAR 005:020
342.035	803 KAR 025:089	510	922 KAR 005:020
	803 KAR 025:091	511.020-511.040	922 KAR 005:020
342.038	803 KAR 025:165	511.085	922 KAR 005:020
	803 KAR 025:170	512.020	922 KAR 005:020
342.039	803 KAR 025:165	513	922 KAR 005:020
	803 KAR 025:170	515	922 KAR 005:020
342.260	803 KAR 025:165	517.050	922 KAR 005:020
	803 KAR 025:185	523.100	902 KAR 100:012
342.267	803 KAR 025:240	527.070	922 KAR 002:120
342.315	803 KAR 025:091	529	922 KAR 005:020
342.325	806 KAR 012:095	529.010	922 KAR 001:330
342.340	803 KAR 025:021	530.020	922 KAR 005:020
	803 KAR 025:165	530.060	922 KAR 005:020
	803 KAR 025:175	530.064	922 KAR 005:020
	803 KAR 025:185	530.065	922 KAR 005:020
342.342	803 KAR 025:021	530.070	922 KAR 005:020
342.345	803 KAR 025:021	531.030	922 KAR 005:020
342.347	803 KAR 025:021	531.040	922 KAR 005:020
342.900-342.912	803 KAR 025:220	531.300-531.370	922 KAR 005:020
342.990	803 KAR 025:015	532.045	922 KAR 001:330
362	202 KAR 007:601	532.060	601 KAR 001:113
363.900-363.908	302 KAR 079:011	600.010	922 KAR 001:330
	302 KAR 079:012	600.020	922 KAR 001:300
365	202 KAR 007:601		922 KAR 001:330
	601 KAR 001:113		922 KAR 001:380
365.390	103 KAR 001:160		922 KAR 001:390
369.101-369.120	907 KAR 003:005		922 KAR 001:490
381.780	902 KAR 010:010		922 KAR 001:520
387.010	910 KAR 002:060	605.080	922 KAR 001:300
387.510	910 KAR 002:060	605.090	922 KAR 001:300
387.760	910 KAR 002:060		922 KAR 001:330
400.203	907 KAR 001:038		922 KAR 001:490
	907 KAR 003:005	605.110	922 KAR 001:300
	907 KAR 003:010	605.120	922 KAR 001:490
403.707	201 KAR 020:411		922 KAR 001:520
403.715-403.785	922 KAR 005:020	605.130	922 KAR 001:330
413.75	907 KAR 003:005		922 KAR 001:490
415.174	907 KAR 003:005	605.150	922 KAR 001:330
415.184	907 KAR 003:005	610.010	922 KAR 001:330
421.500-421.575	201 KAR 020:411	610.110	922 KAR 001:380
421.570	922 KAR 005:020		922 KAR 001:390

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	922 KAR 001:500		803 KAR 002:409
	922 KAR 001:520		803 KAR 002:410
615.010	922 KAR 001:300		803 KAR 002:413
615.030	922 KAR 001:300		803 KAR 002:414
615.040	922 KAR 001:300		803 KAR 002:415
620.010-620.050	922 KAR 001:330		803 KAR 002:416
620.020	201 KAR 009:360		803 KAR 002:417
	922 KAR 001:300		803 KAR 002:420
	922 KAR 001:500		803 KAR 002:423
	922 KAR 001:520		803 KAR 002:424
	922 KAR 001:580		803 KAR 002:440
620.030	908 KAR 001:400		803 KAR 002:600
	922 KAR 001:300		900 KAR 010:120
	922 KAR 002:120	34 C.F.R.	707 KAR 001:340
	922 KAR 005:020		902 KAR 030:210E
620.045	922 KAR 001:580		902 KAR 030:210
620.050	922 KAR 001:450	40 C.F.R.	302 KAR 079:011
	922 KAR 001:490		302 KAR 079:012
	922 KAR 001:580		401 KAR 039:060
620.070	922 KAR 001:330		401 KAR 060:005
620.072	922 KAR 001:330		401 KAR 061:036
620.090	922 KAR 001:300		401 KAR 063:002
620.140	922 KAR 001:300	42 C.F.R.	900 KAR 006:115
	922 KAR 001:380		900 KAR 010:111
	922 KAR 001:390		900 KAR 010:120
	922 KAR 001:500		902 KAR 020:160
	922 KAR 001:520		902 KAR 020:440
620.180	922 KAR 001:330		907 KAR 001:038
620.230	922 KAR 001:300		907 KAR 001:604
620.350	922 KAR 001:330		907 KAR 003:005
620.990	922 KAR 001:330		907 KAR 003:010
625	922 KAR 001:490		907 KAR 007:020
2 C.F.R.	902 KAR 008:170		907 KAR 015:080
7 C.F.R.	902 KAR 050:010		922 KAR 002:240
	902 KAR 050:032	45 C.F.R.	201 KAR 020:660
	902 KAR 050:031		806 KAR 009:360
	902 KAR 050:050		900 KAR 010:111
	921 KAR 003:010		900 KAR 010:115
	921 KAR 003:020		900 KAR 010:120
	921 KAR 003:025		900 KAR 010:125
	921 KAR 003:030		900 KAR 010:130
	921 KAR 003:035		902 KAR 020:160
	921 KAR 003:045		902 KAR 020:440
	921 KAR 003:060		902 KAR 030:210E
	922 KAR 002:120		902 KAR 030:210
9 C.F.R.	302 KAR 022:150		907 KAR 003:005
12 C.F.R.	201 KAR 030:040		907 KAR 003:060
	201 KAR 030:190		907 KAR 003:250
	806 KAR 012:180		921 KAR 003:025
16 C.F.R.	302 KAR 079:011		921 KAR 004:116
	302 KAR 079:012		922 KAR 001:490
	922 KAR 002:120		922 KAR 001:500
21 C.F.R.	201 KAR 002:061		922 KAR 002:120
	302 KAR 060:010		922 KAR 002:410E
	902 KAR 045:160		922 KAR 002:415E
	902 KAR 050:010		922 KAR 002:450E
	902 KAR 050:080		922 KAR 005:020
22 C.F.R.	922 KAR 001:540		922 KAR 006:010
26 C.F.R.	900 KAR 010:111	49 C.F.R.	601 KAR 001:005
	900 KAR 010:120		702 KAR 005:080
29 C.F.R.	803 KAR 002:021		922 KAR 002:120
	803 KAR 002:060	57 C.F.R.	601 KAR 002:231
	803 KAR 002:180E	7 U.S.C.	302 KAR 050:021
	803 KAR 002:180		302 KAR 050:031
	803 KAR 002:181E		302 KAR 050:045
	803 KAR 002:181		302 KAR 050:056
	803 KAR 002:306		302 KAR 050:080
	803 KAR 002:308		921 KAR 003:010
	803 KAR 002:309		921 KAR 003:020
	803 KAR 002:314		921 KAR 003:025
	803 KAR 002:320		921 KAR 003:030
	803 KAR 002:401		921 KAR 003:035
	803 KAR 002:405		921 KAR 003:042
	803 KAR 002:408	8 U.S.C.	900 KAR 010:111

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	921 KAR 003:010		907 KAR 015:080
	922 KAR 001:540		921 KAR 003:010
10 U.S.C.	017 KAR 004:030		921 KAR 003:020
	202 KAR 007:330		921 KAR 003:030
	806 KAR 012:180		921 KAR 003:035
12 U.S.C.	201 KAR 030:040		921 KAR 004:116
	201 KAR 030:190		922 KAR 001:300
	806 KAR 012:180		922 KAR 001:330
15 U.S.C.	811 KAR 002:120		922 KAR 001:390
17 U.S.C.	921 KAR 003:060		922 KAR 001:490
18 U.S.C.	601 KAR 002:232		922 KAR 001:500
	601 KAR 002:233		922 KAR 001:520
	601 KAR 002:233E		922 KAR 001:540
	806 KAR 003:170		922 KAR 002:120
20 U.S.C.	013 KAR 001:020		922 KAR 002:300
	702 KAR 007:065		922 KAR 006:010
	703 KAR 005:225	45 U.S.C.	921 KAR 003:010
	703 KAR 005:270	47 U.S.C.	807 KAR 005:015
	703 KAR 005:280	52 U.S.C.	921 KAR 003:030
	707 KAR 001:340		
	900 KAR 010:115		
	902 KAR 020:160		
	902 KAR 030:210E		
	902 KAR 030:210		
	921 KAR 003:025		
	922 KAR 001:300		
	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		
	105 KAR 001:270		
	806 KAR 012:120		
	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		
	806 KAR 012:180		
	902 KAR 020:160		
	921 KAR 003:020		
31 U.S.C.	045 KAR 001:050		
38 U.S.C.	017 KAR 004:040		
	921 KAR 003:010		
	921 KAR 003:020		
41 U.S.C.	017 KAR 003:050		
42 U.S.C.	201 KAR 002:410E		
	202 KAR 007:540		
	401 KAR 039:060		
	401 KAR 060:005		
	401 KAR 061:036		
	401 KAR 063:002		
	900 KAR 010:111		
	900 KAR 010:115		
	900 KAR 010:120		
	900 KAR 010:125		
	900 KAR 010:130		
	902 KAR 020:160		
	902 KAR 020:440		
	907 KAR 001:038		
	907 KAR 001:604		
	907 KAR 003:005		
	907 KAR 003:010		
	907 KAR 003:060		
	907 KAR 003:250		
	907 KAR 007:020		
	907 KAR 015:070E		

## 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 in Effect As Is
201 KAR 007:015	04-07-2021	Remain in Effect As Is
201 KAR 009:307	03-26-2021	Remain in Effect As Is
201 KAR 039:040	02-01-2021	Remain in Effect As Is
201 KAR 034:025	04-15-2021	Remain in Effect As Is
201 KAR 034:040	04-15-2021	Remain in Effect As Is
201 KAR 037:010	08-07-2020	Remain in Effect As Is
201 KAR 045:140	10-27-2020	Remain in Effect As Is
201 KAR 045:150	10-27-2020	Remain in Effect As Is
201 KAR 045:160	10-27-2020	Remain in Effect As Is
302 KAR 021:001	02-11-2021	Remain in Effect As Is
302 KAR 021:020	02-11-2021	Remain in Effect As Is
302 KAR 021:030	02-11-2021	Remain in Effect As Is
302 KAR 040:010	02-11-2021	Remain in Effect As Is
302 KAR 021:050	02-11-2021	Remain in Effect As Is
302 KAR 021:060	02-11-2021	Remain in Effect As Is
302 KAR 021:070	02-11-2021	Remain in Effect As Is
302 KAR 021:080	02-11-2021	Remain in Effect 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 in Effect 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 006:070	05-27-2021	To be amended. Amendment filed 04-15-19, effective 8-2-2019.
806 KAR 030:020	02-11-2021	Remain in Effect As Is
806 KAR 037:010	02-11-2021	Remain in Effect 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 in Effect As Is
907 KAR 001:030	05-27-2021	Remain in Effect As Is
908 KAR 002:240	05-10-2021	Remain in Effect As Is
908 KAR 002:250	05-11-2021	Remain in Effect 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 in Effect As Is
922 KAR 001:130	09-04-2020	Remain in Effect As Is
922 KAR 001:450	10-02-2020	Remain in Effect 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 Number		Date Corrected	Regulation Number	Date Corrected
101 KAR 002:034		05-07-2021		
101 KAR 002:034		05-07-2021		
200 KAR 002:006	‡	05-11-2021		
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 034:015		02-11-2021		
201 KAR 034:020		02-11-2021		
201 KAR 034:025		02-11-2021		
201 KAR 034:030		02-11-2021		
201 KAR 034:060		02-11-2021		
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		
921 KAR 001:410		04-14-2021		

## SUBJECT INDEX

### ACCOUNTANCY

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### ADULT SERVICES

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#### Guardianship

Trust Fund; 910 KAR 002:060

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Investigational allowances; 012 KAR 004:130

Licenses and fertilizer product registration; 012 KAR 004:075

Maximum chlorine guarantees for tobacco fertilizers; 012 KAR 004:170

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Seed certification in Kentucky; 012 KAR 001:175

Seed not required to be labeled by variety name; 012 KAR 001:160

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Policies and procedures for hemp processors and handlers; 302 KAR 050:031

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