VOLUME 48, NUMBER 1 LEGISLATIVE RESEARCH COMMISSION JULY 1, 2021

ADMINISTRATIVE REGISTER OF KENTUCKY

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

MEETING NOTICES

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet on July 8, 2021, at 3:00 p .m. in room 149 Capitol Annex.
ARRS Tentative Agenda - 1 Online agenda updated as needed

The **Education Assessment and Accountability Review Subcommittee** is **tentatively** scheduled to meet on July 6, 2021, at 3:00 p.m. in the Capitol Annex.

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

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VOLUME 48, NUMBER 1– JULY 1, 2021

The following agenda may not take into consideration all of the administrative regulations that may be deferred by promulgating agencies. Deferrals may be made any time prior to or during the meeting.
Updated: June 25, 2021 at 9:00 a.m.

Administrative Regulation Review Subcommittee
TENTATIVE Meeting Agenda
Thursday, July 8, 2021 at 3:00 p.m.
Annex Room 149

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

BOARDS AND COMMISSIONS

Board of Pharmacy

201 KAR 002:061. Procedures followed by the Kentucky Board of Pharmacy in the investigation and hearing of complaints.

Board of Medical Licensure

201 KAR 009:270. Professional standards for prescribing, dispensing, or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.
201 KAR 009:290. Interpretation and Application of KRS 311.901(1) and KRS 311.903(4).

Board of Examiners of Psychology

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

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 Licensure for Professional Art Therapists

201 KAR 034:070. Inactive status.

Board of Alcohol and Drug Counselors

201 KAR 035:010. Definitions for 201 KAR Chapter 035. (Filed with Emergency) (Amended After Comments)
201 KAR 035:020. Fees. (Filed with Emergency) (Amended After Comments)
201 KAR 035:025. Examinations. (Filed with Emergency) (Amended After Comments)
201 KAR 035:040. Continuing education requirements. (Filed with Emergency) (Amended After Comments)
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201 KAR 035:070. Supervision experience. (Filed with Emergency) (Amended After Comments)
201 KAR 035:075. Substitution for work experience for an applicant for certification as an alcohol and drug counselor. (Filed with Emergency) (Amended After Comments)
201 KAR 035:080. Voluntary inactive and retired status. (Filed with Emergency) (Amended After Comments)

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Board of Emergency Medical Services

202 KAR 007:201. Emergency Medical Responders.
202 KAR 007:301. Emergency Medical Technician.
202 KAR 007:330. Advanced Emergency Medical Technician.
202 KAR 007:401. Paramedics.
202 KAR 007:540. Emergency Medical Services data collection, management, and compliance.
202 KAR 007:601. Training, education, and continuing education.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
Fish
301 KAR 001:400. Assessing fish kill damages.

Game
301 KAR 002:228. Sandhill crane hunting requirements.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Administration
601 KAR 002:233. Kentucky Ignition Interlock Program; participants and device providers. (Filed with Emergency)

Motor Vehicle Commission
605 KAR 001:215E. Licensing Fees. ("E" expires 02-06-2022) (Filed with Ordinary)

LABOR CABINET
Office of Unemployment Insurance
787 KAR 001:360E. Overpayment waivers. ("E" expires 01-29-2021) (Filed with Ordinary)

EDUCATION AND WORKPLACE DEVELOPMENT CABINET
Board of Education
Office of Chief State School Officer
701 KAR 005:081. Repeal of 701 KAR 5:080.
701 KAR 005:100. School-based decision making guidelines.

Office of District Support Services
School Administration and Finance
702 KAR 003:060. Procedure for payment of employees.

LABOR CABINET
Department of Workplace Standards
Occupational Safety and Health
803 KAR 002:181E. Recordkeeping and reporting occupational injuries and illnesses. ("E" expires 02-07-2022) (Filed with Ordinary)
803 KAR 002:182E. Repeal of 803 KAR 002:180. ("E" expires 02-07-2022)

Department of Workers' Claims
803 KAR 025:015. Issuance of citations and procedure in workers' compensation enforcement hearings. (Deferred from June)
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
Horse Racing Commission
General
810 KAR 002:001. Definitions for 810 KAR Chapter 002. (Filed with Emergency) (Not Amended After Comments)

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810 KAR 003:001. Definitions for 810 KAR Chapter 003. (Filed with Emergency) (Not Amended After Comments)

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810 KAR 006:001. Definitions for 810 KAR Chapter 006. (Filed with Emergency) (Not Amended After Comments)
810 KAR 006:010. Exotic wagering. (Filed with Emergency) (Not Amended After Comments)
810 KAR 006:020. Calculation of payouts and distribution of pools. (Not Amended After Comments)
810 KAR 006:030. Pari-Mutuel wagering. (Filed with Emergency) (Not Amended After Comments)

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907 KAR 003:005. Coverage of physicians' services. (Not Amended After Comments)
907 KAR 003:010. Reimbursement for physicians' services. (Amended After Comments))
907 KAR 003:060. Ambulance provider assessment program.

Department for Community Based Services
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922 KAR 001:490. Background checks for foster and adoptive parents and relative and fictive kin caregivers. (Filed with Emergency) (Amended After Comments)

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922 KAR 002:300. Emergency child care approval.

Adult Services
922 KAR 005:020. Batterer intervention provider certification standards.

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Board of Examiners of Psychology
201 KAR 026:301. Repeal of 201 KAR 026:300. (Deferred from June) (Withdrawn by Agency; 06-22-2021)

LABOR CABINET
Department of Workers' Claims
803 KAR 025:021. Individual self-insurers. (Comments Received, SOC ext., due 07-15-2021)
803 KAR 025:190. Utilization review – Medical Bill Audit – Medical Director – Appeal of Utilization Review Decisions. (Comments Received, SOC ext., due 07-15-2021)
803 KAR 025:220. Guaranty funds. (Comments Received, SOC ext., due 07-15-2021)

PUBLIC PROTECTION CABINET
Department of Insurance
Agents, Consultants, Solicitors, and Adjustors
806 KAR 009:025. Licensing process. (Amended After Comments) (Deferred from February)

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Behavioral Health, Developmental and Intellectual Disabilities
Substance Abuse
908 KAR 001:390. Voluntary Employer Substance Use Program (VESUP). (Comments Received; SOC ext., due 07-15-2021)

**Expiration dates in this document have been determined pursuant to KRS Chapter 13A provisions. Other statutes or legislation may affect a regulation's actual end date.*

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.

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
200 KAR 17:110E

This emergency administrative regulation is being promulgated in order to immediately utilize American Rescue Plan (ARP) Act of 2021 federal funding appropriated by Senate Bill 36 from the 2021 Regular Session of the General Assembly (2021 Acts Chapter 195) to mitigate the fiscal effects stemming from the public health emergency with respect to the coronavirus (COVID-19) pandemic. The ARP Act authorizes states to make these necessary investments in water and wastewater infrastructure. This administrative regulation is being filed on an emergency basis in order to avoid an imminent threat to public health, safety, welfare, or the environment that investments in water and wastewater infrastructure prevent and to prevent an imminent loss of federal funds. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
DENNIS KEENE, Chair

KENTUCKY INFRASTRUCTURE AUTHORITY
(New Emergency Administrative Regulation)

200 KAR 17:110E. Guidelines for Kentucky Infrastructure Authority Drinking Water and Wastewater Grant Program.

Effective: June 2, 2021

RELATES TO: KRS 45.031, 151.601, 151.605, 224A.011, 224A.020, 224A.035, 224A.040, 224A.050-224A.314
STATUTORY AUTHORITY: KRS 224A.040, 224A.070(1), 224A.113, 224A.300
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224A.040 authorizes the Kentucky Infrastructure Authority to make grants as funds are available, and KRS 224A.070(1) authorizes the Kentucky Infrastructure Authority to promulgate administrative regulations that shall define with specificity conditions precedent under which applications for loans or grants may be made and the order of priority upon which applications shall be acted upon. Senate Bill 36, 2021 Regular Session Acts of the General Assembly, Chapter 195, requires the Authority to promulgate administrative regulations to ensure that project approvals are based on rational criteria and include a project's readiness to proceed and the project's social, economic, and environmental benefits. This administrative regulation establishes procedures for the application for and provision of financial assistance to governmental agencies for the construction of infrastructure projects from funds available to the Kentucky Infrastructure Authority.

Section 1. Definitions.
(1) "Applicant" means a governmental agency that has submitted an application to the Authority for a grant from Authority funds.
(2) "Application" means the project information contained within the Water Resource Information System Project Profile and designated by an applicant as applying for a grant from the Drinking Water and Wastewater Grant Program funds.
(3) "Authority" means the Kentucky Infrastructure Authority, which is created by KRS Chapter 224A.
(4) "Conditional commitment letter" means a letter delivered to the applicant stating the Authority's commitment to provide a grant under specifications and subject to the satisfaction of certain conditions by the applicant.
(5) "Kentucky State Clearinghouse" means the project review mechanism, attached to the Department for Local Government, established in KRS 45.031.
(6) "Kentucky Uniform System of Accounting" means the elements of a basic accounting system established in KRS 224A.306, which is used by a water or wastewater system seeking or using funds of the Authority if an alternative accounting system has not been approved by the Authority.
(7) "Project" means an infrastructure project related to drinking water or wastewater.
(8) "Unserved" means a customer who does not have access to publicly available potable drinking water or a properly functioning wastewater system.

Section 2. Eligible Projects.
(1) Funds available to the Authority shall be used to fund Projects.
(2) Only water or wastewater projects addressing one (1) or more of the conditions established in paragraphs (a) through (h) of this subsection shall be eligible for funding:
(a) The proposed project shall provide drinking water services to unserved rural customers.
(b) The proposed project shall address provisions in a federal consent decree related to water or wastewater.
(c) The proposed project shall address the provisions of KRS 224A.300 - 224A.314.
(d) The proposed project shall address an emergency situation.
(e) The proposed project shall alleviate existing conditions that pose a serious and immediate threat to the health and welfare of the community.
(f) The proposed project shall promote social, economic, or environmental benefits; but with respect to industrial sites funds may only be awarded if the site has committed occupants.
(g) Funds are needed to complete a funding package previously awarded by the Authority.
(h) Funds are needed to cover cost overrun for a project previously awarded by the Authority.
(3) Project applications meeting the guidelines established in subsection (2) shall be funded based on the Project's:
(a) Readiness to proceed; and
(b) Receipt of a Project approval from a water management planning council as created in KRS 151.601.

Section 3. Applications.
(1) Each applicant shall submit an application to the Authority by requesting that the water service coordinator, as established in KRS 151.605, designate the project for funding. If a water service coordinator is not available, the request may be made directly to the Authority in writing and mailed.
(2) The Authority shall request additional information about the project or the applicant if needed to comply with local, state, or federal laws.
(3) Only a completed application, including all supporting documentation, shall be considered for financial assistance from the Drinking Water and Wastewater Grant Program.

Section 4. Project Priority. Eligible projects shall be funded subject to a project's readiness to proceed, the water management council's approval, and the availability of funds.

Section 5. Additional Conditions to Project Funding.
(1) A water supply and distribution system seeking funding for a Project shall agree, in writing, to adopt and utilize the Kentucky Uniform System of Accounting and to charge rates for services based on the actual cost of that service.

(2) Before funds shall be disbursed to an applicant whose Project has been approved for funding, the applicant shall demonstrate to the Authority that the project:

(a) Has been reviewed through the Kentucky State Clearinghouse process; and

(b) Is in compliance with applicable state and federal requirements.

Section 6. Terms of Financial Assistance.

(1) An application for funding shall be:

(a) Subject to financial viability review by Authority staff; and

(b) Referred to the Authority chair for final action.

(2) A project shall be funded if approved by the Authority chair and reviewed by the Legislative Research Commission's Capital Projects and Bond Oversight Committee.

(3) Upon approval of an application for funding of a project, the Authority shall issue a conditional commitment letter to the applicant establishing the requirements to be satisfied by the applicant prior to execution of an assistance agreement, including:

(a) Accounting standards or financial reporting conditions;

(b) Rate covenants;

(c) Other federal or state legal requirements relating to the project or the applicant;

(d) Engineering or technical requirements; and

(e) Receipt of additional funding commitments from other sources.

(4) Financial assistance by the Authority shall be made available only upon:

(a) Execution of an assistance agreement; and

(b) Satisfaction by the applicant of the conditions established in the conditional commitment letter.

(5) A grant amount may be adjusted by up to ten (10) percent from the principal amount approved without further action if:

(a) Requested by an applicant; and

(b) The staff of the Authority finds that:

1. The additional requested amount is needed for the project; and

2. Adequate funds are available.

(6) The Authority shall monitor the assistance agreements and require that financial reports be made available to the Authority by the applicant.

(7) The Authority may collect an administrative fee of one-half (1/2) of one (1) percent charged on the principal grant amount, as allowed by law. This fee shall be applied to the administrative processing servicing costs of the grants and necessary operating expenses of the program.

DENNIS KEENE, Chair

APPROVED BY AGENCY: June 1, 2021

FILED WITH LRC: June 2, 2021 at 9:22 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 27, 2021, at 10:00 a.m. at 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by July 22, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until July 31, 2021, at 11:59 a.m. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 12A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made upon request.

CONTACT PERSON: Bill Pauley, Staff Attorney, Department for Local Government, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601; phone 502-330-6359; fax 502-227-8691; email Bill.Pauley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bill Pauley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the application for and provision of financial assistance to governmental agencies for the construction of infrastructure projects from funds available to the Kentucky Infrastructure Authority through the Drinking Water and Wastewater Grant Program.

(b) The necessity of this administrative regulation: It is necessary in order to provide guidance to applicants for grants, and to ensure that the application, review and awarding of grants is in accordance with all applicable laws.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Regulation conforms to SB 36 which provides guidelines for the grants, by incorporating its guidelines and definitions throughout.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will assist in the effective administration of the statutes by providing applicants with a consistent procedure for providing the statutorily required information needed to administer the grant program. It will also aid the Kentucky Infrastructure Authority (KIA) in its administration of the program by creating a written process to analyze potential Water and Wastewater Infrastructure projects requesting grant funds.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This is a new regulation and will not change any existing administrative regulation.

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All governmental agencies, including cities, and private sector entities seeking grant funds for the construction of Water and Wastewater Infrastructure in the Commonwealth will be affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As a result of this Regulation, those governmental agencies and private sector entities will be provided guidance as to how to apply for state grant funds. In order to comply with the Regulation, they will be required to provide documentation regarding their proposed construction or improvements required by legislation. This will require the submission of documents and may require advice from an accounting professional.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The expense for the administrative and financial expenses are estimated to be minimal and will only apply to those wishing to request funds.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits to successful applicants are immeasurable. Access to clean drinking water and the treatment of wastewater will greatly improve quality of life for Kentucky citizens and create a more suitable business environment for existing and potential job creators.

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

(a) Initially: The expense for the KIA initially will consist of creating new processes for analyzing grant applications.

(b) On a continuing basis: This may require new computer software and will certainly require the time of staff members.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: On a continuing basis, staff will continue to be utilized, and computer systems will need upgraded as needed.

(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 source of grant funding for this program is entirely federally funded.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: In order to implement this Regulation, some additional fees and funding may be necessary. This funding will be for the creation of software and use of staff resources. It remains to be seen what that amount may be. There are no fees established by this regulation.

(9) TIERING: Is tiering applied? No tiering is applied. Pursuant to the relevant legislation, the funds will be appropriated to those projects based upon population, unserved rural customers, or local governmental agencies under consent decrees. In following that requirement, no tiering is necessary.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation has the potential to impact all level of state and local government, including cities, counties, and special purpose governmental agencies.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation relates to providing grant money for the building of water and wastewater infrastructure. SB 36 requires the action taken by this administrative regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The effect to expenditures on state government include the administrative duties required by the Kentucky Infrastructure Authority. Those expenses should be minimal. The effect to revenues to local governments is indeterminable.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is difficult to estimate the amount of revenue this administrative regulation will generate for state and local government for the first year since construction times are unknown. However, jobs can be assumed to be created relating to the construction of water and wastewater infrastructure. Also, this regulation allows local governments to be given construction costs for approved infrastructure projects. State government will receive benefits from any taxes as a result of infrastructure construction.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? In subsequent years, the construction and repair of water and wastewater infrastructure has the potential to create an unknown number of employment and educational opportunities. Access to proper water and wastewater infrastructure is considered to be necessary for any business venture. The potential for revenue is indeterminable.

(c) How much will it cost to administer this program for the first year? The costs of this regulation for the first year will include the administrative expenses required in order to provide the necessary information to the Kentucky Infrastructure Authority.

(d) How much will it cost to administer this program for subsequent years? In subsequent years, the administrative costs will remain the same, but, since this is a voluntary program, those costs should be outweighed by the benefits.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This program will have a positive fiscal impact on state and local governments by providing employment opportunities and should lower expenses for providing clean drinking water and wastewater systems. The social and environmental impacts due to enhanced sanitation should have a positive fiscal impact as well. The expenditures by local governments will be funded by the federal grant money which is the subject of this regulation.

STATEMENT OF EMERGENCY
902 KAR 2:221E

This emergency repealer is being promulgated to comply with the orders of the Governor in compliance with KRS 13A.190(1)(a)4. Due to decreased COVID-19 incidence and disease severity resulting in large part from COVID-19 vaccination, schools will no longer be required to report students and school personnel diagnosed with Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) (the virus that causes COVID-19) as described in 902 KAR 2:220. The emergency repeal of 902 KAR 2:220 is necessary to coincide with the end of the 2020-2021 school year. This emergency repealer administrative regulation conforms to KRS 13A.310 by repealing an administrative regulation that is no longer necessary. This emergency repealer administrative regulation will not be replaced by an ordinary administrative regulation.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Epidemiology and Health Planning
(Emergency Repealer)

902 KAR 2:221E. Repeal of 902 KAR 2:220.

Effective: June 4, 2021

RELATES TO: KRS 158.160, 214.010, 214.020

STATUTORY AUTHORITY: KRS 194A.050(1), 211.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth. KRS 211.180(1)(e) authorizes the cabinet to formulate, promote, establish, and execute policies, plans, and comprehensive programs relating to all matters of public health, including the protection and improvement of the health of infants, preschool, and school-age children. Due to decreased COVID-19 incidence and disease severity resulting in large part from COVID-19 vaccination, schools will no longer be required to report students and school personnel diagnosed with Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) (the virus that causes COVID-19) as described in 902 KAR 2:220. This administrative regulation is necessary to repeal 902 KAR 2:220, School notification standards related to COVID-19.

Section 1. 902 KAR 2:220, School notification standards related to COVID-19, is hereby repealed.

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

APPROVED BY AGENCY: June 3, 2021

FILED WITH LRC: June 4, 2021 at 2:23 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency administrative regulation repeals 902 KAR 2:220.

(b) The necessity of this administrative regulation: With the increase in vaccine availability and the decline in the COVID-19 positivity rate, schools will no longer be required to report the number of students and school personnel diagnosed with Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) (the virus that causes COVID-19). This emergency administrative regulation is necessary to repeal 902 KAR 2:220.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This emergency administrative regulation conforms to KRS 13A.310 by repealing an administrative regulation that is no longer necessary.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of 902 KAR 2:220 will relieve the administrative burden of public and private schools. Schools will no longer be required to report the number of students and school personnel diagnosed with COVID-19. This emergency administrative regulation is in accordance with KRS 13A.310(3)(a).

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This emergency administrative regulation impacts KDPH; KDE; local school boards; local health departments; and approximately 1,220 public and private elementary and secondary schools; and the children that enroll in or participate at these facilities.

(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: Schools will be relieved of the reporting requirements, students and school personnel will not be required to report a positive diagnosis of COVID-19 to schools. No additional action will be required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There are no costs associated with the compliance of this emergency administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This emergency administrative regulation will reduce the administrative burden on public and private schools.

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

(a) Initially: There are no costs to the administrative body associated with this emergency administrative regulation.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. No fees are associated with this emergency administrative regulation.

(9) TIERING: Is tiering applied? No. Tiering is not applicable as this emergency administrative regulation repeals 902 KAR 2:220.

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 emergency repeal of 902 KAR 2:220 will impact the Department for Public Health, the Department of Education, local school boards, local health departments, and all public and private elementary and secondary schools.

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 211.180.

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

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

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

(d) How much will it cost to administer this program for subsequent years? There are no costs to the administrative body associated with this 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 (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
921 KAR 3:026E

This emergency repealer is being promulgated to comply with Senate Bill 65 (Regular Session 2021, Acts ch. 165), which deems 921 KAR 3:025 to be null, void, and unenforceable effective June 29, 2021. This emergency repealer conforms to KRS 13A.190(1)(a)3. in that it is necessary to meet an imminent deadline established by state statute and KRS 13A.310(1) by repealing an administrative regulation that is being replaced and is no longer desired to be effective. This emergency repealer will not be replaced by an ordinary repealer as the repeal of 921 KAR 3:025 will be effective immediately upon the filing of this repealer.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

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

921 KAR 3:026E. Repeal of 921 KAR 3:025.

Effective: June 11, 2021

RELATES TO: KRS 13A.310, 205.2005, 7 C.F.R. Parts 271-285, 273.4, 273.5, 273.7, 273.11, 45 C.F.R. 261.2, 7 U.S.C. 2011, 2014, 2015(d), 20 U.S.C. 28 Part F, Pub. L. 116-260 Section 702(e)

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 requires the cabinet to administer a Supplemental Nutrition Assistance Program (SNAP) within the state. 7 C.F.R. Parts 272 and 273 establish requirements for the cabinet to participate in the SNAP. This administrative regulation repeals 921 KAR 3:025 because Senate Bill 65 (Regular Session 2021, Acts ch. 165) includes that 921 KAR 3:025 is null, void, and unenforceable effective June 29, 2021. 921 KAR 3:025 is being replaced with 921 KAR 3:027 in order to maintain federally-required SNAP eligibility provisions.

Section 1. 921 KAR 3:025, Technical requirements, is hereby repealed.

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

APPROVED BY AGENCY: June 8, 2021

FIELD WITH LRC: June 11, 2021 at 2:28 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Laura Begin or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This repealer repeals 921 KAR 3:025.

(b) The necessity of this administrative regulation: This administrative regulation repeals 921 KAR 3:025 because Senate Bill 65 (Regular Session 2021, Acts ch. 165) includes that 921 KAR 3:025 is null, void, and unenforceable effective June 29, 2021. 921 KAR 3:025 is being repealed simultaneously with the filing of 921 KAR 3:027 (ordinary and emergency) so as to ensure that the transition from the old administrative regulation to the new administrative regulation containing federally-required SNAP requirements and eligibility provisions is as seemless as possible.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by implementing legislation that was passed in the 2021 Regular Session.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by repealing an administrative regulation that will be deemed null and void.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is a repealer, not an amendment.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: No individuals, businesses, or organizations will be affected by this administrative regulation. Individuals subject to the requirements of 921 KAR 3:025 will be subject to the requirements of 921 KAR 3:027.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no new action required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no new costs associated with this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This repealer will clarify which administrative regulation is in effect after the effective date of Senate Bill 65.

(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 repealer.

(b) On a continuing basis: There will be no continual cost to implement this repealer.

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

There is no source of funding for this repealer.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as this is a repealer.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for this repealer.

2. State compliance standards. KRS 13A.310, 194A.050(1), 205.2005

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate for this regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services will be impacted by this repealer as contents are moved to a new administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.310, 194A.050(1), 205.2005

(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 repealer will not generate revenue.

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

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

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

STATEMENT OF EMERGENCY
921 KAR 3:027E

This emergency administrative regulation is necessary in order to ensure compliance with federal rules that require a state to administer a Supplemental Nutrition Assistance Program (SNAP). Senate Bill 65 (Regular Session 2021, Acts ch. 165), effective June 29, 2021, includes that 921 KAR 3:025 shall be null, void, and unenforceable as of the effective date of the Act. 921 KAR 3:025 contains the eligibility and technical requirements of SNAP, which is required by 7 C.F.R. 271.4; therefor, the cabinet is moving these required criteria into this new administrative regulation, 921 KAR 3:027. The issues that resulted in the passage of Senate Bill 65 were resolved and that agreed upon language is included in this administrative regulation.

This amendment is deemed to be an emergency pursuant to KRS 13A.190(1)(a)2. and 3., as approximately $700 million in federal funding per year will be lost to Kentucky in the absence of a state SNAP, and the effective date of Senate Bill 65, being June 29, 2021, is an imminent deadline by which the cabinet must have a replacement for 921 KAR 3:025 in place, as required by federal rules.

This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

Pursuant to KRS 13A.190(7)(f), this administrative regulation governs the same subject matter as 921 KAR 3:025E, which was filed on January 15, 2021. This administrative regulation differs from the previously filed ordinary and emergency administrative regulation governing the same subject matter in that it contains the SNAP child support arrears disqualification language that was approved at the April 2021 meeting of the Administrative Regulation Review Subcommittee.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

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

921 KAR 3:027E. Technical requirements.

Effective: June 11, 2021

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

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 requires the cabinet to administer a Supplemental Nutrition Assistance Program (SNAP) within the state. 7 C.F.R. Parts 272 and 273 establish requirements for the cabinet to participate in the SNAP. In addition, 7 U.S.C. 2014 establishes that an otherwise-qualified immigrant who is blind or receiving a disability benefit, who has lived in the United States for at least five (5) years, or who is under eighteen (18) years of age shall be eligible to participate in SNAP regardless of the date he or she entered the United States. This administrative regulation establishes the technical eligibility requirements used by the cabinet in the administration of SNAP. Pursuant to Section 702(e) of Pub. L. 116-260, the Consolidated Appropriations Act of 2021, SNAP eligibility was temporarily expanded for qualifying students.

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

(2) “Qualified immigrant” has the same meaning as "qualified alien", as defined by 7 C.F.R. 273.4.

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

Section 2. Technical Eligibility. In accordance with 7 C.F.R.

Parts 271 through 285 promulgated by the Food and Nutrition Service (FNS), of the United States Department of Agriculture, the cabinet shall utilize national uniform requirements of technical eligibility for SNAP.

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

(1) Residency. A household:

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

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

(2) Identity.

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

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

(3) Citizenship and immigration status.

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

1. Citizen of the United States;

2. U.S. noncitizen national; or

3. Qualified immigrant who is lawfully residing in Kentucky.

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

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

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

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

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

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

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

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

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

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

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

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

1. 7 C.F.R. 273.5(a);

2. 45 C.F.R. 261.2; or

3. 19 U.S.C. 2296;

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

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

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

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

1. Eligible to participate in a state or federally financed work study program during the regular school year; or

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

(6) Social Security number (SSN).

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

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

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

(8) Work requirement.

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

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

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

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

a. 7 C.F.R. 273.5(a); or

b. 19 U.S.C. 2296;

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

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

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

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

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

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

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

5. Pregnant.

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

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

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

(d) Subsequent eligibility.

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

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

(e) Loss of employment or training.

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

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

(f) If the individual does not meet all other technical and financial eligibility criteria pursuant to 7 U.S.C. 2011, nothing in this section shall make an individual eligible for SNAP benefits.

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

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

(11) Child support arrears.

(a) In accordance with 7 C.F.R. 273.11(q) to disqualify a noncustodial parent for refusing to cooperate, a noncustodial parent of a child under the age of eighteen (18) shall not be eligible to participate in SNAP if the individual is delinquent in payment of court-ordered support as determined by the Department for Income Support, Child Support Enforcement, unless the individual:

1. Is enrolled in a drug treatment program;

2. Is participating in a state or federally funded employment training program;

3. Meets good cause for nonpayment. Good cause shall include temporary situations resulting from illness, job change, or pendency of unemployment benefits;

4. Is a member of a household containing a child under the age of eighteen (18);

5. Is a member of a household containing an individual who is pregnant or three (3) months post-partum; or

6. Is:

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

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

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

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

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

(a) At the time of initial application for SNAP; and

(b) Every twelve (12) months following the initial application.

(2) Work registration shall be completed by the:

(a) Member required to register; or

(b) Person making application for the household.

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

(a) Ineligible immigrant; or

(b) Individual disqualified for:

1. Refusing to provide or apply for a Social Security number; or

2. An intentional program violation.

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

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

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

(a) Respond to a cabinet request for additional information regarding employment status or availability for work;

(b) In accordance with 7 C.F.R. 273.7(a)(1)(vi), accept a bona fide offer of suitable employment pursuant to 7 C.F.R. 273.7(h), at a wage not lower than the state or federal minimum wage; or

(c) In accordance with 7 C.F.R. 273.7(a)(1)(ii), participate in the E&T Program if assigned by the cabinet.

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

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

(a) Work requirements for each nonexempt household member;

(b) Rights and responsibilities of the work-registered household members; and

(c) Consequences of failing to comply.

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

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

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

1. Quit a job; or

2. Reduced the household member's work effort.

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

(a) Illness of the individual;

(b) Illness of another household member requiring the presence of the individual;

(c) A household emergency;

(d) Unavailability of transportation; or

(e) Lack of adequate care for a child who is six (6) to twelve (12) years of age for whom the individual is responsible.

(3) Good cause for leaving employment shall be granted if:

(a) A circumstance established in subsection (2) of this section exists;

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

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

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

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

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

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

(a) Date the individual complies; or

(b) Lapse of the following time periods:

1. Two (2) months for the first violation;

2. Four (4) months for the second violation; or

3. Six (6) months for the third or a subsequent violation.

(3) Ineligibility shall continue until the ineligible member:

(a) Becomes exempt from the work registration; or

(b)1. Serves the disqualification period established in subsection (2)(b) of this section; and

2. Complies with the work registration requirements.

(4) A disqualified household member who joins a new household shall:

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

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

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

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

(a) Quits a job:

1. Of thirty (30) hours or more per week; and

2. With weekly earnings at least equal to the federal minimum wage times thirty (30) hours; or

(b) Reduces the individual's work effort:

1. To less than thirty (30) hours per week; and

2. So that after the reduction, weekly earnings are less than the federal minimum wage times thirty (30) hours.

(2) The cabinet shall impose a disqualification period

established in Section 6(2)(b) of this administrative regulation on an individual meeting subsection (1)(a) or (1)(b) of this section.

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

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

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

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

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

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

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

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

APPROVED BY AGENCY: June 8, 2021

FIELD WITH LRC: June 11, 2021 at 2:28 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Laura Begin or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the technical requirements to receive Supplemental Nutrition Assistance Program (SNAP), which is assistance for low-income households in purchasing eligible food products.

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

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of technical requirements for SNAP eligibility.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing technical requirements for SNAP.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation, promulgated as a result of Senate Bill 65 (Regular Session 2021, Acts ch. 165). Although 921 KAR 3:025&E was amended and passed at the Administrative Regulation Review Subcommittee in April 2021, with all issues resolved and general consensus on the administrative regulation, Senate Bill 65 causes the administrative regulation to be, “null, void, and unenforceable as of the effective date of this Act”, which will be June 29, 2021. Because 7 C.F.R. 271.4 requires the cabinet to administer a Supplemental Nutrition Assistance Program (SNAP), because this administrative regulation contains the requirements for SNAP eligibility, and because the state of Kentucky must remain in compliance with federal rules over this program, the Department for Community Based Services must move these eligibility requirements into a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Although issues concerning 921 KAR 3:025 have been resolved, Senate Bill 65 (Regular Session 2021, Acts ch. 165) causes the administrative regulation to be null and void on June 29, 2021, forcing the department to move these federally-required eligibility provisions into a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation that will assist in the effective administration of the statutes governing SNAP by complying with federal and state law around program eligibility.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing technical and eligibility requirements for SNAP.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of April 2021, there were 292,743 low-income households in Kentucky receiving SNAP assistance in purchasing eligible food products. These households have been deemed as meeting the program eligibility requirements contained in this administrative regulation. There are over 4,000 Kentucky retailers participating in SNAP that receive over $700 million in SNAP federal funds annually.

(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 households mentioned in question (3) must meet the eligibility requirements contained in this administrative regulation to receive program assistance in purchasing food. There are no new requirements contained in this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to the households deemed eligible to receive program assistance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):
Households that comply with the technical requirements and meet the eligibility requirements contained in this administrative regulation will receive assistance in purchasing eligible food products from participating retailers.

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

(a) Initially: SNAP benefits are 100% federally funded by the U.S. Department of Agriculture. Program administrative costs are funded 50% federal and 50% state and have been appropriated in the enacted budget. There are no new costs associated with this administrative regulation.

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

(6) What is the source of the funding to be used for the

implementation and enforcement of this administrative regulation: SNAP benefits are 100% federally funded by the U.S. Department of Agriculture. There are over 4,000 Kentucky retailers participating in SNAP that receive over $700 million in SNAP federal funds annually.

(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 and no new costs associated with 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? SNAP assistance in purchasing food is only available to low-income households meeting the eligibility and technical requirements contained in this administrative regulation. Tiering is not applied as the eligibility requirements are the same for all program applicants.

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. The U.S. Department of Agriculture requires states implement SNAP, but permit some flexibility in program requirements, consistent with state laws.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The U.S. Department of Agriculture requires states implement SNAP, but permit some flexibility in program requirements, consistent with state laws.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services administers this program.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 7 C.F.R. 271.4, 272, 273, Pub. L. 116-260, KRS 194A.050(1), 205.2005.

(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, but Kentucky retailers in communities throughout Kentucky receive over $700 million in SNAP federal funds annually.

(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, but Kentucky retailers receive over $700 million in SNAP federal funds annually.

(c) How much will it cost to administer this program for the first year? SNAP benefits are 100% federally funded by the U.S. Department of Agriculture. Program administrative costs are funded 50% federal and 50% state and have been appropriated in the enacted budget. There are no new costs associated with this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? SNAP benefits are 100% federally funded by the U.S. Department of Agriculture. Program administrative costs are funded 50% federal and 50% state and have been appropriated in the enacted budget. There are no new costs associated with this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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.

BOARDS AND COMMISSIONS
Board of Alcohol and Drug Counselors
(Emergency As Amended at ARRS, June 8, 2021)

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

As Amended at ARRS version effective: June 8, 2021
Prior versions:
Emergency Amended After Comments - 47 Ky.R. 2536
Emergency Amendment - 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).**

(9)[(10)]**[(8)]** "Chair" means the chairperson or vice-chairperson of the board.

(10)[(11)]**[(9)]**[(7)] "Charge" means a specific allegation contained in a formal complaint, as established in subsection ***(15)[(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.

(11)[(12)]**[(10)]**[(8)] "Classroom hour" means an academic hour from an accredited institution or continuing education hour.

(12)[(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.

(13)[(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.

(14)[(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.

(15)[(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.

(16)[(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[:

(a) 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].

(17)[(18)]**[(16)]**[(14)] "Continuing education hour" means fifty (50) clock minutes of participating in a continuing education experience.

(18)[(19)]**[(17)]**[(15)] "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)].

(19)[(20)]**[(18)]**[(16)] "Disciplinary action" means to:

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

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

(20)[(21)]**[(19)]**[(17)] "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.

(21)[(22)]**[(20)]**[(18)] "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.

(22)[(23)]**[(21)]**[(19)] "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.

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

(24)[(25)]**[(22)]**[(20)] "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(6[4]).

(25)[(26)]**[(23)]**[(21)] "Licensed clinical alcohol and drug

counselor associate" is defined by KRS 309.080(7[~~5~~]).

***(26)[(27)]*[(24)]**[(~~22~~)] "Licensee" is defined by KRS 309.080(8[~~6~~]).

***(27)[(28)]*[(25)]**[(~~23~~)] "Provider" means an organization approved by the Kentucky Board of Alcohol and Drug Counselors for providing continuing education programs.

***(28)[(29)]*[(26)]**[(~~24~~)] "Registered alcohol and drug peer support specialist" is defined by KRS 309.080(10[~~8~~]).

***(29)[(30)]*[(27)]**[(~~25~~)] "Registrant" is defined by KRS 309.080(11[~~9~~]).

***(30)[(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).

***(31)[(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.

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.

BOARDS AND COMMISSIONS
Board of Alcohol and Drug Counselors
(Emergency As Amended at ARRS, June 8, 2021)

201 KAR 35:020E. Fees.

Current version effective: June 8, 2021
Prior versions:
Emergency Amended After Comments - 47 Ky.R. 2538
Emergency Amendment - 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)[~~1.~~] 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)[~~1.~~] 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)[~~(i)~~][~~(e)~~] The renewal fee for licensure shall be $300 for a three (3) year period, and shall accompany the Application for Renewal.

(l)[~~(j)~~][~~(f)~~] 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)[~~(c)~~] 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", ***June[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[911 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.

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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Epidemiology
(Emergency As Amended at ARRS, June 8, 2021)

902 KAR 2:211E. Covering the Face in Response to Declared National or State Public Health Emergency.

Emergency As Amended version effective: June 8, 2021
Regulation withdrawn by agency: June 11, 2021
Prior versions:
New Emergency - 47 Ky.R. 1533
Amended After Comments - 47 Ky.R. 2558

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 ***(4)[~~(3)~~]*** of this section, each person in Kentucky shall cover their nose and mouth with a face covering if the person:

(a) ***Is riding on public transportation or paratransit, including planes, buses, and trains, traveling into, within, or out of the United States and in U.S. transportation hubs, including airports and stations;***

(b) Is in a K-12 educational, preschool, daycare, or other child care setting, including any student, employee, staff member, or visitor;

(c) Is in a healthcare setting; or

(d) Is in a long-term care setting.

(3) The following are strongly encouraged to cover their nose and mouth with a face covering:

(a) An inmate, employee, staff person, or visitor in a correctional facility;

(b) Any person who is in a homeless shelter, including employees of the shelter or volunteers; or

(c) Anyone who is immune-compromised, or who is exhibiting symptoms of COVID-19, or who has tested positive for COVID-19 in the prior ten (10) days.

(4) [~~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) ***A person who has received the final dose of a COVID-19 vaccine at least fourteen (14) days prior;***

(b)[

~~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;]*~~

(c)~~*[(b)]*~~ A person with disability, or a physical or mental impairment, that prevents the person from safely wearing a face covering;

(d)~~*[(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; ***or***

(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. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on June 8, 2021.[

~~*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.]*~~

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ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, June 8, 2021)

103 KAR 26:131. Landscaping services.

RELATES TO: KRS 139.010, 139.200, 139.260, 139.270, 139.470, 139.480

STATUTORY AUTHORITY: KRS 131.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky tax laws. This administrative regulation interprets the sales and use tax law as it applies to landscaping services.

Section 1. Definitions. (1) "Construction contract" is defined by 103 KAR 26:070, Section 1***(1).[;]***

(2) "Contractor" is defined ***by*** ***[in]*** 103 KAR 26:070, Section 1(2)(a).

(3) "Department" means the Department of Revenue.

(4) "De minimis threshold exemption" is defined ***by*** ***[in]*** KRS 139.470(23).

(5) "Farm machinery" is defined ***by*** ***[in]*** KRS 139.480(11).

(6) "Landscaping services" ***means*** ***[includes]*** those services listed in KRS 139.200(2)(g)***.[;]***

(7) "Person" is defined ***by*** ***[in]*** KRS 139.010(26).

(8) "Practice of landscape architecture" is defined ***by*** ***[in]*** KRS 323A.010(3).

(9) "Professional services" is defined ***by*** ***[in]*** KRS 323A.010(4).

(10) "Resale certificate" means Resale Certificate Form 51A105, Streamlined Sales and Use Tax Agreement – Certificate of Exemption, Form 51A260, or Multistate Tax Commission's Uniform Sales and Use Tax Exemption/Resale Certificate – Multi-jurisdiction.

(11) "Retailer" is defined ***by*** ***[in]*** KRS 139.010(35).

(12) "Seller" is defined ***by*** ***[in]*** KRS 139.010(39).

(13) "Subcontractor" is defined ***by*** ***[in]*** 103 KAR 26:070, Section 1(2)(a).

Section 2. Landscaping Services. (1) The furnishing of landscaping services is subject to sales tax pursuant to KRS 139.200(2)(g). Sales tax shall apply to the sales price received from the furnishing of landscaping services.

(2) Persons engaged in the business of providing landscaping services are retailers of the landscaping services furnished. Landscaping service providers shall register for, collect, and remit sales tax.

(3) The list provided in this subsection shall serve as examples of the furnishing of landscaping services:

(a) Aerating;

(b) Applying chemicals to lakes or ponds to control the growth of algae or plant life;

(c) Bush hogging;

(d) Dethatching;

(e) Diagnosing lawn conditions for the purpose of providing landscaping services;

(f) Fertilizing;

(g) Hydro seeding;

(h) Installation of decorative bricks, blocks, and timbers such as those installed for a flower bed;

(i) Installation of lawn edging, decorative rock, and weed control fabric;

(j) Installation of free-standing planter boxes;

(k) Landscape design and installation services;

(l) Lawn care and maintenance services;

(m) Lawn fungus treatments;

(n) Leaf removal;

(o) Mowing and trimming;

(p) Mulching;

(q) Planting, pruning, bracing, removal, surgery, and trimming of plants, trees, and shrubs;

(r) Raking, including power raking;

(s) Seeding or reseeding;

(t) Services for the removal of gophers, moles, voles**,** and other lawn pests;

(u) Snow plowing or removal services;

(v) Sod laying;

(w) Soil moving, grading, removal, or installation as part of a landscaping service (such as removing a top layer of soil to install sod);

(x) Spraying or other applications of chemicals and fertilizer within the landscape. Examples include:

1. Granular and liquid lawn fertilizers;
2. Lime applications;
3. Seed and fertilizer combination applications;
4. Herbicides; or
5. Insecticides, including those to eliminate grubs, ants, fleas, and ticks.

(y) Stump removal;

(z) Tilling and soil preparation;

(aa) Turf installation; or

(bb) Watering, including the installation of soak hoses.

Section 3. Non-landscaping Services. The list provided in this section shall serve as examples of activities not considered the furnishing of landscaping services:

(1) Vegetative management of highway rights-of-way including mowing, line trimming, and tree trimming;

(2) Vegetative management of utility rights-of-way including mowing, line trimming, and tree trimming;

(3) Perpetual care of gravesites at a cemetery;

(4) Government-mandated land reclamation at a mining site;

(5) Mosquito spraying services;

(6) Professional services authorized as part of the licensed practice of professional landscape architecture provided under separate contract from landscape design and installation services;

(7) Mowing, spraying, tree trimming, and fence clearing, provided to a person regularly engaged in the business of farming and provided on land that is:

(a) Being cultivated for the production of crops as a business;

(b) Being directly used in the occupation of raising and feeding livestock or poultry for sale;

(c) Being directly used in the occupation of producing milk for sale;

(d) Being directly used in the occupation of egg production;

(e) Being directly used in the occupation of breeding or producing:

1. Aquatic organisms;
2. Buffalos;
3. Cervids;
4. Llamas or alpacas; or
5. Ratites; and

(8) Mowing, spraying, tree trimming, and fence clearing, provided to a person engaged in the raising of equine as a business; provided however, that the landscaping services are performed on the portion of land directly used in the raising of equine.

Section 4. Property Purchased for Resale by Persons Furnishing Landscaping Services. (1) Persons furnishing landscaping services may issue a fully completed resale certificate for the purchase of property to be resold to a customer when furnishing the landscaping services where the property remains with the customer after the furnishing of landscaping services. The

purchaser of the property to be resold to a customer when furnishing the landscaping services shall collect sales tax from the customer on the sales price of the property.

(2) The list provided in this subsection shall serve as examples of property purchased for resale that demonstrate the types of property that generally are received by, or remain with, the customer after landscaping services are performed:

(a) Bulbs;
(b) Bushes;
(c) Chemicals;
(d) Dirt;
(e) Fertilizer;
(f) Insecticides;
(g) Landscaping materials;
(h) Lawn care chemicals;
(i) Mulch;
(j) Rock;
(k) Shrubs;
(l) Sod;
(m) Trees; or
(n) Weed barriers.

Section 5. Property Used or Consumed by Persons Furnishing Landscaping Services. (1) Persons furnishing landscaping services shall not issue a resale certificate for property used or consumed in the performance of the landscaping services. Property sold to landscaping service providers and used or consumed by the landscaping service providers when furnishing landscaping services shall be subject to sales tax at the time of purchase by the landscaping service provider.

(2) The list provided in this subsection shall serve as examples of property consumed in the performance of landscaping services:

(a) Chemical applicators;
(b) Equipment rentals;
(c) Gasoline;
(d) Gloves;
(e) Lawnmowers;
(f) Oil;
(g) String trimmers, string trimmer lines and spools;
(h) Tools; or
(i) Wheelbarrows.

Section 6. Resale of Landscaping Services. (1) A person furnishing landscaping services may issue a fully completed resale certificate to another person furnishing landscaping services for the purchase of the landscaping services that will be resold to the end consumer. The purchaser of the landscaping services to be resold shall collect sales tax from the end consumer on the sales price for the furnished landscaping services.

(2) Example. Landscaping services provider A may issue a fully completed resale certificate to landscaping services provider B for the purchase of lawn mowing services to fulfill his obligations to the end consumer. Landscaping services provider A shall collect the sales tax from the end consumer on the sales price of the landscaping services.

(3) A contractor or subcontractor shall not issue a resale certificate for the purchase of landscaping services.

Section 7. De Minimis Threshold Exemption. (1) Transactions are exempt from tax for the furnishing of landscaping services or the furnishing of landscaping services combined with other services listed in KRS 139.200(h) through (q) ***if*** ***[when]*** a service provider's receipts have never exceeded the de minimis threshold exemption in a calendar year. Gross receipts from the furnishing of landscaping services that exceed the de minimis threshold exemption amount in a calendar year shall be subject to sales tax. All subsequent receipts in the calendar year and all gross receipts for each calendar year thereafter ***shall be*** ***[are]*** subject to sales tax.

(2) The de minimis threshold exemption described in subsection 1 of this section ***shall*** ***[does]*** not apply if the landscaping services provider is also engaged in the business of selling tangible personal property or digital property, or furnishing other services listed under KRS 139.200(2)(a) to (f). For example, if a landscaping services provider also sells grass seed, weed and feed, lawn equipment, or other similar products at retail, then all of the sales (both landscaping services and sales of tangible personal property) shall be subject to sales tax.

Section 8. Non-taxable Services and Exemptions for Purchases Applicable to Landscaping Services Providers Engaged in Dual Businesses. (1) This section applies to persons engaged in furnishing landscaping services that are also engaged in a dual business.

(2) Contractors and subcontractors ***shall be*** ***[are]*** subject to ***[Regulation]*** 103 KAR 26:070.

(3) ***If*** ***[When]*** a person furnishing landscaping services also operates as a contractor or subcontractor, the following list shall serve as examples of services not considered to be landscaping services when performed by a contractor or subcontractor to fulfill the terms on a construction contract.

(a) Installation, repair, or removal of the following:

1. Berm walls;
2. Driveways, sidewalks, parking areas, and patios, including those constructed of asphalt, brick, concrete, crushed stone, or gravel;
3. Decks;
4. Fences;
5. Fountains or other water works installed as plumbing fixtures;
6. Gazebos;
7. In-ground sprinkler and irrigation systems;
8. Masonry, stone setting, terrazzo, tile marble, or mosaic work;
9. Ponds, excluding decorative or ornamental ponds; or
10. Retaining walls, including those constructed of block, stone, or brick;

(b) Land clearing, excavation, erosion control, and finish grading for the construction of a permanent structure.

(4) Purchases of tangible personal property such as building materials, fixtures, and supplies that are to be incorporated or fabricated into any structure or any improvement to real estate ***shall be*** ***[are]*** subject to sales and use tax at the time of the sale to the contractor or subcontractor furnishing landscaping services in conjunction with his business as a contractor or subcontractor.

(5) ***If*** ***[When]*** a person furnishing landscaping services is also acting as a retailer of tangible personal property, and sells tangible personal property to a person who is claiming an exemption, the retailer shall not be relieved of the burden of collecting the tax until the purchaser provides the retailer with a fully completed certificate of exemption or a direct pay authorization.

Section 9. Forms. The forms ***referenced in [incorporated by reference into]*** this administrative regulation may be inspected, copied, or obtained, subject to applicable copyright law, at:

(1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601;

(2) A Kentucky Taxpayer Service Center, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

(3) The Department or Revenue Web site at http://revenue.ky.gov.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

BOARDS AND COMMISSIONS
Board of Pharmacy
(As Amended at ARRS, June 8, 2021)

201 KAR 2:040. Registration of pharmacist interns.

RELATES TO: KRS 315.010***(18)[(16)]***, 315.020(3), (4), 315.050(4), (5), 315.191(1)(h)

STATUTORY AUTHORITY: KRS 315.050(4), (5), 315.191(1)(a), (h)

NECESSITY, FUNCTION, AND CONFORMITY: ***[~~The Kentucky Board of Pharmacy is required by~~]*** KRS 315.050(4) ***requires the Kentucky Board of Pharmacy*** to establish standards for pharmacy intern certification. KRS 315.191(1)(h) authorizes the board to establish an internship program for training, qualifications, and registration of applicants for registration of pharmacist interns. This administrative regulation establishes the standards for training, qualifications, and registration of pharmacist interns.

Section 1. Definitions. (1) "Academic experience program" means a course or series of courses taken by a pharmacist intern at a school or college of pharmacy approved by the board that involves actual practice of pharmacy experiences.

(2) "Preceptor" means the pharmacist who is responsible to the board for the practice of pharmacy experiences of a pharmacist intern.

Section 2. An applicant for registration as a pharmacist intern shall:

(1) File an Application for Registration as a Pharmacist Intern, Form I, with the board; and

(2) [~~Attach a recent head and shoulders passport photograph, that is not a proof copy or plastic identification; and~~

~~(3)~~] Submit proof of acceptance by a college or school of pharmacy approved by the board.

Section 3. An applicant for examination for licensure as a pharmacist shall:

(1) Complete 1,500 hours of internship;

(2) Be awarded credit for internship for hours worked in a pharmacy or in related research during the time the pharmacist intern is enrolled in an approved school or college of pharmacy;

(3) Not be awarded credit for hours worked in a pharmacy or in related research during the period the pharmacist intern is completing the academic experience program;

(4) Be limited to internship credit:

(a) Of forty-eight (48) hours per week during non-academic sessions if the pharmacist intern is in good standing with a college or school of pharmacy and the board; and

(b) Of twenty (20) hours per week during academic sessions in a college or school of pharmacy. The maximum credit allowed for this enrolled time shall be 500 hours;

(5) Be given credit for the following forms of internship:

(a) Completion of an academic experience program;

(b) Work performed in a pharmacy under the supervision of a preceptor;

(c) Work or research related to the practice of pharmacy that was performed under the supervision of a preceptor for a government body, college or university, pharmacy business, or other entity if the pharmacist intern has received prior approval by the board. The maximum credit allowed for this time shall be 400 hours***,*** and the pharmacist intern shall ***[~~also~~]*** file an essay of at least 500 words describing the work or research experience and the relation of the work or research to the practice of pharmacy, which shall be approved by the board president; or

(d) An internship performed outside of Kentucky if the:

1. Requirements for internship in that state are at least equivalent to the requirements established in this administrative regulation; and

2. Board of licensure in that state has certified that the preceptor, pharmacy, government body, college or university, pharmaceutical business, or other entity is in good standing; and

(6) Not be awarded credit for an internship completed prior to registration with the board.

Section 4. A pharmacist intern shall:

(1) Be issued a Registration Identification Card;

(2) Carry the Registration Identification Card when on duty;

(3) Show it upon request to a member of the board or its authorized agent; and

(4) Notify the board within thirty (30) days of any charge of:

(a) A felony;

(b) A violation of drug laws; or

(c) A violation of alcohol laws.

Section 5. The registration of a pharmacist intern shall be revoked if the pharmacist intern is not:

(1)***(a)*** Currently enrolled in a college or school of pharmacy approved by the board; ***and***

(b) Under the exceptions as established in Section 6 of this administrative regulation;

(2) A current applicant for licensure as a pharmacist in Kentucky; or

(3) Awaiting the results of an examination.

Section 6. The registration of a pharmacist intern shall not be revoked ***if[~~when~~]*** the intern is not currently enrolled in a college or school of pharmacy approved by the board if the board finds that:

(1) The intern is on a semester break; or

(2) Personal or family health concerns or other reasons beyond the control of the pharmacist intern necessitate a temporary absence from enrollment and the absence is approved by the board.

Section 7. A person who is not registered as a pharmacist intern shall not:

(1) Hold himself or herself out as a pharmacist intern; or

(2) Perform the duties of a pharmacist intern.

Section 8. (1) A preceptor shall be a pharmacist who:

(a) Has a license in good standing;

(b) Has been licensed by the board for at least one (1) year; and

(c) Has requested in writing to be designated as a preceptor.

(2) A preceptor shall be actively engaged in the practice of pharmacy in the location where the pharmacist intern performs his or her internship.

(3) The preceptor shall supervise only one (1) pharmacist intern at a time for the purpose of the intern obtaining credit for the practice of pharmacy experience, unless the pharmacist is supervising interns as a faculty member at a school or college pharmacy approved by the board during an academic experience program.

Section 9. Credit for Non-Academic Experience Programs. (1) Within ten (10) days of beginning an internship credit for non-academic experience program, a pharmacist intern shall submit a Pharmacist Preceptor's Affidavit, Form II.

(2) On or before graduation from a college or school of pharmacy, a pharmacist intern shall submit an Internship Report, Form III.

Section 10. Credit for Academic Experience Programs. (1) For a Doctor of Pharmacy degree, credit shall be awarded for each hour of successful completion of an academic experience program at a college or school of pharmacy approved by the board.

(2) An academic experience program shall be reported on an Academic Experience Affidavit, Form IV, which shall be filed with the board upon completion of the academic experience program or prior to certification for examination.

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

(a) "Application for Registration as a Pharmacist Intern", Form I, 03/2021 [~~11/2012~~];

(b) "Pharmacist Preceptor's Affidavit", Form II, 03/2021; [~~11/2012~~]

(c) "Internship Report", Form III, 03/2021 [~~11/2012~~]; and

(d) "Academic Experience Affidavit", Form IV, 03/2021 [~~11/2012~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601 Monday through Friday, 8 a.m. to 4:30 p.m. ***This material is also available on the board's Web site at https://pharmacy.ky.gov/professionals/Pages/Pharmacist-Interns.aspx.***

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

BOARDS AND COMMISSIONS
Board of Pharmacy
(As Amended at ARRS, June 8, 2021)

201 KAR 2:171. Computerized recordkeeping.

RELATES TO: KRS 217.215, 217.216, 315.191

STATUTORY AUTHORITY: KRS 217.215(2), 315.191(1), (a), (f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.215(2) ***authorizes[~~provides for~~]*** the board to establish administrative regulations relating to the storage and retrieval of ***prescription[~~prescriptions~~]*** records ***in licensed pharmacies***, including ***administrative regulations regarding*** computerized recordkeeping. This administrative regulation provides standards for ***licensed pharmacies[~~those~~]*** using computerized recordkeeping.

Section 1. The following information shall be entered into the system:

(1) All information pertinent to a prescription shall be entered into the system, including ***items such as[~~, but not limited to,~~]*** each of the following:

(a) The prescription number;

(b) The patient's name and address;

(c) The prescriber's name and address;

(d) The prescriber's Federal Drug Enforcement Administration number, if appropriate;

(e) Refill authorization;

(f) Any prescriber's instructions or patient's preference permitted by ***KRS Chapters 217, 218A, and 315, or 201 KAR Chapter 2[~~law or administrative regulation~~]***;

(g) The name, strength, dosage form, and quantity of the drug dispensed originally and upon each refill; and

(h) The date of dispensing of the prescription and the identifying designation of the dispensing pharmacist for the original filling and each refill.

(2) The entries shall be made into the system ***when[~~at the time~~]*** the prescription is first filled and ***upon[~~at the time of~~]*** each refill, except that the format of the record may be organized so that the data already entered may appear for the prescription or refill without reentering that data. Records that are received or sent electronically may be kept electronically. The dispensing pharmacist shall ***ensure[~~be responsible for~~]*** the completeness and accuracy of the entries.

(3)***(a)*** The original prescription and a record of each refill, if received written or oral, shall be preserved as a hard copy for a period of three (3) years and thereafter be preserved as a hard copy or electronically for no less than an additional two (2) years.

(b) The original prescription and a record of each refill, if received by facsimile, shall be preserved as a hard copy, the original electronic image, or electronically for a period of three (3) years and thereafter be preserved as a hard copy, the original electronic image, or electronically for no less than an additional two ***(2)*** years.

(c) The original and electronic prescription shall be subject to inspection by authorized agents. An original ***and electronic*** prescription shall not be obstructed in any manner.

(4) The original prescription and a record of each refill, if received as an e-prescription, shall be preserved electronically for a period of no less than five (5) years. The electronic prescription shall be subject to inspection by authorized agents. An original ***and electronic*** prescription shall not be obstructed in any manner.

(5) The required information shall be entered into the system for all prescriptions filled at the pharmacy.

(6) The system shall provide adequate safeguards against improper manipulation or alteration of the data.

(7)The system shall have the capability of producing a hard-copy printout of all original and refilled prescription data as required in ***this*** section ***[~~1 of this administrative regulation~~]***. A hard-copy printout of the required data shall be made available to an authorized agent within forty-eight ***(48)*** hours of the receipt of a written request.

(8) The system shall maintain a record of each day's prescription data as follows:

(a) This record shall be verified, dated, and signed by the ***pharmacist or pharmacists[~~pharmacist(s)~~]*** who filled those prescription orders either:

1. Electronically;
2. Manually; or
3. In a log.

(b) This record shall be maintained for no less than five (5) years; and

(c) This record shall be readily retrievable and shall be subject to inspection by authorized agents.

(9) An auxiliary recordkeeping system shall be established for the documentation of refills if the automated data processing system is inoperative for any reason. The auxiliary system shall ***ensure[~~insure~~]*** that all refills are authorized by the original prescription order and that the maximum number of refills is not exceeded. If the automated data processing system is restored to operation, the information regarding prescriptions filled and refilled during the inoperative period shall be entered into the automated data processing system within seventy-two (72) hours.

(10) Controlled substance data shall be identifiable apart from other items appearing in the record.

(11) The pharmacist shall ***[~~be responsible to~~]*** assure continuity in the maintenance of records throughout any transition in computerized record systems utilized.

Section 2. A computer malfunction or data processing ***service[~~services~~]*** provider's negligence shall not be a defense against charges of improper recordkeeping.

Section 3. This administrative regulation is not applicable to the recordkeeping for drugs prescribed for and administered to patients confined as inpatients in an acute care facility.

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

BOARDS AND COMMISSIONS
Board of Pharmacy
(As Amended at ARRS, June 8, 2021)

201 KAR 2:205. Pharmacist-in-charge.

RELATES TO: KRS 315.020, ***315.035,*** 315.0351, 315.191, 315.300, 315.335

STATUTORY AUTHORITY: KRS 315.020(1), 315.0351, 315.191(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1) authorizes the board to promulgate administrative

regulations pursuant to KRS Chapter 13A necessary to regulate and control all matters relating to pharmacists, pharmacist interns, pharmacy technicians, pharmacies, wholesale distributors, and manufacturers. KRS 315.020(1) and 315.0351***(1)(g)[~~(7)~~]*** require applicants for pharmacy permits to place a pharmacist in charge as a prerequisite to compounding and dispensing privileges granted by the Kentucky Board of Pharmacy. This administrative regulation establishes the requirements relating to a pharmacist-in-charge.

Section 1. Definition. "Pharmacist-in-charge" means a pharmacist licensed in the Commonwealth of Kentucky[~~, or in the appropriate jurisdiction of an out-of-state pharmacy holding a Kentucky Board of Pharmacy permit~~], who accepts responsibility for the operation of a pharmacy in conformance with all laws and administrative regulations pertinent to the practice of pharmacy and the distribution of prescription drugs and who is personally in full and actual charge of the pharmacy.

Section 2. Duties and Responsibilities. (1) The pharmacist-in-charge shall be so designated in the Application for ***[a]*** Permit to Operate a Pharmacy ***in Kentucky and in the Application for Non-Resident Pharmacy Permit,*** and in each Application for ***Resident Pharmacy*** Renewal ***and Application for Non-Resident Pharmacy Permit Renewal submitted for the renewal*** of that permit thereafter.

(2) A pharmacist shall not serve as a pharmacist-in-charge:

(a) For more than one (1) pharmacy at a time, except upon written approval from the Kentucky Board of Pharmacy; and

(b) Unless he or she is physically present in that pharmacy for a minimum of ten (10) hours per week or the amount of time appropriate to provide supervision and control.

(3) The pharmacist-in-charge shall be responsible for:

(a) Quality assurance programs for pharmacy services designed to objectively and systematically monitor care, pursue opportunities for improvement, resolve identified problems as may exist, and detect and prevent drug diversion;

(b) The procurement, storage, security, and disposition of drugs and the provision of pharmacy services;

(c) Assuring that all pharmacists and interns employed by the pharmacy are currently licensed;

(d) Providing notification in writing to the Board of Pharmacy within fourteen (14) calendar days of any change in the:

1. Employment of the pharmacist-in-charge;

2. Employment of staff pharmacists; or

3. Schedule of hours for the pharmacy;

(e) Making or filing of any reports required by state or federal laws and regulations;

(f) Responding to the Kentucky Board of Pharmacy regarding identified violations or deficiencies; and

(g) Filing of any report of a theft or loss to:

1. The U. S. Department of Justice Drug Enforcement Agency as required by 21 C.F.R. 1301.76(b);

2. The Department of the Kentucky State Police as required by KRS 315.335; and

3. The board by providing a copy to the board of each report submitted.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Permit to Operate a Pharmacy in Kentucky" Form 1, 5/2020[~~07/2012~~];

(b) "Application for Non-Resident Pharmacy Permit", Form 3[~~1~~], 5/2020[~~07/2012~~];

(c) "Application for Resident Pharmacy Renewal", Form 2, 5/2020[~~07/2012~~]; and

(d) "Application for Non-Resident Pharmacy Permit Renewal", Form 4[~~2~~], 5/2020[~~07/2012~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. ***This material is also available on the board's Web site at https://pharmacy.ky.gov/Businesses/Pages/Pharmacy.aspx.***

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

BOARDS AND COMMISSIONS
Board of Pharmacy
(As Amended at ARRS, June 8, 2021)

201 KAR 2:390. Requirements for third-party logistics providers[~~provider~~].

RELATES TO: KRS ***315.0351, 315.121,***[~~315.002, 315.005,~~] 315.191(1)(a), 315.400[~~(18)~~], 315.4102, 315.4104, 315.4106, 315.4108, 315.4110***, 21 U.S.C. 360eee-360eee-4***

STATUTORY AUTHORITY: KRS ***315.191(1)(a),*** 315.4102, 315.4104, 315.4106, 315.4108, 315.4110

NECESSITY, FUNCTION AND CONFORMITY: KRS 315.191(1)(a), 315.4102, 315.4104, 315.4106, 315.4108, and 315.4110 authorizes the board to promulgate administrative regulations to regulate third-party logistics providers. [~~KRS 315.4102 requires a third-party logistics provider to be licensed and that the board establish the renewal fee by administrative regulation. KRS 315.4104 requires a board-approved application, licensure fee, and accompanying information. KRS 315.4106 establishes eligibility factors for licensure and renewal. KRS 315.4108 identifies persons disqualified as owners and designated representatives of third-party logistics providers. KRS 315.4110 establishes criteria for lawfully conducting business as a third-party logistics provider in the Commonwealth of Kentucky.~~] This administrative regulation establishes requirements for the regulation of third-party logistics providers [~~to become licensed and operate~~].

Section 1. Definitions.

(1) ***"Board" means the Board of Pharmacy.***

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

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

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

(5) "Illegitimate product" is defined by KRS 315.400(11).

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

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

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

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

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

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

(8) "Third-party logistics provider" is defined by KRS 315.400(18). [~~Application Requirements for Licensure Application and Renewal. (1) An applicant for initial licensure or renewal as a third party logistics provider shall submit:~~

~~(a) A non-refundable initial licensure or renewal fee of $200 by check or money order made payable to the Kentucky State Treasurer;~~

~~(b) A complete, sworn, and notarized Application to Operate as a Third-Party Logistics Facility;~~

~~(c) Unless previously provided, documentation of licensure as a third-party logistics provider through proof of registration with either:~~

~~1. The secretary of the U.S. Department of Health and Human Services, Food and Drug Administration; or~~

~~2. The state in which the provider ships;~~

~~(d) Unless previously provided, copy of current inspection report conducted by the United States Food and Drug Administration, if applicable. If a current inspection report is not available from the United States Food and Drug Administration, the applicant shall submit an inspection report by:~~

~~1. The National Association of Boards of Pharmacy (NABP); or~~

~~2. The board's authorized agent;~~

~~(e) A confirmation statement of the previous owner if ownership changed;~~

~~(f) Legal proof of any name change, if applicable;~~

~~(g) An explanation if an applicant, officer, partner, or director has ever been convicted of a felony or had a professional license or permit disciplined under federal, state, or local law;~~

~~(h) Ownership information for each partner, director, or officer, including:~~

~~1. Name and title;~~

~~2. Email addresses;~~

~~3. Federal employer identification number;~~

~~4. Address;~~

~~5. Phone number;~~

~~6. Social security number; and~~

~~7. Date of birth;~~

~~(i) State of incorporation or organization if the owner is a corporation; and~~

~~(j) Upon request, a list of all manufacturers, wholesale distributors, and dispensers for whom the third-party logistics provider provides services.~~

~~(2) An applicant applying for any ownership or address change shall submit a non-refundable ownership change fee of $100 and a change of address fee of $100.~~

~~(3) Each License shall expire on June 30 following date of issuance, unless earlier suspended or revoked. There shall be a delinquent renewal fee of $200 for failure to renew by June 30 of each year.~~]

Section 2. [~~General~~]Requirements. [~~A third-party logistics provider shall:~~](1) A third-party logistics provider providing services in the Commonwealth, including distributing into the Commonwealth, shall apply for a license from the board ***[of Pharmacy]*** in accordance with KRS 315.4102 and this administrative regulation.

(2) A separate license shall be required for each third-party logistics provider's facility that provides services in the Commonwealth, including distributing into the Commonwealth, regardless of whether joint ownership or control exists.

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

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

(a) Adequate operation, maintenance, and storage conditions to ensure proper lighting, ventilation, temperature and humidity control, sanitation, space, and security as per label requirements or official United States Pharmacopoeia (USP) compendium requirements, USP Chapter 659, Packaging and Storage Requirements**,** as incorporated by reference in 201 KAR 2:105. Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, or logs shall be utilized to document proper storage of components, prescription drugs, or drug-related devices;

(b) Separation and quarantine of deteriorated, damaged, outdated, misbranded, adulterated, or recalled components, prescription drugs, or drug-related devices until they are destroyed or returned; and

(c) If applicable, provide proof of registration with the U.S. Food and Drug Administration (FDA) and U.S. Drug Enforcement Administration (DEA) and shall comply with all federal laws, state and local laws**,** and regulations.

(5) A third-party logistics provider shall comply with all requirements as outlined in the Drug Supply Chain Security Act (DSCSA), 21 U.S.C 360eee-360eee-4, and other applicable federal laws.

(6) A third-party logistics provider shall establish a system to quarantine or destroy suspect or illegitimate product if directed to do so by the manufacturer, repackager, wholesale distributor, dispenser, or authorized government agency.

(7) A third-party logistics provider shall have readily retrievable within forty-eight (48) hours[~~immediately provide~~], upon written request of the board ***[~~of Pharmacy~~]*** or its agents, and maintain for board ***[~~of Pharmacy~~]*** inspection, a list of all manufacturers, wholesale distributors, repackagers, and dispensers for whom the third-party logistics provider provides services;

(8)[~~(2)~~] A third-party logistics provider shall have readily retrievable within forty-eight (48) hours [~~immediately provide~~], upon written request of the board ***[~~of Pharmacy~~]*** or its agents, and maintain for board ***[~~of Pharmacy~~]*** inspection, a list of each partner, limited liability company member, [~~and~~] corporate officer or director, and facility manager, including a description of the duties and qualifications of each; and

(9)[~~(3) Make available for board inspection, records of providing third-party logistics services involving prescription drugs, if such records are maintained; and~~] A third-party logistics provider shall have readily retrievable within forty-eight (48) hours, upon written request of the board ***[~~of Pharmacy~~]*** or its agents, and maintain for board ***[~~of Pharmacy~~]*** inspection, records with capability to trace the receipt and outbound distribution or disposition of components, prescription drugs, or drug-related devices and records of inventory.[

~~(4) Follow closure procedures established in 201 KAR 2:106, Section 2.~~]

Section 3. Qualifications for Licensure. (1) The board ***[~~of Pharmacy~~]*** shall consider, at a minimum, the following factors in determining the eligibility for initial licensure and renewal of third-party logistics providers:

(a) Minimum considerations in KRS 315.4106(1);

(b) Any convictions of the applicant or its officers under any federal, state, or local laws relating to drugs, ***including[~~to include~~]*** drug samples and controlled substances;

(c) The applicant's and its officers' past experience with distribution of prescription drugs and drug-related devices, including drug samples and controlled substances; and

(d) Compliance with the requirements under any previously granted license or permit, if any.

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

(3) A license shall not be issued pursuant to this administrative regulation unless the applicant has furnished proof satisfactory to the board ***[~~of Pharmacy~~]***:

(a) That the applicant is in compliance with all applicable federal, state, and local laws and regulations relating to prescription drugs and ***drug-***related devices; and

(b) That the applicant is equipped as to land, buildings, and security to properly conduct the business described in the application.

(4) A license issued pursuant to this administrative regulation [~~may be disciplined, suspended, or revoked for failure~~] failing to comply with the provisions of KRS 315.400, 315.4102, 315.4104, 315.4106, 315.4108, 315.4110, or this administrative regulation may result in discipline, suspension**,** or revocation under KRS 315.121.

Section 4. Application, Fees, Renewals.

(1) An applicant for initial licensure or renewal as a third-party logistics provider shall submit:

(a) A non-refundable initial licensure or renewal fee of $200 by check or money order made payable to the Kentucky State Treasurer;

(b) A complete, sworn, and notarized ***[“]***Application to Operate as a Third-Party Logistics ***Provider or Application for Third-Party Logistics Provider License Renewal[”]***;

(c) Unless previously provided, documentation of licensure as a third-party logistics provider through proof of registration with either:

1. The FDA; or

2. The state in which the third-party logistics provider is located;

(d) Unless previously provided, copy of most current inspection report conducted by the FDA. If the most current inspection report is not available from the FDA, the applicant shall submit an inspection report by:

1. The National Association of Boards of Pharmacy (NABP); or

2. The resident state licensing or permitting authority's authorized agent;

(e) A confirmation statement from the previous owner if ownership changed;

(f) Legal proof of any name change, if applicable;

(g) An explanation if an applicant, officer, partner, or director has ever been convicted of a felony or had a professional license or permit disciplined under federal, state, or local law;

(h) Ownership information for each partner, director, or officer, including:

1. Name and title;

2. Email addresses;

3. Federal employer identification number;

4. Address;

5. Phone number;

6. Social security number; and

7. Date of birth;

(i) State of incorporation or organization if the owner is a corporation; and

(j) Upon request, a list of all manufacturers, repackagers, wholesale distributors, and dispensers for whom the third-party logistics provider provides services.

(2) An applicant applying for any ownership or address change shall submit a non-refundable fee of $100.

(3) Each license shall expire on June 30 following date of issuance, unless earlier suspended or revoked. There shall be a delinquent renewal fee of $200 for failure to renew by June 30 of each year.

Section 5. Standards. (1) Facilities.

(a) All facilities in which components, prescription drugs, or drug-related devices are held shall be of suitable size, construction, and location to facilitate cleaning, maintenance, and proper operations;

(b) All facilities shall meet all applicable federal, state, and local laws and regulations;

(c) A third-party logistics provider shall quarantine components, prescription drugs, or drug-related devices that are outdated, damaged, deteriorated, misbranded, recalled, or adulterated;

(d) A facility shall not be located in a residence; and

(e) A facility shall be located apart and separate from any pharmacy permitted by the board ***[of Pharmacy]***.

(2) Security.

(a) A third-party logistics provider shall be equipped with an alarm system to detect entry after hours.

(b) A third-party logistics provider shall assure that access from outside ***the provider's[their]*** premises is well controlled and reduced to a minimum. This includes the installation of adequate lighting at the outside perimeter of the premises.

(c) Internal security policies shall be developed to provide reasonable protection against theft and diversion by limiting access to areas where components, prescription drugs, or drug-related devices are held to authorized personnel. These policies shall provide protection against tampering with computers or electronic records.

(d) A third-party logistics provider shall employ adequate personnel with the education and experience necessary to safely and lawfully engage in providing these services.

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

(a) Inventories and other records regarding the receipt and distribution or disposition of components, prescription drugs, or drug-related devices shall be maintained and readily retrievable within forty-eight (48) hours for inspection or photocopying by the board ***[of Pharmacy]*** and authorized officials of any federal, state or local law enforcement agencies for a period of six (6) years. These records shall include:

1. The business name and address of the third-party logistics provider's client and the address of the location from which the component, prescription drugs, or drug-related devices were received;

2. The business name and address to whom the components, prescription drugs, or drug-related devices were distributed or disposed of;

3. The identity and quantity of the components, prescription drugs, or drug-related devices received and distributed or disposed of; and

4. The dates of receipt and distribution or disposition of the components, prescription drugs, or drug-related devices.

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

(c) Third-party logistics providers shall maintain an ongoing list of verified persons or businesses to whom they ship prescription drugs and ***drug-***related devices.

(d) Third-party logistics providers may distribute components, prescription drugs, or drug-related devices only to the following, except as ***established[provided]*** in KRS 315.0351(2) and ***[KRS]*** 315.404:

1. A currently permitted manufacturer;

2. A currently licensed wholesaler;

3. A currently licensed third party logistics provider;

4. A currently permitted pharmacy;

5. A currently licensed outsourcing facility;

6. A currently licensed practitioner;

7. A currently permitted repackager;

8. A currently licensed hospital, but only for use by or in that hospital;

9. A person in charge of a laboratory, but only for use in that laboratory for scientific and medical research purposes; or

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

(4) Written policies and procedures.

(a) A third-party logistics provider shall establish, maintain, and adhere to written policies and procedures for the receipt, security, storage, inventory, and distribution or disposition of components, prescription drugs, or drug-related devices.

(b) There shall be written policies and procedures for identifying, recording, and reporting significant losses or thefts to the board***[of Pharmacy]***, and, if applicable, the FDA and the DEA.

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

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

(e) There shall be written policies and procedures as to the handling of any outdated, returned, or damaged prescription drugs and ***drug-***related devices. Any outdated, returned, or

damaged components, prescription drugs, or drug-related devices shall be segregated.

(f) There shall be written policies and procedures by which the third-party logistics provider exercises control over the shipping and receiving of all components, prescription drugs, or drug-related devices within the operation.

(g) There shall be written policies and procedures for quarantining suspect product and illegitimate product if directed to do so by the respective manufacturer, repackager, wholesale distributor, dispenser, or authorized government agency.

(5) Handling recalls. A third-party logistics provider shall establish, maintain, and adhere to a written policy and procedure in accordance with business agreements as to the handling of recalls and withdrawals of components, prescription drugs, or drug-related devices.

Section 6. Violations. (1) A third-party logistics provider shall not distribute components, prescription drugs, or drug-related devices directly to a consumer or a patient, except as ***established[provided]*** in KRS 315.0351(2).

(2) A third-party logistics provider shall not operate in a manner that endangers the public health.

(3) Violations of any of these provisions shall be grounds for action under KRS 315.121.

Section 7. Incorporation by Reference.

(1) ***The following material is incorporated by reference:***

(a) "Application to Operate as a Third-Party Logistics [Facility]Provider", May 2020***; and***

(b) [July 2017]***[, is incorporated by reference.***

(2)] "Application for Third-Party Logistics Provider License Renewal", May 2020***[, is incorporated by reference]***.

(2)[(3)] ***This material[These forms]*** may be ***[obtained,]*** inspected, ***[or]*** copied, ***or obtained,*** subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601-8024, ***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://pharmacy.ky.gov/Businesses/Pages/Third-Party-Logistics-Provider-License-Information.aspx [Monday through Friday]***.

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PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, June 8, 2021)

810 KAR 5:080. Kentucky Proud Series[Harness racing at county fairs].

RELATES TO: KRS 230.215, 230.260, 230.280, 230.290, 230.310, 230.398

STATUTORY AUTHORITY: KRS 230.215, 230.260, 230.398

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the Kentucky Horse Racing Commission ***[(the "commission")]***to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.398 authorizes the commission to promulgate administrative regulations governing the conduct of county fair races, branded as the ***["]***Kentucky Proud Series.***["]***[.] This administrative regulation establishes conditions, [races,] purses, and payments in races conducted as part of the Kentucky Proud Series,[at county fairs] in which funds for purses are provided by the commission, and regulates eligibility for participation in the Kentucky Proud Series[harness racing at county fairs].

Section 1. Eligibility. A horse ***shall be[is]*** eligible to participate in a two (2) or three (3) year old Kentucky Proud Series stakes race[at a county fair] if the [:

(1) The]horse is a two (2) year old or a three (3) year old that is "Kentucky-bred" as defined ***by[in]*** 810 KAR 7:040[;

(2) All owners of the participating horse are current members of the Kentucky Colt Racing Association, Inc.;

(3) All owners of the participating horse hold a current license with the commission; and

(4) The trainer and driver of the participating horse hold current licenses with the commission].

Section 2. Track Requirements.

(1) A fair shall have a safe and adequate track, and the entire track, including start and finish lines, shall be visible to judges and spectators.

(2) The track shall be inspected and approved by a representative of the commission.

(3) A track shall have a hub rail or pylons approved by the commission.

(4)(a) A fair shall have safe and adequate stalls for participating horses.

(b) If permanent stalls are not available, tents or other tie-in type stalls may be used.

(c) Except as ***established[provided]*** by paragraph (d) of this subsection, a county fair shall not charge stall rent for horses racing at the fair.

(d) A county fair may charge stall rent if the fair is held on state-owned property.

Section 3. [Fair Fees.

(1) The Kentucky Colt Racing Association fees shall be as follows:

(a) A nomination fee of fifty (50) dollars per horse due on or before February 15 of each racing year;

(b) A sustaining fee of $200 per horse due on or before April 15 of each racing year;

(c) A starting fee of fifty (50) dollars per horse, per fair, due at the time of entry for the fair; and

(d) A twenty-five (25) dollar fee per horse for starting in an overnight race, due at the time of entry for the fair.

(2) A $200 payment shall be due at the time of entry for a horse eligible for the fair finals.

Section 4.]Officials.

(1) The host track[Kentucky Colt Racing Association] shall submit to the commission, at least sixty (60) days prior to the opening of a race meeting, a written list of racing officials and applicable employees.

(2) 810 KAR 2:050 shall govern the judges and racing officials at Kentucky Proud Series stakes races.[At a county fair, there shall be at least one (1) presiding judge approved by the commission in the judges' stand. In addition, at a meeting in which races are charted, the association member shall provide both a licensed charter and licensed clerk of the course.

(3) A fair shall use licensed United States Trotting Association judges to preside over the racing.

(4) The judges shall review the ownership of any horse that is entered in order to ensure the horse's eligibility to race.

(5) The judges may determine the validity for racing purposes of any lease, transfer, or agreement pertaining to ownership of a horse and may call for adequate evidence of ownership at any time.

(6) The judges may declare a horse ineligible to race if the ownership or control of the horse is in question.]

(3)[(7)] Officials shall be paid by the entity hosting the races, with the exception of judges. Judges shall be paid by the commission. The Commission shall determine the number of judges, notwithstanding any provision of 810 KAR 2:050 to the contrary [Kentucky Colt Racing Association.

Section 5. Starter. A fair shall use a licensed starter with adequate equipment.

~~Section 6. Use of Entry Fees.~~

~~(1) The entry fees established in Section 3(1)(c) and (d) of this administrative regulation shall be retained by each fair as compensation for conducting its harness racing program and in reimbursement of the expenses incurred.~~

~~(2) A fair shall, upon request, make a full accounting of the entry fees to the commission.~~

~~Section 7. Application for a License and Approval for Purse Distributions.~~

~~(1) The Kentucky Colt Association on behalf of a fair shall apply to the commission for a license to conduct a harness racing event. A request for pari-mutuel wagering shall be included at the time of application.~~

~~(2) Distribution of revenue for the Kentucky County Fairs shall be reviewed annually, not later than December 15 of each calendar year, by the advisory panel established in 810 KAR 7:040~~].

Section 4[~~8~~]. Requirements. ***Each race[~~All races~~]*** shall be held in accordance with KRS Chapter 230 and 810 KAR Chapters 2, 3, 5, 6, 7, and 8[~~Changes in Racing Program. A fair shall have the right to change the order of its program and to postpone or cancel an event due to bad weather or unavoidable cause. If a race is canceled because of lack of entries, entry fees shall be refunded.~~

~~Section 9. Early Closers.~~

~~(1) An early closing event, and all divisions of that event, shall race a single heat at a distance of one (1) mile and shall be contested for a purse approved by the commission on an annual basis.~~

~~(2) An early closing race shall be contested regardless of the number of entries. However, a fair may cancel an overnight race with less than five (5) entries~~].

Section 5[~~10~~]. Kentucky Sire Stakes Panel.***[~~(1)~~]*** No later than December 15 of each calendar year, the Kentucky Sire Stakes advisory panel established in 810 KAR 7:040 may annually address, and the commission may annually approve, ***based on promoting the best interests of racing,*** at least the following conditions, which ***shall, once approved,[~~may~~]*** be placed in the condition book for the following year:[~~Number of Starters and Purse Distributions. There shall be no more than two (2) trailers in any race at a county fair.~~

~~(1) On a one (1) mile track, there shall be ten (10) horses on the gate and the race shall split on eleven (11) horses.~~

~~(2) On a half mile track or five-eighths mile track, there shall be five (5) horses on the gate with two (2) trailers, and the race shall split on eight (8) horses.~~]

(1)[~~(a)~~][~~(3)~~] The purse for each race;

(2)[~~(b)~~] Race dates;

(3)[~~(c)~~] Fees, such as nomination, sustaining, starting, and finals fees;

(4)[~~(d)~~] Distribution of revenue for the Kentucky Proud Series;

(5)[~~(f)~~] Early closers; and

(6)[~~(g)~~] Other conditions necessary to participate in the Kentucky Proud Series.[~~ shall be divided as follows:~~

~~(a) Five (5) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and five (5) percent;~~

~~(b) Four (4) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and the remaining five (5) percent reverts back to the fund;~~

~~(c) Three (3) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, and the remaining thirteen (13) percent reverts back to the fund;~~

~~(d) Two (2) starters - fifty (50) percent, twenty-five (25) percent, and the remaining twenty-five (25) percent reverts back to the fund; and~~

~~(e) One (1) starter - fifty (50) percent, and the remaining fifty (50) percent reverts back to the fund.~~

~~Section 11. Points Distribution.~~

~~(1) Points shall be awarded in an early closing race, and any division of an early closing race, as follows:~~

~~(a) First place finisher - fifty (50) points;~~

~~(b) Second place finisher - twenty-five (25) points;~~

~~(c) Third place finisher - twelve (12) points;~~

~~(d) Fourth place finisher - eight (8) points;~~

~~(e) Fifth place finisher - five (5) points; and~~

~~(f) Each starter that finishes out of the money - one (1) point.~~

~~(2) If two (2) horses dead-heat for any position, they shall each receive one-half (1/2) of the points awarded for that position and one-half (1/2) of the points awarded for the next lower position. The same procedure shall be used for the allocation of points if there is a dead-heat of three (3) or more horses.~~

~~(3) A horse that is declared in and then is the subject of a judge's scratch shall be awarded one (1) point based upon the decision of the presiding judge. This decision shall be final.~~

~~(4) If there is a tie among two (2) or more horses with the same number of points, the tie shall be resolved in favor of the horse with the higher earnings in the early closing fair events in which the horses have competed.~~

~~(5) If any division of a race is rained out before the completion of all other divisions of that race, the points for distribution set forth in this section shall not apply, and instead one (1) point shall be awarded to each horse entered in each division of that race that was rained out.~~

~~Section 12. Entry Limitation. A horse shall not be allowed to compete in more than one (1) race at any fair.~~]

Section 6[~~13~~]. Drug Testing.

(1) The winning horse at a fair race and any other horse or horses as selected by the judges may be ***required to take[~~subjected to~~]*** a drug test as ***established[~~set forth~~]*** in 810 KAR 8:010 and 810 KAR 8:060.

(2) A fair shall provide two (2) enclosed stalls and bedding to be used by the commission veterinarian for drug testing.

(3) The stalls required by subsection (2) of this section shall be located as close to the race track as possible.

(4) The stalls shall be positioned to allow the track announcer to be heard.

(5) The expense of the testing laboratory or other testing processes, whether furnished by contract or otherwise, together with all supplies and equipment used in connection therewith, shall be paid by the entity operating harness races under this administrative regulation.[

~~Section 14. Coggins Test. A current negative Coggins test shall be required for each horse racing at a fair.~~

~~Section 15. Drivers. A driver shall wear full colors, white pants, a safety vest as required by 810 KAR 5:070 Section 17, and a safety helmet that meets the standards set forth in 810 KAR 5:070 Section 16, if on the track less than one (1) hour before the start of a fair racing program.~~

~~Section 16. Trophies. A fair shall provide a trophy or blanket to the winner of a race. If a race is contested in heats or divisions, the trophy shall be presented to the winner of the fastest heat or division.~~

~~Section 17. Early Deadlines. The deadline for entries at a fair shall be set by the Kentucky Colt Racing Association at its annual October meeting preceding the racing year.~~

~~Section 18. Programs. A county fair track holding races for purses shall provide a printed program available to the public containing the following information:~~

~~(1) For non pari-mutuel tracks:~~

~~(a) Horse's name and sex;~~

~~(b) Color and age of horse;~~

~~(c) Sire and dam of horse;~~

~~(d) Owner's name;~~

~~(e) Driver's name and colors;~~

~~(f) Trainer's name; and~~

~~(g) Summary of starts in purse races, earnings, and the best~~

~~win time for the current and preceding year, which may be earned in either a purse or nonpurse race; and~~

~~(2) For pari-mutuel tracks:~~

~~(a) All of the program information required by subsection (1) of this section;~~

~~(b) At least the last six (6) performance and accurate chart lines. An accurate chart line shall include:~~

~~1. Date of race;~~

~~2. Location of race;~~

~~3. Size of track if other than a one-half (1/2) mile track;~~

~~4. Symbol for free-legged pacers;~~

~~5. Track condition;~~

~~6. Type of race;~~

~~7. Distance;~~

~~8. The fractional times of the leading horse including race times;~~

~~9. Post position;~~

~~10. Position of the one-quarter (1/4) marker, the one-half (1/2) marker, and the three-quarters (3/4) marker;~~

~~11. Stretch with lengths behind leader;~~

~~12. Finish with lengths behind leader;~~

~~13. Individual time of the horse;~~

~~14. Closing dollar odds;~~

~~15. Name of the driver;~~

~~16. Names of the horses that placed first, second, and third by the judges; and~~

~~17. Standard symbols for breaks and park-outs, if applicable;~~

~~(c) Indicate drivers racing with a provisional license; and~~

~~(d) Indicate pacers that are racing without hobbles.~~

~~Section 19. Payments. Nomination and sustaining payments shall be made to the Kentucky Colt Racing Association. Entry fees shall be paid to the fair for which the entry is taken.~~]

Section 7[~~20~~]. Violations. A person or association that violates a provision of this administrative regulation shall be subject to the penalties ***established[~~set forth~~]*** in 810 KAR 8:030, Section ***10[~~1~~]***[~~10~~].

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PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, June 8, 2021)

810 KAR 8:010. Medication; testing procedures; prohibited practices.

RELATES TO: KRS 230.215, 230.225, 230.240, 230.260, 230.265, 230.290, 230.320, 230.370

STATUTORY AUTHORITY: KRS 230.215(2), 230.225, 230.240(2), 230.260(8), 230.320, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2), 230.260(8), and 230.320 authorize the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes requirements and controls in the administration of drugs, medications, and substances to horses, governs certain prohibited practices, and establishes trainer responsibilities relating to the health and fitness of horses.

Section 1. Definitions.

(1) "AAS" or "anabolic steroid" means an anabolic androgenic steroid.

(2) "Administer" means to apply to or cause the introduction of a substance into the body of a horse.

(3) "Commission laboratory" means a laboratory chosen by the commission to test biologic specimens from horses taken under the supervision of the commission veterinarian.

(4) "Location under the jurisdiction of the commission" means a licensed race track or a training center as described in KRS 230.260(5).

(5) "Positive finding" means the commission laboratory has conducted testing and determined that a drug, medication, or substance, the use of which is restricted or prohibited by this administrative regulation, 810 KAR 8:020, 810 KAR 8:025, or 810 KAR 8:040, was present in the sample.

(a) For the drugs, medications, or substances listed in this administrative regulation, [~~or~~] 810 KAR 8:020, or 810 KAR 8:025, for which an established concentration level is provided, it shall be necessary to have a finding in excess of the established concentration level as provided for the finding to be considered a positive finding.

(b) Positive finding also includes:

1. Substances present in the horse in excess of concentrations at which the substances could occur naturally; and

2. Substances foreign to a horse that cause interference with testing procedures.

(6) "Primary sample" means the primary sample portion of the biologic specimen taken under the supervision of the commission veterinarian to be tested by the commission laboratory.

(7) "Split sample" means the split sample portion of the biologic specimen taken under the supervision of the commission veterinarian to be tested by the split sample laboratory.

(8) "Split sample laboratory" means the laboratory approved by the commission to test the split sample portion of the biologic specimen from horses taken under the supervision of the commission veterinarian.

(9) "Test barn" means a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for obtaining biologic specimens for testing.

Section 2. Use of Medication.

(1) Therapeutic measures and medication necessary to improve or protect the health of a horse shall be administered to a horse in training under the direction of a licensed veterinarian.

(2) Except as expressly permitted in 810 KAR Chapter 8, while participating in a race (betting or non-betting), qualifying race, or time trial, it shall be a violation for a horse to carry in its body any drug, medication, substance, or metabolic derivative, that:

(a) Is foreign to the horse; or

(b) Might mask the presence of a prohibited drug, or obstruct testing procedures.

(3) It shall be a violation for therapeutic medications to be present in excess of established threshold concentrations established in this administrative regulation, [~~or in~~] 810 KAR 8:020, or in 810 KAR 8:025. The thresholds for permitted NSAIDs are established in Section 8 of this administrative regulation.

(4) Except as provided by paragraphs (a), (b), and (c) of this subsection, it shall be a violation for a substance to be present in a horse in excess of a concentration at which the substance could occur naturally. It shall be the responsibility of the commission to prove that the substance was in excess of normal concentration levels.

(a) Gamma amino butyric acid shall not be present in a concentration greater than 110 nanograms per milliliter in serum or plasma.

(b) Cobalt shall not be present in a concentration greater than twenty-five (25) parts per billion in serum or plasma.

(c) Free prednisolone shall not be present in a concentration greater than ten (10) nanograms per milliliter in urine.

(5) It shall be prima facie evidence that a horse was administered and carried, while running in a race (betting or non-betting), qualifying race, or time trial, a drug, medication, substance, or metabolic derivative thereof prohibited by this section if:

(a) A biologic specimen from the horse was taken under the

supervision of the commission veterinarian promptly after a horse ran in a race (betting or non-betting), qualifying race, or time trial; and

(b) The commission laboratory presents to the commission a report of a positive finding.

(6) The commission shall utilize the Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule as provided in 810 KAR 8:020, for classification of drugs, medications, and substances violating this administrative regulation. Penalties for violations of this administrative regulation shall be implemented in accordance with 810 KAR 8:030.

Section 3. Treatment Restrictions.

(1) Except as provided in Section 4 of this administrative regulation, only a veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall administer by injection a prescription or controlled drug, medication, or other substance to a horse at a location under the jurisdiction of the commission.

(2) The only injectable substance allowed within twenty-four (24) hours prior to post time of the race in which the horse is entered shall be furosemide, as established in Section 6 of this administrative regulation.

(3) Except as provided by subsection (5) of this section, only a veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission may possess a hypodermic needle, syringe, or injectable of any kind at a location under the jurisdiction of the commission.

(4) A veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall use only single-use disposable needles and syringes, and shall dispose of them in a container approved by the commission veterinarian.

(5) If a person regulated by the commission has a medical condition that makes it necessary to possess a needle and syringe at a location under the jurisdiction of the commission, the person shall request prior permission from the stewards or judges and furnish a letter from a licensed physician explaining why it is necessary for the person to possess a needle and syringe. The stewards or judges may grant approval for a person to possess and use a needle and syringe at a location under the jurisdiction of the commission, but may also establish necessary restrictions and limitations.

(6) A commission employee may accompany a veterinarian at a location under the jurisdiction of the commission and take possession of a syringe, needle, or other device used to administer a substance to a horse.

(7) Electronic therapeutic treatments, other than nebulization, shall not be administered to a horse within twenty-four (24) hours prior to post time of a race in which the horse is entered.

Section 4. Certain Permitted Substances. Liniments, antiseptics, antibiotics, ointments, leg paints, washes, and other products commonly used in the daily care of horses may be administered by a person, other than a licensed veterinarian if:

(1) The treatment does not include any drug, medication, or substance otherwise prohibited by this administrative regulation;

(2) The treatment is not injected; and

(3) The person is acting under the direction of a licensed trainer or veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission.

Section 5. Anti-ulcer Medications.

The following anti-ulcer medications may be administered orally, at the dosage stated in this section, up to twenty-four (24) hours prior to post time of the race in which the horse is entered:

(1) Cimetidine (Tagamet): eight (8) to twenty (20) milligrams per kilogram;

(2) Omeprazole (Gastrogard): two and two-tenths (2.2) grams;

(3) Ranitidine (Zantac): eight (8) milligrams per kilogram; and

(4) Sucralfate: two (2) to four (4) grams.

Section 6. Furosemide Use on Race Day.

(1) Furosemide may be administered, in accordance with this section, to a horse that is entered to compete in a race, qualifying race, or time trial, except as provided in subsection (6) of this section.

(2) Furosemide shall only be administered prior to a race, qualifying race, or time trial by:

(a) The commission veterinarian; or

(b) A licensed veterinarian approved by the commission to perform the administration if the commission veterinarian is unavailable. If the furosemide is administered by an approved licensed veterinarian, the administering veterinarian shall provide a written report to the commission veterinarian no later than two (2) hours prior to post time of the race in which the horse receiving the furosemide is competing.

(3) Except as provided in subsection (6) of this section, furosemide may be used if administered:

(a) At a location under the jurisdiction of the commission where the horse is scheduled to race;

(b) By a single intravenous injection, not less than four (4) hours prior to post time for the race, qualifying race, or time trial in which the horse is entered; and

(c) In a dosage not less than 150 milligrams and not more than 500 milligrams.

(4) The specific gravity of a post-race urine sample shall not be below one and one one-hundredths (1.010). If the specific gravity of the post-race urine sample is determined to be below one and one one-hundredths (1.010), a quantification of furosemide in serum or plasma shall be performed by the commission laboratory. If a horse fails to produce a urine specimen, the commission laboratory shall perform a quantification of furosemide in the serum or plasma sample. Concentrations above 100 nanograms of furosemide per milliliter of serum or plasma shall constitute a violation of this section.

(5) The initial cost of administering the furosemide shall be twenty (20) dollars per administration. The commission shall monitor the costs associated with administering furosemide and consult with industry representatives to determine if the cost should be lowered based on prevailing veterinarian services and supplies. The commission shall maintain records documenting the basis for its determination, and if the cost is determined to be less than twenty (20) dollars per administration, then the commission shall lower the cost accordingly. The cost shall be prominently posted in the racing office.

(6)(a) A two (2) year old or stakes horse shall not be administered any drug, medication or other substance, including furosemide, within twenty-four (24) hours of the post time of the race in which the horse is entered. Participation by the horse shall not affect the status of the participating horse on the official authorized bleeder medication list.

(b) The implementation and enforcement of the prohibition in paragraph (a) of this subsection shall begin on:

1. January 1, 2020 for all two (2) year olds; and

2. January 1, 2021 for all horses entered to run in a stakes race; including the races comprising the Breeders' Cup World Championships and the races designated as graded stakes by the American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association.

(c) A concentration of furosemide greater than one and zero-tenths (1.0) nanograms per milliliter in serum in a post-race sample shall constitute a violation of this administrative regulation.

Section 7. Furosemide Eligibility.

(1)(a) Except as provided in Section 6(6) of this administrative regulation, a horse shall be eligible to race with furosemide if the licensed trainer or a licensed veterinarian determines that it would be in the horse's best interests to race with furosemide. Notice that a horse eligible to receive furosemide will race with or without furosemide shall be made at the time of entry to ensure public notification, including publication in the official racing program.

(b) It shall constitute a violation of this administrative regulation if notice is made pursuant to this section that a horse will race with furosemide, and the post-race urine, serum, or plasma does not show a detectable concentration of furosemide in the post-race

urine, serum, or plasma.

(2) After a horse has been determined to no longer be required to receive furosemide, the horse shall not be eligible to receive furosemide unless the licensed trainer or a licensed veterinarian determines that it would be in the horse's best interest to race with furosemide and the licensed trainer or a licensed veterinarian complies with the requirements of this section.

Section 8. Permitted Non-steroidal Anti-inflammatory Drugs (NSAIDs).

(1) NSAIDs shall not be administered within forty-eight (48) hours prior to post time for the race in which the horse is entered. The detection in a post-race sample of blood of a detectable concentration of an NSAID, except as allowed by subsection (2) of this section, shall constitute a violation of this administrative regulation. The detection in a post-race sample of blood of more than one (1) of phenylbutazone, flunixin, and ketoprofen in excess of the concentrations permitted by subsection (2) of this section shall constitute a violation of this administrative regulation.

(2)(a) A finding of phenylbutazone below a concentration of three-tenths (0.3) microgram per milliliter of serum or plasma shall not constitute a violation of this section.

(b) A finding of flunixin below a concentration of five (5) nanograms per milliliter of serum or plasma shall not constitute a violation of this section.

(c) A finding of ketoprofen below a concentration of two (2) nanograms per milliliter of serum or plasma shall not constitute a violation of this section.

Section 9. Anabolic Steroids.

(1) An exogenous AAS shall not be present in a horse that is racing. The detection of an exogenous AAS or metabolic derivative in a post-race sample shall constitute a violation of this administrative regulation.

(2) The detection in a post-race sample of an endogenous AAS or metabolic derivative where the concentration of the AAS or metabolic derivative exceeds naturally occurring physiological levels shall constitute a violation of this administrative regulation. The following shall be deemed to be naturally occurring physiological levels:

(a) Boldenone:

1. In male horses other than geldings, free and conjugated boldenone fifteen (15) nanograms per milliliter in urine or free boldenone twenty-five (25) picograms per milliliter in serum or plasma; and

2. In geldings and female horses, free and conjugated boldenone one (1) nanogram per milliliter in urine or free boldenone twenty-five (25) picograms per milliliter in serum or plasma.

(b) Nandrolone:

1. In geldings, free and conjugated nandrolone one (1) nanogram per milliliter in urine or free nandrolone twenty-five (25) picograms per milliliter in serum or plasma;

2. In fillies and mares, free and conjugated nandrolone one (1) nanogram per milliliter in urine or free nandrolone twenty-five (25) picograms per milliliter in serum or plasma; and

3. In male horses other than geldings, forty-five (45) nanograms per milliliter of metabolite, 5α-estrane-313, 17α-diol in urine or a ratio in urine of 5α-estrane-313, 17α-diol to 5α-estrene-313, 17α-diol of >1:1.

(c) Testosterone:

1. In geldings, free and conjugated testosterone twenty (20) nanograms per milliliter in urine or free testosterone one hundred (100) picograms per milliliter in serum or plasma; and

2. In fillies and mares (unless in foal), free and conjugated testosterone fifty-five (55) nanograms per milliliter in urine or free testosterone one hundred (100) picograms per milliliter in serum or plasma.

(3) The gender of the horse from which a post-race biologic specimen is collected shall be identified to the commission veterinarian and the testing laboratory.

Section 10. Clenbuterol.

(1) Clenbuterol use ***shall be[is]*** prohibited in racing and training unless the ***[following]*** conditions ***established by this subsection*** are met***.[:]***

(a) The prescription for clenbuterol ***shall be[is]*** made for a specific horse based upon a specific diagnosis.

(b) The veterinarian ***shall[must]*** provide a copy of the treatment sheet to the Equine Medical Director or his or her designee for review within twenty-four (24) hours of any administration of clenbuterol.

(c) A horse administered clenbuterol shall be placed on the veterinarian's list for a minimum of twenty-one (21) days after the date of last administration. The horse ***shall[must]*** meet all conditions for removal from the list, including blood and urine sampling taken after the twenty-one (21) day period. Both samples ***shall[must]*** have no detectable clenbuterol.

(2)[(d)] A horse shall not be eligible to race until it has completed all the requirements in ***subsection (1)(c) of this section[paragraph (c) of this subsection]***.

(3)[(2)] If clenbuterol is detected in a horse's post-race or out of competition sample and appropriate notification as ***established in subsection (1)(b) of this section[outlined above]*** was not completed, the horse shall immediately be placed on the veterinarian's list pending the outcome of an investigation. The horse shall be required to meet all conditions for removal from the veterinarian's list ***as established[outlined]*** in ***subsection (1)(c) of this section [paragraph (c) of this subsection]***.

Section 11. Test Barn.

(1) A licensed association shall provide and maintain a test barn on association grounds.

(2) The test barn shall be a fenced enclosure sufficient:

(a) In size and facilities to accommodate the stabling of horses temporarily detained for the taking of biologic specimens; and

(b) In structural design to prevent entry by unauthorized persons.

(3) The test barn shall be under the supervision and control of the Chief Racing Veterinarian or his or her designee, and no access to individuals other than commission personnel shall be permitted unless with the permission of the Chief Racing Veterinarian or his or her designee. If association personnel require immediate access to the test barn due to fire or other emergency, the association shall report the access to commission officials as soon as possible after the emergency.

Section 12[11]. Sample Collection, Testing and Reporting.

(1) Sample collection shall be done in accordance with the procedures provided in this administrative regulation, 810 KAR 8:060, and under the instructions provided by the commission veterinarian.

(2) The commission veterinarian, in consultation with the commission laboratory shall determine a minimum sample requirement which shall be uniform for each horse and which shall be separated into primary and split samples.

(3) An owner or trainer may request that a split sample be tested by a split sample laboratory approved by the commission.

(4) The cost of testing under subsection (3) of this section, including shipping, shall be borne by the owner or trainer requesting the test.

(5)(a) Stable equipment other than that necessary for washing and cooling out a horse shall not be permitted in the test barn.

(b) Buckets and water shall be furnished by the commission veterinarian.

(c) If a body brace is to be used on a horse, it shall:

1. Be supplied by the trainer; and

2. Applied only with the permission and in the presence of the commission veterinarian or his designee.

(d) A licensed veterinarian may attend to a horse in the test barn only with the permission of and in the presence of the commission veterinarian or his designee.

(6) Within five (5) business days of receipt of notification by the commission laboratory of a positive finding, the stewards and judges shall notify the owner and trainer orally or in writing of the positive finding.

(7) The stewards or judges shall conduct a hearing as soon as possible after the conclusion of an investigation of a positive finding. A person charged with a violation may request a continuance, which the stewards or the judges may grant for good cause shown.

Section 13[~~12~~]. Storage and Shipment of Split Samples.

(1) Split samples shall be secured and made available for further testing in accordance with the procedures established in this subsection***.[:]***

(a) Split samples shall be secured in the test barn in the same manner as the primary samples for shipment to the commission laboratory, as established in Section 12[~~11~~] of this administrative regulation, until the primary samples are packed and secured for shipment to the commission laboratory. Split samples shall then be transferred to a freezer or refrigerator at a secure location approved and chosen by the commission.

(b) A freezer or refrigerator for storage of split samples shall be equipped with a lock. The lock shall be secured to prevent access to the freezer or refrigerator at all times except as specifically provided by paragraph (c) of this subsection.

(c) A freezer or refrigerator for storage of split samples shall be opened only for depositing or removing split samples, for inventory, or for checking the condition of samples.

(d) A log shall be maintained by the commission veterinarian that shall be used each time a split sample freezer or refrigerator is opened to specify each person in attendance, the purpose for opening the freezer or refrigerator, identification of split samples deposited or removed, the date and time the freezer or refrigerator was opened, the time the freezer or refrigerator was closed, and verification that the lock was secured prior to and after opening of the freezer or refrigerator. A commission veterinarian or his designee shall be present when the freezer or refrigerator is opened.

(e) Evidence of a malfunction of a split sample freezer or refrigerator shall be documented in the log.

(f) The commission shall be considered the owner of a split sample.

(2)(a) A trainer or owner of a horse receiving notice of a positive finding may request that a split sample corresponding to the portion of the sample tested by the commission laboratory be sent to the split sample laboratory. The party requesting the split sample shall select a laboratory solicited and approved by the commission to perform the analysis.

(b) The request shall be made in writing and delivered to the stewards or judges within three (3) business days after the trainer or owner of the horse receives oral or written notice of the positive finding by the commission laboratory.

(c) A split sample so requested shall be shipped as expeditiously as possible.

(3)(a) The owner or trainer requesting testing of a split sample shall be responsible for the cost of the testing, including the cost of shipping.

(b) Failure of the owner, trainer, or a designee to appear at the time and place designated by the commission veterinarian in connection with securing, maintaining, or shipping the split sample shall constitute a waiver of any right to be present during split sample testing procedures.

(c) Prior to shipment of the split sample, the commission shall confirm:

1. That the split sample laboratory has agreed to provide the testing requested;

2. That the split sample laboratory has agreed to send results to the commission; and

3. That arrangements for payment satisfactory to the split sample laboratory have been made.

Section 14[~~13~~]. Split Sample Chain of Custody.

(1) Prior to opening the split sample freezer or refrigerator, the commission shall provide a split sample chain of custody verification form. The form to be used shall be the Split Sample Chain of Custody Form. The form shall be fully completed during the retrieval, packaging, and shipment of the split sample and shall contain the following information:

(a) The date and time the sample is removed from the split sample freezer or refrigerator;

(b) The sample number; and

(c) The address where the split sample is to be sent.

(2) A split sample shall be removed from the split sample freezer or refrigerator by a commission employee after notice to the owner, trainer, or designee thereof and a commission-designated representative shall pack the split sample for shipment in accordance with the packaging procedures directed by the commission. The Split Sample Chain of Custody Form shall be signed by both the owner's representative, if present, and the commission representative to confirm the proper packaging of the split sample for shipment. The exterior of the package shall be secured and sealed to prevent tampering with the package.

(3) The owner, trainer, or designee, if present, may inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(4) The Split Sample Chain of Custody Form shall be completed and signed by the representative of the commission and the owner, trainer, or designee, if present.

(5) The commission representative shall retain the original Split Sample Chain of Custody Form and provide a copy to the owner, trainer, or designee, if requested.

Section 15[~~14~~]. Medical Labeling.

(1) A drug or medication that, by federal or state law, requires a prescription shall not be used or kept on association grounds unless validly prescribed by a duly licensed veterinarian.

(2) A drug or medication shall bear a prescription label that is securely attached and clearly ascribed to show the following:

(a) The name of the product;

(b) The name, address, and telephone number of the veterinarian prescribing or dispensing the product;

(c) The name of the horse for which the product is intended or prescribed;

(d) The dosage, duration of treatment, and expiration date of the prescribed or dispensed product; and

(e) The name of the trainer to whom the product was dispensed.

Section 16[~~15~~]. Trainer Responsibility.

(1) In the absence of substantial evidence to the contrary, a trainer shall be responsible for the condition of a horse in his or her care.

(2) In the absence of substantial evidence to the contrary, a trainer shall be responsible for the presence of a prohibited drug, medication, substance, or metabolic derivative, including permitted medication in excess of the maximum allowable concentration, in a horse in his or her care.

(3) A trainer shall prevent the administration of a drug, medication, substance, or metabolic derivative that may constitute a violation of this administrative regulation.

(4) A trainer whose horse has been claimed shall remain responsible for a violation of this administrative regulation regarding that horse's participation in the race in which the horse is claimed.

(5) A trainer shall be responsible for:

(a) Maintaining the assigned stable area in a clean, neat, and sanitary condition at all times;

(b) Using the services of those veterinarians licensed by the commission to attend to horses that are on association grounds;

(c) The proper identity, custody, care, health, condition, and safety of horses in his or her care;

(d) Promptly reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;

(e) Promptly reporting to the racing secretary and the commission veterinarian if a posterior digital neurectomy (heel nerving) is performed on a horse in his or her care and ensuring this fact is designated on its certificate of registration;

(f) Promptly reporting to the racing secretary the name of a

mare in his or her care that has been bred and is entered to race;

(g) Promptly notifying the commission veterinarian of a reportable disease or communicable illness in a horse in his or her care;

(h) Promptly reporting the serious injury or death of a horse in his or her care at a location under the jurisdiction of the commission to the stewards or judges and the commission veterinarian and ensuring compliance with Section 23[~~22~~] of this administrative regulation and 810 KAR 4:010, Section 14, governing postmortem examinations;

(i) Complying with the medication and recordkeeping requirements in subsection (6) of this section;

(j) Promptly notifying the stewards or judges and the commission veterinarian if the trainer has knowledge or reason to believe that there has been an administration to a horse of a drug, medication, or other substance prohibited by this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as established in Section 21[~~20~~] of this administrative regulation;

(k) Ensuring the fitness of every horse in his or her care to perform creditably at the distance entered;

(l) Ensuring that every horse he or she has entered to race is present at its assigned stall for a pre-race soundness inspection as prescribed by 810 KAR 2:010, Section 4(1)(l);

(m) Ensuring proper bandages, equipment, and shoes;

(n) Ensuring the horse's presence in the paddock at the time prescribed by racing officials before the race in which the horse is entered;

(o) Personally attending in the paddock and supervising the saddling or preparation of a horse in his or her care, unless an assistant trainer fulfills these duties or the trainer is excused by the judges or stewards pursuant to 810 KAR 4:100, Section 3(2)(f); and

(p) Attending the collection of a biologic specimen taken from a horse in his or her care or delegating a licensed employee or the owner to do so.

(6)(a) A trainer shall maintain a clear and accurate record of any treatment administered to a horse in his or her care.

(b) A trainer shall ensure the transfer of copies of all medical records to the subsequent owner and trainer of a horse.

(c) Failure to comply with this subsection may result in the imposition of penalties pursuant to 810 KAR 8:030.

(d) The stewards and judges may at any time require presentation of a horse's medical records.

Section 17[~~16~~]. Licensed Veterinarians.

(1) A veterinarian licensed by the commission and practicing at a location under the jurisdiction of the commission shall be considered under the supervision of the commission veterinarian and the stewards or judges.

(2) A veterinarian shall report to the stewards, judges or the commission veterinarian a violation of this administrative regulation by a licensee.

Section 18[~~17~~]. Veterinary Reports.

(1) A veterinarian who treats a horse at a location under the jurisdiction of the commission shall submit a Veterinary Report of Horses Treated to be Submitted Daily form to the commission veterinarian containing the following information:

(a) The name of the horse treated;

(b) The type and dosage of drug or medication administered or prescribed;

(c) The name of the trainer of the horse;

(d) The date and time of treatment; and

(e) Other pertinent treatment information requested by the commission veterinarian.

(2) The Veterinary Report of Horses Treated to be Submitted Daily form shall be signed by the treating practicing veterinarian.

(3) The Veterinary Report of Horses Treated to be Submitted Daily form shall be on file not later than the time prescribed on the next race day by the commission veterinarian.

(4) The Veterinary Report of Horses Treated to be Submitted Daily form shall be confidential, and its content shall not be disclosed except in the course of an investigation of a possible violation of this administrative regulation or in a proceeding before the stewards, judges or the commission, or to the trainer or owner of record at the time of treatment.

(5) A timely and accurate filing of a Veterinary Report of Horses Treated to be Submitted Daily form by the veterinarian or his designee that is consistent with the analytical results of a positive test reported by the commission laboratory may be used as a mitigating factor in determining the appropriate penalties pursuant to 810 KAR 8:030.

(6) A veterinarian having knowledge or reason to believe that a horse entered in a race has received a drug, medication, or substance prohibited under this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as established in Section 21[~~20~~] of this administrative regulation shall report this fact immediately to the commission veterinarian or to the stewards or judges.

(7) A practicing veterinarian shall maintain records of all horses treated and of all medications sold or dispensed. The records shall include:

(a) The name of the horse;

(b) The trainer of the horse;

(c) The date, time, amount, and type of medication administered;

(d) The drug or compound administered;

(e) The method of administration; and

(f) The diagnosis.

(8) The records shall be retained for at least sixty (60) days after the horse has raced and shall be available for inspection by the commission.

Section 19[~~18~~]. Veterinarian's List.

(1) The commission veterinarian shall maintain a list of horses determined to be unfit to compete in a race due to illness, physical distress, unsoundness, infirmity, or other medical condition.

(2) A horse may be removed from the veterinarian's list when, in the opinion of the commission veterinarian, the horse is capable of competing in a race.

(3) The commission shall maintain a bleeder list of all horses that have demonstrated external evidence of exercise-induced pulmonary hemorrhage during or after a race or workout as observed by the commission veterinarian.

(4) Every horse that is a confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to participate in a race (betting or non-betting), qualifying race, time trial, or for the following time periods:

(a) First incident - fourteen (14) days;

(b) Second incident within a 365-day period - thirty (30) days;

(c) Third incident within a 365-day period - 180 days; and

(d) Fourth incident within a 365-day period - barred from racing for life.

(5) For the purpose of counting the number of days a horse is ineligible to run, the day after the horse bled externally shall be the first day of the recovery period.

(6) The voluntary administration of furosemide without an external bleeding incident shall not subject a horse to the initial period of ineligibility as established in this section.

Section 20[~~19~~]. Distribution of Purses, Barn Searches, and Retention of Samples.

(1)[~~(7)~~] For all races, purse money in thoroughbred and other flat racing shall be paid or distributed pursuant to the process provided in 810 KAR 2:070, Section 27(3), and in standardbred racing, no later than twenty-four (24) hours after notice from the commission that a final laboratory report has been issued.

(2)[~~(8)~~] The distribution of purse money prior to the issuance of a final laboratory report shall not be considered a finding that no prohibited drug, medication, substance, or metabolic derivative has been administered to a horse.

(3)[~~(9)~~] After the commission laboratory issues a positive finding the executive director of the commission or the stewards or judges may authorize and execute an investigation into the circumstances surrounding the incident that is the subject of the

positive finding.

(4)[(10)] If the purse money has been distributed, the stewards or judges shall order the money returned immediately to the association upon notification from the commission laboratory that a prohibited drug, medication, substance, or metabolic derivative was administered to a horse eligible for purse money.

(5)[(11)] At the conclusion of testing by the commission laboratory and split sample laboratory, the remaining portion of the samples at the commission laboratory and split samples remaining at the test barn may be retained at a proper temperature at a secure facility approved and chosen by the commission. If a report indicating a positive finding has been issued, the commission shall use its best reasonable efforts to retain any remaining portion of the sample until legal proceedings have concluded. The commission may freeze samples.

Section 21[20]. Other Prohibited Practices Constituting a Violation of this Administrative Regulation.

(1) A drug, medication, substance, or device shall not be possessed or used by a licensee, or his designee or agent, within a nonpublic area at a location under the jurisdiction of the commission:

(a) The use of which may endanger the health and welfare of the horse; or

(b) The use of which may endanger the safety of the rider or driver.

(2) Without the prior permission of the commission or its designee, a drug, medication, or substance that has never been approved by the United States Food and Drug Administration (USFDA) for use in humans or animals shall not be possessed or used at a location under the jurisdiction of the commission. The commission shall determine whether to grant prior permission after consultation with the Equine Drug Research Council.

(3) The following blood-doping agents shall not be possessed or used at a location under the jurisdiction of the commission:

(a) Erythropoietin;

(b) Darbepoietin;

(c) Oxyglobin;

(d) Hemopure; or

(e) Any substance that abnormally enhances the oxygenation of body tissue.

(4) A treatment, procedure, or therapy shall not be practiced, administered, or applied that may:

(a) Endanger the health or welfare of a horse; or

(b) Endanger the safety of a rider or driver.

(5) Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy shall not be used unless the conditions established in this subsection are met.

(a) A treated horse shall not race for a minimum of ten (10) days following treatment.

(b) A veterinarian licensed to practice by the commission shall administer the treatment.

(c) The commission veterinarian shall be notified prior to the delivery of the machine on association grounds.

(d) Prior to administering the treatment, a report shall be submitted by the veterinarian administering the treatment to the commission veterinarian on the Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy.

(6) Other than furosemide, an alkalizing substance that could alter the serum or plasma pH or concentration of bicarbonates or carbon dioxide in a horse shall not be used within twenty-four (24) hours prior to post time of the race in which the horse is entered.

(7) Without the prior permission of the commission veterinarian or his designee, based on standard veterinary practice for recognized conditions, a nasogastric tube which is longer than six (6) inches shall not be used for the administration of any substance within twenty-four (24) hours prior to post time of the race in which the horse is entered.

(8) A serum or plasma total carbon dioxide (TCO2) level shall not exceed thirty-seven (37.0) millimoles per liter; except, a violation shall not exist if the TCO2 level is found to be normal for the horse following the quarantine procedure established in Section 22[21] of this administrative regulation.

(9) A blood gas machine shall not be possessed or used by a person other than an authorized representative of the commission at a location under the jurisdiction of the commission.

(10) A shock wave therapy machine or radial pulse wave therapy machine shall not be possessed or used by anyone other than a veterinarian licensed by the commission at a location under the jurisdiction of the commission.

Section 22[21]. TCO2 Testing and Procedures.

(1)(a) The stewards, judges, or commission veterinarian may order the pre-race or post-race collection of blood specimens from a horse to determine the total carbon dioxide concentration in the serum or plasma of the horse. The winning horse and other horses, as selected by the stewards or judges, may be tested in each race to determine if there has been a violation of this administrative regulation.

(b) Pre-race sampling shall be done at a reasonable time, place, and manner directed by the chief state steward in consultation with the commission veterinarian.

(c) A specimen consisting of at least two (2) blood tubes shall be taken from a horse to determine the TCO2 concentration in the serum or plasma of the horse. If the commission laboratory determines that the TCO2 level exceeds thirty-seven (37.0) millimoles per liter plus the laboratory's measurement of uncertainty, the executive director of the commission shall be informed of the positive finding.

(d) Split sample testing for TCO2 may be requested by an owner or trainer in advance of the collection of the specimen by the commission veterinarian; however, the collection and testing of a split sample for TCO2 testing shall be done at a reasonable time, place, and manner directed by the commission veterinarian.

(e) The cost of split sample testing, including the cost of shipping, shall be borne by the owner or the trainer.

(2)(a) If the level of TCO2 is determined to exceed thirty-seven (37.0) millimoles per liter plus the laboratory's measurement of uncertainty and the licensed owner or trainer of the horse certifies in writing to the stewards or judges within twenty-four (24) hours after the notification of the test result that the level is normal for that horse, the owner or trainer may request that the horse be held in quarantine. If quarantine is requested, the licensed association shall make guarded quarantine available for that horse for a period of time to be determined by the steward or judges, but in no event for more than seventy-two (72) hours.

(b) The expense for maintaining the quarantine shall be borne by the owner or trainer.

(c) During quarantine, the horse shall be retested periodically by the commission veterinarian.

(d) The horse shall not be permitted to race during a quarantine period, but it may be exercised and trained at times prescribed by the licensed association and in a manner that allows monitoring of the horse by a commission representative.

(e) During quarantine, the horse shall be fed only hay, oats, and water.

(f) If the commission veterinarian is satisfied that the horse's level of TCO2, as registered in the original test, is physiologically normal for that horse, the stewards or judges:

1. Shall permit the horse to race; and

2. May require repetition of the quarantine procedure established in paragraphs (a) through (f) of this subsection to reestablish that the horse's TCO2 level is physiologically normal.

Section 23[22]. Postmortem Examination.

(1) A horse that dies or is euthanized on the grounds of a licensed association or training center under the jurisdiction of the commission shall undergo a postmortem examination at the discretion of the commission and at a facility designated by the commission, through its designee, as provided in 810 KAR 4:010, Section 14.

(2) The commission shall bear the cost of an autopsy that is required by the commission.

(3) The presence of a prohibited drug, medication, substance, or metabolic derivative thereof in a specimen collected during the

postmortem examination of a horse may constitute a violation of this administrative regulation.

Section 24[~~23~~]. Corticosteroids.

(1) A corticosteroid shall not be administered intra-articularly within fourteen (14) days before post time for the race in which the horse is entered.

(2) The presence of a detectable concentration of more than one (1) corticosteroid in a post-race sample of blood, urine, or any combination of blood and urine shall constitute a violation of this section.

Section 25[~~24~~]. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Veterinary Report of Horses Treated to be Submitted Daily", KHRC 8-010-1, 11/2018;

(b) "Split Sample Chain of Custody Form", KHRC 8-010-2, 11/2018; and

(c) "Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy", KHRC 8-010-3, 11/2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the commission's Web site at ***https://khrc.ky.gov/new_docs.aspx?cat=32*** ***[~~http://khrc.ky.gov~~]***.

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PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, June 8, 2021)

810 KAR 8:025. Drug, medication, and substance withdrawal guidelines.

RELATES TO: KRS 230.215, 230.225, 230.240, 230.260, 230.265, 230.290, 230.320, 230.370

STATUTORY AUTHORITY: KRS 230.215(2), 230.225, 230.240(2), 230.260, 230.320, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission ***[~~(the "commission")~~]*** to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes the withdrawal guidelines for permitted drugs, medications, and substances that may be administered to race horses competing in Kentucky.

Section 1. The Kentucky Horse Racing Commission Withdrawal Guidelines Thoroughbred; Standardbred; Quarter Horse, Appaloosa, and Arabian.

(1) This administrative regulation shall provide certain mandatory treatment requirements, guidance, and advice on medication withdrawal intervals.

(2)(a) These withdrawal guidelines ***shall[~~do~~]*** not apply to two (2) year-old or stakes horses pursuant to 810 KAR 8:010**,** Section 6.

(b) Unless otherwise specified in these withdrawal guidelines, ***KAR*** Title 810 ***[~~of the Kentucky Administrative Regulations~~]***, or ***KRS*** Chapter 230 ***[~~of the Kentucky Revised Statutes~~]***, the following withdrawal guidelines are voluntary and advisory. The guidelines are recommendations based on current scientific knowledge that may change over time.

(c) A licensee may present evidence of full compliance with these guidelines to the commission and the stewards as a mitigating factor to be used in determining violations and penalties.

(d) These withdrawal interval guidelines assume that administration of medications will be performed at doses that are not greater than the manufacturer's maximum recommended dosage, or the dosage recommended in this document. Medications administered at dosages above manufacturer's recommendations, in compounded formulations, or in combination with other medications or administration inside the withdrawal interval may result in test sample concentrations above threshold concentrations that could lead to positive test results and the imposition of penalties.

(e) The time of administration of an orally administered substance, for the purposes of withdrawal interval, shall be considered to be the time of complete ingestion of the medication by the horse via eating or drinking.

(f) For products containing multiple medications, the withdrawal time to be used should be no less than the longest identified for any of the individual constituent substances--even if that substance is not present in the highest concentration in the product.

(g) Brand names of medications, where applicable, are listed in parentheses following the generic name of a drug.

(3)(a) Withdrawal Guidelines. Furosemide shall be administered pursuant to 810 KAR 8:010.

(b) The following substances may be administered or applied up to the scheduled paddock time of the race in which the horse is to compete:

1. Topical applications, such as liniments, leg paints, salves, and ointments, which may contain antibiotics or DMSO, but do not contain steroids, anesthetics, or any other prohibited substances.

2. The following substances may be administered up to twenty-four (24) hours prior to the scheduled post time of the race in which the horse is to compete as long as their use follows ***subsection (2) of this*** section ***[~~1(a) of this administrative regulation~~]***:

a. Antibiotics, except those containing prohibited drugs, such as Procaine;

b. Antiprotozoals, such as ponazuril (Marquis), toltrazuril (Baycox), sulfamethoxazole/pyrimethamine (Daraprim);

c. Antifungal agents, such as Griseofulvin and Ketoconazole;

d. Certain inhalation agents that do not exhibit bronchodilator properties, such as cromolyn sodium (Intal), and acetylcysteine (Mucomyst);

e. Cimetadine (Tagamet), orally at 20 mg/kg twice daily for 7 doses;

f. Electrolytes, Vitamins, and Minerals, via IV, IM or oral administration;

g. Any oral supplements or nutrients not containing drugs;

h. Hyaluronic Acid (Legend), via IV administration;

i. Misoprostol;

j. Non-Androgenic Reproductive Hormones, such as HCG, Regumate and GnRH, in fillies and mares only;

k. Omeprazole (Gastrogard), orally at 2.2 g once daily for 4 days;

l. Polysulfated glycosaminoglycan (Adequan), via IM administration;

m. Proprionibacterium acnes suspension (Eqstim), or comparable immunostimulants, excluding levamisole;

n. Ranitidine (Zantac), orally at 8 mg/kg twice daily for 7 doses; and

o. Sucralfate.

3. Non-steroidal anti-inflammatory drugs (NSAIDS):

a. Elected NSAID: Only one of the following three NSAIDS may be administered up to the manufacturer's maximum labeled dosage until forty-eight (48) hours prior to the scheduled post time of the race in which the horse is to compete, as long as their use follows Section 1(2) of this ***administrative*** regulation and the requirements of 810 KAR 8:010.

(i) Phenylbutazone (Butazolidin) 4.4 mg/kg, via IV administration only;

(ii) Flunixin Meglumine (Banamine) 1.1 mg/kg, via IV administration only; and

(iii) Ketoprofen (Ketofen) 2.2 mg/kg, via IV administration only.

b. In accordance with the European Horserace Scientific Liaison Committee, the following withdrawal intervals shall be observed for all NSAIDS, except for those ***established[~~set forth~~]*** in ***subparagraph 3.a. of this paragraph[~~Section 1(b)(3)(a) of this regulation~~]***, for administration prior to the scheduled post time of the race in which the horse is to compete, as long as their use follows Section 1(2) of this ***administrative*** regulation:

(i) Flunixin Meglumine (Banamine) 1.1 mg/kg, via IV administration: 6-day withdrawal interval;

(ii) Phenylbutazone (Butazolidin) 4.4 mg/kg, via IV administration: 7-day withdrawal interval;

(iii) Ketoprofen (Ketofen) 2.2 mg/kg, via IV administration: 4-day withdrawal interval;

(iv) Diclofenac Sodium Topical (Surpass Cream), via a single, 5-inch application: 7- day withdrawal interval; and

(v) Firocoxib (Equioxx) 0.1 mg/kg, via a single oral or IV dose, repeated daily administration: 15-day withdrawal interval from date of last administration.

c. The following substances have a forty-eight (48) hour withdrawal guidance prior to the scheduled post time of the race in which the horse is to compete as long as their use follows Section 1(2) of this ***administrative*** regulation:

(i) Acepromazine (Promace), via IV administration at 0.05 mg/kg;

(ii) Butorphanol (Torbugesic), via IV administration at 0.1 mg/kg;

(iii) Cetirizine (Zyrtec), orally at 0.4 mg/kg twice daily for 5 doses; although it is recommended that ivermectin should not be administered within forty-eight (48) hours of a race if horse has been administered cetirizine;

(iv) Dantrolene (Dantrium), via oral administration at 500 mg total dose;

(v) Detomidine (Dormosedan), via IV administration at 5 mg single dose;

(vi) DMSO via IV, oral, or topical administration up to 60 ml;

(vii) Glycopyrrolate (Robinol), via IV administration at 1 mg total dose;

(viii) Guaifenesin, orally at 2 g twice daily for 5 doses;

(ix) Methocarbamol (Robaxin-V), via single IV at 15 mg/kg;

(x) Procaine penicillin, via IM administration at 17 mg/kg; and

(xi) Xylazine (Rompun), via IV administration at 200 mg single dose.

d. The following substances shall not be administered within forty-eight (48) hours of a race:

(i) Beta-2 agonists by inhalation, such as terbutaline, salmeterol, and fenoterol;

(ii) Ergot alkaloids, such as Ergonovine and Methergine;

(iii) Ipratopium;

(iv) Isoxsuprine; and

(v) Pentoxyphylline (Trental).

e. The following substances may be administered up to seventy-two (72) hours prior to the scheduled post time of the race in which the horse is to compete as long as their use follows Section 1(2) of this ***administrative*** regulation:

(i) Albuterol (Proventil) via inhalation at 720 mcg;

(ii) Dexamethasone (Azium), via oral, IV, IM administration at 0.05 mg/kg. However, if another corticosteroid was administered systemically or intra-articularly, this withdrawal guidance ***shall[~~does~~]*** not apply and a minimum five (5) day withdrawal is recommended;

(iii) Lidocaine, via subcutaneous administration at 200 mg total dose;

(iv) Mepivacaine (Carbocaine), via subcutaneous administration at 0.07 mg/kg; ***and***

(v) Romifidine (Sedivet), via IV administration at 50 mg.

f. The following substances may be administered up to ninety-six (96) hours prior to the scheduled post time of the race in which the horse is to compete as long as their use follows Section 1(2) of this ***administrative*** regulation:

(i) Hydroxyzine (Atarax); and

(ii) Phenytoin (Dilantin).

g. Reserpine (Serpasil) may be administered up to seven (7) days prior to the scheduled post time of the race in which the horse is to compete as long as its use follows Section 1(2) of this ***administrative*** regulation.

h. The use of an extra-corporeal shock wave therapy or radial pulse wave therapy machine may be performed until ten (10) days prior to the scheduled post time of the race in which the horse is to compete, as long as its use complies with 810 KAR 8:010.

i. The following substance may be administered up to twenty-one (21) days prior to the scheduled post time of the race in which the horse is to compete, as long as its use follows Section 1(2) of this ***administrative*** regulation, and its use complies with 810 KAR 8:010***.*** Section 10: Clenbuterol (Ventipulmin), orally up to 0.8 mcg/kg twice daily.

j. Any horse that has been treated with therapeutic medications found in Section 1 of this ***administrative*** regulation may, at the trainer's request and expense, and on permission of a commission veterinarian, have samples of blood ***or[~~and/or~~]*** urine collected by the commission veterinarian for analysis by the commission***[~~-authorized~~]*** laboratory prior to entry to race in the state of Kentucky.

(i) As a condition of this elective testing, the trainer ***shall[~~will~~]*** be required to disclose the date and time, dose, and route of administration of the substance for which clearance testing is requested.

(ii) A report from the commission laboratory of a negative finding in this pre-race, elective testing ***shall[~~does~~]*** not provide a safe harbor for the owner, trainer, veterinarian, or horse. A report from the commission laboratory of a positive finding in a post-race sample shall be treated as a violation of ***KAR Title 810[~~KHRC regulations~~]*** even if there was a negative finding by the commission laboratory in the clearance testing sample.

k. The following ***shall*** have a fourteen (14) day stand down period for intra-articular injection. Any IA corticosteroid injection within fourteen (14) days ***shall be[~~is~~]*** a violation:

(i) Betamethasone, via IA administration at 9 mg total dose in a single articular space**.** Withdrawal time should be increased for use of betamethasone products with a ratio of greater than 1:1 betamethasone acetate to betamethasone sodium phosphate. Intramuscular administration is associated with substantially longer withdrawal times.

(ii) Isoflupredone (Predef 2x), via IA administration at 20 mg in a single joint space or 10 mg subcutaneous.

(iii) Methyprednisolone (Depo-Medrol), via IA administration at a total dose of less than 100 mg in a single articular space**.** Intramuscular administration is associated with substantially longer withdrawal times and is not recommended, in accordance with the Racing Medication and Testing Consortium. Clearance testing is recommended in blood and urine prior to entry.

(iv) Triamcinolone acetonide (Vetalog), via IA administration at 9 mg total dose in a single articular space. Intramuscular administration is associated with substantially longer withdrawal times.

l. It is recommended that any horses receiving Fluphenazine (Prolixin) receive pre-race clearance testing.

(4) Withdrawal Guidelines Chart:

Substance	Brand Name	Recommended Minimum Withdrawal	Administration Specifications
Acepromazine	PromAce	48 hours	0.05 mg/kg via IV administration
Acetylcysteine	Mucomyst	24 hours	Inhalation
Albuterol	Proventil	72 hours	720 mcg via inhalation
Beclomethasone	Beclovent	24 hours	Inhalation only
Butorphanol	Torbugesic	48 hours	0.1 mg/kg via IV administration
Cetirizine	Zyrtec	48 hours	0.4 mg/ml orally twice daily for 5 doses

Cimetadine	Tagamet	24 hours	20 mg/kg orally twice daily for 7 doses
Clenbuterol	Ventipulmin	21 days	0.8 mcg/kg orally. ***Pursuant to 810 KAR 8:010, Section 10, clenbuterol shall be prohibited unless the prescription is made for a specific horse based on a specific diagnosis. The veterinarian shall provide a copy of the treatment sheet to the Equine Medical Director or designee for review within twenty-four (24) hours of administration. A horse administered clenbuterol shall be placed on the veterinarian's list for at least twenty-one (21) days after the last administration. The horse shall meet all conditions for removal from the list, including negative blood and urine sampling.***
Cromolyn sodium	Intal	24 hours	Inhalation
Dantrolene	Dantrium	48 hours	500 mg orally
Detomidine	Dormosedan	48 hours	5 mg via IV administration
Dexamethasone	Azium	72 hours IV PO, with no other corticosteroids administered. 5 days if other corticosteroids have been administered.	IV, PO, IM, pursuant to the European Horserace Scientific Liaison Committee.
DMSO		48 hours	Topical, IV, or oral administration up to 60 ml
Ergonovine		48 hours	No dose specified
Fenoterol		48 hours	Via inhalation, no dose specified
Furosemide 2-year-olds beginning in 2020 Stakes horses beginning in 2021	Salix	24 hours	Administration ***shall be prohibited[~~is not permitted~~]*** at less than 24 hours, and limited to a maximum 500 mg single dose via IV administration
Furosemide	Salix	4 hours	150-500 mg single IV dose administered by KHRC veterinarian. See 810 KAR 8:010**,** Section 6.
Guaifenesin		48 hours	2 g orally twice daily for 5 doses
Glycopyrrolate	Robinol	48 hours	1 mg
Griseofulvin	Fulvacin	24 hours	No dose specified
Hyaluronic Acid	Legend	24 hours	IV administration only; no dose specified
Hydroxyzine	Atarax	96 hours	No dose specified
Ipratropium		48 hours	Via inhalation, no dose specified
Isoxsuprine	Vasodilan	48 hours	No dose specified
Ketoconazole	Nizoral	24 hours	No dose specified
Lidocaine		72 hours	200 mg total dose SQ
Mepivacaine	Carbocaine	72 hours	0.07 mg/kg SQ
Methocarbamol	Robaxin	48 hours	15 mg/kg single IV
Methylergonovine	Methergine	48 hours	No dose specified
Misoprostol	Cytotec	24 hours	No dose specified
Omeprazole	Gastrogard	24 hours	2.2 g orally once daily for 4 days
Omeprazole	Gastrogard	24 hours	2.2 g orally once daily for 4 days
Pentoxyfylline	Trental	48 hours	No dose specified
Phenytoin	Dilantin	96 hours	No dose specified
Ponazuril/Diclazuril/Sulfadiazine-Pyrimethamine	Marquis/Protazil	24 hours	Oral
Procaine Penicillin		48 hours	17 mg/kg IM Procaine penicillin treatments ***shall[~~must~~]*** be reported to the stewards no later than twenty-four (24) hours after the last injection is administered. Horses so treated may be required to be under commission-approved, continuous surveillance for the six-hour interval prior to the post time for the race in which the horse is entered. The owner of the horse ***shall be[~~is~~]*** responsible for all costs associated with the surveillance. Prospective surveillance arrangements ***shall[~~must~~]*** be submitted to the stewards no later than close of business on the day of entry.
PSGAG	Adequan	24 hours	Via IM administration
Ranitidine	Zantac	24 hours	8 mg/kg orally twice daily for 7 doses
Reserpine	Serpasil	7 days	No dose specified
Romifidine	Sedivet	72 hours	50 mg via IV administration
Salmeterol		48 hours	Via inhalation, no dose specified
Sucralfate	Carafate	24 hours	No dose specified
Terbutaline		48 hours	No dose specified
Xylazine	Rompun	48 hours	200 mg via IV administration

(5) NSAID withdrawal guidelines chart:

Substance	Brand Name	Recommended Minimum Withdrawal	Administration Specifications
Phenylbutazone	Butazolidin	48 hours—single elected NSAID. If this is not the single elected NSAID, then 7 days, pursuant to the European Horserace Scientific Liaison Committee.	4.4 mg/kg via IV administration
Flunixin	Banamine	48 hours—single elected NSAID. If this is not the single elected NSAID, then 6 days, pursuant to the European Horserace Scientific Liaison Committee.	1.1 mg/kg via IV administration
Ketoprofen	Ketofen	48 hours—single elected NSAID, If this is not the single elected NSAID, then 4 days, pursuant to the European Horserace Scientific Liaison Committee.	2.2 mg/kg via IV administration
Diclofenac	Surpass	7 days, pursuant to the European Horserace Scientific Liaison Committee.	5 inch ribbon of Surpass every 12 hours to one site
Firocoxib	Equioxx	15 days, pursuant to the European Horserace Scientific Liaison Committee.	0.1 mg/kg once daily for 4 days

(6) Miscellaneous withdrawal guidelines chart:

Substance	Brand Name	Recommended Minimum Withdrawal	Administration Specifications
Anthemintics (except thiazide products		72 hours	
Non-androgenic reproductive hormones	Including HCG, Regumate, GnRH, in fillies and mares only	24 hours	
Proprionibacterium acnes suspension or comparable immunostimulants		24 hours	
Electrolytes, vitamins, minerals		24 hours	Via IV or IM administration
Antibiotics		24 hours	
Any injectable other than furosemide		24 hours	***810 KAR 8:010[~~KHRC regulations~~]*** specifically ***prohibits[~~prohibit~~]*** any injections at less than 24 hours to post time for any substance.
Intra-articular injections, other than corticosteroids		72 hours	

(7) Available Threshold Levels Associated to KHRC Withdrawal Guidelines:

SUBSTANCE	THRESHOLD
Acepromazine	10 nanograms per ml in urine of hydroxyethylpromazine sulfoxide (HEPS)
Albuterol	1 nanogram per ml in urine
Boldenone Male horses other than Geldings	15 nanograms per ml in urine of boldenone, free and conjugated OR 25 picograms per ml in serum or plasma of boldenone, free
Boldenone Geldings and female horses	1 nanogram per mil in urine of boldenone, free and conjugated
Butorphanol	2 nanograms per ml in serum or plasma of butorphanol, free OR 300 nanograms per ml in urine of total butorphanol
Cetirizine	6 nanograms per ml in serum or plasma
Cimetadine	400 nanograms per ml in serum or plasma
Clenbuterol	140 picograms per ml of urine OR Limit of detection in both urine and blood
Dantrolene	0.1 nanograms per ml of serum or plasma of 5-OH dantrolene
Detomidine	2 nanogram per ml in urine of carboxydetomidine OR 1 nanogram per ml of detomidine in serum or plasma
Diclofenac	5 nanograms per ml in serum or plasma
DMSO	10 micrograms per ml in serum or plasma
Firocoxib	20 nanograms per ml in serum or plasma
Flunixin	5 nanograms per ml in serum or plasma
Furosemide	For horses eligible to race on furosemide, 100 nanograms per ml in serum or plasma AND Urine specific gravity of less than 1.010 OR 1 nanogram per ml in serum or plasma for 2-year-olds beginning in 2020 or stakes horses beginning in 2021, see 810 KAR 8:010
Glycopyrrolate	3 picograms per ml in serum or plasma
Guaifenesin	12 nanograms per ml in serum or plasma

Ketoprofen	2 nanograms per ml of serum or plasma
Lidocaine	20 picograms per ml in serum or plasma of Total 3-OH-lidocaine
Mepivacaine	10 nanograms per ml in urine of OH-mepivicaine OR Limit of detection in serum or plasma
Methocarbamol	1 nanogram per ml in serum or plasma
Methylprednisolone	100 picograms per ml in serum or plasma
Nandrolone Male horses other than geldings	45 nanograms per ml in urine of 5α-estrane-3β, 17α-diol OR In urine a ratio of 5α estrane-3β, 17 α-diol to 5α estrene-3β, 17 α-diol of > 1:1
Nandrolone Geldings and female horses	1 nanogram per ml in urine of nandrolone, free and conjugated OR 50 picograms per ml of procaine in blood, serum, or plasma of nandrolone, free
Omeprazole	10 nanograms per ml omeprazole sulfide in serum or plasma
Phenylbutazone	0.3 micrograms per ml in serum or plasma
Prednisolone	10 nanograms per ml free Prednisolone in urine
Procaine Penicillin Horses reported to have been treated with procaine penicillin	25 nanograms per ml of procaine in serum or plasma Procaine penicillin treatments ***shall[~~must~~]*** be reported to the stewards no later than 24 hours after the last injection is administered. Horses so treated may be required to be under KHRC approved, continuous surveillance for the six hour interval prior to the post time for the race in which the horse is entered. The owner of the horse ***shall be[~~is~~]*** responsible for all costs associated with the surveillance. Prospective surveillance arrangements ***shall[~~must~~]*** be submitted to the stewards no later than close of business on the day of entry.
Procaine Penicillin Horses not reported to have been treated with procaine penicillin	Limit of detection for procaine in serum or plasma 2 nanograms per ml of serum or plasma. Procaine penicillin treatments ***shall[~~must~~]*** be reported to the stewards no later than 24 hours after the last injection is administered. Horses so treated may be required to be under KHRC approved, continuous surveillance for the six hour interval prior to the post time for the race in which the horse is entered. The owner of the horse ***shall be[~~is~~]*** responsible for all costs associated with the surveillance. Prospective surveillance arrangements ***shall[~~must~~]*** be submitted to the stewards no later than close of business on the day of entry.
Ranitidine	40 nanograms per ml in serum or plasma
Testosterone Geldings	20 nanograms per ml in urine of testosterone, free and conjugated OR 25 picograms per ml in serum or plasma of testosterone, free
Testosterone Female horses (unless in foal)	55 nanograms per ml in urine of testosterone, free and conjugated OR 100 picograms per ml in serum or plasma of testosterone, free
Xylazine	200 picograms per ml in serum or plasma

(8) All other NSAIDs not listed on the withdrawal guidelines ***shall*** have a threshold set at limit of detection in serum or plasma.

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PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, June 8, 2021)

810 KAR 8:030. Disciplinary measures and penalties.

RELATES TO: KRS 230.215, 230.260, 230.265, 230.290, 230.300, 230.310, 230.320, 230.361

STATUTORY AUTHORITY: KRS 230.215(2), 230.240(2), 230.260(8), 230.265, 230.320

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the Kentucky Horse Racing Commission to promulgate administrative regulations under which racing shall be conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes the penalty structure for rule violations and also establishes disciplinary powers and duties of the stewards, judges, and the commission.

Section 1. Definitions.

(1) "Associated person" means the spouse of an inactive person, or a companion, family member, employer, employee, agent, partnership, partner, corporation, or other entity whose relationship, whether financial or otherwise, with an inactive person would give the appearance that the other person or entity would care for or train a horse or perform veterinarian services on a horse for the benefit, credit, reputation, or satisfaction of the inactive person.

(2) "Class A drug" means a drug, medication, or substance classified as a Class A drug, medication, or substance in the schedule.

(3) "Class B drug" means a drug, medication, or substance classified as a Class B drug, medication, or substance in the schedule.

(4) "Class C drug" means a drug, medication, or substance classified as a Class C drug, medication, or substance in the schedule.

(5) "Class D drug" means a drug, medication, or substance classified as a Class D drug, medication, or substance in the schedule.

(6) "Companion" means a person who cohabits with or shares living accommodations with an inactive person.

(7) "Inactive person" means a trainer or veterinarian who has his or her license denied or suspended or revoked for thirty (30) or more days pursuant to KAR Title 810 or KRS Chapter 230.

(8) "NSAID" means a nonsteroidal anti-inflammatory drug.

(9) "Schedule" means the Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule as provided in 810 KAR 8:020.

(10) "Withdrawal guidelines" means the Kentucky Horse Racing Commission Withdrawal Guidelines established in 810

KAR 8:025[~~810 KAR 8:020~~].

Section 2. General Provisions.

(1) An alleged violation of the provisions of KRS Chapter 230 or KAR Title 810 shall be adjudicated in accordance with this administrative regulation, 810 KAR 9:010, and KRS Chapters 230 and 13B.

(2) If a drug, medication, or substance that is not classified in the schedule is found to be present in a pre-race or post-race sample or possessed or used by a licensee at a location under the jurisdiction of the commission, the commission may establish a classification after consultation with either or both of the Association of Racing Commissioners International and the Racing and Medication Testing Consortium or their respective successors.

(3) The stewards, judges, and the commission shall consider any mitigating or aggravating circumstances properly presented when assessing penalties pursuant to this administrative regulation. Evidence of full compliance with the withdrawal guidelines shall be considered by the stewards, judges, and the commission as a mitigating factor to be used in determining violations and penalties.

(4) A licensee whose license has been suspended or revoked in any racing jurisdiction or a horse that has been deemed ineligible to race in any racing jurisdiction shall be denied access to locations under the jurisdiction of the commission during the term of the suspension or revocation.

(5) A suspension or revocation shall be calculated in calendar days, unless otherwise specified by the stewards, judges, or the commission in a ruling or order.

(6) Notice of the assessment of a penalty, including a written warning, shall be made to the person penalized. The notice and terms of the penalty shall be posted immediately on the official Web site of the commission and sent to the United States Trotting Association, the Association of Racing Commissioners International, or their successors, as applicable, to be posted on their respective official Web sites. If an appeal is pending, that fact shall be so noted.

(7) A horse administered a substance in violation of 810 KAR 8:010 may be required to pass a commission-approved examination as determined by the stewards or judges pursuant to 810 KAR 4:010, Section 10 or 810 KAR 5:010, Section 4, or be placed on the veterinarian's list pursuant to 810 KAR 8:010, Section 19[~~18~~].

(8) To protect the racing public and ensure the integrity of racing in Kentucky, a trainer whose penalty for a Class A violation or for a Class B third offense violation has not been finally adjudicated may, if stall space is available, be required to house a horse that the trainer has entered in a race in a designated stall for the twenty-four (24) hour period prior to post time of the race in which the horse is entered. If the stewards or judges require the trainer's horse to be kept in a designated stall, there shall be twenty-four (24) hour surveillance of the horse by the association, and the cost shall be borne by the trainer.

(9) In addition to the penalties contained in Section 4 of this administrative regulation for the trainer and owner, any other person who administers, is a party to, facilitates, or is found to be responsible for any violation of 810 KAR 8:010 shall be subject to the relevant penalty as provided for the trainer or other penalty as may be appropriate based upon the violation.

(10) A veterinarian who administers, is a party to, facilitates, or is found to be responsible for any violation of KRS Chapter 230 or KAR Title 810 shall be reported to the Kentucky Board of Veterinary Examiners and the state licensing Board of Veterinary Medicine by the stewards or judges.

(11) In accordance with KRS 230.320(6), an administrative action or the imposition of penalties pursuant to this administrative regulation shall not constitute a bar or be considered jeopardy to prosecution of an act that violates the criminal statutes of Kentucky.

(12) If a person is charged with committing multiple or successive overages involving a Class C or Class D drug, medication, or substance, the stewards, judges, or the commission may charge the person with only one (1) offense if the person demonstrates that he or she was not aware that overages were being administered because the positive test results showing the overages were unavailable to the person charged. In this case, the person alleging that he or she was not aware of the overages shall bear the burden of proving that fact to the stewards, judges, or the commission.

(13) If a penalty for a medication violation requires a horse to be placed on the stewards' list or the judges' list for a period of time, the stewards or judges may waive this requirement if ownership of the horse was legitimately transferred prior to the trainer's notification by the commission of the positive result.

(14) In standardbred racing only, if the penalty is for a driving violation and does not exceed in time a period of five (5) days, the driver may complete the engagement of all horses declared in before the penalty becomes effective. The driver may drive in stake, futurity, early closing and feature races, during a suspension of five (5) days or less, but the suspension shall be extended one (1) day for each date the driver drives in a race.

(15) A horse shall not be permitted to race while owned or controlled wholly or in part by a person whose license has been suspended or revoked.

(16) An association under the jurisdiction of the commission shall not willfully allow:

(a) A person whose license has been suspended or revoked in any jurisdiction to participate in racing;

(b) A horse suspended in any jurisdiction to start in a race or a performance against time; or

(c) The use of its track or grounds by a licensee whose license has been suspended or revoked and has been denied access to the grounds by the stewards or judges in any jurisdiction.

(17) If a person is ejected or excluded from a location under the jurisdiction of the commission, the stewards, judges, and commission director of security shall be notified in writing.

(18) A licensee that has been suspended shall serve any suspension imposed:

(a) During the current race meet, if there are enough remaining days to serve out the suspension;

(b) During the next regularly scheduled race meet at the operating race track where the infraction took place if there are not enough remaining days to serve out the suspension; or

(c) At the discretion of the stewards or judges, during a race meet at another operating track in any jurisdiction where the licensee seeks to engage in the activity for which he or she is licensed if the track where the infraction took place closes before another race meet is held at that track.

(19) A penalty imposed by the governing body of any racing jurisdiction or the USTA States Trotting Association shall be recognized and reciprocally enforced by the commission unless application is made for a hearing before the stewards or judges, during which the applicant shall show cause as to why the penalty should not be enforced against him in Kentucky. The hearing shall be limited to the following issues:

(a) Whether the applicant is the same person who is subject to the penalty imposed;

(b) Whether the USTA or other racing jurisdiction in fact suspended the applicant; and

(c) Determination of the time period of the suspension as imposed by the USTA or other racing jurisdiction.

Section 3. Prior Offenses. A prior offense occurring in Kentucky or any other racing jurisdiction shall be considered by the stewards, judges, and the commission in assessing penalties. The stewards or judges shall attach to a penalty judgment a copy of the offender's prior record listing violations that were committed both inside and outside of Kentucky.

Section 4. Penalties for Class A, B, C, and D Drug Violations and NSAID and Furosemide Violations.

(1) Class A drugs. The penalties established in paragraphs (a) and (b) of this subsection shall apply to a Class A drug violation.

(a) Trainer

First offense	Second lifetime offense in any racing jurisdiction	Third lifetime offense in any racing jurisdiction
One (1) to three (3) year suspension, absent mitigating circumstances; AND $10,000 to $25,000 fine, absent mitigating circumstances.	Three (3) to five (5) year suspension, absent mitigating circumstances; AND $25,000 to $50,000 fine, absent mitigating circumstances.	Five (5) year suspension to a lifetime ban, absent mitigating circumstances; AND $50,000 to $100,000 fine, absent mitigating circumstances.

(b) Owner

First offense	Second lifetime offense in any racing jurisdiction in a horse owned by the same owner	Third lifetime offense in any racing jurisdiction in a horse owned by the same owner
Disqualification and loss of purse; AND Horse shall be placed on the stewards' list or judges' list for sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.	Disqualification and loss of purse; AND Horse shall be placed on the stewards' list or judges' list for 120 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.	Disqualification and loss of purse; AND Ninety (90) day suspension, absent mitigating circumstances; AND $50,000 fine, absent mitigating circumstances; AND Horse shall be placed on the stewards' list or judges' list for 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.

(2)(a) The penalties established in paragraphs (b) and (c) of this subsection shall apply to the following:

1. Class B drugs;

2. Gamma amino butyric acid in a concentration greater than 110 nanograms per milliliter; and

3. Cobalt in a concentration greater than fifty (50) parts per billion.

(b) Trainer

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Thirty (30) to sixty (60) day suspension, absent mitigating circumstances; AND $500 to $1,000 fine, absent mitigating circumstances.	Sixty (60) to 180 day suspension, absent mitigating circumstances; AND $1,000 to $2,500 fine, absent mitigating circumstances.	180 to 365 day suspension, absent mitigating circumstances; AND $2,500 to $5,000 fine, absent mitigating circumstances.

(c) Owner

First offense	Second offense within a 365-day period in any racing jurisdiction in a horse owned by the same owner	Third offense within a 365-day period in any racing jurisdiction in a horse owned by the same owner
Disqualification and loss of purse; Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges; AND For a cobalt violation, the horse shall be placed on the stewards' list or judges' list until the horse tests below twenty-five (25) parts per billion. The owner shall be responsible for the cost of testing.	Disqualification and loss of purse; AND Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.	Disqualification and loss of purse; AND Horse shall be placed on the stewards' list or judges' list for forty-five (45) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.

(3)(a) The penalties established in paragraphs (b) and (c) of this subsection shall apply to a Class C drug violation and an overage of permitted NSAIDs as follows:

1. Phenylbutazone in a concentration greater than three-tenths (0.3) micrograms per milliliter;

2. Flunixin in a concentration greater than five (5) nanograms per milliliter; and

3. Ketoprofen in a concentration greater than two (2) nanograms per milliliter.

(b) Trainer

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Zero to ten (10) day suspension absent mitigating circumstances; AND $500 to $1,500 fine absent mitigating circumstances.	Ten (10) to thirty (30) day suspension absent mitigating circumstances; AND $1,500 to $2,500 fine absent mitigating circumstances.	Thirty (30) to sixty (60) day suspension absent mitigating circumstances; AND $2,500 to $5,000 fine absent mitigating circumstances.

(c) Owner

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction

Disqualification and loss of purse; AND Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.	Disqualification and loss of purse; AND If same horse as first offense, horse shall be placed on the stewards' list or judges' list for forty-five (45) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.	Disqualification and loss of purse; $5,000 fine, absent mitigating circumstances; AND If same horse as first and second offenses, horse shall be placed on the stewards' list or judges' list for sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.

(4)(a)The penalties established in paragraphs (b) and (c) of this subsection shall apply to the following:

1. Overage of furosemide in a concentration greater than one (1) nanogram per milliliter ***for horses that are not permitted by 810 KAR 8:010 to receive furosemide within twenty-four (24) hours of the post time of a race in which the horse is entered*** [~~for horses that are not permitted by 810 KAR 8:001 to receive furosemide within twenty-four (24) hours of the post time of a race in which the horse is entered~~];

2. Overage of furosemide in a concentration greater than 100 nanograms per milliliter for horses other than those identified in subparagraph 1. of this paragraph;

3. Furosemide not identified when notice made that the horse would run on furosemide; and

4. Cobalt in a concentration greater than twenty-five (25) parts per billion through fifty (50) parts per billion.

(b) Trainer

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Written warning to a $500 fine, absent mitigating circumstances.	Written warning to a $750 fine, absent mitigating circumstances.	$500 to $1,000 fine, absent mitigating circumstances.

(c) Owner

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges; AND For a cobalt violation, the horse shall be placed on the stewards' list or judges' list until the horse tests below twenty-five (25) parts per billion. The owner shall be responsible for the cost of testing.	Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.	If same horse as first and second offenses, disqualification and loss of purse; AND Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.

(d) If a furosemide violation occurs due solely to the actions or inactions of the commission veterinarian, then the trainer and owner shall not be penalized.

(5) Multiple NSAIDs. The penalties established in paragraphs (a) and (b) of this subsection shall apply to an overage of two (2) permitted NSAIDs: phenylbutazone, flunixin, and ketoprofen.

(a) Trainer

	Concentrations of both permitted NSAIDs above the NSAID threshold.
First offense	Zero to sixty (60) day suspension, absent mitigating circumstances; AND $500 to $1,000 fine, absent mitigating circumstances.
Second offense within a 365-day period in any racing jurisdiction	Sixty (60) to 180 day suspension, absent mitigating circumstances; AND $1,000 to $2,500 fine, absent mitigating circumstances.
Third offense within a 365-day period in any racing jurisdiction	180 to 365 day suspension, absent mitigating circumstances; AND $2,500 to $5,000 fine, absent mitigating circumstances.

(b) Owner

	Concentrations of both permitted NSAIDs above the NSAID threshold.
First offense	Disqualification and loss of purse.
Second offense within a 365-day period in any racing jurisdiction	Disqualification and loss of purse.
Third offense within a 365-day period in any racing jurisdiction	Disqualification and loss of purse.

(6) Class D drugs.

(a) The penalties established in paragraph (b) of this subsection shall apply to a Class D drug violation.

(b) Trainer

One (1) to four (4) offenses within a 365-day period in any racing jurisdiction	Five (5) or more offenses within a 365-day period in any racing jurisdiction
Zero to five (5) day suspension, absent mitigating circumstances; AND $250 to $500 fine, absent mitigating circumstances.	Five (5) to ten (10) day suspension, absent mitigating circumstances; AND $500 to $1,000 fine, absent mitigating circumstances.

Section 5. TCO2 Penalties. The penalties established in subsections (1) and (2) of this section shall apply to a violation of 810 KAR 8:010, Section 21(6), (7), or (8) [~~20(6), (7), or (8)~~].

(1) Trainer

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction	Subsequent offenses within a 365-day period in any racing jurisdiction
Zero to ninety (90) day suspension, absent mitigating circumstances; AND $1,000 to $1,500 fine, absent mitigating circumstances.	Ninety (90) to 180 day suspension, absent mitigating circumstances; AND $1,500 to $3,000 fine, absent mitigating circumstances.	180 to 365 day suspension, absent mitigating circumstances; AND $3,000 to $5,000 fine, absent mitigating circumstances.	One (1) year suspension to lifetime ban, absent mitigating circumstances.

(2) Owner

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction	Subsequent offenses within a 365-day period in any racing jurisdiction
Disqualification and loss of purse.	Disqualification and loss of purse; AND If same horse as first offense, horse shall be placed on the stewards' list from fifteen (15) to sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND If same horse as first and second offenses, horse shall be placed on the stewards' list from sixty (60) to 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND If same horse as first, second, and third offenses, horse shall be placed on the stewards' list from 180 to 365 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.

Section 6. Shock Wave Machine and Blood Gas Machine Penalties. The penalties established in subsections (1) and (2) of this section shall apply to a violation of 810 KAR 8:010, Section 21(5), (9), or (10) [~~Section 20(5), (9), or (10)~~].

(1) Trainer

First offense	Second lifetime offense in any racing jurisdiction	Third lifetime offense in any racing jurisdiction
Thirty (30) to sixty (60) day suspension absent mitigating circumstances; AND $1,000 to $5,000 fine absent mitigating circumstances.	Sixty (60) to 180 day suspension absent mitigating circumstances; AND $5,000 to $10,000 fine absent mitigating circumstances.	180 to 365 day suspension absent mitigating circumstances; AND $10,000 to $20,000 fine absent mitigating circumstances.

(2) Owner

First offense	Second lifetime offense in any racing jurisdiction	Third lifetime offense in any racing jurisdiction
Disqualification and loss of purse.	Disqualification and loss of purse; AND If same horse as first offense, horse shall be placed on the stewards' list or judges' list from fifteen (15) to sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.	Disqualification and loss of purse; AND If same horse as first and second offenses, horse shall be placed on the stewards' list or judges' list from sixty (60) to 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.

Section 7. Persons with a Suspended or Revoked License.

(1) A person shall not train a horse or practice veterinary medicine for the benefit, credit, reputation, or satisfaction of an inactive person. The partners in a veterinary practice may provide services to horses if the inactive person does not receive a pecuniary benefit from those services.

(2) An associated person of an inactive person shall not:

(a) Assume the inactive person's responsibilities at a location under the jurisdiction of the commission;

(b) Complete an entry form for a race to be held in Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked; or

(c) Pay or advance an entry fee for a race to be held in Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked.

(3) An associated person who assumes the responsibility for the care, custody, or control of an unsuspended horse owned (fully or partially), leased, or trained by an inactive person shall not:

(a) Be paid a salary directly or indirectly by or on behalf of the inactive person;

(b) Receive a bonus or any other form of compensation in cash, property, or other remuneration or consideration;

(c) Make a payment or give remuneration or other compensation or consideration to the inactive person or associated person; or

(d) Train or perform veterinary work for the inactive person or an owner or customer of the inactive person at a location under the jurisdiction of the commission.

(4) A person who is responsible for the care, training, or veterinary services provided to a horse formerly under the care, training, or veterinary services of an inactive person shall:

(a) Bill customers directly on his or her bill form for any services rendered at or in connection with any race meeting in Kentucky;

(b) Maintain a personal checking account totally separate from and independent of that of the inactive person to be used to pay expenses of and deposit income from an owner or client of the inactive person;

(c) Not use the services, directly or indirectly, of current employees of the inactive person; and

(d) Pay bills related to the care, training, and racing of the horse from a separate and independent checking account. Copies of the invoices for the expenses shall be retained for not less than six (6) months after the date of the reinstatement of the license of the inactive person or the expiration of the suspension of the inactive person's license.

Section 8. Other Disciplinary Measures.

(1) A person who violates 810 KAR 8:010, Section 21(2)[~~20(2)~~], shall be treated the same as a person who has committed a drug violation of the same class, as determined by the commission after consultation with the Equine Drug Research Council.

(2) A person who violates 810 KAR 8:010, Section 21(3)[~~20(3)~~], shall be treated the same as a person who has committed a Class A drug violation.

Section 9. Disciplinary Measures by Stewards or Judges. Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 or KAR Title 810, if not otherwise provided for in this administrative regulation, the stewards or judges may impose one (1) or more of the following penalties:

(1) If the violation or attempted violation may affect the health or safety of a horse or race participant, or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or a licensee in a race;

(2) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years in proportion to the seriousness of the violation and the facts of the case;

(3) Cause a person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of the orderly conduct of a race or race meeting, or person whose presence is found by the stewards or judges to be inconsistent with maintaining the honesty and integrity of the sport of horse racing to be denied access to association grounds or a portion of association grounds; and

(4) Payment of a fine in an amount not to exceed $50,000 as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.

Section 10. Disciplinary Measures by the Commission.

(1) Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 or KAR Title 810, if not otherwise provided for in this administrative regulation, the commission may impose one (1) or more of the following penalties:

(a) If the violation or attempted violation may affect the health or safety of a horse or race participant or may affect the outcome of a race, declare a horse or a licensed person ineligible to race or disqualify a horse or licensed person in a race;

(b) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years in proportion to the seriousness of the violation;

(c) Cause a person found to have interfered with or contributed toward the interference of the orderly conduct of a race or race meeting, or person whose presence is found by the commission to be inconsistent with maintaining the honesty and integrity of horse racing, to be denied access to association grounds or a portion of association grounds for a length of time the commission deems necessary;

(d) Payment of a fine of up to $50,000 as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.

(2) Upon appeal of a matter determined by the stewards' or judges the commission may:

(a) Order a hearing de novo of a matter determined by the stewards' or judges; and

(b) Reverse or revise the stewards' or judges' ruling in whole or in part, except as to findings of fact by the stewards' or judges' ruling regarding matters that occurred during or incident to the running of a race and as to the extent of disqualification fixed by the stewards or judges for a foul in a race.

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PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, June 8, 2021)

810 KAR 8:040. Out-of-competition testing.

RELATES TO: KRS 230.215, 230.225(5), 230.240, 230.260, 230.290, 230.300, 230.310, 230.320, 230.370

STATUTORY AUTHORITY: KRS 230.215(2), 230.240(2), 230.260(11)***[.]***

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) ***authorizes[~~grants~~]*** the ***Kentucky Horse Racing*** commission ***to promulgate administrative regulations prescribing*** ***[~~the authority to regulate~~]*** conditions under which horse racing shall be conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes ***[~~new~~]*** sampling and testing procedures for prohibited substances, and establishes penalties for individuals found to be in violation of this administrative regulation.

Section 1. Definitions.

(1) "Endogenous" means a substance that is naturally produced by the healthy body.

(2) "Exogenous" means a substance that is not naturally produced by the healthy body.

(3) "Out of competition testing" means all testing other than:

(a) Pre-race TCO2 testing; and

(b) Post-race testing at a licensed association under the jurisdiction of the commission.

(4) "Sample" means that portion of a specimen subjected to testing by the commission laboratory.

(5) "Sampling" means the act of collecting a specimen from a horse.

(6) "Specimen" means blood, urine, or other biologic matter taken or drawn from a horse for testing.

Section 2. Prohibited Substances and Practices.

(1) All substances identified in this administrative regulation shall be prohibited unless specifically permitted. A positive finding by the commission laboratory of a substance prohibited by this administrative regulation in a specimen taken from a horse designated for testing by a commission veterinarian or his designee shall be prima facie evidence that a violation has occurred. Any reference to substances in this section does not alter the requirements for testing concentrations in race day samples established in 810 KAR 8:010 and 810 KAR 8:050.

(2) Any pharmacological substance not addressed by this administrative regulation and without current approval by the U.S. Food and Drug Administration for human or veterinary use shall be prohibited at all times without prior approval of the commission. If a veterinarian seeks approval to use a pharmacological substance not currently approved by the U.S. Food and Drug Administration, the commission or its designee may consult with the Association of Racing Commissioners International, the Racing and Medication Testing Consortium, or their successors to determine whether to authorize use of the substance.

(3) Therapeutic substances not otherwise prohibited by this administrative regulation may be used if the substances:

(a) Are currently approved for human or veterinary use by the

U.S. Food and Drug Administration; and

(b) Are prescribed and administered in the context of a valid veterinarian-client-patient relationship.

(4) Compounded medications not otherwise prohibited by this administrative regulation may be used if the medications:

(a) Are permitted by federal law or the law of the state where the horse is located when the compounded medication is administered; and[,]

(b) Are prescribed and administered in the context of a valid veterinarian-client-patient relationship.

(5)(a) Except as provided in paragraph (b) of this subsection, the following Anabolic Androgenic Steroids (AAS) shall be prohibited:

1. Exogenous AAS, such as [~~including~~]: 1-androstenediol (5α-androst-1-ene-3β,17β-diol); 1-androstenedione (5α-androst-1-ene-3,17-dione); bolandiol (estr-4-ene-3β,17β-diol); bolasterone; boldenone; boldione (androsta-1,4-diene-3,17-dione); calusterone; clostebol danazol (oxazolopregna-4-en-20-yn-17α-ol); dehydrochlormethyltestosterone (4-chloro-17β-hydroxy-17α-methylandrosta-1,4-dien-3-one); desoxymethyltestosterone (17α-ethyl-5α-androst-2-en-17β-ol); drostanolone; ethylestrenol (19-norpregna-4-en-17α-ol); fluoxymesterone; formebolone; furazabol (17α-methyloxadiazolo-5α-androstan-17β-ol); gestrinone; 4-hydroxytestosterone (4,17β-dihydroxyandrost-4-en-3-one); mestanolone; mesterolone; metandienone (17β-hydroxy-17α-methylandrosta-1,4-dien-3-one); metenolone; methandriol; methasterone (17β-hydroxy-2α,17α-dimethyl-5α-androstan-3-one); methyldienolone (17β-hydroxy-17α- methylestra-4,9-dien-3-one); methyl-1-testosterone (17β-hydroxy-17α-methyl-5α-androst-1-en-3-one); methylnortestosterone (17β-hydroxy-17α-methylestr-4-en-3-one); methyltestosterone; metribolone (methyltrienolone, 17β-hydroxy-17α-methylestra-4,9,11-trien-3-one); mibolerone; nandrolone; 19-norandrostenedione (estr-4-ene-3,17-dione); norboletone; norclostebol; norethandrolone; oxabolone; oxandrolone; oxymesterone; oxymetholone; prostanozol (17β--1'H pyrazolo-5α-androstane); quinbolone; stanozolol; stenbolone; 1-testosterone (17β-hydroxy-5α-androst-1-en-3-one); tetrahydrogestrinone (17-hydroxy-18a-homo-19-nor-17α pregna-4,9,11-trien-3-one); and trenbolone (17β-hydroxyestr-4,9,11-trien-3-one); and

2. Endogenous AAS or their synthetic esters if administered exogenously: androstenediol (androst-5-ene-3β,17β-diol); androstenedione (androst-4-ene-3,17-dione); dihydrotestosterone (17β-hydroxy-5α-androstan-3-one); prasterone (dehydroepiandrosterone, DHEA, 3β-hydroxyandrost-5-en-17-one); testosterone; and their metabolites and isomers, including but not limited to: 5α-androstane-3α,17α-diol; 5α-androstane-3α,17β-diol; 5α-androstane-3β,17α-diol; 5α-androstane-3β,17β-diol; 5β-androstane-3α, 17β-diol, androst-4-ene-3α,17α-diol; androst-4-ene-3α,17β-diol; androst-4-ene-3β,17α-diol; androst-5-ene-3α,17α-diol; androst-5-ene-3α,17β-diol; androst-5-ene-3β,17α-diol; 4-androstenediol (androst-4-ene-3β,17β-diol); 5-androstenedione (androst-5-ene-3,17-dione); androsterone (3β-hydroxy-5α-androstan-17-one); epi-dihydrotestosterone; epitestosterone; etiocholanolone; 7α-hydroxy-DHEA; 7β-hydroxy- DHEA; 7-keto-DHEA; 19-norandrosterone; 19-noretiocholanolone.

(b) Anabolic steroids may be used out of competition if:

1. The anabolic steroid is currently approved for human or veterinary use by the U.S. Food and Drug Administration;

2. The administration is:

a. Performed pursuant to a valid veterinary prescription;

b. Entered into the horse's medical record by the administering veterinarian; and

c. Reported by the administering veterinarian to the commission no later than twenty-four (24) hours after administration or dispensing of the medication;

3. The record is made available upon request for inspection by the commission or its designee; and

4. The horse is placed on the Veterinarian's List for six (6) months after the last administration of an anabolic steroid or agent.

(6)(a) Except as provided in paragraph (b) of this subsection, the following anabolic agents shall be prohibited:

1. Clenbuterol;

2. Selective androgen receptor modulators (SARMs);

3. Ractopamine;

4. Tibolone;

5. Zeranol; and

6. Zilpaterol.

(b) Clenbuterol may be administered if the treatment is:

1. Pursuant to a valid veterinary prescription; [~~and~~]

2. Reported by the administering veterinarian to the commission no later than 24 hours after administration or dispensing of the medication; and[~~.~~]

3. Otherwise compliant with 810 KAR 8:010, Section 10.

(7) The following substances shall be prohibited:

(a) Erythropoiesis-Stimulating Agents (ESAs), such as [~~including~~] darbepoetin (dEPO); erythropoietins (EPO); EPO-Fc; EPOmimetic peptides (EMP), e.g., CNTO 530 and peginesatide; and methoxypolyethylene glycol-epoetin beta (CERA);

(b) Non-erythropoietic EPO-Receptor agonists, such as [~~including~~] ARA-290, asialo EPO and carbamylated EPO; and

(c) Hypoxia-inducible factor (HIF) stabilizers, such as [~~including~~]cobalt (if detected at concentrations in excess of the threshold prescribed in 810 KAR 8:010, Section 2(4)(b)), and roxadustat (FG-4592); and HIF activators, (e.g., argon, xenon).

(8)(a) Except as provided in paragraph (b) of this subsection, Chorionic Gonadotropin (CG) and Luteinizing Hormone (LH) and their releasing factors, shall be prohibited in male horses.

(b) Chorionic Gonadatropin (CG) and Luteinizing Hormone (LH) may be used in male horses if:

1. The treatment is pursuant to a valid veterinary prescription; and

2. The administering veterinarian files a treatment plan with the commission prior to administering the medication.

(9)(a) Except as provided in paragraph (b) of this subsection, Corticotrophin releasing factors and corticotrophin releasing hormones (CCRH) shall be prohibited.

(b) Adrenocorticotrophic Hormone (ACTH) may be used if the treatment is:

1. Pursuant to a valid veterinary prescription; and

2. Reported by the administering veterinarian to the commission no later than twenty-four (24) hours after administration or dispensing of the medication by the veterinarian.

(c) Growth Hormone (GH); Growth Hormone Releasing Hormone (GHRH); CJC-1295, sermorelin and tesamorelin; Growth Hormone Secretagogues (GHS); anamorelin; ipamorelin; GH-Releasing Peptides (GHRPs); alexamorelin; GHRP-6; hexarelin; and pralmorelin (GHRP-2) shall be prohibited.

(d) Venoms and toxins from sources, such as [~~including~~] snails, snakes, frogs, and bees and their synthetic analogues, such as [~~including~~] ziconotide, shall be prohibited.

(e) Growth factors, such as [~~including~~]Fibroblast Growth Factors (FGFs), Hepatocyte Growth Factor (HGF), Insulin-like Growth Factor-1 (IGF-1) and its analogues, Mechano Growth Factors (MGFs), Platelet-Derived Growth Factor (PDGF), Vascular-Endothelial Growth Factor (VEGF) and any other growth factor affecting muscle, tendon or ligament protein synthesis/degradation, vascularization, energy utilization, regenerative capacity or fiber type switching shall be prohibited.

(10) Platelet rich plasma (PRP) and autologous conditioned plasma (IRAP) may be used if the treatment is:

(a) Pursuant to a valid veterinary prescription; and

(b) Reported to the commission's representative at the time of sampling if administered within the preceding twenty-four (24) hours.

(11) All beta-2 agonists, such as [~~including~~] all optical isomers (i.e., d- and l-) where relevant, shall be prohibited.

(12) Clenbuterol and albuterol may be used if the treatment is:

(a) Pursuant to a valid veterinary prescription; [~~and~~]

(b) Reported by the administering veterinarian to the commission no later than twenty-four (24) hours after administration or dispensing of the medication by the veterinarian; and[~~.~~]

(c) Otherwise compliant with 810 KAR 8:010, Section 10.

(13)(a) Except as established in paragraphs (b) and (c) of this subsection, hormone and metabolic modulators shall be prohibited

such as [~~including~~]:

1. Aromatase inhibitors, such as [~~including~~]aminoglutethimide, anastrozole, androsta-1,4,6-triene-3,17-dione (androstatrienedione), 4-androstene-3,6,17 trione (6-oxo), exemestane, formestane, letrozole, testolactone;

2. Selective estrogen receptor modulators (SERMs), such as [~~including~~] raloxifene, tamoxifen, toremifene;

3. Other anti-estrogenic substances, such as [~~including~~] clomiphene, cyclofenil, fulvestrant;

4. Agents modifying myostatin function(s), such as [~~including~~] myostatin inhibitors;

5. Activators of the AMP-activated protein kinase (AMPK), such as [~~including~~] 5-Aminoimidazole-4-carboxamide ribonucleotide (AICAR); and Peroxisome Proliferator Activated Receptor δ (PPARδ) agonists such as [~~including~~] GW 1516;

6. Insulins;

7. Trimetazidine; and

8. Thyroxine, and thyroid modulators/hormones such as [~~including~~] T4 (tetraiodothyronine/thyroxine), T3 (triiodothyronine), or combinations thereof.

(b) Thyroxine (T4) may be used:

1. The treatment is pursuant to a valid veterinary prescription; and

2. A treatment report is filed in writing or electronically with the commission within twenty-four (24) hours of the administration or dispensing of the medication by the veterinarian.

(c) Altrenogest may be used in fillies and mares if the treatment is pursuant to a valid veterinary prescription. Altrenogest may be used is permitted in intact males if the treatment is:

1. Pursuant to a valid veterinary prescription; and

2. The administering veterinarian files a treatment plan with the commission prior to administering the medication.

(14)(a) Except as provided in paragraphs (b) and (c) of this subsection, diuretics shall be prohibited, such as [~~including~~] acetazolamide, amiloride, bumetanide, canrenone, chlorthalidone, ethacrynic acid, indapamide, metolazone, spironolactone, thiazides, such as [~~including~~] bendroflumethiazide, chlorothiazide, hydrochlorothiazide, torsemide, triamterene, vasopressin receptor antagonists or vaptans, such as [~~including~~] tolvaptan.

(b) Furosemide and trichlormethiazide may be used out of competition if the treatment is:

1. Pursuant to a valid veterinary prescription; and

2. Reported at the time of sampling if administered within the preceding twenty-four (24) hours.

(c) Other diuretics, including those established in paragraph (a) ***of this subsection[~~above~~]***, may be administered in an emergency if the treatment is:

1. Pursuant to a valid veterinary prescription; and

2. Reported to the commission within twenty-four (24) hours of administration.

(15) Masking agents, such as [~~including~~] desmopressin, plasma expanders (such as [~~including~~] glycerol; intravenous administration of albumin, dextran, and hydroxyethyl starch), and probenecid, shall be prohibited.

(16) The administration or reintroduction of any quantity of autologous, allogenic (homologous) or heterologous blood or red blood cell products of any origin into the circulatory system shall be prohibited.

(17) Artificially enhancing the uptake, transport or delivery of oxygen, with perfluorochemicals, efaproxiral (RSR13), hemoglobin products, hemoglobin-based blood substitutes, and microencapsulated hemoglobin products (excluding supplemental oxygen) shall be prohibited.

(18)(a) Except as provided in paragraph (b) of this subsection, any form of intravascular manipulation of the blood or blood components by physical or chemical means shall be prohibited.

(b) The use of a hyperbaric oxygen chamber shall not be a violation of this administrative regulation.

(19) Polymers of nucleic acids or nucleic acid analogues shall not be transferred unless prior approval is requested and received from the commission or its designee.

(20) The use of normal or genetically modified hematopoietic cells shall be prohibited.

(21) Mesenchymal stem cells may be used for treatment of musculoskeletal disorders, if the treatment is:

(a)[~~1.~~] Entered by the veterinarian in the horse's medical record, which record shall be made available to a designee of the commission upon request;

(b)[~~2.~~] Pursuant to a valid veterinary prescription; and

(c)[~~3.~~] Reported to the commission's representative at the time of sampling.

Section 3. Out-of-Competition Testing.

(1) Any horse eligible to race in Kentucky shall be subject to testing without advance notice for the substances specified in Section 2 of this administrative regulation. A horse shall be presumed eligible to race in Kentucky if:

(a) It is under the care, custody, or control of a trainer licensed by the commission;

(b) It is owned by an owner licensed by the commission;

(c) It is nominated to a race at an association licensed pursuant to KRS 230.300;

(d) It has raced at an association licensed pursuant to KRS 230.300 within the previous twelve (12) calendar months;

(e) It is stabled on the grounds of an association licensed pursuant to KRS 230.300 or a training facility subject to the jurisdiction of the commission; or

(f) It is nominated to participate in the Kentucky Thoroughbred Development Fund, the Kentucky Standardbred Development Fund, or the Kentucky quarter horse, paint horse, Appaloosa and Arabian Development Fund.

(2) A horse subject to testing under subsection (1) of this section may be designated for testing by the executive director, the chief state steward, chief judge, or their respective designee.

(3) An owner, trainer, or any authorized designee shall fully cooperate with the commission veterinarian, or his or her designee, by:

(a) Locating and identifying any horse designated for out-of-competition testing;

(b) Making the horse available for the collection of the specimen at a place designated by the commission veterinarian, or his or her designee; and

(c) Observing the collection of the specimen.

1. If the owner, trainer or their authorized designee, is not available to observe the collection of the specimen, the collection shall be deferred until the trainer, owner, or their authorized designee[~~,~~] becomes reasonably available, but the collection shall occur no later than six (6) hours after notice of intent to collect a specimen from a horse is issued by the commission veterinarian or his or her designee.

2. If the collection does not occur within the time provided for in this subsection, any horse that is designated for testing may be barred from racing in Kentucky and placed on the veterinarian's list, pursuant to 810 KAR 8:010, Section 18 [~~17~~], and the steward's list or judges' list, for a period of 180 days and the owner and trainer of the horse may be subject to the penalties described in Section 8 of this administrative regulation.

(4) Responsible persons.

(a) The trainer of the horse shall be responsible for the condition of a horse sampled for an out-of-competition test while on the grounds of a licensed training facility or racetrack.

(b) If the horse is sampled while not on the grounds of a licensed training facility or racetrack, the owner shall be presumed to be the responsible person unless the owner can establish, by substantial evidence, that another licensed person had accepted the responsibility for the care, custody, and control of the horse, making that person the responsible person.

(c) If a horse sampled for an out-of-competition test was claimed, sold, or otherwise transferred during the time the substance giving rise to the positive test may have been administered, then the commission shall investigate to determine, by a preponderance of the evidence, the identity of the responsible person at the time the substance may have been administered.

(d) If the commission cannot determine a responsible person, then the commission may deem the owner responsible and may place the horse on the veterinarian's list for as long as is necessary

to protect the integrity of racing.

(e) If a horse designated for testing is sampled at a location not under the jurisdiction of the commission, the trainer or his designee may declare at the time of sampling any reportable substances that have been administered to the horse but have not previously been disclosed to the commission.

Section 4. Specimen Collection.

(1) A specimen shall be collected from any horse designated by the executive director, the chief state steward, the presiding judge, or their designee, whether the horse is located in Kentucky or in another jurisdiction.

(2) If a designated horse is located in another jurisdiction, the executive director or commission veterinarian may select a veterinarian from that jurisdiction's racing commission or regulatory entity to collect the specimen.

(3) At a licensed association or training facility under the jurisdiction of the commission, the commission veterinarian, or his or her designee, may collect a specimen from a horse designated for testing at any time.

(4) At a location other than the grounds of a licensed association or a training facility under the jurisdiction of the commission, the commission veterinarian, or his or her designee, shall collect the specimen between the hours of 7 a.m. and 6 p.m., prevailing time, and shall notify orally or in writing the owner, trainer, or their designee before arriving to collect the specimen.

(5) A licensed association or training facility under the jurisdiction of the commission at which a horse designated for testing is located shall cooperate fully in the collection of the specimen.

Section 5. Minimum and split samples. The commission veterinarian, in consultation with the official laboratory, shall determine minimum and split sample requirements as established at 810 KAR 8:010, Section 12 [~~11~~].

Section 6. Sample Storage and Testing.

(1) Any out of competition sample collected pursuant to this administrative regulation shall be stored in a temperature controlled unit at a secure location chosen by the commission until the sample is submitted for testing. The samples shall be secured under conditions established by the commission veterinarian in accordance with 810 KAR 8:010, Section ***13[12]*** [~~11~~].

(2) The commission is the owner of an out of competition specimen.

(3) A trainer or owner of a horse receiving notice of a report of finding from the commission may request that a split sample corresponding to the portion of the sample tested by the commission laboratory be sent to a split sample laboratory which has documented its proficiency in detecting the substance associated with the report of finding and has been approved by the commission.

(4) Split samples shall be subject to 810 KAR 8:010, ***Sections[~~Section~~]*** 12 ***and 13*** [~~11~~], and the chain of custody of any split sample shall be maintained in accordance with 810 KAR 8:010, Section ***14[13]*** [~~12~~].

(5) The cost of testing a split sample, including shipping, shall be borne by the owner or trainer requesting the test.

Section 7. Notice of Violation and Hearing. Within five (5) business days of receipt by the stewards or judges of notification of a violation of this administrative regulation, the stewards or judges shall notify the owner and trainer orally or in writing of the violation and shall schedule a stewards' or judges' hearing within fourteen (14) calendar days of notification by the stewards or judges to the owner and trainer. The hearing may be continued if the stewards or judges determine a continuation is necessary to accommodate the parties.

Section 8. Penalty. A trainer, owner, responsible person, or any other individual who violates this administrative regulation shall be subject to the following penalties:

(1) A positive finding of a substance prohibited by this administrative regulation shall be subject to the penalties for that substance established in 810 KAR 8:010, 810 KAR 8:020, 810 KAR 8:025, and 810 KAR 8:030.

(2) If the owner, trainer, or any authorized designee fails to cooperate or otherwise prevents a horse from being tested, the horse designated for testing shall be barred from racing in Kentucky and placed on the veterinarian's list, pursuant to 810 KAR 8:010, Section 19 [~~17~~], and the steward's list or judges' list, for 180 days, and the individual or individuals responsible for the failure to cooperate or prevention of the horse from being tested shall be subject to the penalties established in subsection (4) of this section.

(3) A horse that is barred from racing in Kentucky and placed on the Veterinarian's List and the steward's list, or judges' list pursuant to subsection (4)***(b)[~~(c)~~]*** or subsection (5) of this section shall remain barred from racing and shall remain on the veterinarian's list and the steward's list or judge's list:

(a) Upon sale or transfer of the horse to another owner or trainer until the expiration of 180 days; and

(b) Until the horse is determined by the commission to test negative for any substance prohibited by this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward or presiding judge.

(4)(a) Willful failure to make a horse available for sampling, tampering with or attempting to tamper in order to alter the integrity and validity of a sample, including urine substitution or adulteration, or any other deceptive acts or interference in the sampling process, shall be penalized as follows:

1. For a first offense, a Class A penalty as established in 810 KAR 8:030; or

2. For a second offense, permanent license revocation.

(b) A horse that is not produced for out of competition testing shall be placed on the Veterinarian's List for a minimum of 180 days.

(5) Failure to report treatment as required by this administrative regulation shall be penalized as follows:

(a) For a first offense, a warning; or

(b) For a second or subsequent offense, a Class D penalty as established in 810 KAR 8:030.

(6) Upon finding a violation of this administrative regulation, the horse in which the presence of a substance described in Section 2 of this administrative regulation was detected shall be barred from racing in Kentucky and placed on the veterinarian's list pursuant to 810 KAR 8:010, Section ***19[18]***[~~17~~], and the stewards' or judges' list, for a period of up to 180 days and shall remain barred from racing in Kentucky until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward or presiding judge.

(7) Upon finding a violation of this administrative regulation, the horse in which the presence of a substance described in Section 2 of this administrative regulation was detected shall remain subject to the requirements of subsection (4) of this section:

(a) Upon sale or transfer of the horse to another owner or trainer before the expiration of 180 days; and

(b) Until the horse is determined by the commission to test negative for any substance described in Section 2 of this administrative regulation and is approved for racing by the commission veterinarian and the chief state steward or presiding judge.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Data and Analytics
Division of Health Benefit Exchange
(As Amended at ARRS, June 8, 2021)

900 KAR 10:120. KHBE Eligibility and Enrollment in a Qualified Health Plan, SHOP, and SHOP Formal Resolution Process.

RELATES TO: KRS ***Chapter 304,*** 304.14-110, ***[~~304.17A-125,~~]*** 304.17A-243, 304.17A-245, ***[~~Chapter 304,~~]*** 26 U.S.C. 5000A, ***[~~9831,~~]*** 6011, 6012, ***9831,*** 42 U.S.C***[~~,~~]*** 18031, 26 C.F.R. 1.36B-2, 1.36B-3, 54.9801-6, 54.9802-4, 29 C.F.R. 2590.702-2, 42 C.F.R. 435.320, 45 C.F.R. 146.123, 147.104, 147.128, Parts 155, 156.

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Office of Health Data and Analytics, Division of Health Benefit Exchange has responsibility to administer the Kentucky Health Benefit Exchange. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law. This administrative regulation establishes the policies and procedures relating to eligibility and enrollment in a qualified health plan in the individual market, the operation of a Small Business Health Options Program, and the formal review process related to SHOP on the Kentucky Health Benefit Exchange pursuant to and in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

Section 1. Eligibility and Enrollment.

(1) An applicant shall be eligible to enroll in a QHP through the KHBE if the applicant:

(a)1. Is a citizen or national of the United States;

2. Is a non-citizen who is lawfully present in the United States and is reasonably expected to become a citizen or national; or

3. Is a non-citizen who is lawfully present for the entire period for which enrollment is sought;

(b) Except for an incarceration pending a disposition of a charge, is not incarcerated; and

(c) Meets a residency requirement in 45 C.F.R. 155.305(a)(3).

(2) An applicant may apply for a determination of eligibility at any time during a year; however, the applicant shall only enroll during open enrollment or SEPs.

(3) An applicant determined eligible for enrollment in a QHP as set forth in subsection (1) of this section shall be eligible to enroll in a QHP during:

(a) An open enrollment period as established in Section 5(2) of this administrative regulation; or

(b) A SEP as established in Sections 5(4) and 6 of this administrative regulation.

(4) An applicant shall attest to whether or not information affecting the applicant's eligibility has changed since the most recent eligibility determination if the applicant:

(a) Was determined eligible to enroll in a QHP***,*** but:

1. Did not select a QHP within the applicable enrollment period as set forth in Section 5 or 6 of this administrative regulation; or

2. Was not eligible for an enrollment period; and

(b) Seeks a new enrollment period prior to the date on which the applicant's eligibility is redetermined as established in Section 8 of this administrative regulation.

(5) An applicant shall submit an application for enrollment in a QHP:

(a) Via the Web site ***at www.kynect.ky.gov***;

(b) By telephone;

(c) By mail; or

(d) In person.

(6)(a) An applicant who has a Social Security number shall provide the number to the KHBE.

(b) An individual who is not seeking coverage for himself or herself shall not provide a Social Security number, except as established by Section 2(8) of this administrative regulation.

(7) In accordance with 45 C.F.R. 155.310(a)(2), an individual shall not provide information regarding citizenship, status as a national, or immigration status for an individual who is not seeking coverage for himself or herself.

(8)(a) Except as established by paragraph (b) of this subsection, an applicant who requests an eligibility determination for an insurance affordability program shall have an eligibility determination for all insurance affordability programs.

(b) An applicant who requests an eligibility determination for a QHP only shall not have an eligibility determination for an insurance affordability program.

(9) An applicant shall not provide information beyond the minimum amount necessary to determine eligibility and enrollment through the KHBE.

Section 2. Eligibility Standards for Advanced Payments of the Premium Tax Credit.

(1) A tax filer shall be eligible for APTC if:

(a) The tax filer is expected to have a household income as prescribed in 45 C.F.R. 155.305(f)(1)(i) for the benefit year for which coverage is requested; and

(b) One (1) or more applicants for whom the tax filer expects to claim a personal exemption deduction on the tax filer's tax return for the benefit year:

1. Meets the requirements for eligibility for enrollment in a QHP through the KHBE as established by Section 1 of this administrative regulation; and

2. Is not eligible for minimum essential coverage, with the exception of coverage in the individual market, in accordance with 26 C.F.R. 1.36B-2(a)(2) and (c).

(2) A tax filer who is a non-citizen and lawfully present and ineligible for Medicaid for reason of immigration status shall be eligible for APTC if:

(a) The tax filer meets the requirement in subsection (1)(b) of this section;

(b) The tax filer is expected to have a household income of less than ***[~~one hundred (~~]***100***[~~)~~]*** percent of the FPL for the benefit year for which coverage is requested; and

(c) One (1) or more applicants for whom the tax filer expects to claim a personal exemption deduction on the tax filer's tax return for the benefit year is:

1. A non-citizen who is lawfully present; and

2. Not eligible for Medicaid for reason of immigration status.

(3) A tax filer shall attest that one (1) or more applicants for whom the tax filer attests that a personal exemption deduction for the benefit year shall be claimed is enrolled in a QHP that is not a catastrophic plan.

(4) A tax filer shall not be eligible for APTC if HHS notifies the KHBE that APTCs were made on behalf of the tax filer or tax filer's spouse for a year in accordance with 45 C.F.R. 155.305(f)(4).

(5) An APTC amount shall be:

(a) Calculated in accordance with 26 C.F.R. 1.36B-3; and

(b) Allocated between QHPs and stand-alone dental policies in accordance with 45 C.F.R. 155.340(e).

(6) An applicant for APTC may accept less than the full amount of APTC for which the applicant is determined eligible.

(7) An APTC shall be authorized by the KHBE on behalf of a tax filer only if the KHBE obtains necessary attestations from the tax filer that:

(a) The tax filer shall file an income tax return for the benefit year in accordance with 26 U.S.C. 6011 and 6012;

(b) If the tax filer is married, a joint tax return shall be filed for the benefit year;

(c) Another taxpayer shall not be able to claim the tax filer as a dependent for the benefit year; and

(d) The tax filer shall claim a personal exemption deduction on the tax filer's return for the applicants identified as members of the tax filer's family, including the tax filer and the spouse of the tax filer, in accordance with 45 C.F.R. 155.305(f)(4).

(8) An application filer who is not an applicant shall provide the Social Security number of a tax filer only if the applicant attests that the tax filer:

(a) Has a Social Security number; and

(b) Filed a tax return for the year for which tax data would be utilized for verification of household income and family size.

(9) The effective date for APTC shall be:

(a) For an initial eligibility determination, in accordance with the dates established by Section 5(1), (2), (3) and (4) ***of this administrative regulation***, as applicable; and

(b) For a redetermination, in accordance with the dates established by 45 C.F.R. 155.330(f) and 155.335(i), as applicable.

(10) An employer ***may[~~shall~~]*** be notified of an employee's eligibility for APTC in accordance with 45 C.F.R. 155.310 (h).

Section 3. Eligibility Standards for Cost Sharing Reductions.

(1) An applicant shall be eligible for CSRs if the applicant:

(a) Meets the eligibility requirements for enrollment in a QHP as set forth in Section 1 of this administrative regulation;

(b) Meets the requirements for APTC as set forth in Section 2 of this administrative regulation;

(c) Is expected to have a household income that does not exceed the amount established by 45 C.F.R. 155.305(g)(1)(i)(C) for the benefit year for which coverage is requested; and

(d) Except for an enrollee who is an Indian, enrolls in a silver level QHP through the KHBE.

(2) An eligibility determination for CSRs shall be based on the categories as described in 45 C.F.R. 155.305(g)(2).

(3) If two (2) or more individuals enrolled in the individual market under a single policy would be eligible for different cost sharing amounts if enrolled in separate policies, the individuals under the single policy shall be ***found[~~deemed~~]*** by the KHBE to be collectively eligible only for the last category listed in 45 C.F.R. 155.305(g)(3) for which all the individuals covered by the policy would be eligible.

(4) The effective date for CSRs shall be:

(a) For an initial eligibility determination, in accordance with the dates established by Section 5(1), (2), (3), and (4) of this administrative regulation, as applicable; and

(b) For a redetermination, in accordance with the dates established by 45 C.F.R. 155.330(f) and 45 C.F.R. 155.335(i), as applicable.

(5) An employer shall be notified of an employee's eligibility for CSRs in accordance with 45 C.F.R. 155.310(h).

Section 4. Verification Processes.

(1) Verification of eligibility for an applicant seeking enrollment in a QHP shall be performed in accordance with:

(a) 45 C.F.R. 155.315; and

(b) ***The*** Kentucky QHP/APTC Eligibility Verification Plan.

(2) Verification of eligibility for an applicant or tax filer who requests an eligibility determination for an insurance affordability program shall be in accordance with:

(a) 45 C.F.R. 155.320; and

(b) ***The*** Kentucky QHP/APTC Eligibility Verification Plan.

Section 5. QHP Enrollment Periods and Effective Dates of Coverage.

(1) A qualified individual shall enroll in a QHP or an enrollee may change from one (1) QHP to another QHP during an open enrollment period.

(2) The timeframe for an open enrollment period shall be established by the Secretary of the Cabinet for Health and Family Services.

(3) A qualified individual or enrollee who selects a QHP during an open enrollment period shall have an effective date of coverage of:

(a) January 1, if a QHP selection is made on or before December 15 of the previous year;

(b) If after December 15, the first day of the following month, if a QHP selection is made between the first and the fifteenth of a month; or

(c) If after December 15, the first day of the second following month, if a QHP selection is made between the sixteenth and last day of a month.

(4)(a) A qualified individual shall enroll in a QHP or an enrollee may change from one (1) QHP to another QHP during a SEP as established by Section 6 of this administrative regulation.

(b) A qualified individual or an enrollee who selects a QHP during a SEP shall have an effective date of coverage as set forth in Section 6 of this administrative regulation.

(5) An initial enrollment in a QHP shall not be effective until the first month's premium is received by the QHP issuer.

Section 6. Special Enrollment Periods.

(1) Except as established by subsection (3) of this section, a qualified individual or enrollee shall have sixty (60) days from the date of a qualifying event as set forth in subsection (2) of this section to select a QHP.

(2) A qualified individual may enroll in a QHP or an enrollee or a dependent of an enrollee may change QHPs during a SEP if:

(a) The qualified individual or a dependent of the qualified individual:

1. Loses minimum essential coverage;

2. Is enrolled in any non-calendar year group health plan, individual health insurance coverage, or qualified small employer reimbursement arrangement even if the qualified individual or his or her dependent has the option to renew or reenroll in ***the[~~such~~]*** coverage;

3. Loses pregnancy-related coverage described in 45 C.F.R. 155.420(d)(1)(iii);

4. Loses medically needy coverage as described under 42 C.F.R. 435.320 only once per calendar year; or

5. Is enrolled in coverage under 26 C.F.R. 54.9801– 6(a)(3)(i) through (iii) for which an employer is paying all or part of the premiums and the employer ceases its contributions;

(b) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, placement in foster care, a child support order, or other court order;

(c) The qualified individual, or a dependent of the qualified individual, who was not previously a citizen, national, or lawfully present gains status as a citizen, national, or lawfully present;

(d) The enrollee is determined newly eligible or newly ineligible for APTC;

(e) The enrollee or a dependent of the enrollee becomes newly eligible for CSRs and is not enrolled in a silver-level QHP;

(f) The enrollee or a dependent of the enrollee becomes newly ineligible for CSRs and is enrolled in a silver-level QHP;

(g) The qualified individual or a dependent of the qualified individual who is enrolled in qualifying coverage in an employer-sponsored plan is determined newly eligible for APTC in part on a finding that the individual ***shall[~~will~~]*** no longer be eligible for qualifying coverage in the employer-sponsored plan in the next sixty (60) days and is allowed to terminate existing coverage;

(h) The qualified individual or enrollee or a dependent of the qualified individual or the enrollee:

1. Gains access to new QHPs as a result of a permanent move; and

2. Had MEC for one (1) of more days during the sixty (60) days preceding the date of the permanent move;

(i) The qualified individual is an Indian who may enroll in a QHP or change from one (1) QHP to another QHP one (1) time per month;

(j) The qualified individual is or becomes a dependent of an Indian and is enrolled or is enrolling in a QHP on the same application as the Indian, and may change from one (1) QHP to another QHP one (1) time per month, at the same time as the Indian;

(k) The qualified individual or enrollee or a dependent of the qualified individual or enrollee is no longer incarcerated;

(l) The qualified individual or enrollee, or a dependent of the qualified individual or enrollee:

1. Gains access to an individual HRA; or

2. Is newly provided a QSEHRA arrangement;

(m) The plan in which the enrollee or a dependent of the enrollee is enrolled is decertified by the division;

(n) The enrollee loses a dependent or is no longer considered a dependent through divorce or legal separation;

(o) The enrollee or a dependent of the enrollee dies;

(p) The qualified individual or enrollee:

1. Is a victim of domestic abuse or spousal abandonment as defined by 26 C.F.R. 1.36B-2, or a dependent of the qualified individual or enrollee, or an unmarried victim of domestic abuse or spousal abandonment residing within the same household as the qualified individual or enrollee;

2. Is enrolled in MEC; and

3. Sought to enroll in coverage separate from the perpetrator of abuse or abandonment;

(q) The qualified individual or enrollee:

1. Is a dependent of an individual described in paragraph (i) of this subsection;

2. Is on the same application as the individual described in paragraph (i) of this subsection; and

3. Enrolls at the same time as the individual described in ***paragraph[~~subsection (2)~~]*** (i) of this ***subsection[~~section~~]***;

(r) The qualified individual or enrollee:

1. Applies for coverage during:

a. An annual open enrollment period; or

b. If there is a qualifying event, a SEP; and

2. Is determined ineligible for Medicaid or KCHIP:

a. After open enrollment has ended; or

b. More than sixty (60) days after the qualifying event;

(s) The qualified individual or dependent of the qualified individual enrolls or fails to enroll in a QHP due to an error, misrepresentation, or inaction of an officer, employee, or representative of the KHBE;

(t) The enrollee or dependent of the enrollee demonstrates to the KHBE that the QHP in which the enrollee or the dependent of the enrollee is enrolled substantially violated a provision of its contract in relation to the enrollee or dependent;

(u) The qualified individual or enrollee, or a dependent of the qualified individual or enrollee, demonstrates to the KHBE that a material error related to a plan benefit, service area, or premium influenced the qualified individual's or enrollee's decision to purchase a QHP though KHBE***. Material errors may include any incorrect premium, copay, co-insurance or deductible amount as well as services covered or providers included in network***;

(v) The qualified individual:

1. a. Was previously ineligible for APTC because of a household income below 100 percent of the FPL; and

b. Was ineligible for Medicaid due to living in a non-Medicaid expansion state during the same timeframe; and either

2. a. Experiences a change in household income; or

b. Makes a permanent move to the Commonwealth of Kentucky resulting in the individual becoming newly eligible for APTC;

(w) The qualified individual or a dependent of the qualified individual:

1. Experiences a decrease in household income;

2. Is newly determined eligible by the KHBE for APTC; and

3. Had MEC for one (1) or more days during the sixty (60) days preceding the date of the change in household income; or

(x) The qualified individual or a dependent of the qualified individual meets other exceptional circumstances as defined by 45 C.F.R. 155.420(d)(9).

(3) The date of the triggering event for the loss of minimum essential coverage shall be:

(a) For a decertification of a QHP as set forth in 900 KAR 10:115, the date of the notice of decertification;

(b) For an event described in subsection (2)(a)2. of this section, the last day of the plan year;

(c) For an event described in subsection (2)(a)5. of this section, the last day of the period for which COBRA continuation coverage is paid for, in part or in full, by an employer; or

(d) For all other cases, the date the qualified individual or dependent of the qualified individual loses eligibility for minimum essential coverage.

(4) Loss of minimum essential coverage shall include those circumstances described in 26 C.F.R. 54.9801–6(a)(3)(i) through (iii).

(5) Loss of minimum essential coverage shall not include termination or loss due to:

(a) Failure to pay premiums on a timely basis; or

(b) A situation allowing for a rescission as established by 45 C.F.R. 147.128.

(6) Except as established by subsection (7), (8), or (9) of this section, a qualified individual or enrollee who selects a QHP during a SEP shall have an effective date of coverage of:

(a) The first day of the following month for a selection made between the first and the fifteenth day of any month; or

(b) The first day of the second following month for a selection made between the sixteenth and last day of any month.

(7) A qualified individual or enrollee who selects a QHP:

(a) For a birth, adoption, placement for an adoption, placement in foster care, or child support or other court order, shall have an effective date of coverage of either:

1. The date of the birth, adoption, placement for adoption, placement in foster care, or effective date of court order; or

2. If the qualified individual or enrollee elects:

a. The first of the month following plan selection; or

b. In accordance with subsection (6) of this section;

(b) For a marriage, shall have an effective date of coverage of the first day of the month following plan selection;

(c) For a loss of coverage as described in subsection (2)(a) of this section, for a gain of access to a new QHP as a result of a permanent move as described in subsection (2)(h) of this section, or for being newly eligible for enrollment in a QHP as described in subsection (2)(c) or (2)(k) of this section, if:

1. The plan selection is made on or before the day of the triggering event, shall have a coverage effective date of the first day of the month following the triggering event; or

2. The plan selection is made after the date of the triggering event, shall have a coverage effective date in accordance with this subsection; or

(d) For a death as described in subsection (2)(o) of this section, shall have a coverage effective date:

1. Of the first day of the month following a plan selection; or

2. In accordance with paragraph (c) of this subsection.

(8) A qualified individual, enrollee, or dependent of the qualified individual or enrollee who selects a QHP as described in subsection (2)(g) ***of this section*** shall have a coverage effective date:

(a) If the plan selection is made before the day of the triggering event:

1. On the first day of the month following the triggering event; or

2. If the triggering event is on the first day of a month, on the date of the triggering event; or

(b) If the plan selection is made on or after the day of the triggering event, on the first day of the month following plan selection.

(9) A qualified individual or enrollee who selects a QHP in accordance with subsection (2)(a)4.,(r), (s), (t), (u),or (v) of this section shall have a coverage effective date based on the circumstances of the SEP.

(10)(a) An individual described in subsection (2)(g) of this section may access a SEP sixty (60) days prior to the end of the individual's qualifying coverage in the employer-sponsored plan.

(b) An individual who accesses a SEP as set forth in paragraph (a) of this subsection shall not be eligible for APTCs until the end of the individual's qualifying coverage through the eligible employer-sponsored plan.

(11) If an existing enrollee becomes newly eligible for CSRs and is not enrolled in a silver plan, the enrollee may choose a silver plan.

(12) If an enrollee and a dependent of an enrollee become newly ineligible for CSRs and are enrolled in a silver-level QHP, the enrollee may change to a QHP one (1) metal level higher or lower.

(13) If an enrollee gains a dependent due to marriage, birth, adoption, foster care, or court order, the enrollee shall:

(a) Not change plans; and

(b) Either:

1. Add the new dependent to the enrollee's current enrollment;

or

2. Enroll the new dependent in a plan of any plan category.

(14) Except for the qualifying events established by subsection (2)(i), (l), (p), (u), and (v) of this section and the events described in subsections (11), (12), and (13) of this section:

(a) If an enrollee qualifies for a SEP, the enrollee may change to a QHP within the same level of coverage;

(b) If a dependent of an enrollee qualifies for a SEP and the enrollee does not also qualify for a SEP, the enrollee shall add the dependent to the enrollee's current QHP; or

(c) If a qualified individual who is not an enrollee qualifies for a SEP and has a dependent who is an enrollee who does not qualify for a SEP, the qualified individual shall be added to the dependent's current QHP.

(15) For a qualified individual, enrollee, or dependent described in subsection (2)(l) of this section, the triggering event shall be:

(a) The first day on which coverage for the qualified individual, enrollee, or dependent under the individual coverage HRA can take effect; or

(b) The first day on which coverage under the QSEHRA takes effect.

(16) A qualified individual, enrollee, or dependent described in subsection (2)(l) of this section shall:

(a) Qualify for a SEP regardless of whether they were previously offered or enrolled in an individual HRA or previously provided a QSEHRA, if:

1. The qualified individual, enrollee, or dependent is not enrolled in the individual coverage HRA; or

2. The qualified individual, enrollee, or dependent is not covered by the QSEHRA on the day immediately prior to the triggering event; and

(b)1. Have sixty (60) days before the triggering event to select a QHP; or

2. Have sixty (60) days before or after the triggering event if the HRA or QSEHRA was not required to provide the notice described in 45 C.F.R. 146.123(c)(6), 26 C.F.R. 54.9802-4(c)(6), and 29 C.F.R. 2590.702-2(c)(6) or 26 U.S.C. 9831(d)(4).

Section 7. Verifications for Special Enrollment Periods.

(1) KHBE shall conduct pre-enrollment verification of newly enrolling individuals as established by this section.

(2) A QHP enrollment for an individual subject to verification shall not be submitted to the issuer pending verification for a SEP.

(3) For an enrollment subject to verification as described in this section, a new enrollee shall have thirty (30) days from the date of plan selection to provide requested documentation.

(4) A qualifying individual described in Section 6(2)(h) of this administrative regulation shall provide proof of:

(a) A permanent move during the past sixty (60) days; and

(b) Either:

1. Having had minimum essential coverage for one (1) or more days during the sixty (60) days preceding the date of the qualifying event; or

2. Having:

a. Lived in a foreign county or in a US territory for one (1) or more days during the sixty (60) days preceding the qualifying event;

b. Lived in a service area where no qualified health plan was available through KHBE for ***one (***1***)*** or more days during the sixty (60) days preceding the qualifying event or their most recent open enrollment or SEP; or

c. Status as an Indian.

(5) For a marriage, as described in Section 6(2)(b) of this administrative regulation, a qualified individual shall provide proof of marriage during the past sixty (60) days.

(6) Other than as described in subsections (4) and (5) of this section, a qualified individual described in Section 6(2)(b) of this administrative regulation shall provide proof of:

(a) The qualifying event during the past sixty (60) days; and

(b) Either:

1. Having minimum essential coverage as described in Section 6(2)(a) of this administrative regulation for one (1) or more days during the sixty (60) days preceding the date of the qualifying event; or

2. Meeting the requirements in subsection (4)(b) of this section.

(7) For a loss of minimum essential coverage as described in Section 6(2)(a) of this administrative regulation, a qualified individual shall provide proof of coverage for one (1) or more days during the past sixty (60) days.

(8) SEP verification shall not impact an enrollee's effective date of coverage except as provided in 45 C.F.R. 155.400(e)(1)(iii).

Section 8. Eligibility Redetermination During a Benefit Year.

(1) Eligibility shall be redetermined for an enrollee during a benefit year if the KHBE receives and verifies:

(a) New information reported by an enrollee; or

(b) Updated information obtained in accordance with 45 C.F.R. 155.330(d).

(2) Except as established by subsection (3) of this section, an enrollee or an application filer, on behalf of an enrollee, shall report within thirty (30) days:

(a) A change related to an eligibility standard in Section 1, 2, 3, 9, or 10 of this administrative regulation; and

(b) Via a method described in Section 1(5) of this administrative regulation.

(3) An enrollee who did not request an eligibility determination for an insurance affordability program shall not report a change related to income.

(4) If new information provided by an enrollee in accordance with subsection (1)(a) of this section is verified:

(a) Eligibility shall be redetermined in accordance with the standards in Section 1, 2, 3, 9, or 10 of this administrative regulation;

(b) The enrollee shall be notified of the redetermination in accordance with the requirements in 45 C.F.R. 155.310(g); and

(c) If applicable, the enrollee's employer shall be notified in accordance with the requirement established by 45 C.F.R. 155.310(h).

(5) If updated information obtained in accordance with subsection (1)(b) of this section regarding death or related to eligibility not regarding income, family size, or family composition is identified, an enrollee shall:

(a) Be notified by the KHBE of:

1. The updated information; and

2. The projected enrollees' eligibility determination after consideration of the information; and

(b) Have thirty (30) days from the date of the notice in paragraph (a) of this subsection to notify the KHBE if the information is inaccurate.

(6) If an enrollee responds to the notice in subsection (5)(a) of this section, contesting the updated information in the notice, the KHBE shall proceed in accordance with 45 C.F.R. 155.315(f).

(7) If an enrollee does not respond to the notice in subsection (5)(a) of this section within the thirty (30) day timeframe specified in subsection (5)(b) of this section, the KHBE shall:

(a) Redetermine eligibility in accordance with the standard in Section 1, 2, 3, 9, or 10 of this administrative regulation; and

(b) Notify the enrollee regarding the determination in accordance with the requirements established by 45 C.F.R. 155.310(g).

(8) With the exception of information regarding death, if updated information regarding income, family size, or family composition is identified, an enrollee shall:

(a) Be notified by the KHBE of:

1. The updated information regarding income, family size, and family composition obtained in accordance with subsection (1)(b) of this section; and

2. The projected eligibility determination after consideration of the information; and

(b) Have thirty (30) days from the date of the notice to:

1. Confirm the updated information; or

2. Provide additional information.

(9) If the enrollee responds to the notice in subsection (8)(a) of this section by confirming the updated information, the KHBE shall:

(a) Redetermine the enrollee's eligibility in accordance with

Section 1, 2, 3, 9, or 10 of this administrative regulation; and

(b) Notify the enrollee regarding the determination in accordance with the requirements established by 45 C.F.R. 155.310(g).

(10) If the enrollee does not respond to the notice in subsection (8)(a) of this section within the thirty (30) day timeframe established by subsection (8)(b) of this section, the KHBE shall maintain the enrollee's existing eligibility determination without considering the updated information in subsection (8)(a) of this section.

(11) If the enrollee responds with more updated information, the KHBE shall verify the updated information in accordance with 45 C.F.R. 155.315 and 155.320.

(12) The effective date of a change resulting from a redetermination pursuant to this section shall be in accordance with 45 C.F.R. 155.330(f).

(13) The amount of an APTC or eligibility for a CSR as a result of an eligibility redetermination in accordance with this section shall be recalculated in accordance with 45 C.F.R. 155.330(g).

Section 9. Annual Eligibility Redetermination.

(1) A qualified individual shall:

(a) Have an annual redetermination of eligibility; and

(b) Be sent a notice of the annual redetermination that includes:

1. The data obtained under subsection (2) of this section;

2. The data used in the qualified individual's most recent eligibility determination; and

3. The projected eligibility determination for the following year, after considering the information in subparagraph 1. of this paragraph.

(2)(a) A qualified individual requesting an eligibility determination for an insurance affordability program shall authorize the release of updated tax return information, data regarding Social Security benefits, and data regarding MAGI-based income as described in 45 C.F.R. 155.320(c)(1) for use in the qualified individual's eligibility redetermination.

(b) Eligibility shall not be redetermined for a qualified individual requesting an eligibility determination for an insurance affordability program who does not authorize the release of updated tax return information.

(3) A qualified individual may authorize the release of tax return information for a period of no more than five (5) years based on a single authorization, if the authorization permits the qualified individual to:

(a)1. Decline to authorize the release of updated tax return information; or

2. Authorize the release of updated tax return information for fewer than five (5) years; and

(b) Discontinue, change, or renew the authorization at any time.

(4) A qualified individual, an application filer, or an authorized representative, on behalf of the enrollee, shall report any changes with respect to the information listed in the notice described in subsection (1)(b) of this section:

(a) Within thirty (30) days from the date of the notice; and

(b) Via a method listed in Section 1(5) of this administrative regulation.

(5) Any information reported by a qualified individual under subsection (4) of this section shall be verified as set forth in Section 4 of this administrative regulation.

(6) For a qualified individual who fails to act on the notice described in subsection (1)(b) of this section within the thirty (30) day period established by subsection (4) of this section, eligibility shall be redetermined as set forth in subsection (7)(a) of this section.

(7)(a) After the thirty (30) day period established by subsection (4) of this section:

1. Eligibility of a qualified individual shall be redetermined in accordance with the standards in Section 1, 2, 3, 9, or 10 of this administrative regulation using the information provided in the notice, as supplemented with any information reported by the qualified individual verified in accordance with Section 4 of this administrative regulation;

2. The qualified individual shall be notified in accordance with the requirements in 45 C.F.R. 155.310(g); and

3. If applicable, the qualified individual's employer shall be notified in accordance with 45 C.F.R. 155.310(h).

(b) If a qualified individual reports a change with respect to the information provided in the notice established by subsection (1)(b) of this section that has not been verified by the KHBE as of the end of the thirty (30) day period established by subsection (4) of this section, eligibility shall be redetermined after verification in accordance with Section 4 of this administrative regulation.

(8) The effective date of a redetermination in accordance with this section shall be the later of:

(a) The first day of the coverage year following the year in which the notice in subsection (1)(b) of this section is issued to the qualified individual; or

(b) The date determined in accordance with 45 C.F.R. 155.330(f)(1).

(9) If an enrollee remains eligible for coverage in a QHP upon annual redetermination and has not terminated coverage from the QHP in accordance with Section 10 of this administrative regulation, the enrollee shall:

(a) Remain in the QHP selected the previous year that may include modifications that shall be approved by the Department of Insurance; or

(b) Be enrolled by KHBE in a QHP that is substantially similar that shall be approved by the Department of Insurance.

(10) Eligibility shall not be redetermined if a qualified individual was redetermined eligible in accordance with this section during the prior year, and the qualified individual was not enrolled in a QHP ***when[***~~at the time of~~***]*** the redetermination and has not enrolled in a QHP since the redetermination.

Section 10. Eligibility to Enroll in a QHP that is a Catastrophic Plan.

(1) In addition to the requirements in Section 1 of this administrative regulation, to enroll in a QHP that is a catastrophic plan, an applicant shall:

(a) Not have attained the age of thirty (30) before the beginning of the plan year; or

(b) Have a certificate of exemption from the shared responsibility payment issued by the KHBE or HHS for a plan year in accordance with:

1. 26 U.S.C. 5000A(e)(1); or

2. 26 U.S.C. 5000A(e)(5).

(2) Verification related to eligibility for enrollment in a QHP that is a catastrophic plan shall be in accordance with 45 C.F.R. 155.315(j).

Section 11. Special Eligibility Standards and Processes for Indians.

(1) An applicant who is an Indian shall be eligible for the special cost sharing described in 45 C.F.R. 155.350(b) if the applicant:

(a) Meets the requirements established by 45 C.F.R.155.305(a) and (f);

(b) Is expected to have a household income that does not exceed the amount established by 45 C.F.R. 305(g)(3)(vi) for the benefit year for which coverage is requested; and

(c) Enrolls in a QHP through the KHBE.

(2) An applicant who is an Indian shall have an eligibility determination for the special cost sharing described in ***[section]*** 45 C.F.R. 155.350(b) without requesting an eligibility determination for an insurance affordability program.

Section 12. Eligibility Determination and Notification Standards.

(1) Eligibility shall be determined in accordance with 45 C.F.R. 155.310(e).

(2) Notifications regarding eligibility determinations shall be made in accordance with 45 C.F.R. 155.310(g).

Section 13. Termination of Coverage.

(1) An enrollee, including an enrollee who has obtained other

minimum essential coverage, may terminate coverage in a QHP by submitting a request:

(a) Via the Web site ***at www.kynect.ky.gov***;

(b) By telephone;

(c) To the QHP issuer;

(d) By mail; or

(e) In person.

(2) An enrollee in a QHP may choose to remain in a QHP without financial assistance if the enrollee:

(a)1. Has been identified as eligible for other minimum essential coverage through the data matching described in 45 C.F.R. 155.330(d); or

2. Has been identified as eligible for Medicaid, KCHIP, or Medicare and has granted prior permission to KHBE; and

(b) Does not request termination in accordance with subsection (1) of this section.

(3) The last day of coverage of an enrollee who terminates coverage in accordance with subsection (1) of this section shall be:

(a) The termination date requested by the enrollee if the enrollee provides reasonable notice in accordance with subsection (7) of this section;

(b) Fourteen (14) days after the termination is requested by the enrollee, if the enrollee does not provide reasonable notice in accordance with subsection (7) of this section;

(c) A date determined by the issuer of an enrollee's QHP if the issuer is able to terminate coverage in fewer than fourteen (14) days and the enrollee requests an earlier termination effective date; or

(d) If the enrollee is newly eligible for Medicaid or KCHIP, the day before coverage in Medicaid or KCHIP begins.

(4) An enrollee's health coverage shall be terminated by an issuer if:

(a) The enrollee is no longer eligible for coverage in a QHP through the KHBE;

(b) The enrollee has failed to pay a premium; and

1. A three (3) month grace period required for an individual receiving an APTC has been exhausted as described in 45 C.F.R. 156.270(g); or

2. A thirty (30) day grace period required by KRS 304.17A-243 for an individual not receiving an APTC has been exhausted;

(c) The enrollee's coverage is rescinded in accordance with 45 C.F.R. 147.128 or KRS 304.14-110;

(d) The enrollee is enrolled in a QHP that:

1. Has been decertified pursuant to 900 KAR 10:115; or

2. Has withdrawn from participation in the KHBE; or

(e) The enrollee changes from one (1) QHP to another during an open enrollment period or SEP in accordance with Section 5 or 6 of this administrative regulation.

(5) The last day of coverage of an enrollee shall be:

(a) If terminated in accordance with subsection (4)(a) of this section, the last day of the month following the month in which the notice described in subsection (7) of this section is sent by KHBE, unless the enrollee requests an earlier termination date in accordance with subsection (3) of this section;

(b) If terminated in accordance with subsection (4)(b)1. of this section, the last day of the first month of the three (3) month grace period; or

(c) If terminated in accordance with subsection (4)(b)2. of this section, in accordance with KRS 304.17A-245.

(6) For an enrollee who is terminated in accordance with subsection (4)(e) of this section, the last day of coverage in an enrollee's prior QHP shall be the day before the effective date of coverage in the enrollee's new QHP.

(7) Reasonable notice shall be fourteen (14) calendar days from the requested date of termination of coverage.

Section 14. Authorized Representative.

(1) An individual may designate an authorized representative in accordance with 45 C.F.R. 155.227.

(2) An authorized representative shall comply with state and federal laws regarding:

(a) Conflict of interest; and

(b) Confidentiality of information.

(3) An applicant may authorize a representative to:

(a) Sign an application on behalf of the applicant;

(b) Submit an update or respond to a redetermination of eligibility for the applicant in accordance with Section 7 or 8 of this administrative regulation;

(c) Receive a copy of a notice or communication from the KHBE;

(d) Make an appeal request on behalf of an appellant; and

(e) Act on behalf of the individual in a matter with the KHBE.

(4) An authorization for an authorized representative shall be valid until:

(a) An applicant:

1. Changes the authorization; or

2. Notifies the KHBE and the authorized representative, through a method described in 45 C.F.R. 155.405(c), that the authorized representative is no longer authorized to act on behalf of the individual; or

(b) The authorized representative informs the KHBE and the individual that the authorized representative is no longer acting as the authorized representative.

Section 15. SHOP Employer Eligibility.

(1) An employer shall be a qualified employer and eligible to purchase coverage through SHOP if the employer meets the eligibility requirements established in 45 C.F.R. 155.710(b).

(2) An employer shall apply for an eligibility determination online to participate in SHOP ***at www.kynect.ky.gov***.

(3) ***Upon[~~At the time of~~]*** application, an employer shall provide:

(a) Employer name;

(b) Address of employer location;

(c) A valid federal employer identification number; and

(d) ***A statement from the employer attesting that[~~Information sufficient to confirm~~]*** the employer is:

1. A small employer; and

2. Offering at a minimum, all full-time employees coverage in a QHP through SHOP.

(4) Except as provided in 45 C.F.R. 147.104(b)(1)(i)(B), a qualified employer shall meet a minimum group participation rate of fifty (50) percent, calculated as described in 45 C.F.R. 155.706 (b)(10)(i).

(5) A qualified employer may purchase coverage for its qualified employees at any time during the year.

(6) An employer's plan year shall be the twelve (12) month period beginning with the effective date of coverage.

(7) An employer shall enroll in a QHP or SADP certified by the division by contacting an issuer or a participating agent.

(8) A qualified employer who ceases to be a small employer by reason of an increase in the number of employees shall be eligible to participate in SHOP until the employer:

(a) Fails to otherwise meet the eligibility criteria of this section; or

(b) Chooses to no longer purchase health coverage.

(9) An employer that fails to meet the requirements in subsection (1) of this section, shall be denied eligibility to participate in SHOP.

Section 16. SHOP Right to Formal Review.

(1) An employer applicant may request a formal review of a:

(a) Denial of eligibility as set forth in Section 15(9) of this administrative regulation; or

(b) Failure of the KHBE to make an eligibility determination to participate in SHOP within fifteen (15) calendars days of receiving an application from an employer.

(2) Within ninety (90) days of receipt of a notice of denial of eligibility, an employer may submit a formal review request to the division:

(a) By telephone;

(b) By mail; or

(c) By email.

(3) A formal review request shall clearly state a reason for the formal review in accordance with subsection (1) of this section.

(4) If an employer is notified that a formal review request does

not meet the requirements of this section, the employer may amend the request to satisfy the requirements.

Section 17. SHOP Dismissal of a Formal Review.

(1) A formal review by an employer shall be dismissed if the employer:

(a) Withdraws the formal review request in writing; or

(b) Fails to submit a formal review request that meets the requirements in Section 16 of this administrative regulation.

(2) If a formal review is dismissed in accordance with subsection (1) of this section, the division shall provide written notice to the employer:

(a) Within three (3) business days of the dismissal; and

(b) That includes the reason for dismissal.

(3) The division may reverse a dismissal under subsection (2) of this section if an employer makes a written request within thirty (30) days of the date of the notice of dismissal in subsection (2) of this section ***and provides new information supporting a reversal of the previous decision[~~showing good cause why the dismissal shall be reversed~~]***.

Section 18. SHOP Desk Review.

(1) An employer shall have the opportunity to submit evidence to the division for review of an eligibility determination.

(2) The division shall consider:

(a) The information used to determine the employer's eligibility; and

(b) Any additional evidence provided by the employer under subsection (1) of this section.

(3) An applicant's formal review request shall be desk reviewed by one (1) or more impartial division officials who have not been directly involved in the eligibility determination implicated in the formal review.

Section 19. SHOP Formal Review Decision.

(1) A desk review by an official of the division shall result in a final formal review decision.

(2) A final formal review decision shall:

(a) Be in writing;

(b) Be based on the eligibility requirements in Section 15 of this administrative regulation;

(c) State the decision and the effect of the decision on the eligibility of the employer;

(d) Summarize the facts relevant to the formal review;

(e) Identify the legal and regulatory basis for the decision;

(f) State the effective date of the decision; and

(g) Be rendered within ninety (90) days of receipt by the division of an employer formal review request.

(3) The division shall issue written notice of the formal review decision to the employer within ninety (90) days of the date of receipt of a formal review request.

(4) If the formal review decision affects the employer's eligibility, the division shall implement the formal review decision.

Section 20. SHOP Formal Review Record. The formal review record shall be available and accessible to an employer:

(1) In a convenient format; and

(2) During regular business hours, which shall:

(a) Be Monday through Friday from 8:00 a.m. to 4:30 p.m.; and

(b) Exclude holidays.

Section 21. Incorporation by Reference.

(1) "Kentucky QHP/APTC Eligibility Verification Plan", Revised March, 2021, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Health Benefit Exchange, 275 East Main Street 4WE, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m., or from its Web site at www.khbe.ky.gov.

CONTACT PERSON: Krista Quarles, Policy Advisor, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Data and Analytics
Division of Health Benefit Exchange
(As Amended at ARRS, June 8, 2021)

900 KAR 10:125. KHBE Consumer Assistance Program, kynector Certification, and Individual Agent Participation with the KHBE.

RELATES TO: KRS Chapter 45A, ***Chapter 304,*** 304.2-310, ***29[~~Chapter 304, 26~~]*** U.S.C. 794, 42 U.S.C. 12101-12103, ***18022,*** 18031, ***18042, 18054,*** 45 C.F.R. Part 155***, 156***

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Office of Health Data and Analytics, Division of Health Benefit Exchange has responsibility to administer the Kentucky Health Benefit Exchange. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law. This administrative regulation establishes the policies and procedures relating to the registration of an individual agent and certification of a kynector, including a certified application counselor or navigator in accordance with 42 U.S.C. 18031 and 45 C.F.R. Part 155.

Section 1. KHBE Consumer Assistance Programs.

(1) The kynector program, in accordance with the accessibility standards of ***45[42]*** C.F.R. 155.205(c) and (d), shall include the following:

(a) The certified application counselor program described in Section 2 of this administrative regulation; and

(b) The navigator program described in Section 3 of this administrative regulation.

(2) A kynector shall:

(a) Receive training in accordance with 45 C.F.R. 155.215(b)(2) that shall be provided by the division or an approved vendor;

(b) Complete Medicaid, KCHIP, and other applicable training provided by CHFS;

(c) Complete all training required by the division within three (3) attempts;

(d) Enter into an agreement with the division to comply with the applicable standards of 45 C.F.R. 155.205, 155.210, 155.215, and 155.225 and this administrative regulation;

(e) Refer a consumer to other consumer assistance programs and community resources in Kentucky if available and appropriate;

(f) Be prepared to serve the individual exchange, Medicaid program, KCHIP, and other programs as designated by the secretary of CHFS; and

(g) Comply with the privacy and security standards consistent with 45 C.F.R. 155.260.

Section 2. Certified Application Counselor Program.

(1) The certified application counselor program shall comply with the provisions of 45 C.F.R. 155.225.

(2) An organization shall apply to the division to be designated as a certified application counselor.

(3) Upon designation by the division to participate in the certified application counselor program, an organization shall:

(a) Act in the best interest of an applicant;

(b) Provide information in a manner that is accessible to individuals with disabilities directly or through a referral to a kynector; and

(c) Provide quarterly reports of an activity to the division.

(4) A staff or a volunteer of a certified application counselor organization shall act as a kynector to:

(a) Provide information about an insurance affordability

program and a QHP or SADP coverage option;

(b) Assist an individual to apply through the KHBE for coverage in a QHP, SADP, or an insurance affordability program; and

(c) Help to facilitate enrollment of a qualified individual in a QHP, SADP, or an insurance affordability program.

(5) An individual operating as a certified application counselor shall:

(a) Be identified by a designated organization described in subsection (2) of this section as an employee or a volunteer of the designated organization;

(b) Agree to act in the best interest of an applicant;

(c) Provide information with reasonable accommodation for an individual with a disability, as defined by 42 U.S.C. 12101 through 12103, if providing in-person assistance; and

(d) Register with the division through the KOG.

(6) A certified application counselor shall not:

(a) Impose any charge or fee on an applicant for application assistance;

(b) Receive compensation or a referral fee from an agent; or

(c) Enter into an exclusive referral agreement with an agent.

(7) In accordance with the procedures established in Section 4 of this administrative regulation, the division shall withdraw certification from a kynector or kynector entity if it finds noncompliance with the terms and conditions of the kynector or kynector entity agreement or this administrative regulation.

Section 3. Navigator Program.

(1) In accordance with 45 C.F.R. 155.205(d) and (e), ***[45 ~~C.F.R.~~]***155.210, and ***[45 ~~C.F.R.~~]*** 155.215, the division shall establish a navigator program to authorize an eligible public or private entity to carry out consumer assistance functions as described in 45 C.F.R. 155.205 and this section.

(2) An entity wishing to participate as a navigator shall:

(a) Be awarded a contract by the division pursuant to policies and procedures established by the Finance and Administration Cabinet and KRS Chapter 45A;

(b) Designate an individual as the participating entity representative who shall:

1. Register with the division through the KOG as the individual authorized by the agency;

2. Serve as a primary contact for the division;

3. Be responsible for ensuring that only an employee of the navigator agency is registered through KOG as a certified navigator;

4. Comply with 45 C.F.R. 155.210(b)(1) and (d) regarding a conflict of interest; and

5. As a navigator employee, comply with this subsection;

(c) Designate an individual employee who shall participate through the navigator entity and who shall register with the division through the KOG;

(d) Submit to the division a written plan to remain free of conflicts of interest while carrying out consumer assistance functions under 45 C.F.R. 155.205(d) and (e), and ***[45 ~~C.F.R.~~]***155.210; and

(e) Provide a monthly report of activities to the division.

(3) An employee designated as a navigator by the kynector entity shall:

(a) Be eighteen (18) years of age or older;

(b) Provide an authorization to the navigator entity to conduct a state background check for evidence of good character; and

(c) Travel, if necessary, to assist an applicant with enrollment.

(4) A navigator entity and its employees shall:

(a) Inform an applicant of the functions and responsibilities of a navigator and a participating agent;

(b) Obtain authorization for the disclosure of applicant information prior to assisting an applicant with prescreening and completion of the application process; and

(c) Provide technical support to another navigator, navigator entity, or the division upon request.

(5) Upon authorization by the division, a navigator may assist:

(a) A qualified individual with enrollment in any QHP or SADP offered though the KHBE in the individual market;

(b) A small employer with applying for an eligibility determination online to participate on SHOP; or

(c) An individual with applying for insurance affordability programs, including Medicaid or KCHIP, and other public assistance programs as designated by KHBE.

(6) A navigator entity and its employees shall:

(a) Maintain expertise in eligibility, enrollment, and program specifications and conduct public education activities to raise awareness about a QHP, SADP, or an insurance affordability program; and

(b) Provide information and services in a fair, accurate, and impartial manner.

(7) A navigator entity and its employees shall not:

(a) Impose any charge or fee on an applicant for their assistance;

(b) Receive compensation or a referral fee from an agent; or

(c) Enter into an exclusive referral agreement with an agent.

(8) A navigator entity and its employees shall provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the exchange, including individuals with limited English proficiency, and ensure accessibility and usability of navigator tools and functions for individuals with disabilities in accordance with the Americans with Disabilities Act, 42 U.S.C. 12101, Section 504 of the Rehabilitation Act, and 29 U.S.C. 794.

(9) A navigator entity or its employees shall provide a referral to the DOI for any enrollee or qualified individual with a grievance, complaint, or question regarding a health plan, coverage, or a determination under the plan or coverage.

(10) A navigator entity or its employees shall demonstrate to the division that the entity has existing relationships, or could readily establish relationships, with:

(a) Consumers, including uninsured and underinsured consumers; or

(b) Self-employed individuals eligible for a QHP, SADP, or another insurance affordability program.

(11)(a) In accordance with Section 4 of this administrative regulation, the division shall withdraw certification if it finds noncompliance with the terms and conditions of the agreement from:

1. An individual navigator; or

2. A navigator entity.

(b) In addition to withdrawal of certification, the division may enforce any penalty as specified in the contract.

Section 4. Withdrawal of Certification of a kynector and Appeals.

(1) If the division finds noncompliance with the terms and conditions of an agreement or this administrative regulation, the division shall:

(a) Provide the kynector entity or kynector with notice that the applicable certification shall be withdrawn as of the date on the notice;

(b) Allow the kynector entity or kynector an opportunity to submit evidence of compliance or additional information within ten (10) business days;

(c) Review any information submitted by the kynector entity or kynector; and

(d) Based on a review of the information provided, issue a final decision to withdraw or reinstate the applicable certification of the kynector entity or kynector.

(2) A kynector entity or kynector may appeal a final decision to withdraw the applicable certification by submitting a written request to the division within ten (10) business days of the final decision.

(3) After one (1) year following a decision to withdraw certification of a kynector entity or kynector, the kynector or kynector entity may reapply in accordance with this administrative regulation.

Section 5. Requirements to be a Participating Individual Agent. An agent wishing to participate on KHBE in accordance with 42 U.S.C. 18031 and 45 C.F.R. 155.220 shall:

(1) Be licensed by DOI with a health line of authority;

(2) Complete the agent training provided by the division in

accordance with 45 C.F.R. 155.220(d)(2) within three (3) attempts;

(3) Enter into an agreement with the division to comply with the applicable standards of 45 C.F.R. 155.205 and 155.220 and this administrative regulation;

(4) Comply with the privacy and security standards of 45 C.F.R. 155.260;

(5) Except for an employee of an issuer or an individual agent directly contracted with an issuer, maintain:

(a) An appointment with at least one (1) QHP or SADP issuer participating on the KHBE; or

(b) A designation with a business entity having an appointment with at least one (1) QHP or SADP issuer participating on the KHBE;

(6) Register with the KHBE through the KOG; and

(7) Not serve as a web broker or consultant while assisting individuals with the activities described in Section 6 of this administrative regulation.

Section 6. Permitted Activities of a Participating Individual Agent.

(1) Upon completion of the registration requirements as set forth in Section 5 of this administrative regulation, a participating individual agent may:

(a) Enroll a qualified individual in any QHP or SADP offered by an issuer with which the individual agent has the appropriate designation or appointment as required by Section 5(5) of this administrative regulation through the KHBE in the individual market;

(b) Assist a qualified employer in selecting a QHP or SADP offered by an issuer with which the individual agent has the appropriate designation or appointment as required by Section 5(5) of this administrative regulation; or

(c) Assist an individual to apply through the KHBE for coverage in a QHP, SADP, or an insurance affordability program.

(2) A qualified individual may be enrolled in a QHP or SADP through the KHBE by a participating individual agent if the participating individual agent ensures the applicant's completion of an application as described in ***45[42]*** C.F.R. 155.405.

(3) A participating individual agent shall:

(a) Disclose to a potential applicant any relationships the individual agent has with a QHP or SADP issuer, insurance affordability program, or other potential conflicts of interest identified by the division; and

(b) Not:

1. Impose any charge or fee on an applicant for assistance in completing an application for, or enrolling in, a QHP, a SADP, or an insurance affordability program;

2. Provide compensation or a referral fee to a kynector; and

3. Enter into an exclusive referral agreement with a kynector.

(4) If the division finds noncompliance with this administrative regulation, the division shall withdraw an agent's registration and participation with the KHBE after giving:

(a) Notice to the participating individual agent; and

(b) An opportunity to respond to the notice required by paragraph (a) of this subsection in accordance with Section ***8[5]*** of this administrative regulation.

Section 7. Renewal of Participation and Registration with the Division. To maintain registration with the division, a participating individual agent shall:

(1) Comply with training provided by the division;

(2) Enter into an agreement with the division to comply with the applicable standards of 45 C.F.R. 155.205 and 155.220 and this administrative regulation;

(3) Maintain licensure, appointments, and designations as identified in Section 5 of this administrative regulation;

(4) Comply with the requirements of 45 C.F.R. 155.220; and

(5) Comply with 900 KAR Chapter 10.

Section 8. Withdrawal of Registration as an Individual Agent and Appeals.

(1)(a) Except as ***established[~~provided~~]*** in subsection (2) of this section, if the division finds noncompliance with the terms and conditions of an individual agent agreement or 900 KAR Chapter 10, the division shall:

1. Provide the participating individual agent with notice that the applicable registration shall be withdrawn as of the date of notice;

2. Allow the participating individual agent an opportunity to submit evidence of compliance or additional information within ten (10) business days;

3. Review any information submitted by the participating individual agent; and

4. Based on a review of the information provided, issue a decision to uphold the withdrawal or reinstate the applicable registration of a participating individual agent.

(b) A participating individual agent shall have the right to appeal a decision to withdraw registration in accordance with paragraph (a) of this subsection through the division.

(2)(a) If the health line of authority or licensure of an agent is suspended, revoked, or expired, the registration of the agent shall be withdrawn by the division based on DOI's administrative action.

(b) Any appeal or request of an action by DOI pursuant to paragraph (a) of this subsection shall be made to DOI in accordance with KRS 304.2-310(2)(b).

(3) After one (1) year following a decision to withdraw the registration of a participating individual agent, the individual agent may reapply in accordance with Section 5 of this administrative regulation.

CONTACT PERSON: Krista Quarles, Policy Advisor, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Data and Analytics
Division of Health Benefit Exchange
(As Amended at ARRS, June 8, 2021)

900 KAR 10:130. Appeals of Eligibility for KHBE Participation and Insurance Affordability Programs.

RELATES TO: KRS 13B.050, 13B.080, 13B.090, 13B.110, 13B.120, 13B.140, 42 U.S.C. 18031, 26 C.F.R. 1.36B-4, 45 C.F.R. Parts 155, 156

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Office of Health Data and Analytics, Division of Health Benefit Exchange has responsibility to administer the Kentucky Health Benefit Exchange. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law. This administrative regulation establishes the policies and procedures relating to appeals of eligibility determinations for KHBE participation and insurance affordability programs on the Kentucky Health Benefit Exchange pursuant to and in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

Section 1. Right to Appeal an Individual Eligibility Determination or Redetermination.

(1) An applicant or an enrollee ***may[~~shall have the right to~~]*** make an appeal request of:

(a) An eligibility determination made in accordance with 45 C.F.R. 155.300 to 155.355 and 900 KAR 10:120, including:

1. An initial determination of eligibility for enrollment in a QHP or SADP, including the amount of APTC and CSR, made in accordance with the standards specified in 45 C.F.R. 155.305(a) through (h); or

2. A redetermination of eligibility, including the amount of APTC and CSR, made in accordance with 45 C.F.R. 155.330 and 155.335;

(b) A determination of eligibility for an enrollment period;

(c) A failure by the KHBE to provide ***within twenty (20) days[~~timely~~]*** notice of an eligibility determination pursuant to 45 C.F.R. 155.310(g), 155.330(e)(1)(ii), 155.335(h)(1)(ii), or 155.610(i); or

(d) A denial of a request to vacate dismissal made by DAH in accordance with 45 C.F.R. 155.530(d)(2), made pursuant to Section 8(3) of this administrative regulation.

(2) An appeal request that fails to meet the criteria in subsection (1) of this section shall not be considered an acceptable appeal request, and the division shall send written notice to the appellant to:

(a) State the appeal request has not been accepted and explain the nature of the defect in the appeal request; and

(b) Explain that the applicant or enrollee may cure the defect and resubmit the appeal request within ninety (90) days of the notice of action.

(3) Upon exhaustion of the appeal process established in this administrative regulation, an appellant ***may[~~shall have the right to~~]***:

(a) Appeal to HHS in accordance with 45 C.F.R. 155.520(c); and

(b) Seek a judicial review of an appeal decision pursuant to KRS 13B.140.

(4) The DAH shall conduct an appeal of an individual eligibility determination, except for an eligibility determination for an exemption made in accordance with 45 C.F.R. 155.605.

(5) An appeal of an eligibility determination of an exemption shall be conducted by HHS.

Section 2. Individual Appeal Designation of a Representative.

(1) An appellant may represent himself or herself or be represented during an appeal process by:

(a) Legal counsel;

(b) A relative;

(c) A friend; or

(d) Another individual not listed in paragraph (a), (b), or (c) of this subsection.

(2) The division shall designate a representative to act on behalf of the division for the hearing.

Section 3. Individual Appeal Notice of Appeal Rights.

(1) An applicant or an enrollee shall be notified of the right to appeal, timeframe to file an appeal, and how to file an appeal ***when[~~at the time~~]***:

(a) The applicant submits an application; and

(b) A notice of eligibility determination is sent by KHBE under 45 C.F.R. 155.310(g) or 155.330(e)(1)(ii), or by HHS under 45 C.F.R. 155.610(i).

(2) A notice described in subsection (1) of this section shall include:

(a) An explanation of the applicant or enrollee's appeal rights in accordance with this administrative regulation;

(b) A description of the procedure and timeframe within which to request an appeal;

(c) Information on the applicant or enrollee's right to represent himself or herself or to be represented by legal counsel or other authorized person as identified in Section 2 of this administrative regulation;

(d) An explanation of the circumstances under which the appellant's or enrollee's eligibility may be maintained or reinstated pending an appeal decision in accordance with Section 7 of this administrative regulation; and

(e) An explanation that an appeal decision for one (1) household member may result in a:

1. Change in eligibility for another household member; or

2. Redetermination of eligibility in accordance with 900 KAR 10:120.

Section 4. Individual Appeal Requests.

(1) An applicant or an enrollee may submit an appeal request:

(a) By phone;

(b) By mail;

(c) In person; or

(d) Via the internet.

(2) Upon request, the division or the DAH shall assist an applicant or enrollee in filing an appeal.

(3) An applicant or enrollee's right to appeal shall not be limited or interfered with by an employee or representative of the division.

(4) An applicant or enrollee shall have thirty (30) days from the date of notice of an eligibility determination or redetermination to submit an appeal request.

Section 5. Individual Appeal Informal Resolution Completed by the Division.

(1) After receiving an appeal request, the division shall:

(a) Conduct a desk review of an appeal prior to sending the appeal to the DAH; and

(b)1. Except ***established[~~as provided~~]*** in subparagraph 2. of this paragraph, complete the review within fifteen (15) calendar days of receipt of the appeal request; or

2. For an expedited appeal request submitted in accordance with Section 10 of this administrative regulation, complete the review within three (3) business days.

(2) An appellant shall:

(a) Have the right to a hearing if the appellant is dissatisfied with the outcome of the informal resolution process; and

(b) Not have to provide duplicative information or documentation previously provided during the application process.

(3) The outcome of an informal resolution shall be final and binding and the appeal shall not advance to a hearing if the appellant:

(a) Is satisfied with the outcome of the informal resolution process: and

(b) Withdraws his or her appeal request in accordance with Section 11 of this administrative regulation.

(4) If an appellant is dissatisfied with the outcome of the information resolution process, KHBE shall send:

(a) The appeal request and all documents utilized by the division in the desk review to DAH no later than five (5) business days after the completion of the informal resolution process; and

(b) A written notice to the appellant that includes:

1. Notification that the appeal request has been sent to DAH for a hearing;

2. Information regarding the appellant's eligibility pending appeal in accordance with Section 7 of this administrative regulation; and

3. An explanation that any APTCs paid on behalf of a tax filer pending appeal are subject to reconciliation under 26 C.F.R. 1.36B-4.

Section 6. Individual Appeal Acknowledgement of Appeal Request and Eligibility Record by DAH.

(1) A request for an appeal sent by KHBE to the DAH shall be reviewed by DAH to ensure that the appeal request is valid.

(2) Upon receipt of a valid appeal request, the DAH shall:

(a) Send ***within thirty (30) days[~~timely~~]*** notice to the appellant of receipt of the valid appeal, to include the hearing requirements contained in Section 9 of this administrative regulation; and

(b) Confirm receipt of the records transferred by KHBE pursuant to Section 5(4)(a) of this administrative regulation.

(3) The DAH shall consider an appeal request valid if the request:

(a) Was incorrectly delivered or mailed to a department or division of the Cabinet for Health and Family Services; and

(b) Is otherwise valid.

(4) Upon receipt of an appeal request that is not valid, the DAH shall:

(a) Send written notice to the appellant and KHBE that the appeal request has not been accepted and of the nature of the defect in the appeal request; and

(b) Accept an amended appeal request as valid that meets the requirements of this administrative regulation.

Section 7. Individual Eligibility Pending Appeal.

(1) An appellant who has submitted an acceptable request as described in Section 1 of this administrative regulation of a redetermination of eligibility in accordance with Section 4 of this administrative regulation shall be considered eligible while the appeal is pending.

(2) If a tax filer or appellant accepts eligibility pending an appeal of an eligibility redetermination, the appellant's eligibility for an APTC or CSR or enrollment in a QHP or SADP as applicable shall be continued in accordance with the level of eligibility immediately before the redetermination being appealed.

(3) An appellant may waive receipt of APTCs pending the outcome of an appeal.

(4) The continued receipt of APTCs during an appeal may impact the amount owed or due by an appellant during the reconciliation process set forth in 26 C.F.R. 1.36B-4, depending upon the appeal decision.

(5) Eligibility pending appeal shall not be applicable to an appellant appealing an initial denial of eligibility for APTCs.

Section 8. Individual Dismissal of an Appeal.

(1) An appeal shall be dismissed by DAH if the appellant:

(a) Withdraws the appeal request in accordance with Section 11 of this administrative regulation;

(b) Fails to appear at a scheduled hearing without good cause;

(c) Fails to submit a valid appeal request as specified in Section 4 of this administrative regulation; or

(d) Dies while the appeal is pending.

(2) If an appeal is dismissed in accordance with subsection (1) of this section, DAH shall provide ***within thirty (30) days[~~timely~~]*** written notice to the appellant and the division that includes:

(a) The reason for the dismissal;

(b) An explanation of the effect of the dismissal on the appellant's eligibility;

(c) An explanation of how the appellant may show good cause why the dismissal should be vacated in accordance with subsection (3)(a) of this section;

(d) A statement of the eligibility determination to be implemented; and

(e) A statement discontinuing eligibility provided under Section 7 of this administrative regulation, if applicable.

(3) DAH shall:

(a) Vacate a dismissal under this section and proceed with the appeal if the appellant makes a written request within thirty (30) days of the date of the notice of the dismissal showing good cause why the dismissal should be vacated; and

(b) Provide ***within thirty (30) days[~~timely~~]*** written notice of the recommendation to the secretary of the Cabinet for Health and Family Services to deny the request to vacate a dismissal to the appellant, if the request is denied.

(4) Good cause for the purposes of this section shall include if the appellant:

(a) Was away from home during the entire filing period;

(b) Is unable to read or to comprehend the right to request a hearing on an adverse action notice;

(c) Moved, resulting in delay in receiving or failure to receive the adverse action notice;

(d) Had a household member who was seriously ill;

(e) Was not at fault for the delay of the request, as determined by the hearing officer; or

(f) Did not receive the notice.

Section 9. Individual Hearing Requirements.

(1) DAH shall provide written notice to the appellant and the division that:

(a) Acknowledges the appeal request as required by Section 6(2) of this administrative regulation; and

(b) Meets the notice requirements established by KRS 13B.050(3).

(2) An appellant ***may[~~shall have the opportunity to~~]***:

(a) Upon request, obtain from the division, copies of the appeal record, including all documents and records to be used at the hearing, prior to the date of the hearing, and during the hearing;

(b) Bring witnesses to testify;

(c) Establish all relevant facts and circumstances;

(d) Present an argument without undue interference; and

(e) Question or refute any testimony or evidence, including the opportunity to confront and cross-examine an adverse witness.

(3) The DAH shall:

(a) Consider the information used to determine an appellant's eligibility;

(b) Consider additional relevant evidence presented during the course of the appeal, including at the hearing; and

(c) Review the appeal without deference to a prior decision in the appeal case.

(4) A hearing shall be conducted:

(a) In accordance with the requirements of KRS 13B.080 and KRS 13B.090;

(b) At a reasonable date, time, and location or format;

(c) After notice of the hearing provided pursuant to subsection (1) of this section;

(d) Consistent with subsection (3) of this section; and

(e) By one (1) or more impartial hearing officers who have not been directly involved in the eligibility determination or any prior appeal decision in the same matter.

Section 10. Individual Expedited Appeals.

(1) An appellant ***may make[~~shall have the right to~~]*** an expedited appeal if:

(a) There is an immediate need for a health service; and

(b) The standard appeal process established in Section 9 of this administrative regulation ***may[~~could~~]*** seriously endanger the appellant's life, health, or ability to attain, maintain, or regain maximum function.

(2) An expedited appeal shall be requested in the same manner as a standard appeal as set forth in Section 4 of this administrative regulation.

(3) If an expedited appeal is requested, an appellant shall submit evidence of the reason for the expedited appeal.

(4) If an expedited appeal request under this section is denied by the DAH, the DAH shall:

(a) Conduct the appeal under the standard appeal process as set forth in Section 9 of this administrative regulation;

(b) Inform the appellant through electronic or oral notification, if possible, of the denial within the timeframes established by the secretary of HHS; and

(c) If notification is oral, follow up with the appellant by written notice.

(5) A written notice pursuant to subsection (4)(c) of this section shall include:

(a) The reason for the denial;

(b) An explanation that the appeal request shall be transferred to the standard process described in Section 9 of this administrative regulation; and

(c) An explanation of the appellant's rights under the standard process in Section 9 of this administrative regulation.

Section 11. Individual Withdrawal of an Appeal. If an appellant wants to withdraw an appeal, the appellant shall withdraw a request for an appeal:

(1) In writing;

(2) Orally to KHBE staff during an informal resolution process described in Section 5 of this administrative regulation; or

(3) Orally to the hearing officer during an appeal proceeding.

Section 12. Individual Hearing Decision.

(1) After the hearing is concluded or a decision is made not to reverse a dismissal of an appeal, the hearing officer shall issue a recommended order in accordance with the requirements of KRS 13B.110.

(2) A recommended order rendered by the DAH shall be based only on the:

(a) Information and evidence specified in 45 C.F.R. 155.535(e);

(b) Eligibility requirements in 900 KAR 10:120;

(c) Eligibility requirements under 45 C.F.R. 155.300 to 155.355; and

(d) Record of the appeal and hearing.

(3) A recommended order shall:

(a) Be sent to the appellant and the appellant's authorized representative, if applicable, and the division;

(b) State the decision;

(c) Include a plain language description of the effect of the decision on an appellant's eligibility;

(d) Summarize the facts relevant to the appeal;

(e) Identify the legal basis, including an administrative regulation that supports the decision; and

(f) State the effective date of the decision.

(4) If either the appellant or the division is dissatisfied with the recommended order, either party shall have fifteen (15) days from the date the recommended order is mailed to file exceptions to the recommendations with the secretary of the Cabinet for Health and Family Services.

(5) The secretary of the Cabinet for Health and Family Services shall consider the appeal record, including the recommended order and any exceptions filed to a recommended order, in accordance with KRS 13B.120.

(6) The secretary of the Cabinet for Health and Family Services shall:

(a) Accept the recommended order of the hearing officer and adopt it as the agency's final order;

(b) Reject or modify, in whole or in part, the recommended order; or

(c) Remand the matter, in whole or in part, to the hearing officer for further proceedings as appropriate.

(7) The secretary of the Cabinet for Health and Family Services shall:

(a) Issue written notice of the final order to the appellant and include in that notice the appellant rights to a judicial review afforded under KRS 13B.140 within ninety (90) days of the date an appeal request under Section 4 of this administrative regulation is received;

(b) If an appeal request is submitted under Section 10 of this administrative regulation that is determined to meet the criteria for an expedited appeal, issue the final order as expeditiously as:

1. The appellant's health condition requires; and

2. Reasonably possible, consistent with the timeframe established by the secretary of HHS; and

(c) Provide notice of the appeal decision and instructions to cease pended eligibility to:

1. The appellant, if applicable; and

2. The division.

(8) Upon receipt of a notice described in subsection (7)(a) of this section, the division shall:

(a) Implement the appeal decision:

1. Retroactive to the date the incorrect eligibility determination was made; or

2. At a time determined under 45 C.F.R. 155.330(f); and

(b) Redetermine the eligibility of a household member who has not appealed an eligibility determination***,*** but whose eligibility may be affected by the appeal decision, in accordance with the standards described in:

1. 900 KAR 10:120; and

2. 45 C.F.R. 155.305.

Section 13. Individual Right to Appeal to HHS.

(1) If an appellant disagrees with an appeal decision made in accordance with Section 12 of this administrative regulation or notice of denial of a request to vacate a dismissal under Section 8(3)(b) of this administrative regulation, the appellant may request an appeal from HHS within thirty (30) days of the date of the appeal notice.

(2) Upon receipt of a notice of an appeal under subsection (1) of this section, DAH shall transmit via secure electronic interface the appellant's appeal record, including the appellant's eligibility record received from KHBE, to HHS.

(3) An applicant or an enrollee denied a request for an exemption by HHS under 45 C.F.R. 155.625(b) may appeal the decision to HHS.

Section 14. Individual Appeal Release of Records.

(1) An appellant shall have access to the information used by the KHBE to determine his or her eligibility.

(2) An appellant shall have access to his or her appeal record:

(a) Upon written request;

(b) At a place and time convenient to the appellant; and

(c) Subject to all applicable federal and state laws regarding privacy, confidentiality, disclosure, and personally identifiable information.

(3) The public shall have access to an appeal decision, subject to all applicable federal and state laws regarding privacy, confidentiality, disclosure, and personally identifiable information.

CONTACT PERSON: Krista Quarles, Policy Advisor, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Maternal and Child Health
(As Amended at ARRS, June 8, 2021)

902 KAR 4:150. Enhanced HANDS services in response to declared national or state public health emergency.

RELATES TO: KRS 13B.080 - 13B.160, 200.700, 211.090, 211.180, 211.689

STATUTORY AUTHORITY: KRS 194A.050, 211.690

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 211.690 authorizes the Cabinet for Health and Family Services to implement a voluntary statewide home visitation program for the purpose of providing assistance to at-risk parents. This administrative regulation establishes the provisions for providing home visitation through tele-service delivery methods if a national or state public health emergency has been declared.

Section 1. Definitions. (1) "Declared national or state public health emergency" means a formal declaration by the President of the United States or the Governor of Kentucky of an extraordinary event that is determined to constitute a public health risk through the spread of disease.

(2) "Tele-service" means a home visitation service provided through telephone or video communication with the HANDS provider, parent, and child present in real time.

Section 2. Enhanced Home Visitation Services in Response to a Declared National or State Public Health Emergency. (1) HANDS services and requirements may be enhanced to allow for tele-service delivery methods if a national or state public health emergency has been declared.

(2)(a) HANDS home visitation services that are otherwise designated as face-to-face in accordance with 902 KAR 4:120 may be provided through tele-service delivery methods with informed parental consent.

(b) These services ***shall*** include those listed in 902 KAR 4:120, ***Sections[~~Section~~]*** 2(4), 2(5), and 4.

(c) Verbal and written consent shall be provided for each child in a shared household. For example, if the family has twins, verbal and written consent shall be provided for each baby.

(3) Tele-service delivery methods shall be reimbursed at the usual and customary rate.

(4) Tele-service delivery methods in the manner ***established[~~prescribed~~]*** by this section shall only be utilized during a declared national or state public health emergency.

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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Maternal and Child Health
(As Amended at ARRS, June 8, 2021)

902 KAR 30:210. Enhanced early intervention services in response to declared national or state public health emergency.

RELATES TO: KRS 200.650 - 200.676, 34 C.F.R. Part 99, 34 C.F.R. Part 303, 45 C.F.R. Part 160, 20 U.S.C. 1431-1444
STATUTORY AUTHORITY: KRS 194A.050, 200.660
NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions of KRS 200.650 ***through[~~to~~]*** 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the provisions for providing tele-intervention services if a national or state public health emergency has been declared.

Section 1. Definitions. (1) "Declared national or state public health emergency" means a formal declaration by the President of the United States or the Governor of Kentucky of an extraordinary event that is determined to constitute a public health risk through the spread of disease.
(2) "Tele-intervention service" means early intervention services provided through the internet with both video and audio features and with the early intervention provider and family both present in real time.

Section 2. Enhanced Early Intervention Services in Response to a Declared National or State Public Health Emergency. (1) Early intervention services and requirements may be enhanced to allow for tele-intervention services if a national or state public health emergency has been declared.
(2) Early intervention services that are otherwise designated as face-to-face in accordance with 902 KAR 30:160 may be provided through tele-intervention with informed parental consent if:
(a) Informed parental consent is obtained verbally for the purposes of tele-intervention services;
(b) Written consent is received by the point of entry within ten (10) days of the verbal consent; and
(c) The date verbal consent is obtained is documented in the child's electronic record.
(3) ***Each provider[~~Providers~~]*** utilizing tele-intervention services shall take all necessary steps to maintain confidentiality with 34 C.F.R. Part 99, 34 C.F.R. 303.402, and 45 C.F.R. Part 160.
(4) Tele-intervention services shall be reimbursed at the usual and customary rate as established in 902 KAR 30:200, Section 2.
(5) Tele-intervention services shall revert to face-to-face service delivery methods following the end of the declared national or state public health emergency.

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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at IJC on Health, Welfare, and Family Services, June 16, 2021)

902 KAR 45:190. Hemp-derived cannabinoid[~~cannabidiol~~] products*; packaging* and labeling requirements.

RELATES TO: KRS 217.015, ***[217.037,]***217.025, 217.035, ***217.037,*** 217.155**, 260.850**
STATUTORY AUTHORITY: KRS 217.125, 217.127, 217.135
NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.125(1) ***authorizes[~~requires~~]*** the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations for the efficient administration and enforcement of the Kentucky Food, Drug and Cosmetic Act, KRS 217.005 ***through[~~to~~]*** 217.215. KRS 217.125(2) requires the secretary to provide by administrative regulation a schedule of fees for permits to operate and for inspection activities carried out by the cabinet pursuant to KRS 217.025 through 217.390. KRS 217.135 authorizes the secretary to establish food standards by administrative regulation including a reasonable definition, standard of identity, and designation of optional ingredients that shall be named on the label. This administrative regulation establishes the registration process to utilize hemp-derived **cannabinoid[~~cannabidiol~~]** products in foods and cosmetics, the labeling ***and packaging*** requirements for products containing hemp-derived **cannabinoid[~~cannabidiol~~]**, and methods for use of hemp-derived **cannabinoid[~~cannabidiol~~]** as an additive to food products.

Section 1. Definitions. (1) **"Approved source" means a Kentucky hemp grower, processor, or handler licensed by the Kentucky Department of Agriculture, or an *out-of-state[~~out of state~~]* hemp grower, processor, or handler who is duly authorized to produce hemp under the laws of *the applicable[~~their~~]* jurisdiction.**
(2) "Cabinet" is defined by KRS 217.015(3).
(3) "Cannabinoid"[~~(1) "Cannabidiol" or "CBD"~~] means a non-intoxicating **compound[~~cannabinoid~~]** found in the hemp plant Cannabis sativa.
(4)[~~(2)~~] "Cosmetic" is defined by KRS 217.015(7).
(5)[~~(3)~~] "Department" means the Kentucky Department for Public Health.
(6)[~~(4)~~] "Food service establishment" is defined by KRS 217.015(21).
(7) "Hemp" is defined by KRS 260.850(5).
(8)[~~(5)~~] "Home-based processor" is defined by KRS 217.015(56).
(9)[~~(6)~~] "Person" is defined by KRS 217.015(32).

Section 2. Permits. (1) A person **located in Kentucky** seeking to manufacture***[~~, market, sell, or distribute~~]*** a hemp-derived **[~~CBD~~]** ingestible or cosmetic **cannabinoid** product shall submit an Application for Permit to Operate a Food Plant or Cosmetic Manufacturing Plant, ***DFS-260,*** incorporated by reference in 902 KAR 45:160, to the department.
(2) The permit shall be:
(a) Nontransferable in regards to person or address; and
(b) Renewed annually.
(3) The fee shall be paid in accordance with:
(a) 902 KAR 45:180, for a food processing establishment;
(b) 902 KAR 45:180, for a cosmetic manufacturer; and
(c) 902 KAR 45:110, Section 1(3)***[~~, (4),~~]*** and ***(6)[~~(5)~~]***, for a food service establishment.
(4) Ingestible hemp-derived **cannabinoid** products shall not be manufactured, marketed, sold, or distributed by a home-based processor.

Section 3. Product ***Packaging and*** Labeling. (1) Each hemp-derived **cannabinoid[~~CBD~~]** product manufactured, marketed, sold, or distributed in the Commonwealth shall be ***packaged and*** labeled in accordance with KRS 217.037 and this administrative regulation.
(2) ***Except as established in subsection (3) of this section,*** an ingestible or cosmetic product label shall include, in a print no less than six (6) point font, the following information:
(a) A statement of identity or common product name that shall be stated upon the principal display panel of the label;
(b) The net quantity of contents expressed in both standard English and metric units of measurement located in the lower thirty ***(30)*** percent ***[(30%)]*** of the **principal display panel of the** label parallel to the base of the container;
(c) The ingredients of the hemp-derived **cannabinoid[~~CBD~~]** product, in descending order of predominance by weight;
(d) The name of the manufacturer or distributor;

(e) A statement that the hemp-derived **cannabinoid[~~CBD~~]** product is within the federal legal limit of ***zero and*** three-tenths ***(0.3) percent[~~of one percent (0.3%)~~]*** delta-9 tetrahydrocannabinol;

(f) The total amount of **cannabinoid[~~cannabidiol~~]** per serving for ingestible products, or the total amount per container for cosmetic products;

(g) Suggested use instructions or directions, including serving sizes;

(h) ***[~~The statement, or a similar statement, "Consult your physician or healthcare professional before use";~~]*** **and*[***

~~(i)~~] An expiration date, if any**[~~; and~~**

~~(j) The Kentucky Hemp or Kentucky Proud logo or a similar marking that denotes the product was produced in Kentucky~~].

(3) **An ingestible or cosmetic product that has a total area of twelve (12) square inches or less available to bear labeling shall be labeled in accordance with subsection (2) of this section, except the print may be smaller than six (6) point font but shall not measure less than 1/32 of an inch in height.**

(4) ***[~~The labeling requirements of subsection (2) of this section shall not be printed unduly small in relation to the total area available to bear labeling in order to accommodate unrequired information such as logos, photographic representation of the product, or additional marketing copy.~~***

~~(5)~~]Each container of ingestible or cosmetic hemp-derived **cannabinoid[~~CBD~~]** product shall **have a tamper evident seal[~~bear either a foil seal on the inside or a plastic sealant on the outside~~]**.

(5)[~~(6)~~]**[~~(4)~~]** Product ***packaging,*** labeling or advertising material for any hemp-derived **cannabinoid[~~CBD~~]** product shall not bear any implicit or explicit health claims stating that the product can diagnose, treat, cure, or prevent any disease.

Section 4. Hemp-derived Ingestible **Cannabinoid Products[~~CBD product as a food additive~~]**. (1) Hemp-derived **cannabinoid[~~CBD~~]** may be added to an ingestible product during the manufacturing process or prior to retail sale at a food service establishment.

(2) **The hemp-derived cannabinoid shall be obtained from an approved source.**

(3) The food processor or food service establishment shall obtain a valid certificate of analysis from the approved source and provide a copy upon inspection.

(4) Food or ingestible product shall not contain a total delta-9 tetrahydrocannabinol concentration of more than *zero and* three-tenths *(0.3) percent[~~of one percent (0.3%)~~]* on a dry weight basis or contain tetrahydrocannabinol as the primary cannabinoid.

(5) A food service establishment offering hemp-derived **cannabinoid[~~CBD~~]** products in a finished food product shall provide ***[~~the following information~~]***to consumers upon request:

(a) The common name of the product;

(b) The manufacturer or distributor of the product; and

(c) A statement that the hemp-derived **cannabinoid[~~CBD~~]** product is within the federal legal limit of ***zero and*** three-tenths ***(0.3) percent[~~to one percent (0.3%)~~]*** delta-9 tetrahydrocannabinol.

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 Alcohol and Drug Counselors
(Amended After Comments)

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

RELATES TO: KRS 309.080, 309.0805, 309.081, 309.0813, 309.084, 309.085, 309.086, 309.087, 309.089**, 309.0830, 309.0834**
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.

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

(9)[~~(8)~~] "Chair" means the chairperson or vice-chairperson of the board.

(10)[~~(9)~~][~~(7)~~] "Charge" means a specific allegation contained in a formal complaint, as established in subsection **(15)**[~~**(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.

(11)[~~(10)~~][~~(8)~~] "Classroom hour" means an academic hour from an accredited institution or continuing education hour.

(12)[~~(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.

(13)[~~(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.

(14)[~~(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.

(15)[~~(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.

(16)[~~(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[~~:~~

~~(a) 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~~].

(17)[~~(16)~~][~~(14)~~] "Continuing education hour" means fifty (50) clock minutes of participating in a continuing education experience.

(18)[~~(17)~~][~~(15)~~] "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)~~].

(19)[~~(18)~~][~~(16)~~] "Disciplinary action" means to:

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

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

(20)[~~(19)~~][~~(17)~~] "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.

(21)[~~(20)~~][~~(18)~~] "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.

(22)[~~(21)~~][~~(19)~~] "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.

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

(24)[~~(22)~~][~~(20)~~] "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(6[~~4~~]).

(25)[~~(23)~~][~~(21)~~] "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(7[~~5~~]).

(26)[~~(24)~~][~~(22)~~] "Licensee" is defined by KRS 309.080(8[~~6~~]).

(27)[~~(25)~~][~~(23)~~] "Provider" means an organization approved by the Kentucky Board of Alcohol and Drug Counselors for providing continuing education programs.

(28)[~~(26)~~][~~(24)~~] "Registered alcohol and drug peer support specialist" is defined by KRS 309.080(10[~~8~~]).

(29)[~~(27)~~][~~(25)~~] "Registrant" is defined by KRS 309.080(11[~~9~~]).

(30)[~~(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).

(31)[~~(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.

TIM CESARIO, Chair

APPROVED BY AGENCY: June 11, 2021

FILED WITH LRC: June 14, 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 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 Amended After Comments version will also change this existing administrative regulation by adding definitions for "Certified clinical supervisor" and "Licensed alcohol and drug counselor".

(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 Amended After Comments version will also add references to the "certified clinical supervisor" and "licensed alcohol and drug counselor" credentials created by KRS 309.0830 and .0834 (2021 Ky. Acts ch. 107, 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). KRS 309.0830 and .0834 (2021 Ky. Acts ch. 107, Senate Bill 166), which were effective as of March 1, 2021, create 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
(Amended After Comments)

201 KAR 35:020. Fees.

RELATES TO: KRS 309.083, 309.0831, 309.0832, 309.0833, 309.084, 309.0841, 309.0842, 309.085(1)(a)**, 309.0830, 309.0834**

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, 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)[~~1.~~] 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)[~~1.~~] 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) 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)[~~(i)~~][~~(e)~~] The renewal fee for licensure shall be $300 for a three (3) year period, and shall accompany the Application for Renewal.

(l)[~~(j)~~][~~(f)~~] 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)[~~(c)~~] 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", **June[~~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", June 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, 8:00 a.m. to 4:30 p.m. The board's Web site address is: https://adc.ky.gov.

TIM CESARIO, Chair

APPROVED BY AGENCY: June 11, 2021

FILED WITH LRC: June 14, 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 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 counsel, 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 cancelation 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 Amended After Comments version will also add references to the new "certified clinical supervisor" and "licensed alcohol and drug counselor" credentials created by KRS 309.0830 and .0834 (2021 Ky. Acts ch. 107 (Senate Bill 166) 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 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 counsel, 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 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 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 KRS 309.0830 and .0834 (2021 Ky. Acts ch. 107, Senate Bill 166), which were effective as of March 1, 2021, create 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 counsel, 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, certified alcohol and drug counselor associate II credentials at fifty (50) dollars. The 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 counsel, 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, certified alcohol and drug counselor associate II credentials at fifty (50) dollars. The 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
(Amended After Comments)

201 KAR 35:025. Examinations.

RELATES TO: KRS 309.083(5), 309.0831(5), 309.0832(4), 309.0833**, 309.0830, 309.0834**

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[~~911 Leawood Drive~~], Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. The board's Web site address is: https://adc.ky.gov.

TIM CESARIO, Chair

APPROVED BY AGENCY: June 11, 2021

FILED WITH LRC: June 14, 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 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 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 Amended After Comments version will also add references to the new "certified clinical supervisor" and "licensed alcohol and drug counselor"

credentials created by KRS 309.0830 and .0834 (2021 Ky. Acts ch. 107, 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. KRS 309.0830 and .0834 (2021 Ky. Acts ch. 107, Senate Bill 166), which were effective as of March 1, 2021, create 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
(Amended After Comments)

201 KAR 35:040. Continuing education requirements.

RELATES TO: KRS 309.085(1)(b)**, 309.0830, 309.0834**

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 **or[~~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)[~~(c)~~] 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 **(4)[~~(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.

TIM CESARIO, Chair

APPROVED BY AGENCY: June 11, 2021

FILED WITH LRC: June 14, 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 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 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 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 KRS 309.0830 and .0834 (2021 Ky. Acts ch. 107, 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. KRS 309.0830 and .0834 (2021 Ky. Acts ch. 107, Senate Bill 166), which were effective as of March 1, 2021, create 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
(Amended After Comments)

201 KAR 35:050. Curriculum of study.

RELATES TO: KRS 309.083(4), (8), 309.0841, 309.0842**, 309.0830, 309.0834**

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", **June[~~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.

TIM CESARIO, Chair

APPROVED BY AGENCY: June 11, 2021

FILED WITH LRC: June 14, 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 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 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 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 KRS 309.0830 and .0834 (2021 Ky. Acts ch. 107, 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. KRS 309.0830 and .0834 (2021 Ky. Acts ch. 107, Senate Bill 166), which were effective as of March 1, 2021, create 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
(Amended After Comments)

201 KAR 35:070. Supervision experience.

RELATES TO: KRS 309.0814, 309.083(4), 309.0831, 309.0832, 309.0833, 309.0841, 309.0842**, 309.0830, 309.0834**

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)[~~(10)~~] 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[~~ReOcquest~~] to Provide Supervision", **June[~~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[~~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.

TIM CESARIO, Chair

APPROVED BY AGENCY: June 11, 2021

FILED WITH LRC: June 14, 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 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 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 Amended After Comments version will also set supervision requirements for the new "licensed alcohol and drug counselor" credential created by KRS 309.0830 and .0834 (2021 Ky. Acts ch. 107, 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. KRS 309.0830 and .0834 (2021 Ky. Acts ch. 107, Senate Bill 166), which were effective as of March 1, 2021, create 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
(Amended After Comments)

201 KAR 35:075. Substitution for work experience for an applicant for certification as an alcohol and drug counselor and licensed alcohol and drug counselor.

RELATES TO: KRS 309.083, 309.0831, 309.0832, 309.0833**, 309.0830**

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 KRS 309.0830**. (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", **June[~~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[~~911 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.

TIM CESARIO, Chair

APPROVED BY AGENCY: June 11, 2021

FILED WITH LRC: June 14, 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 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 Amended After Comments version will also apply the workplace experience substitution requirements to the new "licensed alcohol and drug counselor" credential created by KRS 309.0830 (2021 Ky. Acts ch. 107, 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. KRS 309.0830 (2021 Ky. Acts ch. 107, Senate Bill 166), which was effective as of March 1, 2021, creates the "licensed alcohol and drug counselor" credential, 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
(Amended After Comments)

201 KAR 35:080. Voluntary inactive and retired status.

RELATES TO: KRS 309.0813(5) and (12)**, 309.0830, 309.0834**

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.

TIM CESARIO, Chair
APPROVED BY AGENCY: June 11, 2021
FILED WITH LRC: June 14, 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 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 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 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 KRS 309.0830 and .0834 (2021 Ky. Acts ch. 107, 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). KRS 309.0830 and .0834 (2021 Ky. Acts ch. 107, Senate Bill 166), which were effective as of March 1, 2021, create 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

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amended After Comments)

703 KAR 5:270. Kentucky's Accountability System.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455, **158.649, 160.346,** 20 U.S.C. 6311

STATUTORY AUTHORITY: KRS 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools, and districts; complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor; and ensures accountability. KRS 158.6455 requires the Kentucky Board of

Education to create an accountability system to classify schools and districts, including a process for annual summative performance evaluations and goals for improvement. This administrative regulation establishes the statewide system of accountability, and meets requirements set forth in the federal Every Student Succeeds Act of 2015 at 20 U.S.C. 6311.

Section 1. Definitions. (1) [~~"Achievement gap" means a measure of the performance difference between student demographic groups to each other for reading and mathematics.~~

~~(2) "Comparison group" means the student demographic group being contrasted to the reference group.~~

~~(3) "English learners" in the indicators of growth and transition readiness means students currently identified on an English language proficiency exam. For all other areas, it means students currently identified and those who continue to be monitored.~~]"English learner progress indicator" means the combination of individual student growth for status and the difference in school performance for change of English learners toward English language proficiency. For all other indicators, **English learners [~~it~~]** means students currently identified and those who continue to be monitored **as English learners**.

[~~(2)~~] [~~(4)~~][**~~"Federal student group designation" means targeted support and improvement, and additional targeted [comprehensive] support and improvement as provided in KRS 160.346.~~**][

~~(5) "Federally defined student demographic groups" include White, African American, Hispanic, Asian, Native Hawaiian or other Pacific Islander, American Indian or Alaska Native, two (2) or more races, free/reduced-price meal eligible, students with disabilities who have an IEP, and English learners.~~]

(2) [~~(3)~~] [~~(6)~~] "Full academic year" means 100 or more instructional days of student enrollment within the school year.

(3) [~~(4)~~] [~~(7)~~] "Grade twelve (12) non-graduates" means all students enrolled in grade twelve (12) at the end of the school year who do not graduate.

(4) [~~(5)~~] [~~(8)~~] "Graduation rate" means the percentage of students who enter high school and receive a diploma based on their cohort in four (4) and five (5) years, adjusting for transfers in and out, émigrés, and deceased students.[

~~(9) "Growth" means a student's continuous improvement toward proficiency or above.~~

~~(10) "Indicator" means a component of the accountability system that provides specific information on the school or district.~~]

(5) [~~(6)~~] "Indicator performance rating" means one of five colored-coded performance levels on each state indicator that is determined by combining status and change.

(6) [~~(7)~~] [~~(11)~~] "Individual education program" or "IEP" means an individual education program as defined in 707 KAR 1:002.

(7) [~~(8)~~] [~~(12)~~] "Local education agency" or "LEA" for the purposes of this administrative regulation shall mean a local school district as provided in KRS 161.010 and KRS 161.020 or a charter school board of directors as provided in KRS 161.1590.[

~~(13) "Practical significance" means a measure of the differences between student groups has real meaning.~~

~~(14) "Proficiency indicator" means the measure of academic status or performance for reading and mathematics on state assessments.~~]

(8) [~~(9)~~] "Overall performance rating" means one (1) of five (5) color-coded performance levels that aggregates all available state indicator data that is determined by combining status and change.

(9) [~~(10)~~] "Postsecondary readiness" means the attainment of the necessary knowledge, skills, and dispositions to successfully transition to the next level.

(10) [~~(11)~~] [~~(15)~~] "Proficient" or "proficiency" means reaching the desired level of knowledge and skills as measured on academic assessments.

(11) [~~(12)~~] [~~(16)~~] "Quality of school climate and safety indicator" means the measures of school environment.[

~~(17) "Rating" means the process of inclusion of an indicator in the formal overall rating of the school or district.~~

~~(18) "Reference group" means a student demographic group to which another group is contrasted to provide a benchmark for performance.~~

~~(19) "Separate academic indicator for science, social studies, and writing" means the measure of academic status or performance for science, social studies, and writing on state assessments.~~]

(12) [~~(13)~~] "State assessment results for reading and mathematics indicator" means the measure of academic **[~~status or~~]** performance for reading and mathematics on state assessments.

(13) [~~(14)~~] "State assessment results for science, social studies, and writing indicator" means the measure of academic **[~~status or~~]** performance for science, social studies, and writing on state assessments.

(14) [~~(15)~~] "State indicator" means a component of the accountability system as defined in KRS 158.6455.[

~~(20) "Transition readiness" means the attainment of the necessary knowledge, skills, and dispositions to successfully transition to the next level.~~]

(15) [~~(16)~~] [~~(21)~~] "Value table" means a set of numbers that are used to attribute scores to different performance levels.

(16) [~~(17)~~] [~~(22)~~] "Writing" means the content area that includes on-demand writing, and editing and mechanics.

Section 2. Kentucky's accountability system that is used to classify schools and LEAs shall include the state indicators of: state assessment results for reading and mathematics [~~proficiency~~]; state assessment results [~~separate academic indicator~~] for science, social studies, and writing; English learner progress [~~growth~~]; postsecondary [~~transition~~] readiness; quality of school climate and safety; and graduation rate.

(1) The state assessment results for reading and mathematics [~~proficiency~~] indicator shall be measured by student performance on state **assessments [~~tests~~]** in reading and mathematics.

(2) The state assessment results for science, social studies, and writing [~~A separate academic~~] indicator shall be measured by student performance on state **assessments [~~tests~~]** in science, social studies, and writing.

(3) The English learner progress indicator shall be measured by student performance on an English proficiency test. The English learner progress indicator shall be measured based on a growth value table. Additional tables shall incorporate the federal flexibilities of age upon entry to U.S. schools, initial English language proficiency level, and degree of interrupted schooling. [~~The growth indicator shall be calculated at the elementary and middle school levels. The growth indicator shall be measured:~~

~~(a) Based on a growth value table in reading and mathematics; and~~

~~(b) Progress toward achieving English proficiency by English learners.~~]

(4) The quality of school climate and safety indicator shall include perception data from surveys that measure insight to the school environment.

(5) The postsecondary [~~transition~~] readiness indicator shall be measured at high school for students meeting the following criteria:

(a) Earn a regular or alternative high school diploma plus grade twelve (12) non-graduates; and

(b) Achieve academic readiness or career readiness.

1. A school shall receive credit for each student demonstrating academic readiness by:

a. Scoring at or above the benchmark score as determined by the Council on Postsecondary Education (CPE) on the college admissions examination or college placement examination; or

b. Completing two (2) [~~six (6) hours of~~] Kentucky Department of Education approved dual credit courses and receiving a grade of C or higher in each course; or

c. Completing two (2) advanced placement (AP) courses and receiving a score of three (3) or higher on each AP assessment; or

d. Receiving a score of five (5) or higher on two (2) examinations for international baccalaureate courses; or

e. Scoring at or above the benchmark on two (2) Cambridge Advanced International examinations; or

f. Completing a combination of academic readiness indicators listed above.

g. Demonstration of academic readiness listed in paragraph 5 (b)1 of this section shall include **successful completion of** one (1) quantitative reasoning or natural sciences **course** and one (1) written or oral communication **course**; or visual and performing arts **course**; or humanities **course**; or social and behavioral sciences learning outcomes **course**.

2. A school shall receive credit for each student demonstrating career readiness by:

a. Scoring at or above the benchmark on industry certifications as approved by the Kentucky Workforce Innovation Board on an annual basis; or

b. Scoring at or above the benchmark on the career and technical education end-of program assessment for articulated credit; or

c. Completing two (2) [~~six (6) hours of~~] Kentucky Department of Education approved CTE dual credit courses, and receiving a grade of C or higher in each course; or

d. Completing a Kentucky Department of Education approved or labor cabinet-approved apprenticeship. [~~; or~~

~~e. Completing a Kentucky Department of Education approved alternate process to verify exceptional work experience.~~

~~3. For students who qualify as English learners in high school: Meeting criteria for English language proficiency to be English language ready.~~]

3[4]. Students participating in the alternate assessment program shall meet criteria based on academic or career alternate assessment requirements.

(6) The graduation rate indicator shall be measured for each high school using the four (4)-year and extended five (5)-year cohort rate. The graduation rate shall be reported for all students and student groups.

Section 3. Classification of Schools and LEAs in the State Accountability System. (1) Data shall be included in the overall performance rating for schools and LEAs for the following state indicators:

(a) State Assessment Results [~~Proficiency~~] (reading and mathematics);

(b) State Assessment Results [~~Separate academic indicator~~] (science, social studies, and writing);

(c) English learner progress [~~Growth (elementary and middle school)~~];

(d) Postsecondary [~~Transition~~] readiness (high school);

(e) Quality of school climate and safety; and

(f) Graduation rate (high school).

(2) Data from individual student performance on state assessments administered as required in KRS 158.6451 and KRS 158.6453 shall be included in the overall performance rating of each school and LEA. This data shall include students with disabilities with IEPs who participate in the alternate assessment program.

(3) Data in the overall performance rating shall be attributed to grade level spans for schools and LEA as established in this subsection.

(a) Elementary schools shall include data from: state assessment results for reading and mathematics [~~proficiency~~]; state assessment results [~~separate academic indicator~~] for science, social studies, and writing; English learner progress [~~growth~~]; **and** quality of school climate and safety **[~~; and federal student group designation~~]**.

(b) Middle schools shall include data from: state assessment results for reading and mathematics [~~proficiency~~]; state assessment results [~~separate academic indicator~~] for science, social studies, and writing; English learner progress [~~growth~~]; **and** quality of school climate and safety**[~~; and federal student group designation~~]**.

(c) High schools shall include data from: state assessment results for reading and mathematics [~~proficiency~~]; state assessment results [~~separate academic indicator~~] for science, social studies, and writing; English learner progress; postsecondary [~~transition~~] readiness; graduation rate; **and** quality of school climate and safety**[~~; and federal student group designation~~]**.

(d) LEAs shall include data from: school state assessment results for reading and mathematics [~~proficiency~~]; state assessment results [~~separate academic indicator~~] for science, social studies, and writing, English learner progress [~~growth~~]; postsecondary [~~transition~~] readiness; graduation rate; and quality of school climate and safety.

Section 4. Calculations for Reporting Categories. (1)**(a)** State assessment results [~~Proficiency~~] for reading and mathematics shall be rated equally in elementary, middle and high schools and LEAs by awarding points as described in paragraph 2(b) of this section.

(b)[~~(2)~~] State assessment results [~~The separate academic indicator~~] for science, social studies, and writing shall be rated **equally** in elementary, middle and high schools, and in LEAs by awarding points as described in paragraph 2(b) of this section. [~~The highest proportion shall be attributed to science and social studies.~~]

(2)(a) For any content area (reading, mathematics, science, social studies, and writing) where data are not available, the data of the remaining content areas shall be redistributed proportionally across state assessment results state [~~proficiency and separate academic~~] indicators.

(b) The following **value table [~~chart~~]** shall be used to calculate the points for state assessment results in reading and mathematics and state assessment results in science, social studies, and writing [~~proficiency and the separate academic indicator~~]:

Proficiency Levels	Points Awarded for Each Percent of Students
Novice	0
Apprentice	.5
Proficient	1
Distinguished	1.25

[

~~(3) Growth shall be rated for elementary and middle schools as established in this subsection.~~

~~(a) Novice and apprentice performance levels for growth calculations shall be subdivided into novice high, novice low; and apprentice high, apprentice low.~~

~~(b) The school calculation for mathematics shall be the sum of the total points from the growth value table for all students divided by the total number of scores.~~

~~(c) The values in the growth value table below shall be used in calculating growth in this subsection.~~

~~Growth Value Table (Points for student performance in Year 2, given Performance in Year 1)~~						
	~~Novice~~		~~Apprentice~~		~~Proficient~~	~~Distinguished~~
~~Year 1 Student Performance~~	~~Low~~	~~High~~	~~Low~~	~~High~~		
~~Distinguished~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~50~~
~~Proficient~~	~~0~~	~~0~~	~~0~~	~~0~~	~~50~~	~~100~~
~~Apprentice High~~	~~0~~	~~0~~	~~0~~	~~50~~	~~100~~	~~150~~
~~Apprentice Low~~	~~0~~	~~0~~	~~50~~	~~100~~	~~150~~	~~200~~
~~Novice High~~	~~0~~	~~50~~	~~100~~	~~150~~	~~200~~	~~250~~
~~Novice Low~~	~~0~~	~~100~~	~~150~~	~~200~~	~~250~~	~~300~~

~~(d) The school calculation for reading shall be the sum of the total points for all students from the growth value table plus growth for English language proficiency as described in Section 4(3)(e) of this administrative regulation divided by the total number of scores.~~]

(3) [~~(e)~~] Progress toward achieving English proficiency by English learners shall be calculated as follows:

(a) [~~1.~~] Individual growth shall be compared to prior year performance on an English proficiency exam.

(b) [~~2.~~] The exit benchmark and English learner growth value tables created involving Kentucky educators and advised by technical experts shall be utilized.

(c) [~~3.~~] Points for each English learner based on the English

learner growth value table shall be averaged [summed].

(d) The value tables shall be included in the Every Student Succeeds Act Consolidated State Plan and negotiated with the United States Department of Education.

(e) [a. Depending on further analysis,] Kentucky shall [may] modify the value table and its use to reflect factors that may impact English learners' progress toward language proficiency, including age upon entry to U.S. schools, initial English language proficiency level, and degree of interrupted schooling.[

b. The values in the growth value table below shall be used in calculating growth in this subsection.

WIDA ACCESS score previous year	WIDA ACCESS score current year							
	1	1.5	2.0	2.5	3.0	3.5	4.0	4.5
4.0	0	0	0	0	0	0	50	100
3.5	0	0	0	0	0	50	100	150
3.0	0	0	0	0	50	100	150	200
2.5	0	0	0	50	100	150	200	250
2.0	0	0	50	100	150	200	250	300
1.5	0	50	100	150	200	250	300	300
1.0	0	100	150	200	250	300	300	300

4. Total points for English learners shall be added to the sum of the reading growth points for all students in reading as described in Section 4(3)(e) of this administrative regulation.

(f) For an overall school growth score, an average of reading scores that includes growth for English learners on an English proficiency exam and mathematics growth scores shall be calculated.]

(4) The quality of school climate and safety indicator shall be rated for elementary, middle, high schools, and LEAs as established in this subsection. The Kentucky Board of Education shall approve the measures of quality of school climate and safety. **Data collected for individual students shall be aggregated to calculate school and district level scores for climate, safety, and overall climate and safety indicator.**

(5) Postsecondary [Transition] readiness shall be calculated by dividing the number of high school graduates plus grade twelve (12) non-graduates who have met measures of postsecondary [transition] readiness [plus the number of English learners who have achieved English language proficiency] by the total number of graduates plus grade twelve (12) non-graduates [plus the number of graduates who have received English language services during high school]. Credit for students obtaining an industry-recognized certification, licensure, or credential in specialized career pathways in state and regional high demand sectors as approved by Kentucky's Workforce Innovation Board is one and one-quarter (1.25) points. Credit for students obtaining all other readiness indicators is one (1.0) point.

(6) Graduation rate is the percentage of students completing the requirements for a Kentucky high school diploma compared to the cohort of students beginning in grade nine. The accountability system shall include a four (4) year cohort rate and an extended five (5) year cohort rate. Each rate shall be weighted equally.

(7) The indicator performance rating shall be assigned as follows:

(a) Indicators identified in Section 3 shall have a rating of very low, low, medium, high, or very high by school and LEA for status.

(b) Indicators identified in Section 3 shall have a rating of declined significantly, declined, maintained, increased, or increased significantly by school and LEA for change.

(c) Each state indicator combines status and change and reports an indicator performance level using a color-coded table.

(8) [(7)] The [overall rating shall be assigned as follows:

(a) The] indicators for each school and LEA as identified in Section 3 of this administrative regulation shall contribute to the overall performance rating of schools and LEAs.[

(b) Indicators identified in Section 3 shall have a rating of very low, low, medium, high, or very high by school and LEA level.]

(9) [(c)] A standard setting process shall be conducted involving Kentucky educators and advised by technical experts to recommend [determine] very low to very high performance levels for status and declined significantly to increased significantly for change on each indicator including state assessment results for reading and mathematics [proficiency], state assessment results for science, social studies, and writing [separate academic indicator], English learner progress [growth], postsecondary [transition] readiness, graduation rate, and quality of school climate and safety.

(10)**(a)** [(8)] An overall performance [star] rating for elementary, middle, and high schools shall be reported using a color [five (5) star] rating system to communicate performance of schools, with red [one (1) star] being the lowest rating and blue [five (5) stars] being the highest rating. Color ratings shall include five performance levels from highest to lowest: Blue, Green, Yellow, Orange, and Red. Performance of schools, LEAs, and state will be reported by level (elementary, middle, and high) as applicable. The School Report Card shall display the color [star] ratings earned for each school, LEA, and state (by level) [and the total five (5) stars available].[

(a)]

Overall Accountability Weights						
	State Assessment Results [Proficiency] (Reading and Mathematics)	State Assessment Results [Separate Academic Indicator] (Science, Social Studies, and Writing)	English learner progress [Growth (including English Language Learners)]	Quality of School Climate and Safety	Postsecondary [Transition] Readiness [(High school includes English language) learners)]	Graduation Rate (4 and 5 year cohort)
Elementary[/ Middle] Schools	51 [35]	40 [26]	5 [35]	4	--	---
Middle Schools	46	45	5	4		
High Schools	45	20 [15]	5 [---]	4	20 [30]	6

(b) The performance on state indicators is combined [that contribute to the overall star ratings] using the amounts in the Overall Accountability Weights table to generate an overall performance [shall be determined by a standards-setting process involving Kentucky educators].

(c) **As a result of the standard setting process, the committee shall recommend the procedures for determining indicator and overall performance ratings, combining status and change and reflecting the indicator weights. [Indicator and overall performance color ratings shall be recommended during standards setting.]** The recommendation from the standards setting committee shall be approved as defined in KRS 158.6455. [

(c) If achievement gaps are found in schools and LEAs earning a four (4) or five (5) star rating, the star rating will be reduced by one (1) star.

b.1. Achievement gap shall be calculated between student demographic comparison groups and reference groups for reading and mathematics combined by:

a. Determining the student demographic groups to be included in this subsection, which shall include the following student demographic groups that have at least ten (10) students: African

~~American, Hispanic, Asian, Native Hawaiian or other Pacific Islander, American Indian or Alaska Native, two (2) or more races, and White.~~

~~(i) Comparing African American, Hispanic, Asian, Native Hawaiian or other Pacific Islander, American Indian or Alaska Native, two (2) or more races, and White to a reference group. The reference group shall be the highest performing racial and ethnic student group that has at least ten (10) students and constitutes at least ten (10) percent of the students enrolled in the school; (ii) Free and reduced price meal eligible students compared to non-free and reduced price meal eligible students;~~

~~(iii) Students with disabilities who have an IEP compared to students without IEPs; and~~

~~(iv) English learners compared to non-English learner students.~~

~~2. Using a statistical analysis for each pair of comparison and reference groups, the department shall determine if a gap between the comparison group and reference group is both statistically and practically significant.~~]

(d) Kentucky will identify schools to determine required federal designations **as defined in KRS 160.346** [~~bottom five (5) percent and ten (10) percent~~] based on the overall performance [~~indicators~~] of the accountability [~~(five) 5-star~~] system.

(e) If data cannot be calculated for an indicator, the weights shall be redistributed proportionally to remaining state indicators that shall be reported for the school or LEA.

(11) [~~(9)~~] School accountability indicators shall be assigned as follows:

(a) Students enrolled for a full academic year shall be included in the calculations for state assessment results for reading and mathematics [~~proficiency~~], state assessment results [~~a separate academic indicator~~] for science, social studies, and writing, English learner progress [~~growth~~], quality of school climate and safety, and postsecondary [~~transition~~] readiness for a school and LEA.

(b) Graduation rate calculations shall be based on the students' final enrollment.

(c) Student demographic groups shall have a minimum of thirty (30) [~~ten (10)~~] students to be included in school rating calculations.

(d) In accordance with KRS 158.6455, schools and districts shall be placed into one (1) of five (5) color [~~(5) star~~] ratings established by a standards-setting process utilizing results from the first operational administration of assessments [~~in 2018-19~~]. The process shall:

1. Be advised by the National Technical Advisory Panel on Assessment and Accountability; the School Curriculum, Assessment and Accountability Council; Local Superintendent Advisory Council, and the Office of Education Accountability; and

2. Use accepted technical procedures and involve Kentucky school and district administrators and teachers.

Section 5. Additional Public Reporting Requirements. (1) The Kentucky Department of Education shall report disaggregated data for each state indicator of the state assessment and accountability system.

(2) Progress on long-term and interim goals shall be reported publicly as required by the federal Every Student Succeeds Act and submitted in Kentucky's Consolidated State Plan. Goals shall be developed for every student group, including all students, for academic achievement in each content area of reading, mathematics, science, social studies, and writing[~~, and the content areas combined~~]; graduation rate based on four (4) year and five (5) year adjusted cohorts; and progress on English proficiency for English learners.

(3) The goal for academic achievement operationalizes both the improvement of proficient and distinguished performance for all students and each student group and the reduction of achievement gaps as defined in KRS 158.649 [~~in student group performance by fifty (50) percent by 2030~~]. Each student group of ten (10) or more students shall be reported on the School Report Card. The data will be suppressed as necessary for reporting to meet the Family Educational Rights and Privacy Act (FERPA) [~~Each student group of ten (10) or more students shall be compared to the reference group of the highest performing student group that is at least ten (10) percent of the student population~~].[

~~(4) Goals for graduation rate shall be generated for a four (4) year adjusted cohort to ninety-five (95) percent for all students and an extended five (5) year cohort to ninety-six (96) percent for all students. The goal for progress on English language proficiency shall be based on the percent of students making progress toward attainment of the English language.~~

~~(5) Performance levels of each indicator (proficiency for reading and mathematics, a separate academic indicator for science, social studies, and writing, growth, transition readiness, quality of school climate and safety, and graduation rate) from very low to very high on each indicator will be determined by Kentucky educators with a standards setting process.~~

~~(6) Federal designations and statistically and practically significant achievement gaps will be reported for each school, LEA, and state.~~]

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

JASON E. GLASS, Ed.D., Commissioner
LU YOUNG, Ed.D., Chairperson

APPROVED BY AGENCY: June 14, 2021

FILED WITH LRC: June 15, 2021 at 11:12 a.m.

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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 state accountability requirements for Kentucky's public local education agencies (LEAs) and schools.

(b) The necessity of this administrative regulation: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools and districts, complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor, and ensures accountability.

KRS 158.6455 requires the Kentucky Board of Education (KBE) to create an accountability system to classify schools and districts, including a process for annual summative performance evaluations and goals for improvement.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specific details for establishing the indicators and measures of the state-required accountability system for Kentucky public LEAs and schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific details for establishing the statewide accountability program that rates LEAs and schools based on performance of multiple indicators: state assessment results (reading and mathematics), state assessment results (science, social studies and writing), English learner progress, graduation rate (high school only), postsecondary readiness (high school only) and quality of school climate and safety. The multiple indicators incorporate the student test results and school quality measures. The regulation complies with state statute and the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor, and ensures accountability.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation establishes state accountability requirements for Kentucky's public local education agencies (LEAs) and schools. The amendments to this regulation will change certain accountability indicators and measures in the system due to recently passed legislation, Senate Bill (SB) 158 (2020).

SB 158 (2020) amends KRS 158.6455 to create an accountability system that shall include an annual meaningful differentiation of all public schools in the state using multiple measures that describe the overall performance of each district, school and student subgroup. Performance shall be based on a combination of academic and school quality indicators and measures known as "state indicators." Those indicators shall exclusively include student assessment results, progress toward achieving English proficiency by limited English proficiency students, quality of school climate and safety, high school graduation rates, and postsecondary readiness. In addition, the accountability system performance for each district, school and student subgroup determined by the state indicators shall be based on a combination of annual performance, hereinafter called "Status," and improvement over time, hereinafter called "Change." In addition, SB 158 (2020) changes the definition for achievement gap.

(b) The necessity of the amendment to this administrative regulation: After recently passed legislation, Senate 158 (2020), it is necessary to amend the accountability regulation to align with state statute.

(c) How the amendment conforms to the content of the authorizing statute: This administrative regulation provides specific details for establishing the indicators and measures of the state-required accountability system for Kentucky public LEAs and schools.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides specific details for establishing the statewide accountability program that rates LEAs and schools based on performance of multiple indicators: state assessment results (reading and mathematics), state assessment results (science, social studies and writing), English learner progress, graduation rate (high school only), postsecondary readiness (high school only) and quality of school climate and safety. The multiple indicators incorporate the student test results and school quality measures. The regulations amendments complies with state statute and the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor, and ensures accountability.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public LEAs and schools in Kentucky with schools grade 3 or higher and supporting staff in the Kentucky Department of Education (KDE).

(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: KDE, LEAs and schools shall implement the specific details of the assessment and accountability system. The regulation defines the indicators and measures to be included in the accountability system used to evaluate and rate the performance of Kentucky's public LEAs and schools. The system is a multi-dimensional model that uses student- and school-based data to differentiate performance. The KDE implements and manages the accountability system, as established and promulgated in regulation by the KBE. LEAs and schools implement the required assessments and processes that generate data reported annually in the accountability system. The data reported help schools and districts improve student achievement, ensure students are ready to transition to the next step of education or life, and provide quality school climate and safety for students.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The accountability system requires no additional direct costs to the LEAs and schools. LEAs and schools may choose to implement new programs or services in response to the new accountability system that may result in additional costs for LEAs and schools, however, this would be a locally determined decision. KDE anticipates additional indirect costs to implement a new accountability system. Additional costs are expected to implement new accountability and reporting requirements codified in SB 158 (2020).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The accountability system has several key goals: promote higher levels of student learning and achievement, include quality of school climate and safety, build a culture of high expectation and continuous improvement, and communicate a clear and honest understanding of strengths and opportunities for improvement in LEAs and schools. In addition, achievement gaps will be reported outside of accountability.

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

(a) Initially: The transition to the new accountability system will require KDE to implement activities such as standard setting, additional staff time, and the support of experts, each with associated costs. The accountability system requires no additional cost to the LEAs and schools. KDE anticipates additional costs to implement new assessments and reporting requirements codified in Senate Bill 1 (2017 Kentucky General Assembly). The results of these assessments are used to rate schools in the accountability system established by this regulation.

(b) On a continuing basis: Senate Bill 1 requires continual reviews of standards and assessments. There will be ongoing costs to implement new assessments and meet reporting requirements, particularly the release of some assessment items annually. These activities directly support the accountability system established in this regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increased fees or funding are anticipated as a result of this regulation, however activities related to this regulation as required by SB 1 (2017) may require additional funding as described above.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and LEAs.

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? Public Local Education Agencies (LEAs) and schools.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6453; KRS 158.6455; 20 U.S.C. secs. 6301 et seq.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? The transition to the new accountability system will require the Kentucky Department of Education (KDE) to implement activities such as standard setting, additional staff time, and the support of experts, each with associated costs. The accountability system requires no additional cost to the LEAs and schools. KDE anticipates additional costs to implement new assessments and reporting requirements codified in Senate Bill 1 (2017 Kentucky General Assembly). The results of these assessments are used to rate schools in the accountability system established by this regulation.

(d) How much will it cost to administer this program for subsequent years? Senate Bill 1 (2017) requires continual reviews of standards and assessments. There will be ongoing costs to implement new assessments and meet reporting requirements, particularly the release of some assessment items annually. These activities directly support the accountability system established in this 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 (+/-):The transition to the new accountability system will require KDE to implement activities such as standard setting, additional staff time, and the support of experts, each with associated costs. The accountability system requires no additional cost to the LEAs and schools. KDE anticipates additional costs to implement new assessments and reporting requirements codified in Senate Bill 1 (2017 Kentucky General Assembly). The results of these assessments are used to rate schools in the accountability system. Senate Bill 1 requires continual reviews of standards and assessments. There will be ongoing costs to implement new assessments and meet reporting requirements, particularly the release of some assessment items annually. These activities directly support the accountability system established in this regulation.

Other Explanation: N/A

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Amended After Comments)

907 KAR 3:010. Reimbursement for physicians' services.

RELATES TO: KRS 205.560, 205.565, 210.370-210.485, 311.840, 42 C.F.R. 400.203, Part 414, 438.2, 440.50, 447.10, 447.200-447.205, 447.325, 42 U.S.C. 1395m, 1395w-4, 1395x(t)(1), 1396a, 1396b, 1396c, 1396d, 1396s

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560

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 method of reimbursement for physicians' services by the Medicaid Program.

Section 1. Definitions. (1) "Add-on code" or "add-on service" means a service designated by a specific CPT code that may be used in conjunction with another CPT code to denote that an adjunctive service has been performed.

(2) "Anesthesia under medical direction" means a service that is:

(a) Directed by an anesthesiologist;

(b) Delivered by an appropriate and qualified anesthesia provider, including a certified registered nurse anesthetist; and

(c) Provided concurrently to no more than four (4) patients by the anesthesiologist.

(3) "Assistant surgeon" means a physician who attends and acts as an auxiliary to a physician performing a surgical procedure.

(4)[~~(3)~~] "Community mental health center" means a facility that meets the community mental health center requirements established in 902 KAR 20:091.

(5)[~~(4)~~] "CPT code" means a code used for reporting procedures and services performed by physicians and published annually by the American Medical Association in Current Procedural Terminology.

(6)[~~(5)~~] "Department" means the Department for Medicaid Services or its designee.

(7)[~~(6)~~] "Direct physician contact" means that the billing physician is physically present with and evaluates, examines, treats, or diagnoses the recipient.

(8)[~~(7)~~] "Drug" means the definition of "drugs" pursuant to 42 U.S.C. 1395x(t)(1).

(9)[~~(8)~~] "Federal financial participation" is defined by 42 C.F.R. 400.203.

(10)[~~(9)~~] "Global period" means the period of time in which related preoperative, intraoperative, and postoperative services and follow-up care for a surgical procedure are customarily provided.

(11)[~~(10)~~] "Healthcare common procedure coding system" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or items.

(12)[~~(11)~~] "Incidental" means that a medical procedure:

(a) Is performed at the same time as a primary procedure; and

(b)1. Requires little additional resources; or

2. Is clinically integral to the performance of the primary procedure.

(13)[~~(12)~~] "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

(14)[~~(13)~~] "Locum tenens physician" means a substitute physician:

(a) Who temporarily assumes responsibility for the professional practice of a physician participating in the Kentucky Medicaid Program; and

(b) Whose services are paid under the participating physician's provider number.

(15)[~~(14)~~] "Major surgery" means a surgical procedure assigned a ninety (90) day global period.

(16)[~~(15)~~] "Managed care organization" means an entity for which the department has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

(17)[~~(16)~~] "Medicaid Physician Fee Schedule" means a list, located at https://chfs.ky.gov/agencies/dms/Pages/feesrates.aspx[~~http://chfs.ky.gov/dms~~], that:

(a) Contains the current reimbursement rates for physician services established by the department in accordance with this administrative regulation; and

(b) Is updated at least quarterly to coincide with the quarterly updates made by the Centers for Medicare and Medicaid Services as required by 42 U.S.C. 1395m and 1395w-4 and 42 C.F.R. Part 414.[

~~(17) "Medical direction" means a service provided:~~

~~(a) Under direct orders from a physician who is:~~

~~1. Not physically present with the recipient during the provision of the service; and~~

~~2. Communicating with the service provider during the provision of the service; or~~

~~(b) Based on a set of written instructions from a physician who is not physically present with the recipient during the provision of the service.~~]

(18) "Minor surgery" means a surgical procedure assigned a ten (10) day global period.

(19) "Modifier" means a reporting indicator used in conjunction with a CPT code to denote that a medical service or procedure that has been performed has been altered by a specific circumstance while remaining unchanged in its definition or CPT code.

(20) "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with each other during the same patient encounter on the same date of service;

(b) Represent two (2) methods of performing the same procedure;

(c) Represent medically impossible or improbable use of CPT codes; or

(d) Are described in Current Procedural Terminology as inappropriate coding of procedure combinations.

(21) "Pediatric teaching hospital" is defined by KRS 205.565(1).

(22) "Physician administered drug" or "PAD" means any rebateable covered outpatient[~~out-patient~~] drug that is:

(a) Provided or administered to a Medicaid recipient;

(b) Billed by a provider other than a pharmacy provider through the medical benefit, including a provider that is a physician office or another outpatient clinical setting; and

(c) An injectable or non-injectable drug furnished incident to provider services that are billed separately to Medicaid.

(23) "Physician assistant" is defined by KRS 311.840(3).

(24) "Professional component" means the physician service component of a service or procedure that has both a physician service component and a technical component.

(25) "Provider group" means a group of at least two (2) individually licensed physicians who:

(a) Are enrolled with the Medicaid Program individually and as a group; and

(b) Share the same Medicaid provider number.

(26) "Relative value unit" or "RVU" means the Medicare-established value assigned to a CPT code that takes into consideration the physician's work, practice expense, and liability insurance.

(27) "Resource-based relative value scale" or "RBRVS" means the product of the relative value unit (RVU) and a resource-based dollar conversion factor.

(28) "State university teaching hospital" means:

(a) A hospital that is owned or operated by a Kentucky state-supported university with a medical school; or

(b) A hospital:

1. In which three (3) or more departments or major divisions of the University of Kentucky or University of Louisville medical school are physically located and that are used as the primary (greater than fifty (50) percent) medical teaching facility for the medical students at the University of Kentucky or the University of Louisville; and

2. That does not possess only a residency program or rotation agreement.

(29) "Technical component" means the part of a medical procedure performed by a technician, inclusive of all equipment, supplies, and drugs used to perform the procedure.

(30) "Usual and customary charge" means the uniform amount that a physician charges the general public in the majority of cases for a specific medical procedure or service.

Section 2. Standard Reimbursement. (1) Reimbursement for a covered service shall be made to:

(a) The individual participating physician who provided the covered service; or

(b) The physician:

1. In a provider group enrolled in the Kentucky Medicaid Program; and

2. Who provided the covered service.

(2) Except as provided in subsection (3) of this section and Sections 3 through 11[~~10~~] of this administrative regulation, reimbursement for a covered service shall be the lesser of:

(a) The physician's usual and customary charge; or

(b) The amount specified in the Medicaid Physician Fee Schedule established in accordance with this administrative regulation.

(3) If there is not an established fee for a listed service in the Medicaid Physician Fee Schedule, the reimbursement shall be forty-five (45) percent of the usual and customary billed charge.

Section 3. Rates Established Using a Relative Value Unit and a Dollar Conversion Factor.

(1) Except for a service specified in Sections 4 through 10[~~9~~] of this administrative regulation:

(a) The rate for a non-anesthesia related covered service shall be established by multiplying RVU by a dollar conversion factor to obtain the RBRVS maximum amount specified in the Medicaid Physician Fee Schedule; and

(b) The rate for a covered anesthesia service shall be established by multiplying the dollar conversion factor (designated as X) by the sum of each specific procedure code RVU (designated as Y) plus the number of units spent on that specific procedure (designated as Z). A unit shall equal a fifteen (15) minute increment of time.

(2) The dollar conversion factor shall be:

(a) Fifteen (15) dollars and twenty (20) cents for a nondelivery related anesthesia service; or

(b) Twenty-nine (29) dollars and sixty-seven (67) cents for all non-anesthesia related services.

Section 4. Medicare Part B Covered Services. Reimbursement for a service covered under Medicare Part B shall be made in accordance with 907 KAR 1:006, Section 3.

Section 5. Services with a Modifier. Reimbursement for a service denoted by a modifier used in conjunction with a CPT code shall be as established in this section.

(1) A service reported with a two (2) digit modifier of "51" shall be reimbursed at fifty (50) percent of the fee listed on the Medicaid Physician Fee Schedule for the service.

(2) A professional component of a service reported by the addition of the two (2) digit modifier "26" shall be reimbursed at the product of:

(a) The Medicare value assigned to the physician's work; and

(b) The dollar conversion factor specified in Section 3(2) of this administrative regulation.

(3) A technical component of a service reported by the addition of the two (2) letter modifier "TC" shall be reimbursed at the product of:

(a) The Medicare value assigned to the practice expense involved in the performance of the procedure; and

(b) The dollar conversion factor specified in Section 3(2) of this administrative regulation.

(4) A bilateral procedure reported by the addition of the two (2) digit modifier "50" shall be reimbursed at 150 percent of the amount assigned to the CPT code.

(5) An assistant surgeon procedure reported by the addition of the two (2) digit modifier "80" shall be reimbursed at sixteen (16) percent of the allowable fee for the primary surgeon.

(6) A procedure performed by a physician acting as a locum tenens physician for a Medicaid-participating physician reported by the addition of the two (2) character modifier "Q6" shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable CPT code.

(7) An evaluation and management telehealth consultation service provided by a telehealth provider or telehealth practitioner in accordance with 907 KAR 3:170 and reported by the appropriate[~~two (2)~~] letter modifier, as applicable,[~~"GT"~~] shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable evaluation and management CPT code.

(8) A level II national healthcare common procedure coding system modifier designating a location on the body shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable code.

Section 6. Laboratory, Venipuncture, and Catheter. (1) Except for a service specified in paragraph (a) or (b) of this subsection, a physician laboratory service shall be reimbursed in accordance with 907 KAR 1:028.

(a) Charges for a laboratory test performed by dipstick or reagent strip or tablet in a physician's office shall be included in the office visit charge.

(b) A routine venipuncture procedure shall not be separately reimbursed if submitted with a charge for an office, hospital, or emergency room visit or in addition to a laboratory test.

(2) Reimbursement for placement of a central venous, arterial, or subclavian catheter shall be:

(a) Included in the fee for the anesthesia if performed by the anesthesiologist;

(b) Included in the fee for the surgery if performed by the surgeon; or

(c) Included in the fee for an office, hospital, or emergency room visit if performed by the same provider.

(3) A laboratory test performed with microscopy shall be reimbursed separately from an evaluation and management CPT code.

Section 7. Delivery-Related Anesthesia, Anesthesia Add-On Services, and Oral Surgery-Related Anesthesia[~~, and Anesthesia Under Medical Direction~~]. (1) The department shall reimburse as follows for the following delivery-related anesthesia services:

(a) For a vaginal delivery, the lesser of:

1. $215; or

2. The actual billed charge;

(b) For a cesarean section, the lesser of:

1. $335; or

2. The actual billed charge;

(c) For neuroxial labor anesthesia for a vaginal delivery or cesarean section, the lesser of:

1. $350; or

2. The actual billed charge;

(d) For an additional anesthesia for cesarean delivery following neuroxial labor anesthesia for vaginal delivery, the lesser of:

1. Twenty-five (25) dollars; or

2. The actual billed charge; or

(e) For an additional anesthesia for cesarean hysterectomy following neuroxial labor anesthesia, the lesser of:

1. Twenty-five (25) dollars; or

2. The actual billed charge.

(2) For an anesthesia add-on service provided to a recipient under the age of one (1) year or over the age of seventy (70) years, the department shall reimburse the lesser of:

(a) Twenty-five (25) dollars; or

(b) The actual billed charge.

(3) For deep sedation or general anesthesia relating to oral surgery performed by an oral surgeon, the department shall reimburse the lesser of:

(a) $150; or

(b) The actual billed charge.[

~~(4) The department shall not reimburse for an anesthesia service if the claim for the service is submitted with a modifier indicating that a service of medical direction was performed.~~]

Section 8. **Medical Direction of Anesthesia and Anesthesia Under Medical Direction Services. (1) A provider or facility performing medical direction shall comply with all Medicare requirements to perform medical direction services located in 42 C.F.R. 415.110 and as found in the Medicare Claims Processing Manual, Chapter 12, Section 50, Paragraph C, as they existed at the time of the applicable claim submission.**

(2) No reimbursement shall be made for an anesthesiologist assistant or a student registered nurse anesthetist unless those provider types are otherwise eligible for licensure or certification and appropriately enrolled with the department and, if applicable, a managed care organization[~~Anesthesia Under Medical Direction. (1) An anesthesia under medical direction service that complies with this section shall be eligible for reimbursement.~~

~~(2) An anesthesiologist performing anesthesia under medical direction, regardless of the type of anesthesia provided, shall personally document performing each element described in subsection (3) of this section.~~

~~(3) An anesthesia under medical direction service shall meet the requirements established in paragraphs (a) through (i) of this subsection.~~

~~(a) The anesthesiologist shall perform a face-to-face examination and evaluation, by telehealth if appropriate pursuant to 907 KAR 3:170, prior to the anesthetic session. The examination and evaluation shall indicate the body system or area examined and the anesthesiologist's findings.~~

~~(b) The anesthesiologist shall personally decide on the appropriate anesthetic for the procedure and shall document that decision.~~

~~(c) The anesthesiologist shall personally participate in person for the most demanding procedures in the treatment plan developed pursuant to this section. This personal participation shall include that the anesthesiologist be in the room and participating in the service if induction and emergence are part of the anesthesia service provided.~~

~~(d) Any services not provided by the anesthesiologist shall be conducted by a qualified individual.~~

~~(e) A qualified individual providing services pursuant to this section shall document and sign their delivery of the service. Any signature shall also include the qualified individual's licensure or certification.~~

~~(f) The anesthesiologist shall monitor the course of anesthesia administration at frequent intervals during the course of treatment.~~

~~(g) The anesthesiologist shall:~~

~~1. Remain physically present for all key and critical portions of the procedure; and~~

~~2. Be immediately available for immediate diagnosis and treatment of an emergency.~~

~~(h)1. The following services may be performed on another patient or case by an anesthesiologist while complying with paragraph (g) of this subsection:~~

~~a. Addressing an emergency of short duration in the immediate area;~~

~~b. Administering an epidural or caudal anesthetic to ease labor pain;~~

~~c. Periodically, but not continuously, monitoring an obstetrical patient;~~

~~d. Receiving patients entering an operating suite for surgery;~~

~~e. Assessing or discharging patients in the recovery room; or~~

~~f. Managing scheduling matters.~~

~~2. A service performed in subparagraph 1. of this paragraph shall not be anesthesia under medical direction if:~~

~~a. The anesthesiologist leaves the immediate area of the operating suite for longer than a short amount of time;~~

~~b. The anesthesiologist is not available to respond to the immediate needs of surgical patients, for example, if the anesthesiologist devotes extensive time to an emergency case; or~~

~~c. The anesthesiologist's services to the anesthesia patients are supervisory in nature.~~

~~(i) The anesthesiologist shall perform and document all appropriate and necessary post-anesthesia care as indicated. Compliance with this paragraph shall include documentation that transfer was done safely to another level of care~~].

Section 9. Vaccines. (1) The department shall reimburse administration of a:

(a) Pediatric vaccine to a recipient under the age of nineteen (19) years; or

(b) Flu vaccine to a recipient of any age.

(2)(a) The department shall reimburse for the cost of a vaccine administered to a recipient under nineteen (19) years of age, in addition to administration of the vaccine, for a vaccine that is:

1. Administered to the recipient by a physician; and

2. Not available free through the Vaccines for Children Program in accordance with 42 U.S.C. 1396s.

(b) The department shall not reimburse for the cost of a vaccine if the vaccine is available free through the Vaccines for Children Program in accordance with 42 U.S.C. 1396s.

Section 10[~~9~~]. Physician Assistant. Reimbursement for a service provided by a physician assistant shall be seventy-five (75) percent of the amount reimbursable to a physician in accordance with this administrative regulation.

Section 11[~~10~~]. Reimbursement Limits and Related Requirements. (1)(a) Except for chemotherapy administration to a recipient under the age of nineteen (19) years, reimbursement for an evaluation and management service with a corresponding CPT code of 99214 or 99215 shall be limited to two (2) per recipient per provider per calendar year.

(b) A claim for an evaluation and management service with a corresponding CPT code of 99214 or 99215 submitted in excess of the limit established in paragraph (a) of this subsection shall be reimbursed as an evaluation and management service with a

corresponding CPT code of 99213.

(c) A claim for an evaluation and management service of moderate or high complexity in excess of the limit established in paragraph (a) of this subsection shall be reimbursed at the Medicaid rate for the evaluation and management service representing medical decision making of low complexity.

(2) Reimbursement for an anesthesia service shall include:

(a) Preoperative and postoperative visits;

(b) Administration of the anesthetic;

(c) Administration of fluids and blood incidental to the anesthesia or surgery;

(d) Postoperative pain management until discharge from the recovery area;

(e) Preoperative, intraoperative, and postoperative monitoring services; and

(f) Insertion of arterial and venous catheters.

(3) With the exception of an anesthetic, contrast, or neurolytic solution, administration of a substance to a recipient by epidural or spinal injection for the control of chronic pain shall be limited to three (3):

(a) Injections per date of service; and

(b) Dates of service per six (6) month period.

(4) If related to the surgery and provided by the physician who performs the surgery, reimbursement for a surgical procedure shall include the following:

(a) A preoperative service;

(b) An intraoperative service; and

(c) A postoperative service and follow-up care within:

1. Ninety (90) calendar days following the date of major surgery; or

2. Ten (10) calendar days following the date of minor surgery.

(5) Reimbursement for the application of a cast or splint shall be in accordance with 907 KAR 1:104, Section 3(4).

(6) Multiple surgical procedures performed by a physician during the same operative session shall be reimbursed as follows:

(a) The major procedure, an add-on code, and other CPT codes approved by the department for billing with units shall be reimbursed in accordance with Section 3(1)(a) or (2)(b) of this administrative regulation; and

(b) The additional surgical procedure shall be reimbursed at fifty (50) percent of the amount determined in accordance with Section 3(1)(a) or (2)(b) of this administrative regulation.

(7) If[~~When~~] performed concurrently, separate reimbursement shall not be made for a procedure that has been determined by the department to be incidental, integral, or mutually exclusive to another procedure.

(8) The department shall not reimburse for an evaluation and management CPT code unless:

(a) Direct physician contact occurred during the visit; or

(b) Direct physician contact is not required in accordance with 907 KAR 3:005, Section 3(2).

Section 12[~~11~~]. Other Provider Preventable Conditions. In accordance with 907 KAR 14:005, the department shall not reimburse for other provider preventable conditions.

Section 13[~~12~~]. Supplemental Payments. (1) In addition to a reimbursement made pursuant to Sections 2 through 11[~~10~~] of this administrative regulation, the department shall make a supplemental payment to a medical school faculty physician:

(a) Who:

1. Is licensed to practice medicine or osteopathy in Kentucky;

2. Is enrolled in the Kentucky Medicaid program in accordance with 907 KAR 1:672;

3. Is participating in the Kentucky Medicaid program in accordance with 907 KAR 1:671;

4. Is employed by a state university teaching hospital, a pediatric teaching hospital, or a state university school of medicine that is part of a university health care system; and

5. Agrees to assign his or her Medicaid reimbursement, in accordance with 42 C.F.R. 447.10, to the state university entity with whom the physician is employed; and

(b) For services provided:

1. Directly by the medical school faculty physician; or

2. By a resident working under the supervision of the medical school faculty physician.

(2) A supplemental payment plus other reimbursements made in accordance with this administrative regulation shall:

(a) Not exceed the physician's charge for the service provided; and

(b) Be paid directly or indirectly to the medical school.

(3) A supplemental payment made in accordance with this section shall be:

(a) Based on the funding made available through an intergovernmental transfer of funds for this purpose by a state-supported school of medicine meeting the criteria established in subsection (1) of this section;

(b) Consistent with the requirements of 42 C.F.R. 447.325; and

(c) Made on a quarterly basis.

Section 14[~~13~~]. The department shall reimburse for physician administered drugs in accordance with 907 KAR 23:020.

Section 15[~~14~~]. Not Applicable to Managed Care Organizations. (1) A managed care organization may elect to reimburse the same amount for physician services as the department does.

(2) A managed care organization shall not be required to reimburse the same amount as established in this administrative regulation for a physician service reimbursed by the department via this administrative regulation.

Section 16[~~15~~]. Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services approval for the reimbursement.

Section 17[~~16~~]. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid recipient based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

LISA D. LEE, Commissioner
ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: February 8, 2021

FILED BY LRC: February 11, 2021 at 4:17 p.m.

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

REGULATORY IMPACT ANALYSIS And Tiering Statement

Contact Person: Jonathan Scott

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes reimbursement requirements for physician services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the department's reimbursement for physician services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing reimbursement policies for physician services provided within Kentucky Medicaid.

(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 reimbursement policies for physician services.

(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 allow for anesthesia to be reimbursed when provided under medical direction in certain circumstances. A new section describes elements that must be present and documented in each anesthesia under medical direction case. These requirements include that the anesthesiologist perform a face-to-face examination, personally decide on the appropriate anesthetic, and personally participate in-person for the most demanding procedures in the treatment plan. The amendments also require that anesthesia under medical direction services not conducted by the anesthesiologist be conducted by a qualified individual who shall also sign and document their participation. Finally the anesthesiologist is required to frequently monitor the medical direction services in-person, and provide appropriate post-anesthesia care.

The amended after comment version deletes the previously new Section 8, and the new language will require providers to precisely follow the existing Medicare guidelines relating to medical direction care. Because the Medicare guidelines are written for states that allow additional providers or providers under supervision to provide anesthesia services, another subsection clarifies that only providers eligible for licensure in Kentucky can provide anesthesia services under medical direction.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow for anesthesia under medical direction care to become a reimbursable service in Kentucky Medicaid.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment allows for anesthesia under medical direction to become a reimbursable service.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows for a new service to be reimbursed and delivered in Kentucky Medicaid.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Anesthesia providers wishing to provide anesthesia under medical direction. Currently there are 1,237 physicians with an anesthesiology specialty enrolled as providers, and 2,350 Nurse Anesthetists enrolled as providers.

(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. Anesthesia providers will need to comply and document compliance with the new requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Providers should not experience any additional costs in complying with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Providers will be able to provide anesthesia under medical direction.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates no additional costs to implement this administrative regulation.

(b) On a continuing basis: The Department for Medicaid Services (DMS) anticipates no additional costs to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds from general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding will be necessary to implement the amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendments to this administrative regulation neither establish nor increase any fees.

(9) Tiering: Is tiering applied? No. Tiering was not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(10)(B)

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid).

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter or different responsibilities than the federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be affected by the amendment to this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(1); 42 U.S.C. 1396a(a)(10)(B)

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

(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? DMS does not expect this administrative regulation to 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? DMS does not expect this administrative regulation to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates no additional costs as a result of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The Department for Medicaid Services (DMS) anticipates no additional costs as a result of this administrative regulation.

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

Revenues (+/-): ____
Expenditures (+/-): ____
Other Explanation: ____

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)

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

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**(7)[(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**(7)[(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.

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 [~~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:

(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 for each state of residence during the past five (5) years;

(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.

(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 **Adolescent or Adult** 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) Fingerprint-based background checks shall be conducted for the following individuals through the Kentucky National Background Check Program pursuant to 906 KAR 1:190, using the KARES system:

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

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

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

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

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

(b) A completed and signed:

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

2. DPP-163, Disclosures to be Provided to and Signed by the Applicant and Adult Household Members.

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

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

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

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

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

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

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

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

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

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

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

(a) Approved; or

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

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

(a) Felony conviction involving:

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

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

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

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

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

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

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

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

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

(8) An **applicant or** individual meeting the requirement of

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

~~(1) A completed form, DPP-157, including the fee for a criminal background check; and~~

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

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

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

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

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

(2) The cabinet shall:

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

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

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

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

1. Kentucky Justice and Public Safety Cabinet; or

2. Administrative Office of the Courts;

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

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

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

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

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

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

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

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

(a) Nature of the offense;

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

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

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

(a) An adolescent member of the household has:

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

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

(b) An adult member of the household has:

1. Been convicted of a nonviolent felony or misdemeanor;

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

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

Section 8[~~7~~]. Reevaluation. (1) **Once enrolled in KARES, 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)~~] 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.

[~~(3)(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.

[~~(4)(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 4 [~~2(1)(a) through (d)~~] of this administrative regulation.

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

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

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

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

~~(b) A new adolescent household member of a caretaker relative or fictive kin shall submit to a child abuse and neglect check conducted by the cabinet within thirty (30) calendar days of residence within the household in accordance with Section 5(2) of this administrative regulation.~~
~~(5) An annual address check of the Sex Offender Registry shall be completed for a kinship caregiver's eligibility redetermination in accordance with 922 KAR 1:130, Section 13(2).~~

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

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

~~(a) Applicant;~~

~~(b) Foster or adoptive parent; and~~

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

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

~~(a) An applicant's household; or~~

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

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

~~(a) Caretaker relative;~~

~~(b) Kinship caregiver;~~

~~(c) Fictive kin; and~~

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

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

~~(a) Caretaker relative;~~

~~(b) Kinship caregiver; or~~

~~(c) Fictive kin~~].

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

(1) KRS 620.050(5); or

(2) The terms and conditions of:

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

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

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

(a) "DPP-157, Background Check Request for Foster or Adoptive Applicants and **Adolescent or Adult** Household Members [~~Checks for Applicants or Foster/Adoptive Parents~~]", **06/21 [~~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 Kinship Caregivers~~]", **06/21 [~~02/21~~]**;

(c) "DPP-162, Applicant Waiver Agreement and Statement", **06/21 [~~02/21~~]**;

(d) "DPP-163, Disclosures to **be [~~Be~~]** Provided to and Signed by the Applicant and Adult Household Members", **06/21 [~~02/21~~]**; and

(e) "DPP-164, Applicant Live Scan Fingerprinting Form", **06/21 [~~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/dcbs/Pages/default.aspx.

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

APPROVED BY AGENCY: June 8, 2021

FILED WITH LRC: June 9, 2021 at 8:16 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Laura Begin or Krista Quarles

(1) Provide a brief summary of:

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

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

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

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

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

(a) How the amendment will change this existing administrative regulation: This amendment contains requirements for completing fingerprint-based background checks using the Kentucky National Background Check Program, to be implemented later this year. This is a national background check process provided through the Federal Bureau of Investigation and has been used by Kentucky for years to conduct background checks of long-term care and daycare staff applicants. Language referring to kinship caregivers pursuant to 922 KAR 1:130 is also being deleted as there are no new applicants for this program due to the moratorium placed on the program in 2013. This amendment also incorporates forms required to complete this process.

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

(b) The necessity of the amendment to this administrative regulation: The Kentucky National Background Check Program is a comprehensive, national background check process provided by the Federal Bureau of Information. Fingerprint-based background checks are more reliable than name-based checks and because this check is national rather than only state-based, results will include offenses committed out of state. The utilization of the Kentucky National Background Check Program is consistent with federal recommendations and this program will further ensure the protection of children in the state's custody.

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

members.

(d) How the amendment will assist in the effective administration of the statutes: The amendment further ensures the protection of children in the state's custody.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of January 3, 2021, there were 9,193 children in the custody of the state who were in placements outside of their home of origin. This includes children in foster or adoptive placements and children being cared for by relative and fictive kin caregivers. This amendment requires many of these caregivers to undergo a background check through the Kentucky National Background Check Program prior to being approved to accept placement of these children. The cabinet and private child-placing agencies are also affected by this amendment as they are the entities who will process these checks for applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The cabinet or child-placing agency will use the KARES system to pay and set up an appointment for an applicant to obtain a fingerprint-based background check at a fingerprinting site. There is very little action required on the part of an applicant, but the protection of children in the custody of the state will be ensured through conducting these comprehensive national checks.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Applicants subject to these background check requirements have their background check costs borne by the cabinet or through a child-placing agency in the course of the agency's business practices. There is a fee for obtaining background checks, but it is not paid directly by the individual. Per state law, the cabinet cannot charge more than the actual cost of processing the background check.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The protection of children in the custody of the state will be ensured through conducting these comprehensive national background checks.

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

(a) Initially: There is a cost to move foster and adoptive parent applicants to the Kentucky National Background Check Program, but that cost will be borne by the cabinet and child-placing agencies to ensure the protection of children in the custody of the state.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Title IV-E (of the Social Security Act), Temporary Assistance for Needy Families Block Grant funds, and State General Funds are the sources of funding to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is an increase in costs to the cabinet and child-placing agencies initially, but that cost evens out and decreases over time due to the lower cost of the rap back feature compared to re-doing checks.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

2. State compliance standards. KRS 194A.050(1), 199.462(4), 199.640(5), 605.120(5), (6), 605.130(7), 605.150

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

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The additional restrictions noted in this analysis were added as additional safeguards for children in out-of-home care. The federal law does not prohibit the addition of these restrictions.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There is no effect on revenues. Fees charged by law enforcement, judicial agencies, or the state for criminal background checks cannot exceed the actual costs of conducting the checks.

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

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

comprehensive background checks will also ensure avoidance of costs that are associated with child maltreatment.

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

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

Revenues (+/-):\

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS

Public comment periods for ordinary, non-emergency regulations are at least two months long. For other regulations with open comment periods, please also see last month's *Administrative Register of Kentucky*.

BOARDS AND COMMISSIONS
Board of Pharmacy
(Amendment)

201 KAR 2:270. Expungement.

RELATES TO: KRS 315.121(6), 315.191(1)(a)
STATUTORY AUTHORITY: KRS 315.121(6), 315.191(1)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations relating to subject matters governed by KRS Chapter 315.[~~pharmacists.~~] KRS 315.121(6) requires the board to promulgate administrative regulations to establish violations that are considered minor and subject to expungement. This administrative regulation establishes the violations considered minor and the criteria and procedure for expungement.

Section 1. Definition. "Expungement" means that:
(1) The affected records shall be sealed;
(2) The proceedings to which they refer shall be deemed not to have occurred; and
(3) The affected party may properly represent that no record exists regarding the matter expunged.

Section 2. Minor Violations and Expungement Procedure.
(1) The following violations are to be considered minor in nature:
(a) Any unlicensed[~~, unregistered~~] or unpermitted practice occurring no more than seven (7) days after the expiration of the license [~~registration,~~] or permit due to failure to timely renew a license[~~, registration,~~] or permit;
(b) Failure to timely obtain required continuing education; and
(c) Failure to comply with any provisions of 201 KAR 2:106 for licensed or permitted facility [~~pharmacy, manufacturer, or distributor~~] closures.
(d) At the discretion of the board, any other offense:
1. Not involving the diversion of controlled substances;
2. Not demonstrating a serious inability to practice the profession or to assist in the practice of pharmacy;
3. Not adversely affecting public health, safety or welfare;
4. Not resulting in economic or physical harm to a person; and
5. Not creating a significant threat of economic or physical harm.
(2) A licensee, registrant, or permit holder seeking expungement of a record of a disciplinary action resulting from a violation designated in subsection (1) of this section shall, in accordance with KRS 315.121(6):
(a) Not have been the subject of a subsequent violation of the same nature for a period of three (3) years after the date of completion of disciplinary sanctions imposed for the violation sought to be expunged; and
(b) Submit a written request to the board.
(3) The board shall consider each request and shall, if the conditions of subsection (2) of this section are satisfied, expunge every record under its custody relating to the subject disciplinary order.
(4) The expungement of a record under this regulation is limited to the removal of records in the board's custody and does not guarantee expungement of a record previously reported to the National Practitioner's Data Bank.

LARRY A. HADLEY, Executive Director
APPROVED BY AGENCY: June 8, 2021
FILED WITH LRC: June 9, 2021 at 4:06 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 31, 2021 at 9:00 a.m. Eastern Time at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 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: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Larry Hadley
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the violations considered minor and the criteria and procedure for expungement.
(b) The necessity of this administrative regulation: KRS 315.191(1)(a) authorizes the Board of Pharmacy to promulgate administrative regulations with minimum requirements for the permitting of those entities that provide non-dispensing pharmacy services. Further, KRS 315.121 authorizes this statute and directs the board to promulgate regulations. This administrative regulation establishes the violations considered minor and the criteria and procedure for expungement.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 315.121 provides that any licensee, permit holder, or certificate holder who is disciplined for a minor violation may request in writing that the board expunge the violation from the licensee's, permit holder's or certificate holder's permanent record. This administrative regulation establishes the violations considered minor and the criteria and procedure for expungement.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation identifies minor violations and criteria and procedure for expungement set forth in KRS 315.121.
(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: Identify minor violations and criteria and procedure for expungement.
(b) The necessity of the amendment to this administrative regulation: The criteria needed to be updated to further define minor offenses.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations pertaining to pharmacists and pharmacies.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective regulation of pharmacists and pharmacies by identifying minor violations and criteria and procedure for expungement.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates licensees, permit holders and registrants will be presented an opportunity to have any

minor offense on their record expunged pursuant to KRS 315.121.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Pharmacies and pharmacists will have to familiarize themselves with amended language. The amended language provides a new right or privilege to licensees, permit holders and registrants. The board will help to educate pharmacists and pharmacies of these changes.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment provides any licensee, permit holder or registrant to petition the board for expungement of what fits the amended language for minor offenses.

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

(a) Initially: No costs will be incurred.

(b) On a continuing basis: No costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding for the implementation of the regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all pharmacists and sponsors that desire approval for continuing education credit.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Pharmacy will be the only entity impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.121(6), KRS 315.191(1)(a).

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

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

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

(c) How much will it cost to administer this program for the first year? No costs are required to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No costs are required to administer this program for subsequent years.

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

Revenues (+/-): 0
Expenditures (+/-): 0
Other Explanation:

BOARDS AND COMMISSIONS
Board of Pharmacy
(Amendment)

201 KAR 2:360. Naloxone dispensing.

RELATES TO: KRS 217.186

STATUTORY AUTHORITY: KRS 217.186, KRS 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.186 requires the Board of Pharmacy to promulgate administrative regulations governing dispensing of naloxone by a pharmacist pursuant to a physician-approved protocol. This administrative regulation establishes the minimum requirements for the pharmacist to be able to dispense naloxone pursuant to a physician-approval protocol.

Section 1. Certification. (1) A pharmacist desiring to achieve certification to initiate the dispensing of naloxone shall complete and submit an Application for Pharmacist Certification for Naloxone Dispensing, Form 1, with the board and provide the following:

(a) Name;

(b) Address;

(c) Phone number; and

(d) Pharmacist license number.[~~; and~~]

(e) [~~Proof of education and training in the use and dispensing of naloxone for treatment of opioid overdose pursuant to Section 5 of this administrative regulation.~~]

(2) The board shall issue the certification to a pharmacist [~~who meets the requirements of subsection (1) of this section~~] within thirty (30) days of the receipt of the application.

Section 2. Procedures for Dispensing of Naloxone. A pharmacist may initiate the dispensing of naloxone under the following conditions:

(1) The pharmacist has met the requirements of Section 1 of this administrative regulation;

(2) The pharmacist has received his or her certification;

(3) The pharmacist has a physician-approved protocol that meets the minimum requirements of Section 3 of this administrative regulation; and

(4) The pharmacist documents the dispensing event in the pharmacy management system including:

(a) Documentation as required in 201 KAR 2:171[~~170~~] for the dispensing of prescription medication; and

(b) Documentation that the individual receiving naloxone was provided with the required training and education pursuant to Section 4 of this administrative regulation, unless the recipient of the Naloxone is a person or agency operating a harm reduction program.

(5) The pharmacist may dispense naloxone to any person or agency who provides training on the mechanism and circumstances for the administration of naloxone to the public as part of a harm reduction program, regardless of whom the ultimate user of the naloxone may be. The documentation of the dispensing of naloxone to any person or agency operating a harm reduction program shall satisfy any general documentation or recording requirements.

Section 3. Protocol Minimum Requirements. A physician-approved protocol authorizing a pharmacist to initiate the dispensing of naloxone shall contain:

(1) Criteria for identifying persons or agencies eligible to receive naloxone under the protocol;

(2) Naloxone products authorized to be dispensed, including:

(a) Name of product;

(b) Dose; and

(c) Route of administration;

(3) Specific education to be provided to the person whom the

naloxone is dispensed;

(4) Procedures for documentation of naloxone dispensation, including procedures for notification of the physician authorizing the protocol, if desired by the physician in accordance with KRS 217.186(5)(b)3;

(5) The length of time the protocol is in effect;

(6) The date and signature of the physician approving the protocol; and

(7) The names and work addresses of pharmacists authorized to initiate dispensing of naloxone under the protocol.

Section 4. Education to be Provided to Person Receiving Naloxone Prescription Under Protocol. A pharmacist dispensing naloxone to a person or agency not operating a harm reduction program shall provide verbal counseling and written educational materials, appropriate to the dosage form of naloxone dispensed[~~, including:~~

~~(1) Risk factors of opioid overdose;~~

~~(2) Strategies to prevent opioid overdose;~~

~~(3) Signs of opioid overdose;~~

~~(4) Steps in responding to an overdose;~~

~~(5) Information on naloxone;~~

~~(6) Procedures for administering naloxone; and~~

~~(7) Proper storage and expiration of naloxone product dispensed~~].

Section 5. [~~Pharmacist Education and Training Required for Certification. A pharmacist who applies for certification to initiate dispensing of naloxone shall have received education and training related to the safe dispensing of opioids and use of naloxone as rescue therapy for opioid overdose, including:~~

~~(1) Risk factors for opioid abuse and overdose;~~

~~(2) Opioid overdose prevention;~~

~~(3) Recognizing and responding to opioid overdoses;~~

~~(4) Indications for use of naloxone as rescue therapy;~~

~~(5) Contraindications for use of naloxone;~~

~~(6) Administration of naloxone;~~

~~(7) Adverse effects associated with naloxone rescue therapy;~~

~~(8) Identification of a patient who meets the criteria for provision of naloxone;~~

~~(9) Required education to provide to persons receiving naloxone;~~

~~(10) Required elements of protocol to initiate dispensing of naloxone; and~~

~~(11) Required documentation when initiating dispensing of naloxone.~~

~~Section 6.~~] Incorporation by Reference. (1) "Application for Pharmacist Certification for Naloxone Dispensing", Form 1, 6/2021 [~~7/2015~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, [~~Suite 300, 125 Holmes Street,~~] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or on the Web site at: https://pharmacy.ky.gov/Documents/APPLICATION%20FOR%20PHARMACIST%20CERTIFICATION%20FOR%20NALOXONE%20DISPENSING.pdf.

LARRY A. HADLEY, Executive Director

APPROVED BY AGENCY: June 11, 2021

FILED WITH LRC: June 11, 2021 at 8:39 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 31, 2021 at 9:00 a.m. Eastern Time at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 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: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Larry Hadley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amendment establishes the minimum requirements for the pharmacist to be able to dispense naloxone pursuant to a physician-approval protocol to an individual or an agency.

(b) The necessity of this administrative regulation: This administrative regulation amendment is necessary pursuant to changes made in KRS 217.186 allowing for the dispensing of naloxone to agencies. This administrative regulation amendment enables the dispensing of naloxone as part of a harm reduction program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation amendment, authorized by KRS 217.186, establishes the minimum requirements for the pharmacist to dispense naloxone pursuant to a physician-approval protocol.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 217.186 enables the Board of Pharmacy to promulgate an administrative regulation to identify the appropriate certification and procedures for the dispensing of naloxone aby a pharmacist to an individual or an agency.

(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 authorizes a pharmacist to dispense naloxone to any person or agency for administration to the public as part of a harm reduction program. Moreover, this amendment removes the educational requirement for pharmacist certification to dispense naloxone.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to conform to the language in KRS 217.186 regarding the ability for a pharmacy to dispense to an agency.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 217.186 requires the Board of Pharmacy to promulgate administrative regulations governing dispensing of naloxone by a pharmacist pursuant to a physician-approved protocol.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective regulation of pharmacists and pharmacies by identifying the minimum requirements to dispense naloxone pursuant to a physician-approval protocol.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The board anticipates pharmacists, individual persons, and agencies will be minimally impacted by this regulation amendment. This amendment removes the educational requirements necessary for a pharmacist to become naloxone certified.

(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: Pharmacists, individual persons, and agencies will have to familiarize themselves with the amended

language. This regulation amendment provides greater authorization to pharmacists by removing the educational requirement for pharmacist certification and allowing for the dispensing of naloxone to agencies. The board will help educate identified entities of these changes.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). This amendment will provide pharmacists with a heightened ability to combat the opioid epidemic by authorizing pharmacists to dispense naloxone to agencies as part of a harm reduction program.

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

(a) Initially: No costs will be incurred.

(b) On a continuing basis: No costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding to enforce the regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation is applicable to all pharmacists, individual persons, and agencies which seek to dispense naloxone as part of a harm reduction program.

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? Pharmacies and private and public agencies will be impacted by this administrative regulation amendment.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217.186, KRS 315.191(1)(a).

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

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

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

(c) How much will it cost to administer this program for the first year? No costs are required to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No costs are required to administer this program for subsequent years.

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

Revenues (+/-): 0

Expenditures (+-): 0

Other Explanation:

BOARDS AND COMMISSIONS
Board of Dentistry
(Amendment)

201 KAR 8:520. Fees and fines.

RELATES TO: KRS 218A.205(3)(e)4., 313.022, 313.030, 313.100(2)(c)

STATUTORY AUTHORITY: KRS 218A.205(3)(e)4., 313.022(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.022(1) requires the board to promulgate administrative regulations to prescribe a reasonable schedule of fees, charges, and fines. This administrative regulation establishes fees, charges, and fines for the issuance, renewal, and reinstatement of licenses, for services and materials provided by the board, for investigations, and for infractions.

Section 1. Dentists. (1) The initial licensure fee for a [~~general~~] dental license applied for in the first year of the biennial license period [~~a nonrenewal year~~]shall be $325.

(2) The initial licensure fee for a [~~general~~]dental license applied for in the second year of the biennial license period [~~a renewal year~~] shall be $175.

(3) The renewal fee for a [~~general~~]dental license appropriately renewed on or before the expiration of the license shall be $295.

(4) The [~~renewal~~]reinstatement fee for an expired [~~a general~~]dental license reinstated [~~renewed~~] between January 1 and January 15 of the year following the expiration of the license shall be $280 in addition to the renewal fee. (5) The [~~renewal~~]reinstatement fee for an expired [~~a general~~]dental license reinstated [~~renewed~~]between January 16 and January 31 of the year following the expiration of the license shall be $560 in addition to the renewal fee.

(6) The [~~renewal~~]reinstatement fee for an expired [~~a general~~]dental license reinstated [~~renewed~~]on or after February 1 of the year following the expiration of the license shall be $1,120 in addition to the renewal fee.

(7) The initial licensure fee and renewal fee for a charitable limited dental license shall be twenty-five (25) dollars.[~~The initial fee for a dental anesthesia or sedation permit shall be $250.~~

~~(8) The renewal fee for a dental anesthesia or sedation permit shall be seventy-five (75) dollars and is in addition to the renewal fee for a general dental license.~~

~~(9) The initial fee for an anesthesia or sedation facility certificate shall be $250.~~

~~(10) The renewal fee for an anesthesia or sedation facility certificate shall be seventy-five (75) dollars.~~]

(8)[~~(11)~~] The initial licensure fee for a dental specialty license[~~application fee~~] shall be $100.

(9)[~~(12)~~] The renewal fee for a dental specialty license [~~renewal fee~~]shall be fifty (50) dollars and is in addition to the renewal fee for a [~~general~~]dental license.

(10)[~~(13)~~] The reinstatement fee for [~~reinstatement of~~] a [~~properly~~]retired [~~general~~]dental license shall be $325[~~350~~].

(11)[~~(14)~~] The reinstatement fee for [~~reinstatement of~~] a [~~properly~~]retired dental specialty license shall be fifty (50) dollars and is in addition to the reinstatement [~~renewal~~]fee for a standard [~~general~~] dental license.

(12) The initial fee for a dental anesthesia or sedation permit shall be $250.

(13) The renewal fee for a dental anesthesia or sedation permit shall be seventy-five (75) dollars.

Section 2. Dental Hygienists. (1) The initial licensure fee for a dental hygiene license applied for in the first year of the biennial license period [~~a nonrenewal year~~]shall be $125.

(2) The initial licensure fee for a dental hygiene license applied for in the second year of the biennial license period [~~a renewal year~~] shall be seventy-five (75) dollars.

(3) The renewal fee for a dental hygiene license appropriately renewed on or before the expiration of the license shall be $110.

(4) The [~~renewal~~]reinstatement fee for an expired dental hygiene license reinstated [~~renewed~~]between January 1 and

January 15 of the year following the expiration of the license shall be $130 in addition to the renewal fee.

(5) The [~~renewal~~]reinstatement fee for an expired dental hygiene license reinstated [~~renewed~~]between January 16 and January 31 of the year following the expiration of the license shall be $260 in addition to the renewal fee.

(6) The [~~renewal~~]reinstatement fee for an expired dental hygiene license reinstated [~~renewed~~]on or after February 1 of the year following the expiration of the license shall be $520 in addition to the renewal fee.

(7) The initial licensure fee and renewal fee for a charitable limited dental hygiene license shall be twenty-five (25) dollars.

(8) The initial registration fee to administer local anesthesia [~~registration fee~~]shall be fifty (50) dollars.

(9)[~~(8)~~] The initial registration fee to practice under [~~dental hygiene~~] general supervision [~~registration fee~~]shall be fifty (50) dollars.

(10)[~~(9)~~] The initial registration fee to administer an [~~dental hygiene~~] intravenous access line [~~registration fee~~]shall be fifty (50) dollars.

(11)[~~(10)~~] The initial registration fee to perform [~~dental hygiene~~]laser debridement [~~registration fee~~]shall be fifty (50) dollars.

(12)[~~(11)~~] The initial registration fee to be a public health registered dental hygienist shall be fifty (50) dollars.

(13) The reinstatement fee for [~~reinstatement of~~]a [~~properly~~]retired dental hygiene license shall be $125.

Section 3. Anesthesia and Sedation Facilities. (1) The initial certification fee for an anesthesia or sedation facility shall be $250.

(2) The renewal fee for an anesthesia or sedation facility certificate shall be seventy-five (75) dollars.

(3) The reinstatement fee for an expired anesthesia or sedation facility certificate reinstated between January 1 and January 15 of the year following the expiration of the certificate shall be $50 in addition to the renewal fee.

(4) The reinstatement fee for an expired anesthesia or sedation facility certificate reinstated between January 16 and January 31 of the year following the expiration of the certificate shall be $100 in addition to the renewal fee.

(5) The reinstatement fee for an expired anesthesia or sedation facility certificate reinstated on or after February 1 of the year following the expiration of the certificate shall be $150 in addition to the renewal fee.

Section 4. Dental Laboratories. (1) The initial registration fee for a commercial dental laboratory shall be $150.

(2) The renewal fee for a dental laboratory registration appropriately renewed on or before the expiration of the registration shall be $150.

(3) The reinstatement fee for an expired dental laboratory registration reinstated between August 1 and August 15 following the expiration of the certificate shall be $100 in addition to the renewal fee.

(4) The reinstatement fee for an expired dental laboratory registration reinstated between August 16 and August 31 following the expiration of the certificate shall be $150 in addition to the renewal fee.

(5) The reinstatement fee for an expired dental laboratory registration reinstated on or after September 1 following the expiration of the certificate shall be $200 in addition to the renewal fee.

Section 5. General Fees. (1) The fee for the verification of a license shall be forty (40) dollars.

(2) [~~The fee for a duplicate license shall be twenty-five (25) dollars.~~

~~(3)~~] The fee for a contact list for either currently licensed dentists, currently licensed dental hygienists, or currently registered dental assistants shall be:

(a) $100 for lists obtained for not-for-profit use; and

(b) $1,000 for lists obtained for profit use.

(3)[~~(4) The fee for a query of the National Practitioner Data Bank shall be twenty-five (25) dollars.~~]

~~(5)~~] The fee for any returned check or rejected electronic payment shall be [~~twenty-five (25) dollars~~]equal to the fee charged to the board by the bank.

Section 6[4]. General Fines. (1) Fines shall be determined [~~may be agreed to~~]by settlement or agreed order [~~agreement or as listed in this section.~~]as negotiated by the Law Enforcement Committee or as issued by a hearing panel in accordance with KRS 313.100.[

~~(2) The costs of a disciplinary action taken as a result of a hearing shall be equal to the amount of all actual and necessary costs associated with the hearing.~~

~~(3) If a licensee is found to be deficient on hours following a continuing education audit, the fine shall be $200 per hour deficient not to exceed $5,000.~~

~~(4) The fine for failure of a follow-up infection control inspection shall be $500.~~

~~(5) The fine for failure of a follow-up anesthesia or sedation facility inspection, performed no sooner than thirty (30) days following an initial failed inspection, shall be $1,500.~~]

Section 7[~~5~~]. All fines and fees paid to the board shall be nonrefundable.

JEFF ALLEN, Executive Director

APPROVED BY AGENCY: June 2, 2021

FILED WITH LRC: June 3, 2021 at 11:05 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this Amendment shall be held on August 24, 2021 at 4:00 p.m., Eastern Time at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed Amendment. 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 Amendment. Written comments shall be accepted through August 31, 2021. Send written notification of intent to be heard at the public hearing, or written comments on the proposed Amendment to the contact person below.

CONTACT PERSON: Jeff Allen, Executive Director, Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email jeffrey.allen@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeff Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets amounts for the various fees and fines issued by the board.

(b) The necessity of this administrative regulation: KRS 313.022(1) requires the board to promulgate administrative regulations regarding fees and fines.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes a schedule of reasonable fees, fines, and other charges that do not exceed the national average of other state dental boards, as required by statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes standardized fees and fines in conformity with its authorizing statute.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies previous language, creates new fee categories and eliminates mandatory fine amounts.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to create fee schedules for licenses, registrations, and certifications established in other administrative regulations within 201 KAR Chapter 8.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment updates the schedule of fees and fines in conformity with its authorizing statute.

(d) How the amendment will assist in the effective administration of the statutes: The amendment ensures that the schedule of fees and fines issued by the board is clear, appropriate, and uniformly applied in compliance with applicable law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will primarily affect the approximately six thousand dentists and dental hygienists licensed in Kentucky, as well as future applicants for such licenses. Dental labs doing business in Kentucky will also 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 an amendment, including:

(a) List the actions that each of the related entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation will continue to require that entities pay all applicable fee(s). The vast majority of entities will experience no changes as a result of the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs for most entities will be unchanged as a result of this amendment. Exceptions include the establishment of a $25 limited license fee for out of state providers performing charitable work in Kentucky as well as various penalties for the late renewal of sedation facilities and dental labs, which range from $50 to $200. Also, licensees who pay fines associated with settlement agreements or administrative hearings will no longer need to conform to a mandatory fine schedule. Instead, these punitive costs will be determined on a case-by-case basis.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All entities will benefit from the transparency and detail this amendment adds to the existing administrative regulation, thereby reducing non-compliance and associated costs.

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

(a) Initially: No added costs are anticipated as a result of the amendment.

(b) On a continuing basis: Added costs as a result of this amendment are anticipated to be negligible or nonexistent.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Licensure fees will fund 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 new fee categories will generate minimal revenue but should still cover the negligible expenses associated with implementation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Yes, this administrative regulation is specifically intended to provide a fee schedule in accordance with its authorizing statute.

(9) TIERING: Is tiering applied? No, this amendment impacts all similarly situated practitioners 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? None.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 313.022.

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment is not expected to alter the costs associated with the existing administrative regulation.

(d) How much will it cost to administer this program for subsequent years? This amendment is not expected to alter the costs associated with the existing administrative regulation.

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

Revenues (+/-): None expected. Any increase in revenue from fees should be negligible and will likely be offset by a decrease in revenue from fines as a result of improved compliance.

Expenditures (+/-): None expected.

Other explanation: Not applicable.

BOARDS AND COMMISSIONS
Board of Chiropractic Examiners
(Amendment)

201 KAR 21:035. Seal.

RELATES TO: KRS 312.019

STATUTORY AUTHORITY: KRS 312.019

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(4) provides that the board shall adopt a seal.

Section 1. The official seal of the board shall consist of two (2) concentric circles with the words "[~~The~~]Kentucky [~~State~~]Board of Chiropractic Examiners" between the two (2) circles. The likeness of two (2) hands in the position of [~~an~~]a chiropractic adjustment shall appear within the inner circle with the words "Utile Dulce" immediately below the likeness.

Section 2. The official seal shall be affixed to all licenses, certifications and registrations issued by the board and to other documents the board deems necessary or appropriate.

DR. JEFFREY SMITH, Chair

APPROVED BY AGENCY: June 10, 2021

FILED WITH LRC: June 10, 2021 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 12:00 p.m. on August 31, 2021, at 500 Mero Street, 127CW, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: https://governor.ky.gov/covid-19. Members of the public may utilize the following link to attend the meeting by video conference: Join from PC, Mac, Linux, iOS or Android: https://us02web.zoom.us/j/81055276158?pwd=SDB0ZHFETkhVS1kyc3M5Y0d3V0xnUT09, Password: 518102, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 257130. 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 August 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: August L. Pozgay, Attorney for the Board of Chiropractic Examiners, 500 Mero Street, 218NC, Frankfort, Kentucky 40601, phone (502) 782-0714, fax (502) 564-4818, email august.pozgay@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: August L. Pozgay

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 3I2, regulating the practice of chiropractic. This administrative regulation establishes an official seal for use with Board documents.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 312.019.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes an official seal for use with board documents.

(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 KRS Chapter 312 by designing a seal that is identifiable to licensed practitioners and the consuming public.

(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 makes minor changes to the board's official seal.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the board's official seal consistent with other terminology used by the board.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes the board's official seal.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 312 by carrying out the legislative mandate for the board to establish requirements for the practice of chiropractic.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will only affect the Board of Chiropractic Examiners.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: No action is required of the regulated entities to comply with this regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow chiropractors to have an updated official seal.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Chiropractic Examiners is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because it only affects the Board of Chiropractic Examiners.

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 Chiropractic Examiners.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS Chapter 312.

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 the agency.

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

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 Chiropractic Examiners
(Amendment)

201 KAR 21:054. Emergency orders.

RELATES TO: 312.019(3)

STATUTORY AUTHORITY: KRS 312.019(3), 312.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(1) authorizes the Board of Chiropractic Examiners to establish administrative regulations relating to the practice of chiropractic. KRS 312.019(3) authorizes the board to suspend or limit any license issued by it. This administrative regulation establishes procedures for the emergency suspension or restriction of a license if there is [~~a risk to the public~~]an immediate danger to the health, welfare, or safety of a patient or the general public.

Section 1. Emergency Order of Suspension or Limitation. (1) The board president or the board as a whole may take emergency

action, which shall be in accordance with KRS 13B.125, by issuing an emergency order to suspend or limit a license to practice chiropractic. An emergency order shall:

(a) Be based upon a finding by the board president [~~and vice president~~]or the board as a whole that:

1. The emergency order is in the public interest; and

2. There is substantial evidence of immediate danger to the health, welfare, or safety of a patient or the general public;

(b) Specify the factual basis that caused the emergency condition to exist;

(c) Specify the statutory or regulatory violation that caused the emergency condition to exist; and

(d) Be served on a licensee in accordance with KRS 13B.050(2).

(2) Upon receipt of an emergency order, a licensee shall immediately comply with the emergency order of suspension or limitation.

(3) A licensee may appeal the emergency order. An appeal shall be:

(a) Made by a written request to the board;

(b) In accordance with KRS 13B.125; and

(c) Made within thirty (30) days after receipt of the order.

(4) A chiropractor's license shall be revoked if:

(a) The licensee does not request a hearing; or

(b) The condition that resulted in the emergency order is not corrected within thirty (30) calendar days of service of the emergency order.

(5) The emergency order shall be affirmed if there is substantial evidence of an immediate threat to public health, safety, or welfare.

DR. JEFFREY SMITH, Chair

APPROVED BY AGENCY: June 10, 2021

FILED WITH LRC: June 10, 2021 at 12:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 12:00 p.m. on August 31, 2021, at 500 Mero Street, 127CW, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: https://governor.ky.gov/covid-19. Members of the public may utilize the following link to attend the meeting by video conference: Join from PC, Mac, Linux, iOS or Android: https://us02web.zoom.us/j/81055276158?pwd=SDB0ZHFETkhVS1kyc3M5Y0d3V0xnUT09, Password: 518102, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 257130. 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 August 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: August L. Pozgay, Attorney for the Board of Chiropractic Examiners, 500 Mero Street, 218NC, Frankfort, Kentucky 40601, phone (502) 782-0714, fax (502) 564-4818, email august.pozgay@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: August L. Pozgay

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 3I2, regulating the practice of chiropractic. This administrative regulation establishes procedures for an emergency suspension if a licensee is found to be a danger to the public.

(b) The necessity of this administrative regulation: This administrative regulation is required to clarify who can issue an emergency suspension.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. KRS 312.019(3) allows the board to suspend a license. This administrative regulation clarifies who can issue an emergency suspension.

(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 KRS Chapter 312 by allowing the board to issue an emergency suspension of a license if they are a danger to the public.

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

(a) How the amendment will change this existing administrative regulation: The Amendment clarifies who can issue an emergency summary suspension.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify who can issue an emergency summary suspension.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation clarifies who can issue an emergency summary suspension.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 312 by carrying out the legislative mandate for the board to establish requirements for the practice of chiropractic and to protect the consuming public.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,120 licensed chiropractors practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients.

(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 is no action required for any regulated entity that is necessary to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation should add no additional cost to the licensed chiropractor.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will benefit the regulated community by clarifying the procedures for an emergency summary suspension if a licensee is found to be a danger to the public.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Chiropractic Examiners is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increases in fees or funding is necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under 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 Kentucky Board of Chiropractic Examiners.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS Chapter 312.

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 the agency.

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

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 Chiropractic Examiners
(Amendment)

201 KAR 21:070. Licensing examination requirements.

RELATES TO: KRS 312.019(9), 312.115(2)

STATUTORY AUTHORITY: KRS 312.019(9), 312.115

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312. KRS 312.115(2) provides that the examination for a chiropractic license may consist in part of the National Board Examination of the National Board of Chiropractic Examiners. This administrative regulation establishes the chiropractic licensing examination procedures.

Section 1. (1) An applicant for licensure shall hold a National Board of Chiropractic Examiners Certificate of Attainment, which [~~indicates~~]demonstrates that the applicant has passed the National Board of Chiropractic Examiners (NBCE) examination, parts I, II, III, and IV, by the NBCE's recommended passing score.

(2)(a) An official National Board of Chiropractic Examiners transcript of scores for parts I, II, III, and IV shall be on file with the Kentucky Board of Chiropractic Examiners.

(b) Official transcripts shall be requested by the applicant to be sent to the Kentucky Board of Chiropractic Examiners directly from the National Board of Chiropractic Examiners.

(3) The state's requirement for successful completion (passage) of all parts of the National Board of Chiropractic Examiners examination shall be the National Board of Chiropractic Examiners recommended passing score.

DR. JEFFREY SMITH, Chair

APPROVED BY AGENCY: June 10, 2021

FILED WITH LRC: June 10, 2021 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 12:00 p.m. on August 31, 2021, at 500 Mero Street, 127CW, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: https://governor.ky.gov/covid-19. Members of the public may utilize the following link to attend the meeting by video conference: Join from PC, Mac, Linux, iOS or Android: https://us02web.zoom.us/j/81055276158?pwd=SDB0ZHFETkhVS1kyc3M5Y0d3V0xnUT09, Password: 518102, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 257130. 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 August 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: August L. Pozgay, Attorney for the Board of Chiropractic Examiners, 500 Mero Street, 218NC, Frankfort, Kentucky 40601, phone (502) 782-0714, fax (502) 564-4818, email august.pozgay@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: August L. Pozgay

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 3I2, regulating the practice of chiropractic. This administrative regulation establishes the requirement that to become a licensee an individual must pass the National Board of Chiropractic Examiners examination.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 312.019.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 3I2, regulating the practice of chiropractic. This administrative regulation establishes requirement that to become a licensee an individual must pass the National Board of Chiropractic Examiners examination.

(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 KRS Chapter 312 by specifying the examination requirements for licensure.

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

(a) How the amendment will change this existing administrative regulation: The Amendment clarifies that to become a licensee an individual must pass the National Board of Chiropractic Examiners examination.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify that to become a licensee an individual must pass the National Board of Chiropractic Examiners examination.

(c) How the amendment conforms to the content of the

authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes procedures to become a licensee an individual must pass the National Board of Chiropractic Examiners examination.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 312 by specifying the examination requirements for licensure.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect applicants for licensure. This number is unknown.

(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 regulation applies to potential applicants and not current regulated entities. It will assist the applicants by specifying the examination necessary to become a licensee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation should add no additional cost to the licensed chiropractor.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will benefit applicants by clarifying the examination required for licensure.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Chiropractic Examiners is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increases in fees or funding is necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated applicants are treated similarly under 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 Kentucky Board of Chiropractic Examiners.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS Chapter 312.

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 the agency.

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

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 Chiropractic Examiners
(Amendment)

201 KAR 21:090. Pre-chiropractic [~~Prechiropractic~~] education requirements.

RELATES TO: KRS 312.019, 312.085

STATUTORY AUTHORITY: KRS 312.019(2), (9)(h), 312.085(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(2) requires the board to pass upon the qualifications of applicants for a license to practice chiropractic. KRS 312.019(9) (h) and 312.085(2) authorize the board to establish by administrative regulation a two (2) year pre-chiropractic[~~prechiropractic~~] course of instruction to be completed prior to entry into chiropractic college. This administrative regulation establishes that course of instruction.

Section 1. Pre-chiropractic[~~Prechiropractic~~] Education. An applicant for licensure shall have satisfactorily completed, prior to attending chiropractic college, and as a part of the applicant's required minimal sixty (60) semester credit hours of pre-chiropractic [~~prechiropractic~~]education, the course of instruction established and required by the Council on Chiropractic Education.

DR. JEFFREY SMITH, Chair

APPROVED BY AGENCY: June 10, 2021

FILED WITH LRC: June 10, 2021 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 12:00 p.m. on August 31, 2021, at 500 Mero Street, 127CW, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: https://governor.ky.gov/covid-19. Members of the public may utilize the following link to attend the meeting by video conference: Join from PC, Mac, Linux, iOS or Android: https://us02web.zoom.us/j/81055276158?pwd=SDB0ZHFETkhVS1kyc3M5Y0d3V0xnUT09, Password: 518102, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 257130. 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 August 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: August L. Pozgay, Attorney for the Board of Chiropractic Examiners, 500 Mero Street, 218NC, Frankfort, Kentucky 40601, phone (502) 782-0714, fax (502) 564-4818, email august.pozgay@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: August L. Pozgay

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes the requirements for pre-chiropractic education.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 312.019.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes requirements for pre-chiropractic education.

(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 KRS Chapter 312 by specifying the education requirements for licensure.

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

(a) How the amendment will change this existing administrative regulation: The Amendment clarifies requirements for pre-chiropractic education.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify requirements for pre-chiropractic education.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes requirements for pre-chiropractic education.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 312 by specifying the requirements for pre-chiropractic education.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will only affect potential applicants and that number is unknown.

(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 regulation applies to applicants and not regulated entities. The current regulated entities will have no additional requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation should add no additional cost to the licensed chiropractor.

(c) As a result of compliance, what benefits will accrue to the entities: The applicants will be able to apply for licensure.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Chiropractic Examiners is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increases in fees or funding is necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated applicants are treated similarly under 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 Kentucky Board of Chiropractic Examiners.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS Chapter 312.

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 the agency.

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

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 Chiropractic Examiners
(Amendment)

201 KAR 21:100. Minimum standards for recordkeeping or itemized statements.

RELATES TO: KRS 312.019(9)(j)

STATUTORY AUTHORITY: KRS 312.019

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(9)(j) authorizes the board to promulgate administrative regulations to establish minimum standards for recordkeeping and issuance of itemized statements. This administrative regulation establishes standards for recordkeeping and issuance of itemized statements.

Section 1. Office Visits; Recordkeeping. (1) The patient's records shall include the initial history, exams, re-exams [~~reexams~~], diagnosis, update diagnosis, standing orders or plan of care (updated as needed or at re-exam [~~reexam~~]), and appropriate diagnostic and imaging studies. This information shall be legibly recorded in the patient's records and properly identified.

(2) Legible documentation, whether electronically generated,

computer generated, typewritten, or hand written, shall record each visit, and shall include:

(a) Date of the visit;

(b) Patient name, symptoms and findings, comment and interval history, if any;

(c) Procedures performed, if any;

(d) Additional pertinent comments, instructions, or orders; [~~and~~]

(e) The treating doctor's name; and

(f) The name and relationship to the patient of any other person present during any portion of the examination.

Section 2. Requests for Records[~~Itemized Statements~~]. Requests for office records, or itemized statements, including dates, services and fees, shall be honored within ten (10) business days of receipt of the request.

Section 3. Record Maintenance. All patient records shall be maintained for a minimum of seven (7) years.

DR. JEFFREY SMITH, Chair

APPROVED BY AGENCY: June 10, 2021

FILED WITH LRC: June 10, 2021 at noon.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 12:00 p.m. on August 31, 2021, at 500 Mero Street, 127CW, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: https://governor.ky.gov/covid-19. Members of the public may utilize the following link to attend the meeting by video conference: Join from PC, Mac, Linux, iOS or Android: https://us02web.zoom.us/j/81055276158?pwd=SDB0ZHFETkhVS1kyc3M5Y0d3V0xnUT09, Password: 518102, Or Telephone: Dial: USA 713 353 0212, USA 8888227517 (US Toll Free), Conference code: 257130. 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 August 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: August L. Pozgay, Attorney for the Board of Chiropractic Examiners, 500 Mero Street, 218NC, Frankfort, Kentucky 40601, phone (502) 782-0714, fax (502) 564-4818, email august.pozgay@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: August L. Pozgay

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes procedures for record keeping.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 312.019.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes procedures for record keeping.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists the licensee by setting forth the requirements for how records are to be kept.

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

(a) How the amendment will change this existing administrative regulation: The Amendment clarifies which records must be kept and the deadline for production of those records if request.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update procedures for record keeping and includes office records in the ten-day deadline for production.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes procedures for record keeping and includes office records in the ten-day deadline for production.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 312 by clarifying which records must be kept and the deadline for the production of those records if requested.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,120 licensed chiropractors practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who may want copies of their office records.

(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 only action of the regulated entities is to ensure that their records are complete and can be provided upon request.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation should add no additional cost to the licensed chiropractor.

(c) As a result of compliance, what benefits will accrue to the entities: The required records will be available for production as required by statute.

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

(a) Initially: There is not cost to the administrative body.

(b) On a continuing basis: There is not cost to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Chiropractic Examiners is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increases in fees or funding is necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under 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 Kentucky Board of Chiropractic Examiners.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS Chapter 312.

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 the agency.

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

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

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

301 KAR 1:012. Boating, swimming and water skiing and other activities on department-owned or controlled lakes.

RELATES TO: KRS 150.090, 150.620, 150.625, 150.640

STATUTORY AUTHORITY: KRS 150.025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to promulgate administrative regulations restricting the use of state recreational areas. This administrative regulation establishes the safety procedures for multiple use of state waters to ensure noninterference with the primary users, fishermen.

Section 1. Definitions. (1) "Slow speed" means speed attained with the throttle of the motor set at its slowest forward position.

(2) "Speeding and reckless operation" means any operation of a boat in any area of a lake that may endanger other persons or craft using the lake by intimidation, direct contact or by waves created by the speed or reckless operation of a boat.

Section 2. Water skiing is permitted on Guist Creek Lake and Lake Beshear beginning the third Thursday of May and continuing through September 30, annually, during the daylight hours of 10 a.m. to sunset and only in those areas designated and marked as "ski areas" by buoys or signs by the Department of Fish and Wildlife Resources. Water skiing is prohibited in coves or embayments of the lakes.

Section 3. Water skiing and the pulling of water skiers is permitted on Lake Malone beginning the third Thursday of May and continuing through October 31, annually, but only during the daylight hours of 10 a.m. to sunset and only in those areas designated and marked as "ski areas" by buoys or signs by the Department of Fish and Wildlife Resources. Water skiing and pulling of a water skier is prohibited in coves or embayments of Lake Malone.

Section 4. Water skiing and tubing are prohibited on Cedar Creek Lake.

Section 5. Boat speeding and reckless operation of a boat is not permitted at any time in any area of any lake owned or controlled by the Department of Fish and Wildlife Resources including the ski zones. All boats, except those being operated in the designated skiing areas during the annual summer water skiing period, shall in all areas of any lake maintain slow speed as defined in subsection (1) of this section when passing any other boat in which the occupants are actively engaged in fishing.

Section 6. Swimming in any lake controlled or owned by the Department of Fish and Wildlife Resources is prohibited, except in areas specifically set aside for swimming at which a qualified lifeguard is on duty, or while entering or exiting the water for purposes of water skiing.

Section 7. Camping is prohibited on property owned or controlled by the Department of Fish and Wildlife Resources that surrounds a lake owned or controlled by the Department of Fish and Wildlife Resources, except as designated by a department sign.

Section 8. All officers and agents of the Department of Fish and Wildlife Resources shall have full authority to enforce the provisions of this administrative regulation. Failure to comply with the rules and specifications established in this administrative regulation shall constitute grounds for revocation of the rights and privileges of any person to admittance to and to the use of these public waters.

RICH STORM, Commissioner
MICHAEL E. BERRY, Secretary

APPROVED BY AGENCY: May 19, 2021

FILED WITH LRC: May 19, 2021 at 4:29 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 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 August 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes the safety procedures for multiple use of state waters to ensure noninterference with the primary users, anglers.

(b) The necessity of the administrative regulation: This regulation is necessary to ensure the safety of all users on our multiple-use state waters.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025 authorizes the department to promulgate administrative regulations restricting the use of state recreational areas.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by providing use restrictions necessary to prevent interference between different user groups and provide a safe environment for all users of our multi-use state waters.

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

(a) How the amendment will change the existing administrative regulation: This amendment clarifies restrictions on swimming when in the act of water skiing.

(b) The necessity of the amendment to this administrative regulation: Regulation wording was confusing as to whether swimming is allowed while water skiing.

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

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

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: All individuals using department-owned or controlled lakes open to water skiing 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: No extra actions will need to be taken.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be no confusion as to whether swimming while in the act of water skiing is allowed.

(5) Provide an estimate of how much it will cost 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 cost on a continuing basis.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals water skiing on these lakes 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 authorizes the department to promulgate administrative regulations restricting the use of state recreational areas.

(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 in the first year.

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

(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 1:016. Use of lands and waters on lakes owned or controlled by the department.

RELATES TO: KRS 150.090, 150.625, 150.640

STATUTORY AUTHORITY: KRS 150.025(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations reasonably necessary to implement or carry out the purposes of KRS Chapter 150. KRS 150.620 authorizes the department to promulgate administrative regulations governing the use of lands and waters it has acquired for wildlife management and public recreation. This administrative regulation governs all private structures on property owned or controlled by the department, the private use of public lake water, and permitted and prohibited activities on department-owned or controlled land surrounding department-owned waters.

Section 1. Definitions. (1) "Adjacent property owner" means the owner of real property that shares a common boundary with department property.

(2) "Boat dock" means a privately owned floating or fixed structure that is used by an adjacent landowner to moor a boat on department property.

(3) "Boat dock tag" means a metal tag provided by the department that has a unique combination of letters and numbers, and is permanently affixed to an approved boat dock so that it is visible from the lake.

(4) "Department property" means lands or waters controlled by the department through ownership, lease, license, easement, or cooperative agreement at the department-owned lakes listed in Section 2 of this administrative regulation.

(5) "Existing structure" means an exempted[~~a grandfathered~~] access or nonaccess structure built on department property prior to the effective date of this administrative regulation.

(6) "Normal pool" means a water level equal to the elevation of the lake's principal spillway.

(7) "Permanent dwelling" means a private residence on an adjacent landowner's land that is both fixed in location and of durable permanent construction, but does not include tents, motorized vehicles, trailers, camp trailers, or any type of interim construction or residence.

(8) "Rebuild" means to totally reconstruct.

(9) "Shoreline use permit" means a permit issued by the department that allows an adjacent landowner to construct a new access structure or to keep or rebuild an existing structure on department land.

Section 2. Boat Docks, Boat Dock Applications, and Boat Dock Construction Approval. (1) A boat dock may be constructed on department property by an adjacent landowner if the adjacent property:

(a) Shares at least a fifty (50) foot boundary with the department property if the adjacent boundary lines were extended to the water's edge; and

(b) Is located at one (1) of the following lakes:

1. Beaver Lake;
2. Boltz Lake;
3. Bullock Pen Lake;
4. Carpenter Lake;
5. Corinth Lake;
6. Elmer Davis Lake;
7. Guist Creek Lake;
8. Kincaid Lake;
9. Kingfisher Lakes; or
10. Lake Malone.

(2) Prior to constructing a boat dock, an adjacent landowner shall submit a completed Boat Dock Application to the department, accompanied by the permit fee for the dock as established in 301 KAR 3:022, except that the fee shall be prorated for every year remaining in the ten (10) year permit period.

(3) Boat dock construction shall not begin until:

(a) An on-site inspection by an authorized department employee has been completed; and

(b) The applicant has obtained written approval from the department to begin construction.

(4) Boat dock construction approval shall be valid for one (1) year from the date of issuance.

(5) A boat dock applicant shall:

(a) Report to the department when construction of a new boat dock is complete, an existing boat dock has been rebuilt, or an existing dock has been brought into compliance; and

(b) Allow inspection of the boat dock by an authorized department employee.

(6) An adjacent landowner with an existing boat dock on Bullock Pen Lake shall be required to obtain a Boat Dock Permit, but shall not be required to pay the permit fee until 2018.

Section 3. Boat Dock Permits. (1) The department shall issue a Boat Dock Permit and Boat Dock Tag to an adjacent landowner:

(a) Who has satisfied the boat dock application requirements in Section 2 of this administrative regulation;

(b) Who has a boat dock that has passed a final inspection by an authorized department employee;

(c) Whose permit has not been revoked pursuant to Section 8 of this administrative regulation; and

(d) Who remains compliant with all the provisions of this administrative regulation.

(2) The Boat Dock Tag issued with the boat dock permit shall be affixed to the front edge of the dock facing the lake.

(3) A Boat Dock Permit shall:

(a) Be valid for a ten (10) year period, with the current permit period expiring December 31, 2017 and the next permit period beginning January 1, 2018;

(b) Be renewed within ninety (90) days of the termination date by:

1. Paying the fee as established in 301 KAR 3:022; and
2. Submitting an affidavit that no unauthorized addition or modification has been made to the boat dock;

(c) Be transferable at no additional cost, if ownership changes, for the remainder of the ten (10) year period; and

(d) Not be renewed by the department if the boat dock is out of compliance, except as established in Section 4 or Section 7 of this administrative regulation;

(e) Prohibit the permittee from renting, leasing, or licensing the dock to another person for any purpose.

(4) An adjacent landowner who owns multiple contiguous properties adjacent to department property shall:

(a) Not be issued more Boat Dock Permits than the number of completed permanent dwellings on those properties; or

(b) Qualify for one (1) Boat Dock Permit if there is no completed permanent dwelling on any of the contiguous properties.

(5) An adjacent landowner shall only be eligible for one (1) Boat Dock Permit per adjacent property.

Section 4. Boat Dock Specifications and Requirements. (1) A boat dock constructed or rebuilt after the effective date of this administrative regulation shall not exceed:

(a) Eight (8) by sixteen (16) feet in dimension; and

(b) A surface area of more than 128 square feet.

(2) The longest dimension of the boat dock shall be positioned perpendicular to the shore.

(3) A boat dock shall not have more than one (1) walkway connecting the boat dock to the shore that shall:

(a) Be positioned perpendicular to the shore;

(b) Be anchored to department property by:

1. A concrete pad no larger than ten (10) square feet; or
2. Two (2) metal posts on each side of the walkway.

(c) Not be wider than four (4) feet;

(d) Be the shorter of:

1. A length sufficient to reach a water depth of two (2) feet when the lake is at normal pool; or
2. Twenty (20) feet in length.

(e) Not be used for boat mooring.

(4) The flotation for a boat dock shall be made from materials manufactured for marine use.

(5) All wooden material on a boat dock shall be kiln-dried lumber that has been commercially pressure-treated with a wood preservative and shall not be painted.

(6) A boat dock shall moor no more than:

(a) Two (2) boats; or

(b) One (1) boat and up to two (2) personal watercraft on Lake Malone and Guist Creek Lake only.

(7) A personal watercraft mooring system that is attached to an approved boat dock at Lake Malone and Guist Creek Lake shall:

(a) Be a commercially manufactured floating system;

(b) Not exceed:

1. Six (6) feet in width and fifteen (15) feet in length if mooring a single personal watercraft; or
2. Twelve (12) feet in width and fifteen (15) feet in length if mooring two (2) personal watercraft; and

(c) Be attached to one (1) side of the boat dock, but not the front.

(8) An additional johnboat, canoe, or personal watercraft may be stored on top of a boat dock, except a personal watercraft shall only be stored on top if a commercially manufactured self-loading ramp is used.

(9) The following items shall be prohibited on boat docks:

(a) An enclosed structure;

(b) An unenclosed structure; and

(c) Any other items, structures, or deviations not identified in a previously obtained waiver, pursuant to Section 7 of this administrative regulation.

(10) A boat dock that was constructed prior to the effective date of this administrative regulation shall be exempt from the requirements established in subsections 1 through 6 of this section for the life of the boat dock.

(11) A boat dock owner who rebuilds an existing dock, including those exempted by subsection 10 of this section, shall reapply and meet all the requirements established in this section, except as established in Section 7 of this administrative regulation.

(12) A boat dock permit holder who applies to rebuild an existing, legally permitted boat dock during the ten (10) year permit period shall be exempt from paying the permit fee until permit renewal.

(13) A private community boat dock or a private multi-slip boat facility shall not be allowed except as approved by the Finance and Administration Cabinet prior to January 1, 2010.

Section 5. Access Structures and Shoreline Use Permits. (1) A shoreline use permit shall only be issued for the following lakes:

(a) Beaver Lake;

(b) Carpenter Lake;

(c) Corinth Lake;

(d) Elmer Davis Lake;
(e) Guist Creek Lake;
(f) Kincaid Lake; and
(g) Lake Malone.
(2) Shoreline Use Permits shall be valid for a fifteen (15) year period beginning January 1, 2010.
(3) An adjacent landowner with an existing structure shall apply for a Shoreline Use Permit within ninety (90) days following the effective date of this administrative regulation.
(4) Prior to constructing a new access structure, rebuilding an existing access structure, or permitting an existing structure, an adjacent landowner shall submit to the department:
(a) A completed Shoreline Use Permit Application; and
(b) The appropriate permit fee if applicable, as established in 301 KAR 3:022, except that the fee shall be prorated to the nearest five (5) year interval that remains in the fifteen (15) year permit period.
(5) An adjacent landowner shall not begin construction of a new access structure or begin rebuilding an existing access structure until:
(a) An authorized department employee conducts an on-site visit and determines the type of access structure necessary for safe passage to the lake; and
(b) The adjacent landowner receives written approval from the department.
(6) Access structure construction approval shall be valid for one (1) year from the date of approval.
(7) A Shoreline Use Permit shall not be issued unless all shoreline structures have passed final inspection by an authorized department employee.
(8) A new access structure shall only include the following:
(a) A ground level pathway that shall:
1. Only have pretreated lumber or railroad ties as edging;
2. Not consist of asphalt, concrete, or any other permanent surface;
3. Only consist of crushed stone, wood chips, or other removable material as fill between the edging, except that local natural stones or rocks may be used as steps;
4. Not exceed five (5) feet in width including the edging; and
5. Follow the natural contour of the land if possible.
(b) A raised ground level pathway that shall:
1. Not exceed eight (8) inches in height.
2. Not exceed forty (40) steps, with each step not exceeding five (5) feet in width and eight (8) feet in length;
3. Only consist of pretreated, unpainted lumber; and
4. Follow the natural contour of the land if possible.
(c) A raised staircase that shall:
1. Not exceed four (4) feet in width;
2. Not have more than one (1) landing that does not exceed four (4) feet in width and four (4) feet in length;
3. Not have more than twenty (20) steps if a landing is not used;
4. Not have more than thirty (30) steps if a landing is used;
5. Only consist of pretreated, unpainted lumber; and
6. Conform to prevailing building code standards for stairs for the county of record or, if such standards do not exist, comply with Section 1009 of the Kentucky Building Code Standards for stairs, as established by 815 KAR 7:120; or
(d) A foot bridge that shall:
1. Not exceed four (4) feet in width and twelve (12) feet in length;
2. Not use a tree as an anchoring device; and
3. Only consist of pretreated, unpainted lumber.
(9) An adjacent landowner who has an existing access structure that was constructed prior to the effective date of this administrative regulation, shall be exempt from the requirements of subsection (8) of this section for the life of the structure, if the landowner applies for and maintains a valid Shoreline Use Permit.
(10) An adjacent landowner who rebuilds an existing access structure, including those grandfathered in subsection (9) of this section, shall be exempt from the requirements established in subsection 8 of this section provided the landowner maintains a valid Shoreline Use Permit.
(11) An existing access structure:
(a) May be adequately maintained to extend the life of the structure;
(b) May be rebuilt with less than or equal to the same number of steps in the original structure;
(c) May be rebuilt with necessary landings not to exceed 4 ft. x 8 ft. in dimension; and
(d) Shall conform to prevailing building code standards for the county of record or, if such standards do not exist, comply with Section 1009 of the Kentucky Building Code Standards for stairs, as established in 815 KAR 7:120.
(12) A Shoreline Use Permit shall:
(a) Be renewed every fifteen (15) years within ninety (90) days of the termination date by:
1. Paying the fee established in 301 KAR 3:022; and
2. Submitting an affidavit that an unauthorized addition or modification has not been made to a permitted structure.
(b) Be transferable at no additional cost, if ownership changes, for the remainder of the fifteen (15) year period; and
(c) Not be renewed if the access structure is out of compliance, except if the access structure was built prior to the effective date of this administrative regulation.
(d) Be extended, by written request to the department, for an additional twelve (12) months if the property is transferred or the landowner dies during year fifteen (15) of the permit period.
(13) An existing noncompliant access structure, pursuant to Section 8 of this administrative regulation, shall be removed at the owner's expense.
(14) Nonaccess structures, such as gazebos or storage buildings, excluding existing permanent dwellings, shall be:
(a) Itemized in the adjacent landowner's Shoreline Use Permit; and
(b) Allowed to be kept and maintained by an adjacent landowner for the life of the structure provided the landowner maintains a valid Shoreline Use Permit.
(15) The Shoreline Use Permit fee, as established in 301 KAR 3:022, shall be based on the types of access structures established in subsection (8) of this section, and consist of the following three (3) tiers:
(a) A Tier I permitted structure shall include:
1. All compliant access structures pursuant to subsection (8) of this section;
2. An existing access structure with fifteen (15) or less steps that is not compliant, pursuant to subsection (8) of this section;
3. An existing footbridge; or
4. A new footbridge that is compliant, pursuant to subsection 8 of this section.
(b) A Tier II permitted structure shall include:
1. An existing access structure having thirty (30) or less concrete steps; or
2. An existing access structure that does not comply with the requirements established in subsection (8) of this section, and having sixteen (16) to thirty (30) steps.
(c) A Tier III permitted structure shall include:
1. An existing access structure, including a concrete access structure, that does not comply with the requirements established in subsection 8 of this section, and having more than thirty (30) steps;
2. A new access structure that does not comply with the requirements established in subsection (8) of this section, and requires a waiver pursuant to the requirements of Section 7 of this administrative regulation.
3. An existing staircase that has one (1) or more landings that exceed a four (4) feet in width or four (4) feet in length; or
4. An existing nonaccess structure, such as a storage shed or gazebo.
(16) If an adjacent landowner applies for a Shoreline Use Permit for multiple structures that cover more than one (1) tier, then a single permit will be issued at the highest tier level for which the applicant qualifies.
(17) A concrete access structure shall not be rebuilt.

Section 6. Other Activities on Department Property. (1) A

person shall not be permitted to take water from the lakes listed in Section 2 of this administrative regulation, except for:

(a) Residential use by adjacent landowners;

(b) Temporary use in a time of emergency drought; or

(c) An adjacent landowner who has been given the right to do so by deed.

(2) A person, without first obtaining written permission from the department, shall not:

(a) Place or build any unpermitted object or structure;

(b) Plant any vegetation;

(c) Place or use any mechanical equipment;

(d) Take water from any lake listed in Section 2 of this administrative regulation;

(e) Cut, clear, burn, damage, or kill trees or shrubs greater than two (2) inches in diameter measured at ground level; or

(f) Moor a boat to the shoreline for more than forty-eight (48) hours.

Section 7. Waivers. (1) An adjacent landowner shall first obtain a waiver from the department for any deviation to the specifications established in this administrative regulation by:

(a) Submitting a written request to the department; and

(b) Providing a detailed plan to the department of any planned deviation.

(2) A person shall not begin construction on a project that includes a planned deviation until the department has approved a waiver.

(3) The department, in deciding whether to grant a waiver for a new access structure, shall consider if:

(a) The deviation is in substantial compliance with the requirements established in this administrative regulation;

(b) The deviation poses a potential safety hazard;

(c) Topographical or other physical features of the land necessitate a deviation;

(d) The waiver request exceeds the staircase landing dimension or step limit by more than twenty (20) percent; and

(e) A new staircase will conform to prevailing building code standards for the county of record or, if those standards do not exist, complies with Section 1009 of the Kentucky Building Code Standards for stairs, as established in 815 KAR 7:120.

(4) The department, in deciding whether to grant a waiver for a boat dock, shall consider if:

(a) The deviation is in substantial compliance with the requirements established in this administrative regulation;

(b) The deviation poses a potential safety hazard; and

(c) Topographical or other physical features of the land necessitate a deviation.

(5) An adjacent landowner, either individually or as a director or high managerial agent of a business organization, who violates any provision of this administrative regulation shall be denied a waiver for a new or rebuilt structure for a period of two (2) years from the date of the citation, with the waiver denial applying to:

(a) The individual; and

(b) Any business for which the person is a director or high managerial agent.

Section 8. Noncompliance, Permit Revocation, and Appeals. (1) The department shall revoke each Boat Dock Permit and Shoreline Use Permit issued to a person if that permit holder:

(a) Without department approval rebuilds an existing:

1. Boat dock;

2. Access structure; or

3. Nonaccess structure.

(b) Constructs or places a new nonaccess structure on department property;

(c) Fails to:

1. Maintain the boat dock, boat dock walkway, access structure, or nonaccess structure in a structurally sound condition; or

2. Renew the Boat Dock or Shoreline Use Permit within ninety (90) days of expiration.

(2) An adjacent landowner who has a noncompliant boat dock, boat dock walkway, access structure, or nonaccess structure shall be notified in writing by the department that the landowner has sixty (60) days to come into compliance, to remove the boat dock, walkway, or structure, or to make an appeal as established in subsection 6 of this section.

(3) If the requirements of subsection (2) of this section are not met within sixty (60) days, the department shall have the authority to remove the noncompliant structure at the owner's expense and the structure shall become the property of the department.

(4) If an adjacent landowner, either individually or as a director or high managerial agent of a business organization, violates any provision of this administrative regulation for a second time, then the department shall revoke for a period of three (3) years from the date of the second citation all Boat Dock Permits and Shoreline Use Permits issued to:

(a) The adjacent landowner;

(b) Any business organization for whom the individual adjacent landowner is a director or high managerial agent; and

(c) Any director or high managerial agent of the adjacent landowner who is a business organization.

(5) The following shall apply for any adjacent landowner whose permit is revoked pursuant to subsection (4) of this section:

(a) All structures shall be removed at the owner's expense within thirty (30) days of revocation if an appeal is not filed.

(b) If the structures are not removed by the owner within thirty (30) days and no appeal is filed, then the department shall have the authority to remove the structure at the owner's expense; and

(c) All structures removed pursuant to paragraph (b) of this subsection shall become the property of the department.

(6) An adjacent landowner whose waiver request is denied or whose permit is denied or revoked may appeal the decision in accordance with the provisions of KRS Chapter 13B.

(a) The department shall appoint a hearing officer and conduct the hearing in accordance with the provisions of KRS Chapter 13B;

(b) The hearing officer shall make a recommendation to the Department of Fish and Wildlife Resources' Commission;

(c) The commission shall make a decision by majority vote; and

(d) An appeal of the Commission's decision shall be in accordance with the provisions of KRS Chapter 13B; and

(e) At the conclusion of all appeals or at the expiration of any appeal period for which an appeal has not been made:

1. The owner shall remove any unauthorized structure within ten (10) days, at the owner's expense;

2. An unauthorized structure that has not been removed by the owner within ten (10) days shall be removed by the department at the owner's expense; and

3. Each structure removed pursuant to subparagraph (2) of this paragraph shall become the property of the department.

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

(a) "Boat Dock Permit Application, 2010"; and

(b) "Shoreline Use Permit Application, 3/2010".

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

RICH STORM, Commissioner
MICHAEL E. BERRY, Secretary

APPROVED BY AGENCY: May 19, 2021

FILED WITH LRC: May 19, 2021 at 4:29 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 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 August 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation governs private boat docks on department-owned property, the use of lake water for domestic purposes and permitted and prohibited activities on department-owned and controlled land surrounding department-owned waters.

(b) The necessity of the administrative regulation: This administrative regulation is needed to control the use of water and development activities that can be conducted on land that surrounds department-owned waters.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) authorizes the department to promulgate administrative regulations reasonably necessary to implement or carry out the purposes of KRS Chapter 150. KRS 150.620 authorizes the department to promulgate administrative regulations governing the use of lands and waters it has acquired for wildlife management and public recreation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.620 by authorizing the department to promulgate administrative regulations governing the use of lands and waters it has acquired for wildlife management and public recreation.

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

(a) How the amendment will change the existing administrative regulation: This amendment changes the term “grandfathered” to “exempted” in the definition of “Existing structure”. This is a more preferred term.

(b) The necessity of the amendment to this administrative regulation: This is a cleanup of improper wording used in the regulation

(c) How does the amendment conform to the authorizing statutes: This is simply a cleanup to the language used in the definition section.

(d) How the amendment will assist in the effective administration of the statutes: This cleanup will have no impact on the effective administration of the statutes.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: This cleanup will not affect any of the entities listed in this question.

(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 action will need to be taken to comply with this cleanup.

(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 associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This is only a cleanup in word choice. There will be no benefits accrued.

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

(a) Initially: There will be no initial cost for implementation of this cleanup.

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

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not used because all people who are eligible to have boat docks or shoreline structures on state owned lakes will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky 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 reasonably necessary to implement or carry out the purposes of KRS Chapter 150. KRS 150.620 authorizes the department to promulgate administrative regulations governing the use of lands and waters it has acquired for wildlife management and public recreation.

(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 will be based on how many boat dock and shoreline use permits are issued. Total revenue 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? Revenue will be based on how many boat dock and shoreline use permits are issued. Total revenue in subsequent years is unknown.

(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 (+/-):

Expenditures (+/-):

Other Explanation:

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

301 KAR 1:018. Use of boating access areas.

RELATES TO: KRS 150.620, 235.315, 433.757

STATUTORY AUTHORITY: KRS 150.025, 150.620, 235.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.620 grants the department authority to establish public shooting and fishing grounds and similar or related recreational facilities. KRS 235.280 authorizes the department to promulgate administrative

regulations to govern the fair, reasonable, equitable and safe use of the waters of this state. This administrative regulation establishes the activities that are not allowed at boating access areas.

Section 1. Definitions. (1) "Boating access area" means property owned or managed by the department and identified by signs as a public facility for launching and retrieving boats, including:

(a) Ramps, parking lots, courtesy docks, and access roads; and

(b) A zone extending fifty (50) feet into the water adjacent to the department property described in paragraph (a) of this subsection.

(2) "Camp" means the erecting of[~~to pitch~~] a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or parking of a motor vehicle, motor home or trailer for the apparent purpose of[~~to remain~~] overnight occupancy[~~in a vehicle or trailer~~].

Section 2. At a boating access area, a person shall not:

(1) Engage in an activity that would interfere with:

(a) Launching or retrieving a boat; or

(b) Parking a vehicle used to transport a boat to the area;

(2) Except as necessary to launch or retrieve a boat:

(a) Swim or wade;

(b) Moor or anchor watercraft; or

(c) Operate watercraft at greater than idle speed;

(3) Discharge firearms;

(4) Build or maintain a fire;

(5) Camp;

(6) Without permission from the department:

(a) Solicit; or

(b) Advertise; or

(7) Engage in a commercial activity;

(8) Park in a way that obstructs the normal flow of traffic; or

(9) Consume alcoholic beverages or possess open alcoholic beverages containers.

RICH STORM, Commissioner
MICHAEL E. BERRY, Secretary

APPROVED BY AGENCY: May 19, 2021

FILED WITH LRC: May 19, 2021 at 4:29 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2021 at 11:00 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 August 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes the activities that are restricted at boating access areas.

(b) The necessity of the administrative regulation: This administrative regulation is necessary to provide fair, reasonable, equitable and safe use of boating access areas located on property owned or managed by the department.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.620 grants the department authority to establish public shooting and fishing grounds and similar or related recreational facilities. KRS 235.280 authorizes the department to promulgate administrative regulations to govern the fair, reasonable, equitable and safe use of the waters of this state.

(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 activities to be restricted at boating access areas on property owned or managed by the department.

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

(a) How the amendment will change the existing administrative regulation: This amendment better defines the term "camping" in the definition section.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove any ambiguity in what is considered "camping".

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

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

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Any entity using any material or equipment associated with the term "camping" will be in violation of this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals will need to comply with the amendment 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 individuals identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Better clarification of the term "camping" will prevent individuals from unknowingly violating this regulation.

(5) Provide an estimate of how much it will cost 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 funding to be used for implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals using these boating access areas 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 150.620 grants the department authority to establish public shooting and fishing grounds and similar or related recreational facilities. KRS 235.280 authorizes the department to promulgate administrative regulations to govern the fair, reasonable, equitable and safe use of the waters of this state.

(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 in the first year.

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

(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 1:019. Cedar Creek Lake.

RELATES TO: KRS 150.025, 150.620, 150.625, 150.640

STATUTORY AUTHORITY: KRS 150.025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 and 150.620 authorize the department to promulgate administrative regulations restricting the use of state recreational areas. This administrative regulation establishes the safety procedures for multiple use of state waters to ensure noninterference with the primary users, fishermen.

Section 1. Definitions. (1) "Buffer zone" means the area from the lake pool level of Cedar Creek Lake to [~~a~~] the marked boundary.

Section 2. Prohibited Activities in the Buffer Zone. No one shall construct, alter, or place any structure of any kind within the buffer zone. The following structures and items are specifically prohibited:

(1) Private boat ramps;

(2) Private stairways or permanent steps;

(3) Private boat docks, boat houses, or fishing piers;

(4) Roadways, turnarounds or parking for vehicular traffic;

(5) Motorized vehicular traffic, including all-terrain vehicles;

(6) Electric lines, water lines, or other public or private utilities without prior approval;

(7) Removal or destruction of vegetation by any means;

(8) Burning;

(9) Fencing;

(10) Painting of trees, stumps, or rock outcrops;

(11) Picnic tables, swings, patios, or signs;

(12) Flower or vegetable gardens;

(13) Livestock grazing or watering;

(14) Camping, except in designated areas; and

(15) Use or placement of mechanical equipment.

Section 3. Footpaths that provide access to the lake and are less than five (5) feet in width are permitted. Vegetation less than one (1) inch in diameter may be removed to develop a footpath. Only wood chips or similar natural material may be used to surface and maintain footpaths.

Section 4. Water withdrawal from Cedar Creek Lake is prohibited for public or private purposes.

Section 5. Activities on Cedar Creek Lake. (1) Swimming is prohibited except in designated areas.

(2) Water skiing and tubing are prohibited on the lake.

Section 6. Boat Restrictions. (1) Boat and motor restrictions for the lake are established in 301 KAR 1:015[~~Only monohull boats that do not exceed a maximum center length of twenty-two (22) feet are permitted on the lake. Pontoon boats are permitted on the lake, but their length shall not exceed thirty (30) feet.~~

~~(2) Personal watercraft and houseboats are not permitted on the lake~~].

RICH STORM, Commissioner

MICHAEL E. BERRY, Secretary

APPROVED BY AGENCY: May 19, 2021

FILED WITH LRC: May 19, 2021 at 4:29 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 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 August 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone: (502) 564-3400, fax: (502) 564-0506, email: fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This regulation establishes land use restrictions on the buffer zone at Cedar Creek Lake and also safety restrictions for the lake to ensure noninterference with the primary users, anglers.

(b) The necessity of the administrative regulation: This administrative regulation is needed to control the use of water and development activities that can be conducted on land that surrounds Cedar Creek Lake. It also ensures the safety of individuals recreating on the lake.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025 and 150.620 authorize the department to promulgate administrative regulations restricting the use of state recreational areas.

(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 activities to be restricted on department land surrounding Cedar Creek Lake and on the lake itself.

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

(a) How the amendment will change the existing administrative regulation: This amendment removes duplicate wording found in another administrative regulation and instead, makes reference to that regulation.

(b) The necessity of the amendment to this administrative regulation: This is just a cleanup of redundant information across regulations.

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

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

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: All individuals using Cedar Creek Lake or owning property adjacent to department property around the lake 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: No new actions will need to be takes since this is just a regulation cleanup.

(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 associated cost for this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be no additional benefits outside of the regulation being more concise.

(5) Provide an estimate of how much it will cost 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 cost on a continuing basis.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied since all users of the lake and surrounding landowners must follow the same 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 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 and 150.620 authorize the department to promulgate administrative regulations restricting the use of state recreational areas.

(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 in the first year.

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

(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 1:031. Land Between the Lakes provisions.

RELATES TO: KRS 150.025, 150.090, 150.170, 150.175, 150.250, 150.340, 150.360, 150.370, 150.470

STATUTORY AUTHORITY: KRS 150.025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to promulgate administrative regulations restricting the use of state recreational areas. KRS 150.025 also authorizes the department 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. The U.S. Forest Service has requested the Kentucky Department of Fish and Wildlife Resources to enforce its special fishing administrative regulations on the Land Between the Lakes National Recreation Area waters. This administrative regulation establishes the conditions and provisions under which fishing is permitted in the Land Between the Lakes area and provides for enforcement by state conservation officers. This administrative regulation provides compliance with the U.S. Forest Service.

Section 1. Fishing shall be permitted in Land Between the Lakes in accordance with the following requirements:

(1) Energy Lake.

(a) Fishing from a boat or the bank shall be permitted year-round except in the waterfowl refuge area.

(b) The waterfowl refuge area shall be the western one-third (1/3) of lake and it shall be open to fishing from March 16 through October 31.

(2) Honker Lake.

(a) Fishing from a boat or the bank shall be permitted from March 16 through October 31.

(b) Fishing shall be permitted year round in the portion of Honker Lake which extends from near the end, as indicated by signs, of the Long Creek Walk handicap trail to the base of the Hematite Lake spillway.

(3) Hematite Lake.

(a) Fishing from a boat or the bank shall be permitted from March 16 through October 31.

(b) [~~Fishing from a boat shall be permitted from March 16 through October 31.~~

~~(c)~~] Gas-powered motors shall not be permitted.

(4) Farm ponds. Farm ponds shall be open to fishing year-round unless posted.

(5) Lake Barkley and Kentucky Lake.

(a) Fishing shall be open year-round unless posted.

(b) Bank fishing and frogging from the shoreline shall be permitted except in areas that are posted as closed for waterfowl refuges and other special uses.

(c) Frogging shall be by gigging only.

Section 2. Frogs may be taken in farm ponds and Energy and Honker Lakes by gigs only from May 15 through May 31. Hematite Lake and other areas as posted shall be closed to frogging.

Section 3. (1) Boats shall operate at "no wake" speed on Energy and Honker Lakes.

(2) A federal permit shall not be required for fishing or frogging.

(3) All administrative regulations pertaining to fishing and limits shall apply.

RICH STORM, Commissioner
MICHAEL E. BERRY, Secretary

APPROVED BY AGENCY: May 19, 2021

FILED WITH LRC: May 19, 2021 at 4:29 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 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 August 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes the conditions and provisions under which fishing is permitted in the Land Between the Lakes area and provides for enforcement by state conservation officers. This administrative regulation provides compliance with the U.S. Forest Service.

(b) The necessity of the administrative regulation: This regulation is necessary to provide fishing regulations for Land Between the Lakes waterbodies and make them enforceable by KDFWR Law Enforcement.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025 authorizes the department to promulgate administrative regulations restricting the use of state recreational areas. KRS 150.025 also authorizes the department 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.

(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, the number of frogs, and setting boating restrictions for Land Between the Lakes waterbodies.

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

(a) How the amendment will change the existing administrative regulation: This is a regulation cleanup that removes redundant wording and provides better statutory authority language.

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

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

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

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: All individuals using Land Between the Lakes waterbodies 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: No new actions will be required since this is just a regulation cleanup.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no additional benefits outside of the regulation cleanup.

(5) Provide an estimate of how much it will cost 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 cost on a continuing basis.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied since all individuals using Land Between the Lakes waterbodies must follow the same 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 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 authorizes the department to promulgate administrative regulations restricting the use of state recreational areas. KRS 150.025 also authorizes the department 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.

(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 in the first year.

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

(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 1:050. Small state-owned lakes, special administrative regulations of.

RELATES TO: KRS [~~150.025,~~]150.010, 150.170, 150.175, 150.340, 150.620, 150.990
STATUTORY AUTHORITY: KRS [~~13A.350,~~] 150.025(1), 150.470
NECESSITY, FUNCTION, AND CONFORMITY: 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. The purpose of this administrative regulation is to set creel, possession and size limits on fishes. It is necessary to protect the fish population in small state-owned lakes.

Section 1. The Commissioner of the Department of Fish and Wildlife Resources with the concurrence of the Department of Fish and Wildlife Resources Commission declares that from time to time special creel limits, possession limits and size limits on fishes may be necessary because of unique and/or special needs to protect the fish populations of the smaller state-owned lakes.

Section 2. These special administrative regulations will be conspicuously posted on the premises of these lakes. It is the responsibility of each individual[~~fisherman~~] fishing these lakes to become familiar[~~familiarize himself~~] with these special administrative regulations and to abide by them.

Section 3. Failure of any person to comply with the posted special limits will be a violation of this administrative regulation.

RICH STORM, Commissioner
MICHAEL E. BERRY, Secretary
APPROVED BY AGENCY: May 19, 2021
FILED WITH LRC: May 19, 2021 at 4:29 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2021 at 3:00 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 August 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.
CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Beth Frazee
(1) Provide a brief summary of:
(a) What the administrative regulation does: The purpose of this administrative regulation is to set creel, possession and size limits on fishes. It is necessary to protect the fish populations in small state-owned lakes.
(b) The necessity of the administrative regulation: This administrative regulation is necessary to properly manage the sport fish populations in small state-owned lakes.
(c) How does this administrative regulation conform to the authorizing statute: 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.
(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 small state-owned lakes. 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 the existing administrative regulation: This is a regulation cleanup addressing a change in word choice and provides cleanup of old statutory authority language. There will be no impactful change to the regulation.
(b) The necessity of the amendment to this administrative regulation: This is just a regulation cleanup.
(c) How does the amendment conform to the authorizing statutes: See 1(c) above.
(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.
(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: All anglers fishing on small state-owned lakes 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: No extra actions will need to be taken.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the entities listed in question (3).
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no additional benefits outside of the regulation cleanup.
(5) Provide an estimate of how much it will cost 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 cost on a continuing basis.
(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary to increase a fee or funding to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This administrative regulation does not establish any fees nor does it indirectly increase any fees.
(9) TIERING: Is tiering applied? Tiering is not applied since all individuals fishing small state-owned lakes must follow the same 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 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. 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.

(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 in the first year.

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

(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 1:082. Frog season; limits.

RELATES TO: KRS [~~150.025,~~] 150.175, 150.360

STATUTORY AUTHORITY: KRS [~~13A.350,~~]150.025(1)

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. This administrative regulation[~~It~~] is necessary to regulate the season, time, bag limit, and manner of taking for bullfrogs in order to utilize and conserve the population thereof. [~~This amendment is necessary to change the opening day and time and to bring Section 3 of this administrative regulation in compliance with the gigging season.~~]

Section 1. The open season on bullfrogs shall begin at 12 noon on the 3rd Friday in May and continue until 12 midnight October 31. The daily creel limit shall be fifteen (15) bullfrogs with a possession limit of thirty (30) bullfrogs after two (2) or more days frogging. Each day for taking bullfrogs shall begin at 12 noon and end at 12 noon the following day. No person may have more than fifteen (15) bullfrogs in his possession while in the field.

Section 2. Bullfrogs may be taken with gig, by hand, bow and arrow, firearm or hook and line from public and private waters, and an appropriate license is required. If bullfrogs are taken with firearm or bow and arrow, a hunting license is required. If bullfrogs are taken by use of a pole and line, a fishing license is required. If bullfrogs are taken with hand or by use of a gig, then either a fishing license or a hunting license is valid.

Section 3. It[~~Except as provided in Section 3 of 301 KAR 1:075, it~~] shall be illegal to possess a gig, of any type, while in a boat, or on, or in a stream, or lake, between November 1 and the last day of January of the following year, both dates inclusive.

RICH STORM, Commissioner
MICHAEL E. BERRY, Secretary

APPROVED BY AGENCY: May 19, 2021

FILED WITH LRC: May 19, 2021 at 4:29 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 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 August 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation sets the season, time, bag limit, and manner of taking for bullfrogs in order to utilize and conserve the population.

(b) The necessity of the administrative regulation: This administrative regulation is necessary to properly manage the bullfrog populations in Kentucky.

(c) How does this administrative regulation conform to the authorizing statute: 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.

(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 gear and number of bullfrogs that may be taken in Kentucky during the frog season.

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

(a) How the amendment will change the existing administrative regulation: This is a cleanup of the regulation which removes reference to a non-existent regulation and cleans up old statutory authority language.

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

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

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

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: All individuals wishing to harvest bullfrogs in Kentucky 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: No extra actions will need to be taken.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no additional benefits outside of the regulation cleanup.

(5) Provide an estimate of how much it will cost 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 cost on a continuing basis.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied since all individuals wishing to harvest bullfrogs in Kentucky must follow the same 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 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 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.

(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 in the first year.

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

(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 1:120. Live fish sales and handling; licensure.

RELATES TO: KRS [~~150.025,~~] 150.175, [~~150.180,~~] 150.190, 150.235, 150.485

STATUTORY AUTHORITY: KRS [~~13A.350,~~] 150.025(1), 150.180(6)

NECESSITY, FUNCTION, AND CONFORMITY: 150.025(1) authorizes the department to promulgate administrative regulations to regulate buying, selling, or transporting of game and fish. KRS 150.180(6) requires any person importing or transporting live fish into or within the state to first procure a fish transportation permit. This administrative regulation is necessary in order to control the flow of live fish from and into natural waters and commercial channels to prevent the spread of disease or undesirable species. [~~This amendment is necessary to eliminate unnecessary and confusing wording.~~]

Section 1. All individuals or companies who sell live fish retail or wholesale must have a live fish and bait dealers license issued in the name of the individual or company that is transacting business in this commonwealth. This license or an exact copy thereof, must be in the possession of the individual[~~persons~~] who is[~~are~~] transporting, selling or possessing live fish for sale in Kentucky.

Section 2. Those individuals or companies transporting live fish from one (1) state to another state through Kentucky without conducting any type of business in this commonwealth are not required to have a live fish and bait dealers license, but must have a valid transportation permit.

Section 3. Valid holders of commercial propagation permits and those individuals or companies who sell fish for food in establishments licensed by another state agency to sell retail or wholesale food stuffs are not required to have a live fish and bait dealers license.

RICH STORM, Commissioner
MICHAEL E. BERRY, Secretary

APPROVED BY AGENCY: May 19, 2021

FILED WITH LRC: May 19, 2021 at 4:29 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 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 August 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative

regulation sets the requirements for those individuals or companies selling live fish in Kentucky or transporting live fish in or through Kentucky.

(b) The necessity of the administrative regulation: This administrative regulation is necessary in order to control the flow of live fish from and into natural waters and commercial channels to prevent the spread of disease or undesirable species.

(c) How does this administrative regulation conform to the authorizing statute: 150.025(1) authorizes the department to promulgate administrative regulations to regulate buying, selling, or transporting of game and fish. KRS 150.180(6) requires any person importing or transporting live fish into or within the state to first procure a fish transportation permit.

(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 requiring sales and/or transportation permits when selling or transporting fish in or through 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: This is a regulation cleanup addressing a change in word choice and provides cleanup of old statutory authority language. There will be no impactful change to the regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: All individuals or companies selling or transporting live fish in or through Kentucky 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: No extra actions will need to be taken.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no additional benefits outside of the regulation cleanup.

(5) Provide an estimate of how much it will cost 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 cost on a continuing basis.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This administrative regulation does not establish any new fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied since all individuals or companies selling or transporting live fish in or through Kentucky must follow the same 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 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. 150.025(1) authorizes the department to promulgate administrative regulations to regulate buying, selling, or transporting of game and fish. KRS 150.180(6) requires any person importing or transporting live fish into or within the state to first procure a fish transportation permit.

(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 in the first year.

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

(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 1:125. Transportation of fish.

RELATES TO: KRS 150.010, [~~150.025,~~] 150.170, [~~150.180, 150.235,~~] 150.235, 150.485

STATUTORY AUTHORITY: KRS [~~13A.350,~~] 150.025(1)(c), [~~(1)(h),~~] 150.180(6)[~~, 150.235, EO 2008-516~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(c) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to regulate the buying, selling, or transporting of game and fish. KRS 150.180(6) requires any person importing or transporting live fish into or within the state to first procure a fish transportation permit. [~~EO 2008-516, effective June 16, 2008, reorganized and renamed the Commerce Cabinet as the new Tourism, Arts and Heritage Cabinet.~~] This administrative regulation provides for control of the transportation of fish, fish eggs, live bait, and other aquatic organisms into, through, and within the state in order to protect the resident fish population.

Section 1. Definitions. (1) "APHIS" means U.S. Department of Agriculture Animal and Plant Health Inspection Service.

(2) "APHIS-approved laboratory" means a laboratory authorized by a state, tribal, or federal primacy authority to analyze aquatic animal health and perform assays for the detection of the VHS virus.

(3) "Aquarium species" means the species of fish that are legally sold in the pet and ornamental trade business and not stocked into waters of the Commonwealth.

(4) "Certified VHS free facility" means a fish-rearing facility that has been certified VHS free by an APHIS approved laboratory.

(5) "Roe-bearing fish" means paddlefish, shovelnose sturgeon, and bowfin, regardless of the sex of the fish or the presence or absence of roe.

(6) "VHS" means Viral Hemorrhagic Septicemia, a disease of fish.

(7) "VHS positive state" means any state in the United States, or any Canadian province, listed on the APHIS Web site www.aphis.usda.gov as being positive for Viral Hemorrhagic Septicemia (VHS).

(8) "VHS-regulated fish species" means any species of fish deemed susceptible to VHS and listed on the APHIS Web site at www.aphis.usda.gov.

Section 2. A Fish Transportation Permit is not needed:

(1) By an individual to transport aquarium species;

(2) By permitted Kentucky fish propagators as established in 301 KAR 1:115, except if transporting fish into Kentucky from outside of Kentucky[~~another state or country~~];

(3) By individuals with a sport or commercial fishing license to transport legally caught bait or fish;

(4) By individuals transporting fish purchased from a licensed live bait dealer for stocking in private waters;

(5) By agents of the department while performing their normal duties; or

(6) To transport live fish or other aquatic organisms that were purchased for consumption from a licensed retailer.

Section 3. Live Fish, Live Bait, or Other Aquatic Organisms. (1) All individuals, corporations, or other business entities that transport any live fish, live bait as defined in 301 KAR 1:132, Section 1, or other live aquatic organism, except those individuals listed in Section 2 of this administrative regulation, into, within, or through Kentucky shall have in possession a:

(a) Fish Transportation Permit issued in the name of the individual, corporation, or other business entity transacting the business; and

(b) Bill of lading showing the origin and destination of the organisms being transported.

(2) An individual shall also possess a Live Fish and Bait Dealers License, as established in 301 KAR 1:132, if the organisms shall be sold to another individual, corporation, or other business entity in Kentucky or transported from Kentucky to be sold outside of Kentucky.

(3) All organisms in transport shall be disease free and prohibited species listed in 301 KAR 1:122 shall not be present.

(4) If any VHS-regulated fish species from a VHS positive state are transported and unloaded in Kentucky, in addition to the requirements established in subsections (1), (2), and (3) of this section of this administrative regulation, the following requirements shall apply:

(a) If the origin of the VHS-regulated fish species is from a certified VHS free facility, the individual shall possess a copy of the documentation showing that the facility is VHS free.

(b) If the origin of the VHS-regulated fish species is from a non-certified VHS free facility then:

1. The VHS-regulated fish species shall only be unloaded at a state inspected fish-processing plant or research and diagnostic laboratory;

2. The individual shall possess a copy of the APHIS VS 1-27 permit for Movement of Restricted Animals issued by an APHIS Veterinary Services office or by a state, tribal, or federal accredited veterinarian shall also be in possession; and

3. Water from the fish transportation tank shall only be discharged into a municipal sewage system that includes waste water disinfection or into a nondischarging settling pond devoid of fish.

(5) If the origin of the VHS-regulated fish species is from a VHS positive state and are only being transported through Kentucky then only the requirements established in subsections (1) and (3) of this section and Section 4of this administrative regulation shall apply.

(6) VHS-regulated fish species being transported from a known VHS positive state into, within, or through Kentucky that do not meet all requirements established in Sections 3 and 4 of this administrative regulation shall be confiscated for disposal purposes.

Section 4. Fish Transportation Permit Application. (1) If an individual, corporation, or other business entity wants to transport fish, live bait, or other aquatic organisms into, within, or through Kentucky they first shall submit a completed Application for Fish Transportation Permit to the department, along with permit fees as established in 301 KAR 3:022.

(2) If an individual, corporation, or other business entity wants to transport VHS-regulated fish species into or through Kentucky from a VHS positive state, in addition to the requirements established in subsection (1) of this section they shall also submit a:

(a) Copy of the documentation showing that the facility that the VHS-regulated fish species are coming from is Certified as being VHS free; or

(b) Copy of the APHIS VS 1-27 permit if the facility is not certified as being VHS free.

(3) An individual, corporation, or other business entity shall not transport fish, live bait, or other aquatic organisms into, within, or through Kentucky without an approved Fish Transportation Permit is in possession.

(4) If an individual, corporation, or other business entity desires to transport VHS-regulated fish species from a facility in a VHS positive state that is currently not listed on their Fish Transportation Permit, the permittee shall:

(a) Notify the department; and

(b) If approved by the commissioner based on risk of contagion to fish of the Commonwealth be sent an updated Fish Transportation Permit listing the approved facility.

Section 5. Transportation of Roe-Bearing Fish and Roe. (1) All individuals, with the exception of permitted roe-bearing fish harvesters as established in 301 KAR 1:155, who transport roe-bearing fish or unprocessed roe as established in 301 KAR 1:155 into, within, or through Kentucky, shall have in possession a Fish Transportation Permit issued in the name of the individual with the associated roe-bearing fish harvester's name and commercial fishing license and roe-bearing harvester's permit numbers listed.

(2) All individuals who transport unprocessed roe from a fish processing facility to a permitted roe-bearing fish dealer shall also have in possession a bill of lading as established in 301 KAR 1:155, Section 4(4)(d)3.

Section 6. All officers and agents of the department have the authority to demand of the transporter, at any time, that prohibited species listed in 301 KAR 1:122 shall not be present and proof that the transporter possesses all appropriate permits and documentation.

Section 7. Fish Transportation Permit Revocation and Nonrenewal. (1) The Department shall revoke and not renew the Fish Transportation Permit of an individual, corporation, or other business entity for a period of two (2) years if they;

(a) Falsify the documentation needed to transport fish, eggs, live bait, or any other aquatic organism into, within, or through Kentucky;

(b) Falsify information on the Application for Fish Transportation Permit; or

(c) Are convicted of any federal or state violation involving the transportation of fish, eggs, live bait, or any other aquatic organism.

(2) An individual, corporation, or other business entity whose Fish Transportation Permit has been denied or[~~,~~] revoked [~~or not renewed~~] may request an administrative hearing pursuant to KRS Chapter 13B.

(3) A request for a hearing shall be in writing and postmarked or delivered in person to the department no later than thirty (30) days after notification of the denial or revocation.

(4) Upon receipt of the request for a hearing, the department shall proceed according to the provisions of KRS Chapter 13B.

(5) The hearing officer's recommended order shall be considered by the commissioner and the commissioner shall issue a final order pursuant to KRS Chapter 13B.

Section 8. Incorporated by Reference. (1) "Application for Fish Transportation Permit", 2008 is incorporated by reference.

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

RICH STORM, Commissioner
MICHAEL E. BERRY, Secretary

APPROVED BY AGENCY: May 19, 2021

FILED WITH LRC: May 19, 2021 at 4:29 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2021 at 11:00 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 August 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation controls the transportation of fish, fish eggs, live bait and other aquatic organisms into, through, and within the state.

(b) The necessity of the administrative regulation: This administrative regulation is necessary to protect the resident fish populations of Kentucky.

(c) How does this administrative regulation conform to the authorizing statute: 150.025(1)(c) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to regulate the buying, selling, or transporting of game and fish. KRS 150.180(6) requires any person importing or transporting live fish into or within the state to first procure a fish transportation permit.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the purpose of KRS 150.025(1) by regulating the transportation of fish and other aquatic organisms that are transported into, through, and within Kentucky. It fulfills the purpose of KRS 150.180(6) by prohibiting fish that either may become a menace to the state or are carrying a disease.

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

(a) How the amendment will change the existing administrative regulation: This is a regulation cleanup addressing a change in word choice, provides cleanup of old statutory authority language, and further clarifies the revocation and hearing process.

(b) The necessity of the amendment to this administrative regulation: Clarification of the revocation and hearing process was needed as well as cleanup of some old language.

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

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

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: All individuals transporting live fish or fish roe 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: No extra actions will need to be taken, outside of those listed for requesting a hearing.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no additional benefits outside of the regulation cleanup.

(5) Provide an estimate of how much it will cost 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 cost on a continuing basis.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied since all individuals transporting live fish or fish roe into, within or through Kentucky must follow the same 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 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. 150.025(1)(c) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to regulate the buying, selling, or transporting of game and fish. KRS 150.180(6) requires any person importing or transporting live fish into or within the state to first procure a fish transportation permit.

(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 in the first year.

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

(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 1:140. Special commercial fishing permit for Kentucky and Barkley lakes.

RELATES TO: KRS 150.010(32), 150.450(2)
STATUTORY AUTHORITY: KRS 150.025(1), 150.175(3), (4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to regulate the size or type of devices and methods used to take fish and wildlife, including the places where they may be taken. KRS 150.175(3), (4) authorizes the department to promulgate administrative regulations regarding the issuance of commercial fishing licenses, commercial fishing gear, and commercial fishing gear tags. This administrative regulation is necessary to establish restrictions on the use of gill and trammel nets at Kentucky and Barkley Lakes.

Section 1. Definitions. (1) "Bar mesh size" means the distance between two (2) knots on a line of a net.
(2) "Immediate family" means the person's spouse, mother, father, grandparent, son, or daughter.
(3) "Permit" means a special commercial fishing permit.
(4) "Roe-bearing fish" means paddlefish, shovelnose sturgeon, and bowfin.
(5) "Rough fish" is defined by KRS 150.010(32).
(6) "Whip set" means a gill net or a trammel net rigged so it is free-floating.

Section 2. Permit Requirements. (1) A person shall possess a valid Kentucky commercial fishing license to obtain or retain a permit throughout the special commercial fishing season.
(2) The department shall not issue more than twenty-five (25) permits.
(3) A permit holder shall submit[~~:~~
~~(a) Submit~~] a completed permit application to the department, along with the appropriate permit fee established in 301 KAR 3:022, postmarked on or before November 1 to retain the permit privilege[~~; and~~
~~(b) Ensure that mailed permit applications are postmarked on or before November 1~~].
(4) The ability to purchase a permit shall only be transferred to immediate family members.
(5) New permits shall not be issued until the total number of permits is less than twenty-five (25).
(6) A lottery drawing shall be used to select new permittees if the total number of permits is less than twenty-five (25).
(a) A person applying for a vacant permit shall submit[~~:~~
~~1. Submit~~] to the department a completed Application for a Special Commercial Fishing Permit postmarked on or before[~~by~~] November 1, along with the appropriate fee established in 301 KAR 3:022[~~, Section 1(2)(a) or (b).~~
~~2. Ensure that a mailed permit application is postmarked on or before November 1~~].
(b) The maximum number of permits issued to nonresidents shall be seven (7).

Section 3. Permit Requirements. (1) A person shall possess and carry a valid permit and a valid commercial fishing license:
(a) If using a gill net or trammel net to take rough fish:
1. From November 1 through March 31 at both Kentucky and Barkley Lakes; and
2. In the portions of Kentucky and Barkley Lakes open to commercial fishing as established in 301 KAR 1:150.
(b) If transporting a gill net or trammel net; and
(c) If selling fish taken with a gill net or trammel net.
(2) A person shall:
(a) Tag a gill net or trammel net as established in KRS 150.175(4);
(b) Not use a gill net or trammel net with a bar mesh size smaller than three and five-tenths (3.5) inches or larger than four and five-tenths (4.5) inches, except:
1. A whip set may have a minimum bar mesh size of three (3) inches; and
2. Beginning on November 15 and running through March 31 at both Kentucky and Barkley Lakes, gill and trammel nets with a bar mesh size larger than four and five-tenths (4.5) may be used in stationary sets only;
(c) Not fish a stationary set net with the top of the net or float line shallower than three (3) feet below the surface;
(d) Tend each net, except whip sets, at least once every twenty-four (24) hours;
(e) Not leave whip sets unattended;
(f) Affix a decal supplied by the department to each side of the boat or motor used for fishing under this permit so that the decal is clearly visible while fishing with a gill net or a trammel net;
(g) Not dispose of any commercially caught rough fish at public boat launch areas; and
(h) Not harvest paddlefish at both Kentucky and Barkley Lakes during the special commercial fishing season if the paddlefish are less than thirty-eight (38) inches, as measured from the beginning of the eye to the fork of the tail fin.
(3) A permit holder may be accompanied by two (2) unlicensed helpers, who shall be:
(a) In the same boat with the permit holder if fishing with a gill net or a trammel net; or
(b) Accompanied by the permit holder if transporting or selling fish taken under the permit.
(4) A permit holder shall:
(a) Maintain an accurate record of daily fishing activity; and
(b) Submit a completed monthly report to the department by the tenth day of the following month on the Monthly Report of Commercial Fish Harvest in Kentucky form provided by the department.

Section 4. Paddlefish Harvest Requirements. (1) A person who possesses a valid permit shall be allowed to harvest paddlefish flesh or roe during the special commercial fishing season without the need to purchase a Commercial Roe-bearing Fish Harvester's Permit.
(2) A person who harvests paddlefish roe during the special commercial fishing season shall follow all Commercial Roe-bearing Fish Harvester Permit reporting requirements established in 301 KAR 1:155, Section 4(4).

Section 5. Permit Suspension, Revocation, and Renewal.
(1) The department shall suspend the permit of a person who fails to complete and submit to the department a Monthly Report of Commercial Fish Harvest or a Daily Commercial Roe Harvest Report for each transaction involving a buyer permittee by the following methods:
(a) The first time during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the licensee or permittee shall receive by mail a courtesy reminder letter.
(b) The second time during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the licensee or permittee shall receive a warning letter.
(c) If a third or subsequent time during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the license or permit shall be suspended until all reports have been received.
(2) The department shall not renew the commercial fishing license or harvester's permit of a person who fails to complete and submit to the department all reports required by this administrative regulation.
(3) The department shall revoke or not renew a person's permit for a period of two (2) years, for the following state violations involving commercial fishing:
(a) Use of illegal commercial fishing gear;
(b) Knowingly placing commercial fishing gear in a restricted area;
(c) Harvesting prohibited species of fish;
(d) Commercially fishing, as established by 301 KAR 1:150, in waters not open to commercial fishing; or

(e) Knowingly falsifying commercial harvest data.

(4) A person whose permit has been revoked or denied[~~not renewed~~] shall be eligible to enter the lottery drawing following the revocation period only if a permit is available based on the twenty-five (25) permit restriction established in Section 2 of this administrative regulation.

(5) A person whose permit has been revoked or denied may request an administrative hearing pursuant to KRS Chapter 13B [~~if a permit is:~~

~~(a) Denied;~~

~~(b) Suspended;~~

~~(c) Not renewed; or~~

~~(d) Revoked~~].

(6) A request for a hearing shall be in writing and postmarked or delivered in person to the department no later than thirty (30) days after notification of the denial or revocation.

(7) Upon receipt of the request for a hearing, the department shall proceed according to the provisions of KRS Chapter 13B.

(8) The hearing officer's recommended order shall be considered by the commissioner and the commissioner shall issue a final order pursuant to KRS Chapter 13B.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for a Special Commercial Fishing Permit", 2007;

(b) "Monthly Report of Commercial Fish Harvest in Kentucky", 2008; and

(c) "Daily Commercial Roe-Bearing Fish Harvester's Transaction Report", 2008.

(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.

RICH STORM, Commissioner
MICHAEL E. BERRY, Secretary

APPROVED BY AGENCY: May 19, 2021

FILED WITH LRC: May 19, 2021 at 4:29 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 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 August 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation sets forth the conditions and provisions for a special commercial fishery using gill and trammel nets at Kentucky and Barkley lakes.

(b) The necessity of the administrative regulation: This administrative regulation is necessary to specify the waters open to, and other restrictions on the use of, gill and trammel nets at Kentucky and Barkley lakes.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) authorizes the department to regulate the size or type of devices and methods used to take fish and wildlife, including the places where they may be taken. KRS 150.175(3), (4) authorizes the department to promulgate administrative regulations regarding the issuance of commercial fishing licenses, commercial fishing gear, and commercial fishing gear tags.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.025 by defining the type and size of gill and trammel nets that can be used, time period nets can be used, how and where the nets can be set, and what fish can be harvested.

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

(a) How the amendment will change the existing administrative regulation: This amendment provides basic language cleanup as well as better clarifies the suspension and revocation process as it pertains to requesting a hearing.

(b) The necessity of the amendment to this administrative regulation: Further clarification on the hearing process was needed as well as some basic cleanup of general language in the regulation.

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

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

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: All individuals that fish Kentucky and Barkley lakes during the special commercial fishing season 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: No extra actions will need to be taken, outside of those listed for requesting a hearing.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no additional benefits outside of the regulation cleanup.

(5) Provide an estimate of how much it will cost 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 cost on a continuing basis.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied since all individuals that fish Kentucky and Barkley lakes during the special commercial fishing season must follow the same 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 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 regulate the size or type of devices and methods used to take fish and wildlife, including the places where they may be taken. KRS 150.175(3), (4) authorizes the department to promulgate administrative regulations regarding the issuance of commercial fishing licenses, commercial fishing gear, and commercial fishing gear tags.

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 in the first year.

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

(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 1:152. Harvest and sale of Asian carp.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.445, 150.450(2), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1)

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, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area. This administrative regulation establishes the requirements for the harvest and sale of Asian carp beyond the requirements of 301 KAR 1:155.

Section 1. Definitions. (1) "Asian carp" means:

(a) Bighead carp;

(b) Black carp;

(c) Grass carp; or

(d) Silver carp.

(2) "By-catch" means any fish that is not an Asian carp or scaled rough fish.

(3) "Program" means Asian Carp and Scaled Rough Fish Harvest Program.

(4) "Program participant" means a commercial fisherman who is:

(a) Enrolled in the Asian Carp and Scaled Rough Fish Harvest Program; and

(b) Fishing in restricted water.

(5) "Restricted water" means those areas, as established in 301 KAR 1:140, 1:146, 1:150, and 1:155, where:

(a) Commercial fishing is prohibited; [~~or~~]

(b) Commercial fishing with gill or trammel nets is prohibited; or

(c) Commercial fishing with gill or trammel nets of restricted net mesh size is prohibited.

(6) "Scaled rough fish" means any scaled fish that is not an Asian carp, sport fish as established in 301 KAR 1:060, roe bearing fish, or a species ineligible for commercial harvest as established in 301 KAR 1:155[~~any scaled fish that is not an Asian carp or sport fish as established in 301 KAR 1:060~~].

(7) "Unlicensed helper" means a person without a commercial fishing license who is assisting a program participant[~~"Whip net set" means a gill or trammel net that is set to encircle and harvest Asian carp and scaled rough fish~~].

Section 2. Program Participant Qualifications. A commercial fisherman shall:

(1) Contact the department and request to be included in the program; and

(2) Possess a valid Kentucky commercial fishing license.

Section 3. Program Participant Requirements. A program participant shall:

(1) Call the department at 270-226-4192[~~800-858-1549~~] at least twenty-four (24) hours prior to the requested fishing date and provide the information established in paragraphs (a) through (f)[~~(e)~~] of this subsection:

(a) The participant's name;

(b) The fish buyer's name [~~and phone number~~];

(c) Date requested;

(d) Restricted water body to be fished;

(e) The location in the restricted water body to be fished, listed as river miles or embayment; and

(f)[~~(e)~~] The name or location of the boat ramp that will be used;

(2) Harvest a weight ratio of at least sixty-five (65) percent Asian carp to thirty-five (35) percent scaled rough fish over a one (1) month period, except that a commercial fisherman whose license fee has been waived as established in Section 4 of this administrative regulation shall only harvest Asian carp and not retain any scaled rough fish or by-catch;

(3) Only fish:

(a) On dates approved by the department; and

(b) At a location approved by the department;

(4) [~~Immediately~~] Notify the department and receive approval prior to changing[~~if the participant changes~~] the:

(a) Fishing location in the restricted water body; or

(b) Boat ramp being used;

(5) Only use gill or trammel nets[~~a whip net set~~]:

(a) With a minimum bar mesh size of three (3) inches;

(b) That are[~~is~~] always tended by a program participant when set less than three (3) feet below the surface of the water;

(c) That are[~~is~~] not left unattended by a program participant for more than six (6) hours when set at least three (3) feet below the surface of the water from April 1 through September 30; and

(d) That are[~~is~~] not left unattended by a program participant for more than eight (8) hours when set at least three (3) feet below the surface of the water from October 1 through March 31;

(6) Visibly mark each end of net sets or gangs of nets with floating buoys;

(7) Harvest, possess, and transport fish claimed under this program separately than fish harvested by any other method;

(8) Complete [~~and submit to the department~~] a Daily Harvest and Release Summary Card [~~immediately~~] after each day's fishing and submit all cards to the department at the end of each month;

(9)[~~(7)~~] Be allowed to sell all harvested Asian carp and scaled rough fish as established in Section 2 and 3 of this administrative regulation;

(10)[~~(8)~~] Immediately release all by-catch; and

(11)[~~(9)~~] Report all harvest on a Monthly Report of Commercial Fish Harvest form, as established in 301 KAR 1:155.[~~; and~~

~~(10) Be suspended from the program:~~

~~(a) For a three (3) month period beginning on the first day of the next month if the minimum requirements established in subsection (2) of this section are not met; and~~

~~(b) For a period of one (1) year beginning on the first day of the~~

~~next month if the requirements are not met a second time.~~]

Section 4. Commercial Fishing License Fee Waiver. The commercial fishing license fees, as established in 301 KAR 3:022, shall be waived for a program participant who only harvests Asian carp in restricted or unrestricted waters.

Section 5. Department Program Requirements. (1) The department shall:

(a) Maintain a list of program participants and their contact information, which shall be:

1. Provided to known fish buyers; and

2. Updated at least weekly; and

(b) Review all restricted water fishing requests as established in Section 3 of this administrative regulation.

(2) The department shall approve a qualified fishing request by assigning[~~:~~

~~(a)~~] a fishing location and boat ramp to a program participant[~~, except that no more than two (2) program participants shall be assigned to the same one-half (1/2) mile section of water; and~~

~~(b) The time period when fishing may occur, not to exceed a three (3) consecutive day period~~].

(3) The department shall not approve a fishing request for reasons established in paragraphs (a) and (b) of this subsection:

(a) Higher than normal by-catch is likely to occur at that location and time; or

(b) Excessive user conflicts would occur[~~Two (2) program participants have already been approved for the same one-half (1/2) mile section of water at the same time~~].

Section 6. Unlicensed Helpers.

(1) A program participant shall not utilize more than two (2) unlicensed helpers while actively fishing.

(2) A program participant shall ensure that an unlicensed helper complies with all boating safety requirements established in KRS Chapter 235.

(3) An unlicensed helper shall:

(a) Be accompanied by a licensed program participant while using commercial fishing gear; and

(b) Be permitted to transport Asian carp in the absence of a program participant with a Fish Transportation Permit as established in 301 KAR 1:125.

(4) A program participant whose commercial fishing license has been suspended or revoked in Kentucky or in another state shall not:

(a) Be listed as a helper by a licensed Kentucky commercial fisherman or another program participant; or

(b) Assist a licensed Kentucky commercial fisherman or program participant in harvesting or transporting fish.

Section 7. Program Suspension and Disqualification. (1) A program participant whose commercial fishing license becomes revoked or suspended as established in 301 KAR 1:155 shall be disqualified from participating in the Asian Carp and Scaled Rough Fish Harvest Program while that license is revoked or suspended.

(2) A program participant shall be suspended from the program:

(a) For a three (3) month period beginning on the first day of the next month if the minimum requirements established in Section 3(2) are not met; and

(b) For a period of one (1) year beginning on the first day of the next month if the requirements are not met a second time.

(3[~~2~~]) Any participant who is disqualified or suspended from participation in the program may appeal the decision in accordance with KRS Chapter 13B.

(4) To appeal the disqualification or suspension, the participant shall provide a written request for a KRS Chapter 13B hearing, postmarked or delivered in person to the department no later than thirty (30) days after notification of the disqualification or suspension.

Section 8[~~Section 7~~]. Non-commercial Asian Carp Harvest and Sale. Any person possessing a valid Kentucky sport fishing license[~~A person harvesting Asian carp using legal fishing methods as established in 301 KAR 1:201 and 1:410~~]:

(1) May harvest Asian carp using legal fishing methods as established in 301 KAR 1:201, and

(2) May sell harvested Asian carp[~~; and~~

~~(2) Shall possess a valid Kentucky sport fishing license~~].

Section 9[~~Section 8~~]. Incorporation by Reference. (1) "Daily Harvest and Release Summary Card", 2011 Edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.

RICH STORM, Commissioner
MIKE BERRY, Secretary

APPROVED BY AGENCY: June 15, 2021

FILED WITH LRC: June 15, 2021 at 10:33 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 26, 2021 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through August 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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 Asian Carp and Scaled Rough Fish Harvest Program, which allows commercial harvest of Asian carp and scaled rough fish in waters currently restricted to commercial fishing.

(b) The necessity of this administrative regulation: The regulation is necessary to provide an important mechanism for the removal of invasive and exotic Asian carp from waters critical to sport fishing and recreational boating.

(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 set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the purpose of the statute by establishing a process for nuisance fish removal from waters of the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes several requirements of the regulation in order to clarify or make the program more efficient. Included in the changes are: cleanup of the restricted waters definition and adding wording to prevent harvest of roe-bearing species, expansion of type of net sets allowed, clean-up of wording

for call-in requirements of program participants and harvest submission timelines, requirement for program participants to mark the end of their nets with floating buoys and to harvest, possess and transport fish claimed under this program separately from fish harvested by any other method, removal of distancing and occupancy wording as it applies to multiple program participants when on the water, adding in wording to allow program participants to fish in waters open to commercial fishing (not just restricted waters), addition of wording to allow the department to restrict fishing in locations where there would be excessive user conflict, and the allowance of program participants to use unlicensed helpers.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to create a more efficient Asian carp harvest program and to address potential issues with illegal harvest and user conflicts.

(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: This regulation will affect all commercial fishermen who are participating in this program. Additionally, this regulation may positively affect all anglers and recreational boaters in the Mississippi and Ohio rivers, their tributaries, and in Kentucky and Barkley lakes.

(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: Program participants will need to follow those regulation amendments provided in question (2)(a) above.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to commercial fishermen to participate in this program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Commercial fishermen who wish to participate will benefit by participating in a more efficient program which should allow for more harvest and less conflicts.

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

(a) Initially: There will be no cost to the department to implement this administrative regulation.

(b) On a continuing basis: There will be no continual cost to the Department.

(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: No increase in fees is needed to fund this program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees were established for this program.

(9) TIERING: Is tiering applied? No. All commercial fishermen participating in this program will need to follow the same 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 Department's Fisheries Division and Law Enforcement Division 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 set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area.

(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 directly generate revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not directly generate revenue for state or local government, but local economies could be positively impacted in the future through removal of Asian carp species.

(c) How much will it cost to administer this program for the first year? There will be a minimal cost to the department to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? There will be a minimal cost to the department 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:

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

301 KAR 1:210. Free fishing days.

RELATES TO: KRS 150.010[~~, 150.025, 150.170,150.175~~]
STATUTORY AUTHORITY: KRS 150.025, 150.170, 150.175
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.170 and 150.175 authorize the department to promulgate administrative regulations requiring licenses for taking fish. KRS 150.025 authorizes the department to establish administrative regulations to carry out the purposes of KRS Chapter 150, which includes fish conservation education. This administrative regulation establishes free fishing days the first weekend in June and establishes the requirements for taking fish during the free fishing days.

Section 1. Free Fishing Days. There shall be [~~a~~] two (2) days each year designated as "free fishing days" to promote the sport of fishing and conservation of fish. The two (2) free fishing days shall be the first weekend in June of each year.

Section 2. Requirements. During the free fishing days, individuals[~~persons~~] shall be permitted to fish without a license. Creel and size limits and the provisions[~~provision~~] of KRS Chapter 150 and 301 KAR Chapter 1 shall apply, including entry on to private lands.

Section 3. Trout Permits. A trout permit shall not be required during free fishing days for persons who are fishing for trout.

RICH STORM, Commissioner
MICHAEL E. BERRY, Secretary
APPROVED BY AGENCY: May 19, 2021
FILED WITH LRC: May 19, 2021 at 4:29 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 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 August 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation designates the first two full weekend days in June as free fishing days. On these days, individuals may fish without a fishing license and no trout stamp is required to keep trout. Creel and size limits are still enforced.

(b) The necessity of the administrative regulation: This regulation is necessary to promote fishing and fish conservation within the state of Kentucky.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.170 and 150.175 authorize the department to promulgate administrative regulations requiring licenses for taking fish. KRS 150.025 authorizes the department to establish administrative regulations to carry out the purposes of KRS Chapter 150, which includes fish conservation education.

(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 allowing anglers on the first full weekend in June to fish without a license or trout stamp.

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

(a) How the amendment will change the existing administrative regulation: This is a cleanup pertaining to outdated language in the regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: All individuals fishing on free fishing days 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: No extra actions will need to be taken.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no additional benefits outside of the regulation cleanup.

(5) Provide an estimate of how much it will cost 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 cost on a continuing basis.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied since all anglers fishing on free fishing days are allowed to fish without a license and trout stamp.

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 150.170 and 150.175 authorize the department to promulgate administrative regulations requiring licenses for taking fish. KRS 150.025 authorizes the department to establish administrative regulations to carry out the purposes of KRS Chapter 150, which includes fish conservation education.

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

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

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

(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 2:015. Feeding of wildlife.

RELATES TO: KRS 150.015

STATUTORY AUTHORITY: 150.025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.015 requires the department to protect and conserve the wildlife of this Commonwealth. KRS 150.025(l)(h) authorizes the department to promulgate administrative regulations to carry out the provisions of KRS Chapter 150. This administrative regulation establishes restrictions on the feeding of wildlife that will serve to protect wildlife from disease and toxic substances that may cause harm to the wildlife population if left unregulated. EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet

as the Tourism, Arts and Heritage Cabinet.

Section 1. Definitions. (1) "Captivity" means confinement by fence or other structure or restraint intended to prevent escape.

(2) "Curtilage of the home" means the area encompassing the grounds immediately surrounding any home or group of homes used in the daily activities of domestic life, and may or may not be enclosed by a fence or other barrier, and includes areas occupied by captive cervids as established in[~~pursuant to~~] 301 KAR 2:083 and wildlife held in captivity for rehabilitation purposes as established in[~~pursuant to~~] 301 KAR 2:075 or held in captivity as established in[~~pursuant to~~] 301 KAR 2:081 and 2:082.

(3) "Feeding" means willingly, wantonly, or knowingly depositing, distributing, or scattering of shelled, shucked, or unshucked corn, millet, milo, safflower seed, sunflower seed, thistle, wheat, or other grain, or any manufactured feed to be consumed by wildlife, but shall not include the establishment and maintenance of plantings for wildlife, foods found scattered solely as the result of normal agricultural planting 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.

Section 2. Recreational Feeding of Wildlife. (1) Wildlife shall not be fed from March 1 through May 31 except as provided in subsections (2) and (3) of this section.

(2) Wildlife may only be fed year round:

(a) In[~~in~~] public areas not open to legal hunting or trapping, unless otherwise prohibited by statute,[~~an~~] administrative regulation, or municipal ordinance;[~~.~~]

(b) Within[~~(2) Wildlife may be fed year round within~~] the curtilage of the home; and

(c) In[~~.~~

~~(3) Wildlife shall not be fed from March 1 through May 31 except as provided in subsections (1) and (2) of this section.~~

~~(4) The prohibition established in subsection (3) of this section shall not apply to the feeding of:~~

~~(a) Fish; or~~

~~(b) Wildlife in~~] a zoo or other facility that lawfully keeps or exhibits wildlife for rehabilitation, rescue, or public viewing.

(3) Fish may be fed year round.

RICH STORM, Commissioner
MICHAEL E. BERRY, Secretary

APPROVED BY AGENCY: May 19, 2021

FILED WITH LRC: May 19, 2021 at 4:29 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2021 at 3:00 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 August 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes restrictions on the feeding of wildlife that will serve to protect wildlife from disease and toxic substances that may cause harm to the wildlife population if left unregulated.

(b) The necessity of the administrative regulation: This administrative regulation is necessary to effectively manage wildlife populations in Kentucky, while protecting them from disease concerns.

(c) How does this administrative regulation conform to the authorizing statute:
KRS 150.015 requires the department to protect and conserve the wildlife of this Commonwealth. KRS 150.025(l)(h) authorizes the department to promulgate administrative regulations to carry out the provisions of KRS Chapter 150.

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing requirements for feeding of wildlife.

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

(a) How the amendment will change the existing administrative regulation: This amendment cleans up and simplifies language in the existing regulation in regards to feeding of wildlife.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary as part of the agencies continued efforts to update and simplify our regulations,

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

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

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Anyone feeding fish or wildlife.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Not placing bait in areas or dates prohibited by this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment 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): Healthy wildlife populations

(5) Provide an estimate of how much it will cost 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 funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Additional fees or funding for direct implementation of this regulation are not necessary as the regulation already exists.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied as all individuals feeding fish or wildlife are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

The Kentucky 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. 150.025

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 2:041. Shooting areas, dog training areas, commercial foxhound training enclosures, and bobwhite shoot-to-train season.

RELATES TO: KRS 150.010, 150.170, 150.180, 150.280, 150.630, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.175(28), 150.240(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations establishing hunting seasons, bag limits, and methods of taking wildlife, and to make these requirements apply to a limited area or to the entire state. KRS 150.175(28) authorizes the issuance of a special license for residents and nonresidents for the purpose of hunting on licensed shooting areas. KRS 150.240(2) authorizes the department to promulgate administrative regulations governing public or commercial shooting areas. This administrative regulation establishes a bobwhite shoot-to-train season and other requirements to ensure uniform operation of shooting areas, dog training areas, and commercial foxhound training enclosures.

Section 1. Definitions. (1) "Dog training area permit" means a permit that designates an area to allow dog training and shooting of captive-reared bobwhite quail.

(2) "Hoofed animal" means ungulate wildlife except wild hogs[~~hog~~] and javelinas[~~javelina~~].

(3) "Shooting area" means a place where animals are held or propagated in captivity and released to be taken by hunters.

Section 2. Seasons. (1) The dog training area season and the dog training area hunting season shall be year-round for:

(a) Captive-reared bobwhite quail; and

(b) Pheasant and chukar, pursuant to 301 KAR 3:030.

(2) The shooting area hunting seasons shall be as follows:

(a) Bobwhite quail: August 15 through April 15;

(b) Mallard ducks: year-round;

(c) Hoofed animals: September 1 through May 15; and

(d) All other species: the statewide season in effect where the shooting area is located.

(3) The bobwhite shoot-to-train season shall be from August 15 through May 15.

Section 3. Bobwhite Shoot-to-Train Requirements. (1) A person shall only shoot on private land.

(2) Prior to shooting, a person shall:

(a) Apply on the Bobwhite Quail Shoot-to-Train Application provided by the department;

(b) Submit the completed application to the department;

(c) Possess a valid Kentucky hunting license or be license-exempt pursuant to KRS 150.170;

(d) Possess:

1. Proof of purchase of captive-reared bobwhite quail; or

2. A captive wildlife permit;

(e) Band all captive-reared bobwhite quail with:

1. Aluminum, #7 leg bands; or

2. Department-issued, aluminum leg bands;

(f) Walk and examine the entire area to be hunted to ensure that no wild bobwhite quail are present; and

(g) Release banded birds immediately prior to dog training or shooting.

(3) A person shall contact the department to update an application that is no longer accurate.

(4) The number of leg bands on the dog training or shooting site shall not exceed the number of captive-reared bobwhite present on the site.

(5) A person shall comply with the holding and permit requirements established in 301 KAR 2:081 if:

(a) Captive-reared bobwhite quail are possessed for more than ten (10) days; or

(b) More than 100 captive-reared bobwhite quail are possessed.

Section 4. Permits, Applications, and Transfers. (1) A person shall obtain a permit from the department before operating the following:

(a) A shooting area for birds;

(b) A dog training area; or

(c) A commercial foxhound training enclosure.

(2) A new shooting area permit shall not be issued for hoofed animals.

(3) The following permits shall be valid from July 1 through June 30:

(a) Dog training area permit;

(b) Shooting area permit for birds; and

(c) Shooting area permit for hoofed animals in existence prior to March 8, 2002.

(4) A commercial foxhound training enclosure permit shall be valid for one (1) year from the date of issuance.

(5) A person shall apply using the appropriate form provided by the department:

(a) Shooting Area Permit Application;

(b) Commercial Foxhound Training Enclosure Permit Application; or

(c) Dog Training Area Permit Application.

(6) An application for a dog training area shall not be approved until a department conservation officer or biologist inspects the area to determine if it meets the requirements established in Section 6 of this administrative regulation.

(7) An applicant for a shooting area, dog training area, or commercial foxhound training enclosure shall provide documentation proving the applicant is the:

(a) Owner of the land where the facility is to be located; or

(b) Lessee of the land where the facility is to be located.

(8) A shooting area permit shall be transferable if:

(a) A currently permitted facility is sold to another entity;

(b) The facility is inspected by a conservation officer or biologist prior to transfer;

(c) The seller of the facility is compliant with the provisions of this administrative regulation; and

(d) The purchaser of the facility:

1. Completes a Shooting Area Permit Transfer Application provided by the department; and

2. Provides a plat of the shooting area boundaries completed by a licensed surveyor.

(9) A transferred shooting area permit shall only be valid for the land that was permitted prior to the time of transfer.

(10) If ownership of a commercial foxhound training enclosure changes, the new owner shall be responsible for applying for a new permit.

(11) A person hunting on a shooting area shall:

(a) Possess a valid Kentucky hunting license;

(b) Possess a valid shooting area hunting license;

(c) Possess a shoot-to-retrieve field trial permit; or

(d) Be hunting license exempt pursuant to KRS 150.170.

(12) A shooting area hunting license shall be valid for only one (1) specific shooting area.

Section 5. Shooting Area Requirements. (1) The boundary of a shooting area shall be marked with signs:

(a) At least eight (8) inches by twelve (12) inches;

(b) Having a white background with contrasting letters at least one (1) inch high;

(c) That read "Shooting Area"; and

(d) Placed no more than 500 feet apart.

(2) A person shall check in at a designated check station or with the operator of a shooting area before hunting.

(3) A permit holder shall maintain a daily record of people using the area which includes each person's:

(a) Name:

(b) Address; and

(c) Hunting license number.

(4) A permit holder shall:

(a) Obtain a bill of sale or receipt for each purchase that contains the number of:

1. Game birds purchased; or

2. Game bird eggs purchased; and

(b) Retain previous year's records and receipts for at least one (1) full year.

(5) A permit holder shall possess a commercial captive wildlife permit, if applicable, pursuant to 301 KAR 2:081.

(6) A field trial may be held on a shooting area year-round.

Section 6. Dog Training Area Requirements. (1) A dog training area shall be between ten (10) and seventy-five (75) acres in size.

(2) The dog training area shall:

(a) Be contiguous;

(b) Consist of at least ninety (90) percent mowed or cut grass no greater than ten (10) inches in height; and

(c) Have a marked boundary with signs:

1. At least eight (8) inches by twelve (12) inches high;

2. Having a white background with contrasting letters at least one (1) inch high;

3. That read "Dog Training Area"; and

4. Placed no more than 150 feet apart.

(3) A permit holder shall maintain a daily record of people using the area which includes each person's:

(a) Name;

(b) Address; and

(c) Hunting license number.

(4) A permit holder shall retain previous year's records and receipts for at least one (1) full year.

(5) A person using a dog training area shall possess:

(a) A bill of sale or receipt for any bobwhite quail released on the area; and

(b) A captive wildlife permit, if applicable, pursuant to 301 KAR 2:081.

(6) A field trial may be held on a dog training area year-round.

Section 7. Hoofed Animals. (1) A shooting area permit holder shall not import or release a hoofed animal.

(2) A [~~grandfathered~~] shooting area permit holder who legally holds hoofed animals shall:

(a) Keep a record of the:

1. Total number of each hoofed species taken;

2. Name of each hunter:

3. Address of each hunter;

4. Hunting license number of each hunter; and

5. Species taken by each hunter; and

(b) Submit to the department all records each month from September through May.

(3) A permit holder shall not import, possess, release, or hunt any member of the family Suidae.

Section 8. Commercial Foxhound Training Enclosures. (1) A commercial foxhound training enclosure shall:

(a) Be at least 200 acres;

(b) Be fenced to enclose foxes; and

(c) Not be divided by an interior fence that restricts the range of foxes to less than 200 acres.

(2) Two (2) or more enclosures under the same ownership or management may be licensed under the same permit if:

(a) Each enclosure is at least 200 acres in size; and

(b) The enclosures share a common fence.

(3) The permit holder shall provide for the foxes:

(a) Food;

(b) Water;

(c) Shelter from inclement weather; and

(d) At least one (1) of the following, which is sufficient to prevent capture by foxhounds, per every fifty (50) acres:

1. Natural den;

2. Constructed den;

3. Box; or

4. Hollow log.

(4) A fox held for release into an enclosure shall be confined pursuant to 301 KAR 2:081.

(5) A person shall not intentionally engage in an activity which would cause foxhounds to injure or kill a fox in an enclosure.

(6) Fox chasing on permitted areas shall be considered an authorized field trial if a fox is not captured or killed.

(7) A person shall not take any wildlife within an enclosure except under legal statewide seasons and methods.

(8) The owner or operator of an enclosure shall:

(a) Allow a conservation officer to inspect the facility at any reasonable time; and

(b) Comply with all permitting requirements, if applicable, pursuant to 301 KAR 2:081.

Section 9. Revocation of Permits. (1) Revocation. A person who is convicted of a fish and wildlife violation, including KRS Chapter 150, KAR Title 301, or any federal fish and wildlife laws, shall have his or her permit revoked for a period of one (1) year.

(2) Appeal Procedures. An individual whose request for a permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

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

(a) "Shooting Area Permit Application", July 2012 edition;

(b) "Commercial Foxhound Training Enclosure Permit Application", July 2012 edition;

(c) "Dog Training Area Permit Application", July 2012 edition;

(d) "Shooting Area Permit Transfer Application", July 2012 edition; and

(e) "Bobwhite Quail Shoot-to-Train Application", July 2012 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.

RICH STORM, Commissioner
MICHAEL E. BERRY, Secretary

APPROVED BY AGENCY: May 19, 2021

FILED WITH LRC: May 19, 2021 at 4:29 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25,

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 August 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes a bobwhite shoot-to-train season and other requirements to ensure uniform operation of shooting areas, dog training areas, and commercial foxhound training enclosures.

(b) The necessity of the administrative regulation: This administrative regulation is necessary to establish a bobwhite shoot-to-train season and other requirements to ensure uniform operation of shooting areas, dog training areas, and commercial foxhound training enclosures.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) authorizes the department to promulgate administrative regulations establishing hunting seasons, bag limits, and methods of taking wildlife, and to make these requirements apply to a limited area or to the entire state. KRS 150.175(28) authorizes the issuance of a special license for residents and nonresidents for the purpose of hunting on licensed shooting areas. KRS 150.240(2) authorizes the department to promulgate administrative regulations governing public or commercial shooting areas.

(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 a bobwhite shoot-to-train season and other requirements to ensure uniform operation of shooting area, dog training areas, and commercial foxhound training enclosures.

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

(a) How the amendment will change the existing administrative regulation: This amendment cleans up and simplifies language in the existing regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary as part of the agencies continued efforts to update and simplify our regulations,

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

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

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: All individuals operating shooting areas, dog training areas, commercial foxhound training enclosures, or participating in the bobwhite shoot-to-train season shall 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: Follow the provisions set forth in regards to bobwhite shoot-to train season and other requirements to ensure uniform operation of shooting area, dog training areas, and commercial foxhound training enclosures.

(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): Uniform compliance with the provisions of the regulation and limited conflict with native wildlife or existing statewide seasons

(5) Provide an estimate of how much it will cost 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 funding to be used for implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment.
Additional fees for direct implementation of this regulation are not necessary, as infrastructure fore administration of this regulation already exists.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied as all individuals are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky 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(1), 150.175(28), 150.240(2)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 for the first year.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

301 KAR 2:050. Land Between the Lakes hunting requirements.

RELATES TO: KRS 150.010, 150.025, 150.170, 150.250, 150.360, 150.640, 150.680

STATUTORY AUTHORITY: KRS 150.025, 150.680

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation pertains to general rules for hunting on the Kentucky portion of Land Between the Lakes as defined in KRS 150.680. This administrative regulation is necessary to specify special hunting rules at Land Between the Lakes and to authorize conservation officers to enforce Land Between the Lakes hunting rules.

Section 1. License Requirements. (1) Hunters shall have:

(a) A Land Between the Lakes hunting permit; and

(b) Unless exempted by KRS 150.170(3) through (7), a valid Kentucky hunting license.

(2) Permits are nontransferable and may be cancelled if rules and administrative regulations are violated or if the holder is careless with firearms.

(3) Permits may be obtained at any information station or at the Administrative Office, Golden Pond, Kentucky 42211, or through any KDSS agent.

(4) Unless exempted by KRS 150.170(3) through (7):

(a) Deer hunters shall possess a valid Kentucky deer tag.

(b) Turkey hunters shall possess a valid Kentucky turkey tag.

Section 2. General Requirements. (1) Except as noted, state and federal regulations shall apply.

(2) Persons shall not:

(a) Take or molest wildlife except as authorized.

(b) Target practice except at designated ranges and with Land Between the Lakes approval.

(c) Operate motorized vehicles except within the designated off-highway vehicle area and on Land Between the Lakes legal roads as designated by signs and listed on a map available free of charge from Land Between the Lakes.

(d) Drive in woods, fields, foot trails, or utility rights of way; or

(e) Block access to roads, trails, or entryways.

Section 3. Firearms, Crossbows, and Archery Equipment. (1) Persons shall not:

(a) Carry handguns on their person except during legal hunting hours while participating in authorized gun hunts.

(b) Carry firearms, crossbows, or bows and arrows, except target and fishing arrows, except during authorized hunts by legally licensed and permitted hunters.

(c) Transport in vehicles firearms with ammunition in either the chamber or magazine.

(2) Hunters camping on Land Between the Lakes may possess legal hunting firearms, crossbows, or archery equipment one (1) day prior to, during, and one (1) day after an authorized hunt.

(3) Firearms, crossbows, and archery equipment shall conform to applicable administrative regulations for the species being hunted.

Section 4. Hunting and Chasing. (1) Persons shall not hunt in developed public use areas, safety zones or posted areas unless the area is designated by signs as open to hunting.

(2) A state permit shall be required to conduct a field trial.

(3) Between sunrise and sunset, persons shall not:

(a) Hunt raccoon or opossum; or

(b) Chase foxes with dogs.

(4) Raccoons may be bagged or taken for restocking.

(5) Dogs shall be removed by 8 a.m.

(6) Persons participating in deer quota hunts:

(a) Shall be selected for each hunt by computerized drawing.

(b) Shall not submit more than one (1) application.

(c) If under sixteen (16) years old, shall apply with an adult unless participating in a youth quota hunt.

(d) Shall not hunt except on dates assigned to them.

(e) Shall not change hunt dates.

(f) Shall remain in assigned areas.

(g) Shall take the sex of deer specified on the permit.

Section 5. Tree Stands. (1) Nails, spikes, tree climbers, screw-in devices, or wire shall not be used for attaching stands or for climbing trees.

(2) Existing permanent stands shall not be used.

(3) Portable stands and climbing devices that do not injure trees may be used.

(4) Portable stands shall:

(a) Not[~~Shall not~~] be placed on trees more than two (2) weeks prior to the hunting season;[~~.~~]

(b) Be[~~Shall be~~] removed within one (1) week following a hunting season or portion of a split season; and[~~.~~]

(c) Display[~~Shall display~~] the name and address of the owner.

RICH STORM, Commissioner
MICHAEL E. BERRY, Secretary

APPROVED BY AGENCY: May 19, 2021

FILED WITH LRC: May 19, 2021 at 4:29 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 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 August 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes general rules for hunting on the Kentucky portion of Land Between the Lakes as defined in KRS 150.680.

(b) The necessity of the administrative regulation: This administrative regulation is necessary to specify special hunting rules at Land Between the Lakes and to authorize conservation officers to enforce Land Between the Lakes hunting rules.

(c) How does this administrative regulation conform to the authorizing statute: This administrative regulation pertains to general rules for hunting on the Kentucky portion of Land Between the Lakes as defined in KRS 150.680.

(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 specifying special hunting rules at Land Between the Lakes and to authorize conservation officers to enforce Land Between the Lakes hunting rules.

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

(a) How the amendment will change the existing administrative regulation: This amendment cleans up and simplifies language in the existing regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary as part of the agencies continued efforts to update and simplify our regulations,

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

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

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Individuals hunting in the Land Between the Lakes.

(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: Follow the provisions set forth in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment 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): Compliance with regulations and enforcement capabilities of KDFWR officers.

(5) Provide an estimate of how much it will cost 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 funding to be used for implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment.
Additional fees for direct implementation of this regulation are not necessary, as infrastructure for administration of this regulation already exists.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied as all individuals 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? This amendment does not impact anyone as it is language cleanup.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025, 150.68(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.

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 2:084. Importation of game birds.

RELATES TO: KRS 150.280, 150.290

STATUTORY AUTHORITY: KRS 150.025(1), 150.180(6), 150.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations establishing requirements for buying, selling, or transporting protected wildlife. KRS 150.180(6) requires the department to regulate the importation of wildlife into Kentucky. KRS 150.280 requires the department to promulgate administrative regulations establishing procedures for the holding of protected wildlife. This administrative regulation establishes the procedures for obtaining a transportation permit for the importation of certain game bird species into Kentucky to prevent the introduction and spread of the avian influenza virus into Kentucky.

Section 1. Definition. "Game bird" means quail, pheasant, chukar, grouse, waterfowl, or other avian species normally imported for propagation or for the purpose of hunting, shooting, training, or field trial activities.

Section 2. Importation of Game Birds. (1) Before any live game bird is imported into Kentucky, a person shall obtain a valid transportation permit or permit authorization number from the department as established in 301 KAR 2:081.

(2) A transportation permit shall not be required for the importation of any live game bird by a facility that is accredited by the American Zoo and Aquarium Association.

Section 3. Applying for Permits. (1) A person shall apply for a transportation permit as established in [~~accordance with~~] 301 KAR 2:081.

(2) The applicant shall be responsible to ensure that the shipment is in compliance with the Department of Agriculture's entry and avian influenza health requirements established in 302 KAR 20:020, 20:040, and 20:250.

RICH STORM, Commissioner
MIKE E. BERRY, Secretary

APPROVED BY AGENCY: May 19, 2021

FILED WITH LRC: May 19, 2021 at 4:29 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2021 at 11:00 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 August

31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes the procedures for obtaining a transportation permit for the importation of certain game bird species into Kentucky to prevent the introduction and spread of the avian influenza virus into Kentucky.

(b) The necessity of the administrative regulation: This administrative regulation is necessary to establish the procedures for obtaining a transportation permit for the importation of certain game bird species into Kentucky to prevent the introduction and spread of the avian influenza virus into Kentucky.

(c) How does this administrative regulation conform to the authorizing statute: 150.025(1) authorizes the department to promulgate administrative regulations establishing requirements for buying, selling, or transporting protected wildlife. KRS 150.180(6) requires the department to regulate the importation of wildlife into Kentucky. KRS 150.280 requires the department to promulgate administrative regulations establishing procedures for the holding of protected wildlife.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing the procedures for obtaining a transportation permit for the importation of certain game bird species into Kentucky to prevent the introduction and spread of the avian influenza virus into 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: This amendment cleans up and simplifies language in the existing regulation in regards to feeding of wildlife.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary as part of the agencies continued efforts to update and simplify our regulations,

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

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

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Anyone importing live game birds into 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: Follow the provisions set forth 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): 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): Uniform compliance with the provisions of the regulation and reduced risk of disease introduction or spread.

(5) Provide an estimate of how much it will cost 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 funding to be used for implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Additional fees for direct implementation of this regulation are not necessary, as infrastructure for administration of this regulation already exists.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is applied with the regulation applying to American Zoo and Aquarium Association ("AZA") member organizations differently than all other individuals. Specifically, AZA member organizations are exempted from certain requirements of the regulation as they are subject to the additional oversight of the AZA.

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 amendment does not impact any state or local government.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1), 150.180(6), 150.280

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 2:111. Deer and turkey hunting on special areas.

RELATES TO: KRS 150.025(1), 150.170, 150.370, 150.390

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations relating to game and fish, including seasons, limits, and areas where taking is allowed. This administrative regulation establishes deer and turkey hunting season frameworks and hunting procedures on special areas.

Section 1. General Requirements. (1) Unless otherwise stipulated in this administrative regulation, the provisions of 301 KAR 2:172 and 2:140 shall apply.

(2) Except on the Daniel Boone National Forest, the Jefferson National Forest, the Big South Fork National River and Recreation Area, and Hidden Valley Training Area, on the areas listed in this

administrative regulation, a hunter shall:

(a) Obtain a permit from the area before hunting;

(b) Not hunt deer or turkey except on assigned hunting dates;

(c) Remain in assigned areas;

(d) Unless otherwise specified in this administrative regulation, tag deer with area tags issued on the area;

(e) Keep the area tag attached to the deer until the carcass is processed; and

(f) Check deer at a designated check station before leaving the area.

(3) Land Between the Lakes, Fort Campbell, Fort Knox, Bluegrass Army Depot, Reelfoot National Wildlife Refuge, Clark's River National Wildlife Refuge, Ohio River Islands National Wildlife Refuge, the Daniel Boone National Forest, the Jefferson National Forest, the Big South Fork National River and Recreation Area, the Wendell H. Ford Regional Training Center, and the Hidden Valley Training Center may allow firearm, crossbow, or archery hunting for antlered or antlerless deer from September 1 through January 31.

(4) Land Between the Lakes, Fort Campbell, Fort Knox, Bluegrass Army Depot, and the Wendell H. Ford Training Center may permit turkey hunting up to twenty-three (23) days between the last Saturday in March and the second Saturday in May.

(5) Land Between the Lakes, Fort Campbell, Fort Knox, Bluegrass Army Depot, and the Wendell H. Ford Training Center may permit firearm turkey hunting between October 15 and January 31, and archery or crossbow turkey hunting from the first Saturday in September through the third Monday in January.

(6) Use of tree stands.

(a) On a special area, a person may use portable stands and climbing devices that do not injure trees.

(b) On a special area, a person shall:

1. Not[~~(a) Shall not~~] use nails, spikes, screw-in devices[~~a nail, spike, screw-in device~~], wire, or tree climbers[~~climber~~] for attaching [~~a~~] tree stands[~~stand~~] or for climbing trees[~~a tree~~];

2. Not use an existing permanent tree stand[~~(b) May use a portable stand or climbing device that does not injure a tree~~];

3. Not place a portable stand in a tree more than two (2) weeks prior to the opening day, and shall remove it within one (1) week following the last day of each hunting period[~~(c) Shall not place a portable stand in a tree more than two (2) weeks before opening day, and shall remove it within one (1) week following the last day, of each hunting period~~]; and

4. Plainly[~~(d) Shall plainly~~] mark the portable stand with the hunter's name and address[~~; and~~

~~(e) Shall not use an existing permanent tree stand~~].

Section 2. Land Between the Lakes. (1) A person shall not take more than:

(a) Two (2) deer during archery hunts, as stipulated by the USDA Forest Service;

(b) One (1) deer during quota hunts;

(c) One (1) turkey of either sex during deer archery season; and

(d) One (1) turkey with a visible beard during the spring turkey quota hunt.

(2) Quota hunters shall:

(a) Apply in advance at Land Between the Lakes; and

(b) Abide by the shooting hours of one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.

(3) A person harvesting deer or turkey shall:

(a) Check the carcass as required by the USDA Forest Service;

(b) Affix a Land Between the Lakes game check card as required by the USDA Forest Service; and

(c) Not use bait, feed, minerals, or other attractants.

Section 3. Fort Campbell. (1) Turkey, either sex:

(a) Deer archery hunters may take turkey; and

(b) A turkey taken at Fort Campbell shall be a bonus bird that shall not count toward a hunter's statewide bag limit.

(2) White turkey.

(a) A person may take one (1) white turkey of either sex during open Fort Campbell hunting seasons.

(b) Statewide and post limits and tagging requirements shall not apply to white turkey.

Section 4. Reelfoot National Wildlife Refuge. (1) Bag limits.

(a) Zone 1 limits apply during the open archery hunt; and

(b) A person shall not take more than two (2) deer by firearms, only one (1) of which shall be antlered.

(2) Tagging and checking deer.

(a) A quota hunter shall tag deer with a tag issued by Reelfoot National Wildlife Refuge.

(b) Quota hunters shall comply with the check-in requirements of Reelfoot National Wildlife Refuge.

(c) An archery hunter shall take deer using the appropriate statewide or bonus antlerless deer permit and check harvested deer through the state telephone check system.

Section 5. (1) Bluegrass Army Depot. A person shall not:

(a) Take an antlered deer whose outside antler spread is less than fifteen (15) inches, or

(b) Use bait, feed, minerals, or other attractants.

(2) A turkey taken at the Bluegrass Army Depot shall be a bonus bird that shall not count toward a hunter's statewide bag limit.

Section 6. Fort Knox. (1) A person shall not take an antlered deer whose outside antler spread is less than twelve (12) inches; and

(2) A turkey taken at Fort Knox shall be a bonus bird that shall not count toward a hunter's statewide bag limit.

Section 7. Hidden Valley Training Area. A person shall not:

(1) Hunt turkeys;

(2) Hunt deer using a firearm; or

(3) Use bait, feed, minerals, or other attractants.

Section 8. Daniel Boone National Forest and Jefferson National Forest. A person shall not use bait, feed, minerals, or other attractants.

RICH STORM, Commissioner
MICHAEL E. BERRY, Secretary

APPROVED BY AGENCY: May 19, 2021

FILED WITH LRC: May 19, 2021 at 4:29 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 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 August 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes deer and turkey hunting season frameworks

and hunting procedures on special areas.

(b) The necessity of the administrative regulation: This administrative regulation is necessary to establish seasons, limits, and areas where taking is allowed on special areas.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) authorizes the department to promulgate administrative regulations relating to game and fish, including seasons, limits, and areas where taking is allowed.

(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 season framework on special areas.

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

(a) How the amendment will change the existing administrative regulation: This amendment cleans up and simplifies language in the existing regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary as part of the agencies continued efforts to update and simplify our regulations,

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

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

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Individuals who engage in hunting activities in the listed areas.

(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 action needed to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): 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): Healthy wildlife populations

(5) Provide an estimate of how much it will cost 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 funding to be used for implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment.

Additional fees or funding for direct implementation of this regulation are not necessary as the regulation already exists.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied as all individuals hunting in the listed areas 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? No state or local government units will be impacted by this change.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025

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 2:230. Shoot-to-retrieve field trial permits and procedures.

RELATES TO: KRS 150.025(1), 150.170, 150.175(1)(p), 150.330

STATUTORY AUTHORITY: KRS 150.025(1), 150.175(1)(p)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.175(1)(p) authorizes the department to require permits for shoot-to-retrieve field trials. KRS 150.025(1) authorizes the department to set seasons and limits, and to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 150. This administrative regulation establishes seasons, permit application procedures, game bird marking, and other requirements for conducting a shoot-to-retrieve field trial.

Section 1. Definitions. (1) "Field trial" means an organized event at which hunting dogs are worked and judged.

(2) "Game birds" means quail, chukar, mallard duck or pheasant species.

(3) "Shoot to retrieve field trial" means a field trail where game birds are taken.

(4) "Take" is defined by KRS 150.010(42)[~~(37)~~].

Section 2. (1) A person may conduct a shoot-to-retrieve field trial:

(a) From August 15 through May 15 for quail; and

(b) Year-round for other game birds.

(2) Daily bag or possession limits shall not apply to birds taken during a shoot-to retrieve field trial.

Section 3. A person conducting a shoot-to retrieve field trial shall:

(1) Apply for a permit at least thirty (30) days before the event to the:

(a) Department law enforcement officer in the county where the event will be conducted; or

(b) Department's law enforcement captain in the wildlife district where the event will be conducted.

(2) A permit application shall:

(a) Be made on a form provided the department; and

(b) Include:

1. The fee specified in 301 KAR 3:022; and

2. Permission from the landowner or manager of public land

where the event will be conducted.

(3) Provide pen-raised game birds for the trial.

(4) If the date or location of the trial changes:

(a) Notify the person from whom the permit application was obtained; and

(b) If the location changes, submit written permission to hold the trial at the new location.

Section 4. A person participating in a shoot-to-retrieve field trial shall not:

(1) Knowingly take a game bird that was not:

(a) Raised in captivity; and

(b) Provided by the organizer of the event.

(2) Hunt on land not specified in the permit.

Section 5. Incorporation by Reference. (1) Shoot-to-Retrieve Field Trial Application, 5/98 edition, is incorporated by reference.

(2) It may be copied, inspected or obtained at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane[~~Game Farm Road~~], Frankfort, Kentucky 40601, from 8 a.m. through 4:30 p.m. eastern time on normal business days.

RICH STORM, Commissioner
MICHAEL E. BERRY, Secretary

APPROVED BY AGENCY: May 19, 2021

FILED WITH LRC: May 19, 2021 at 4:29 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 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 August 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes seasons, permit application procedures, game bird marking, and other requirements for conducting a shoot-to-retrieve field trial.

(b) The necessity of the administrative regulation: This administrative regulation is necessary to establish season, permits and procedures for shoot to retrieve field trials.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.175(1)(p) authorizes the department to require permits for shoot-to-retrieve field trials. KRS 150.025(1) authorizes the department to set seasons and limits, and to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 150

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing procedures and requirements for shoot to retrieve field trials.

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

(a) How the amendment will change the existing administrative regulation: This amendment cleans up and simplifies language in the existing regulation

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary as part of the agencies continued efforts to update and simplify our regulations,

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

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

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: All persons conducting or participating in shoot-to-retrieve field trials and landowners at which such field trials are to occur.

(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 action needed to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): 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): Defined process for permitting shoot to retrieve field trials.

(5) Provide an estimate of how much it will cost 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 funding to be used for implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Additional fees or funding for direct implementation of this regulation are not necessary as the regulation already exists.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This administrative regulation does not establish any new fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied as all individuals 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?
No state or local government units will be impacted by this change.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 150.025(1), 150.175(1)(p)

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 2:260. Crow hunting season.

RELATES TO: KRS 150.015, 150.105, 150.170, 150.175, 150.235, 150.330, 150.340, 150.600, 150.630, 150.990

STATUTORY AUTHORITY: KRS 150.015, 150.105, 150.170, 150.175, 150.340, 150.600, 150.630

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation pertains to seasons for the taking of crow. The framework of this administrative regulation falls within the season guidelines prescribed by the United States Fish and Wildlife Service. The function of this administrative regulation is to provide for the prudent taking of crows within reasonable seasonal restrictions based upon an adequate supply.

Section 1. Definitions. (1) "Blind" means any form of concealing enclosure, including a pit, or anchored, stationary, or drifting boat from which hunting occurs.

(2) "Decoy" means any type of visual device used to entice crows[~~birds~~] into shooting range.

(3) "Call" means any type of auditory device used to attract crows into shooting range.

(4) "Depredation" means any act committed by crows which would result in a damage or economic loss of ornamental or shade trees, agricultural crops, livestock, or wildlife, or when crows are concentrated in such numbers as to constitute a health hazard or other nuisance.

Section 2. Crow Hunting Requirements. (1) Seasons: September 1 through November 7 and January 4 through the last day of February.

(2) Shooting hours: one-half (1/2) hour before sunrise until sunset.

(3) Individuals[~~Persons~~] taking crows must have a valid hunting license.

(4) Crow hunters may use mechanical or electronic calling devices during the open season.

Section 3. Acts of Depredation. (1) Individuals[~~Persons~~] may take crows committing or about to commit acts of depredation during the closed season.

(2) Persons taking depredating crows shall not use blinds, decoys, calls or other means of luring the birds into shooting range during the closed season.

RICH STORM, Commissioner
MICHAEL E. BERRY, Secretary

APPROVED BY AGENCY: May 19, 2021

FILED WITH LRC: May 19, 2021 at 4:29 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2021 at 3:00 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 August 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: The function of this administrative regulation is to provide for the prudent taking of crows within reasonable seasonal restrictions based upon an adequate supply.

(b) The necessity of the administrative regulation: This administrative regulation is necessary to stay within federal framework and establish season restrictions for crow hunting.

(c) How does this administrative regulation conform to the authorizing statute: This administrative regulation pertains to seasons for the taking of crow. The framework of this administrative regulation falls within the season guidelines prescribed by the United States Fish and Wildlife Service.

(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 150.015, 150.105, 150.170, 150.175, 150.340, 150.600, 150.630by defining the season, bag limits, and methods of take used to manage crow hunting 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: This amendment cleans up and simplifies language in the existing regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary as part of the agencies continued efforts to update and simplify our regulations,

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

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

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Individuals engaging in crow hunting.

(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 action needed to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): 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): Sustainable wildlife populations

(5) Provide an estimate of how much it will cost 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 funding to be used for implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Additional fees or funding for direct implementation of this regulation are not necessary as the regulation already exists.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied as all individuals 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?
No state or local government units will be impacted by this change.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.
KRS 150.015, 150.105, 150.170, 150.175, 150.340, 150.600, 150.630

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:

LABOR CABINET
Department of Workplace Standards
(Amendment)

803 KAR 1:005. Employer-employee relationship.

RELATES TO: KRS 337.275-337.325, 337.345, 337.385-337.405[~~KRS Chapter 337~~]

STATUTORY AUTHORITY: KRS 337.295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.010 defines employee as any person employed by or suffered or permitted to work for an employer, and employer is any person, either individual, corporation, partnership, agency or firm who employs an employee and includes any person, either individual, corporation, partnership, agency or firm acting directly or indirectly in the interests of an employer in relation to an employee. The function of this administrative regulation is to discuss what constitutes an employee-employer relation. For enforcement purposes, this includes temporary employment agencies as joint employers and for profit and non-profit organizations. This will guide the department[~~office~~] in carrying out its responsibilities under the law.

Section 1. The Employment Relation.

(1) In order for KRS Chapter 337 to apply there shall[~~must~~] be an employee-employer relation. This requires an employer and employee and the act or condition of employment.

(2) The courts have made it clear that the employment relation under similar laws, such as the Fair Labor Standards Act, is broader than the traditional common law concept of the master and servant relation. The difference between the employment relation in KRS Chapter 337 and the common law employment relation arises from the language that employee includes to suffer or permit to work. The courts have indicated that, while "to permit" requires a more positive action than "to suffer," both terms imply much less positive action than required by the common law. Mere knowledge by an employer of work done [~~for him~~] by another shall be[~~is~~] sufficient to create the employment relation under KRS Chapter 337.

(3) The fact that no compensation is paid and the worker is dependent entirely on tips shall[~~does~~] not negate [~~his~~] status as an employee, if other indications of employment are present. If the worker is paid, the fact that the worker[~~he~~] is paid by the piece or by the job or on a percentage or commission basis rather than on the basis of work time shall[~~does~~] not preclude a determination that the worker[~~he~~] is, on the facts, an employee with respect to the work for which the[~~such~~] compensation is received.

Section 2. Religious, Charitable and Nonprofit Organizations, Schools, Institutions, Volunteer Workers, Members of Religious Orders.

(1) There is no special provision in KRS Chapter 337 which precludes an employee-employer relationship between a religious, charitable or nonprofit organization and persons who perform work for the[~~such an~~] organization. For example, a church or religious order may operate an establishment to print books, magazines, or other publications and employ a regular staff who do this work as a means of livelihood. In these[~~such~~] cases there is an employee-employer relationship for purposes of KRS Chapter 337.

(2) Persons such as nuns, monks, lay brothers, deacons, and other members of religious orders who serve pursuant to their religious obligations in the schools, hospitals, and other institutions operated by their church or religious order shall not be considered to be employees.

(3) In many cases the nature of religious, charitable and similar nonprofit organizations, and schools is such that individuals may volunteer their services in one capacity or another, usually on a part-time basis, not as employees or in contemplation of pay for the services rendered. For example, members of civic organizations may help out in a sheltered workshop; [~~women's~~] organizations may send members or students into hospitals or nursing homes to provide certain personal services for the sick or the elderly; individuals[~~mothers~~] may assist in a school library or cafeteria as a public duty to maintain effective services for their children; or individuals[~~fathers~~] may drive a school bus to carry a football team or band on a trip. Similarly, individuals may volunteer to perform such tasks as driving vehicles or folding bandages for the Red Cross, working with [~~retarded or~~] handicapped children or disadvantaged youth, helping in youth programs as camp counselors, scout leaders, troop volunteers[~~scoutmasters, den mothers~~], providing child care assistance for needy working parents[~~mothers~~], soliciting contributions or participating in benefit programs for the[~~such~~] organizations and volunteering other services needed to carry out their charitable educations, or religious programs. The fact that the services are performed under these[~~such~~] circumstances shall[~~is~~] not be sufficient to create an employee-employer relationship.

(4) Although the volunteer services (as described in subsection (3) of this section) shall[~~are~~] not [~~considered to~~] create an employment relationship, the organizations for which they are performed will generally also have employees performing compensated service whose employment is subject to the standards of KRS Chapter 337. Where [~~such~~] an employment relationship exists, KRS Chapter 337 requires payment of not less than the statutory wages for all hours worked in the workweek. However, there are certain circumstances where [~~such~~] an employee may donate services as a volunteer, and the time so spent shall not[~~is not considered to~~] be compensable work. For

example, an office employee of a hospital may volunteer to sit with a sick child or elderly person during off-duty hours as an act of charity. The department[~~office~~] shall[~~will~~] not consider that an employee-employer relationship exists with respect to the[~~such~~] volunteer time between the establishment and the volunteer or between the volunteer and the person for whose benefit the service is performed. Another example is where an office employee of a church may volunteer to perform nonclerical services in the church preschool during off duty time from [~~his or her~~] office work as an act of charity. Conversely, a preschool employee may volunteer to perform work in some other facets of the church's operations without an employment relationship being formed with respect to the[~~such~~] volunteer time. However, this does not mean that a regular office employee of a charitable organization can volunteer services on an uncompensated basis to handle correspondence in connection with a special fund drive or to handle other work arising from exigencies of the operations conducted by the employer.

(5) As part of their overall educational program, public or private schools and institutions of higher learning may permit or require students to engage in activities in connection with dramatics, student publications, glee clubs, bands, choirs, debating teams, radio stations, intramural and interscholastic athletics and other similar endeavors. Activities of students in these[~~such~~] programs, conducted primarily for the benefit of the participants as a part of the educational opportunities provided to the students by the school or institution, are not work of a kind contemplated by KRS Chapter 337 and do not result in an employee-employer relationship between the student and the school or institution. Also, the fact that a student may receive a minimal payment or stipend for participation in the[~~such~~] activities would not necessarily create an employment relationship.

(6) The sole fact that a student helps in a school lunch room or cafeteria [~~for periods of thirty (30) minutes to an hour per day~~] in exchange for [~~his~~] lunch shall not[~~is not considered to~~] be sufficient to make the student[~~him~~] an employee of the school regardless of whether the student[~~he~~] performs the[~~such~~] work regularly or only on occasion. Also, the fact that students on occasion do some cleaning up of a classroom, serve the school as junior patrol officer or perform minor clerical work in the school office or library [~~for periods of an hour per day or less~~] without contemplation of compensation or in exchange for a meal or for a cash amount reasonably equivalent to the price of a meal or, when a cash amount is given in addition to a meal, it is only a nominal sum, shall not[~~is not considered sufficient~~] in itself [~~to~~] characterize the students as employees of the school. A similar policy shall[~~will~~] be followed where the students perform the[~~such~~] tasks less frequently but for a full day, with an arrangement to perform their academic work for the[~~such~~] days at other times. [~~For example, the students may perform full-day cafeteria service four (4) times per year. In such cases, the time devoted to cafeteria work in the aggregate would be less than if the student worked an hour per day~~]. However, if there are other indicia of employment [~~or the students normally devoted more than an hour each day or equivalent to such work,~~] the circumstances of the arrangement shall[~~will~~] be reviewed carefully.

(7) In the ordinary case, tasks performed as a normal part of a program of treatment, rehabilitation, or vocational training in the following situations shall[~~will~~] not be considered as work of a kind requiring a hospital patient, school student, institutional inmate, or handicapped client, to be considered an employee of the hospital, school, institution, or sheltered workshop conducting the program, for the purpose of KRS Chapter 337:

(a) Tasks performed by patients in tuberculosis, mental, and other hospitals who are required to remain under treatment for extended periods, when performed as a part of a program of activities which have been determined, as a matter of medical judgment, to have therapeutic or rehabilitative value in the treatment of the[~~such~~] patients;

(b) Tasks performed by individuals committed to training schools of a correctional nature, which are required as a part of the correctional program of the institution as a part of the institutional discipline and by reason of their value in providing needed therapy, rehabilitation, or training to help prepare the inmate to become self-sustaining in a lawful occupation after release;

(c) Tasks performed by students in special schools for the mentally handicapped [~~or retarded~~] or for the blind or deaf, as a part of the school program to provide activities of therapeutic value for the handicapped student and to develop [~~such~~] capacities [~~as he may have~~] for doing useful things and, to the extent possible, qualifying for gainful employment; and

(d) Tasks performed by handicapped clients in sheltered workshops, as part of the workshop program, to provide activities of therapeutic, vocational, or training value for the handicapped client and to develop [~~such~~] capacities [~~as he may have~~] for doing useful things and, to the extent possible, qualifying for gainful employment.

(8) The department shall[~~office will~~] not assert that patients under treatment in mental hospitals, or handicapped clients of sheltered workshops are employees when placed in another establishment, such as a private employer, for the performance of tasks which are a continuation of a program of activities which have been determined, as a matter of medical judgment, to have therapeutic or rehabilitative value in their treatment. A different situation prevails, however, after an employment relationship clearly has developed. This shift may occur shortly after the placement or it may occur later. The department shall[~~office will~~] examine the facts of the relationship to determine if an employee-employer relationship exists.

(9) In a program [~~such as~~] described in subsection (8) of this section, it is possible that placements may be made with successive employers for short periods of time. It is not expected in the ordinary course that the[~~such~~] successive placements will either be very long with a particular employer or that the total time involved with various employers will last for a long period of time. If situations arise where successive placements as part of therapeutic or rehabilitative treatment continue for more than six (6) months, all the facts of the situations shall[~~will~~] be closely examined.

(10) The department shall[~~office will~~] not assert that [~~mentally retarded and other~~] handicapped individuals' initial participation in a school-work program, or sheltered workshop program constitute an employment relationship if certain conditions are met. However, after an employment relationship has developed, the provisions of KRS Chapter 337 will be applicable. The conditions under which an employment relationship initially will not be asserted are:

(a) The activities are basically educational, are conducted primarily for the benefit of the participants, and comprise one of the facets of the educational opportunities provided to the individuals. The individual may receive some payment for [~~his~~] work in order to have a more realistic work situation, or as an incentive to the individual or to insure that the employer will treat the individual as a worker; and

(b) The time in attendance at the school plus the time in attendance at the experience station (either in the school or with an outside employer) does not substantially exceed time the individual would be required to attend school if following a normal academic schedule. Time in excess of one (1) hour beyond the normal school schedule or attendance at the experience station on days when school is not in session would be considered substantial; and

(c) The individual does not displace a regular employee or impair the employment opportunities of others by performing work which would otherwise be performed by regular employees who would be employed by the school or an outside employer.

(11) The shift to an employment relationship may occur shortly after the placement or it may occur later. As a general guide, work for a particular employer, either a private employer or the school, after three (3) months shall[~~will~~] be assumed by the department[~~office~~] to be part of an employment relationship unless the facts indicate that the training situation has not materially changed.

Section 3. Outside Work or Homework Performed by Independent Contractor.

(1) For investigation purposes, it shall[~~can~~] be assumed that a homeworker is an employee, even though there may be a buying

and selling arrangement between the parties.

(2) If the employer asserts [~~his~~] outside work or homework is performed by independent contractors, the following factors shall[~~will~~] be considered concerning the employee-employer relationship:

(a) Does the employer have the right to control the manner of the performance of the work or the time in which the work is to be done?

(b) Is the employer paying taxes for Social Security, unemployment, or workers'[~~workmen's~~] compensation insurance?

(c) Has the homeworker ever collected any benefits such as unemployment or workers'[~~workmen's~~] compensation, because of unemployment by the employer?

(d) Does the employer furnish the material or finance directly or indirectly the purchase of the material which the homeworker uses?

(e) When did the practice of buying and selling between the employer and the homeworker begin, and what are the mechanics of the transaction?

(f) Does the homeworker bill the employer for the work done? Are bills of sale prepared? Are sales taxes paid, or are state or local exemptions obtained because of retail purposes? Are payments made in cash or by check?

(g) How does the homeworker's profit under the buying-selling arrangement compare with [~~his or her~~] wages as a homeworker?

(h) Whom does the homeworker consider to be the employer?

(i) Does the homeworker have a license to do business?

(j) What equipment is used, what is its value, and who furnishes it?

Section 4. Test of the Employment Relation. (1) The principal test for determining whether an employment relation exists is whether the possible employer controls or has the right to control the work to be done by the possible employee to the extent of prescribing how the work shall be performed. Additional considerations are the method of payment and how free the possible employer is to replace the possible employee with another. A determination of the employer-employee relationship shall not[~~cannot~~] be based on isolated factors or upon a single characteristic, but rather upon the circumstances of the whole activity.

(2) The factors which are considered significant, although no single one is regarded as controlling, are:

(a) The extent to which the services in question are an integral part of the employer's business;

(b) The amount of the alleged contractor's investment in facilities and equipment;

(c) The alleged contractor's opportunities for profit and loss; and

(d) The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent enterprise.

(3) Where the facts clearly establish that the possible employee is the subordinate party, the relation is one of employment. To determine the amount of control consider:

(a) Whether there are restrictive provisions in the agreement[~~contract~~] between the possible employer and possible employee which require that the work shall[~~must~~] be satisfactory to the possible employer and detailing, or giving the possible employees the right to detail how the work is to be performed.

(b) Whether the possible employer has control over the business of the person performing work [~~for him~~] even though the possible employer does not control the particular circumstances of the work;

(c) Whether the agreement[~~contract~~] is for an indefinite period or for a relatively long period;

(d) Whether the possible employer may discharge employees of the alleged independent contractor;

(e) Whether the possible employer may cancel the agreement[~~contract~~] at his or her discretion, and on how much notice;

(f) Whether the work done by the alleged independent contractor is the same or similar to that done by admitted employees.

(4) Since the determination of whether an employment relation exists depends upon the circumstances of the whole activity, particular factors to be considered are:

(a) Is the alleged independent contractor listed on the payroll with the appropriate tax deductions, or are the payments [~~to him~~] charged to the labor and salary account or selling expense account instead of to the account to which attorney's fees, auditor's fees, and the like are charged?

(b) Must employees of the alleged independent contractor be approved by the possible employer?

(c) Does the possible employer keep the books and prepare the payroll for the possible employee?

(d) Is the alleged independent contractor assigned to a particular territory without freedom of movement outside thereof?

(e) Does the alleged independent contractor have an independent economic or other interest in his or her work, other than increasing his or her own pay?

(f) How do the respective tax returns of the parties list the remuneration paid?

(g) If the possible employer has control over the manner in which the work is to be performed, the absence of any or all of the factors shall[~~will~~] not indicate an absence of the employee-employer relation. However, where the element of control cannot be firmly established, they shall[~~will~~] help in determining whether the relation is one of employer and employee or of independent contractor.

(5) The following factors are immaterial to the determination of whether the relation is one of employer-employee or of independent contractors:

(a) The state or local government grants a license to the alleged independent contractor;

(b) The measurement, method, or designation of compensation;

(c) The fact that no compensation is paid and the alleged independent contractor shall[~~must~~] rely entirely on tips;

(d) The place where the work is performed; and

(e) The absence of a formal employment agreement.

(6)(a) An employment relation may exist between the parties to a transaction which is nominally a sale. Thus, house-to-house canvassers who sell at retail the products of a particular company are employees of the company, although their contracts with the company are in the form of dealer contracts under which the company purports to sell its products to them at fixed wholesale prices and to recommend retail prices at which the products should be sold where the control exercised by the company over the so-called dealers is not substantially different than that exercised by an employer over his outside salesman.

(b) Likewise, an employee shall[~~is~~] not be converted into an independent contractor by virtue of a fictitious sale of the goods produced [~~by him~~] to an employer, so long as the other indications of the employment relation exist. Homeworkers who sell their products to a manufacturer are [~~his~~] employees where the control exercised by the manufacturer[~~him~~] over the homeworkers through the[~~his~~] ability to reject or refuse to buy the product is not essentially different from the control ordinarily exercised by a manufacturer over employees performing work [~~for him~~] at home on a piece rate basis.

(7) The subject matter of the employment relation shall[~~must~~] be work or its equivalent. The essential elements of work are:

(a) Physical or mental exertion (whether burdensome or not);

(b) Controlled or required by the employer; and

(c) Pursued necessarily and primarily for the benefit of the employer and his business.

(d) Once it is determined that one who is reputedly an independent contractor, lessee, partner, or the like, is in fact an employee, then all the employees of the so-called independent contractor engaged in the work for the principal employer likewise become the employees of the principal employer, who shall[~~must~~] guarantee compliance with KRS Chapter 337. Thus, the one who is responsible will be charged with seeing to compliance with KRS Chapter 337 [~~and must keep the records of the employees~~].

Section 5. Trainees and Student-trainees. [~~(1) The Supreme Court has held that the words "to suffer or permit to work, to define employ, do not make all persons employees who, without any express or implied compensation agreement, may work for their own advantage on the premises of another."~~

~~(2)~~]Whether trainees or students are employees of an employer under KRS Chapter 337 shall[~~will~~] depend upon all of the circumstances surrounding their activities on the premises of the employer. If all six (6) of the following criteria apply, the trainees or students shall[~~are~~] not be employees within the meaning of KRS Chapter 337:

(1)[~~(a)~~] The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;

(2)[~~(b)~~] The training is for the benefit of the trainees or students;

(3)[~~(c)~~] The trainees or students do not displace regular employees, but work under their close observation;

(4)[~~(d)~~] The employer that provides the training derives no immediate advantage from the activities of the trainees or students and on occasion [~~his~~] operations may actually be impeded;

(5)[~~(e)~~] The trainees or students are not necessarily entitled to a job at the conclusion of the training period; and

(6)[~~(f)~~] The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.

KIMBERLEE C. PERRY, Commissioner
LARRY L. ROBERTS, Secretary

APPROVED BY AGENCY: June 14, 2021

FILED WITH LRC: June 14, 2021 at 2:11 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2021 at 2:00pm (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/83102207739?pwd=dUFjQzE0ZnJJdkpwME51ZWtQdUlydz09, password 265686 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 August 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: Anthony Russell, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-3534, fax (502) 564-5484, email anthony.russell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Anthony Russell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides guidance on what constitutes an employee-employer relationship.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify what constitutes an employee-employer relationship in order to help determine whether the statutes are applicable.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 337.295 authorizes the commissioner to promulgate administrative regulations under KRS 337.275 to 337.325, 337.345, and 337.385 to 337.405.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance on what constitutes an employee-employer relationship within KRS Chapter 337 which guides the department in determining whether an employer is subject to statutory requirements.

(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: This amendment updates the administrative regulation to match the current language that is utilized by the department and removes language that is no longer utilized.

(b) The necessity of the amendment to this administrative regulation: This amendment updates language to ensure compliance with KRS Chapter 13A and ensures effective guidance for the statutory provisions under KRS Chapter 337 by ensuring the language has been updated to match the current language utilized by the department.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 337.295 authorizes the commissioner to promulgate administrative regulations under KRS 337.275 to 337.325, 337.345, and 337.385 to 337.405.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates language to clarify the guidance provided in the administrative regulation to ensure that statutory requirements can be met and enforced.

(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 subject employers who employ employees in the Commonwealth subject to KRS Chapter 337, as well as, their employees.

(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 required by this amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee and employer protections and guidance for what constitutes an employee-employer relationship to help determine applicability of statutes.

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

(a) Initially: This administrative regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This administrative regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state 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: This administrative regulation, as amended, is not anticipated to generate any increase in fees or funding.

(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 subject employers and employees covered by KRS Chapter 337 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? Most state and local governmental entities are subject to KRS Chapter 337.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 337.295.

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

(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 the first year? There is no cost to this amendment.

(d) How much will it cost to administer this program for subsequent years? There is no cost to 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 explanations: This amendment does not impose any additional requirements or expenditures.

LABOR CABINET
Department of Workplace Standards
(Amendment)

803 KAR 1:025. Equal pay provisions, meaning and application.

RELATES TO: KRS 337.420-337.433

STATUTORY AUTHORITY: KRS 337.425(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.425 authorizes the Commissioner[~~Executive Director~~] of Workplace Standards to issue administrative regulations appropriate to carry out the provisions of KRS 337.420 to 337.433. The function of this administrative regulation is to make available official interpretations of the Department[~~Office~~] of Workplace Standards with respect to the meaning and application of the equal pay provisions set forth in KRS 337.420 to 337.433.

Section 1. Application of Provisions in General.

(1) Application to employers. The prohibition against discrimination in wages on basis[~~account~~] of sex contained in KRS 337.423 shall be[~~is~~] applicable to every employer who has two (2) or more employees employed within the state in each of twenty (20) or more calendar weeks in the current or preceding calendar year. The employer shall[~~may~~] not discriminate on the basis of sex against such employees in any establishment in which [~~such~~] employees are employed by paying them wages at rates lower than paid[~~he pays~~] employees of the opposite sex employed in the same establishment for work on jobs which have comparable requirements relating to skill, effort and responsibility. The law excepts from this general prohibition [~~such~~] differences between the wage rates pursuant to established seniority systems or merit systems which do not discriminate on the basis of sex. It is clear in KRS 337.423(2) that where a wage rate differential in violation of the provision is paid, the violation cannot be corrected by reducing the wage rate of any employee.

(2) Application to establishments.

(a) The prohibition against discrimination in wages on the basis[~~account~~] of sex applies within the same establishment. It should be kept in mind, in determining an employer's obligations under the law, that employer and establishment as used in the statute are not synonymous terms. An employer may have more than one (1) establishment in which he or she employs employees. In these[~~such~~] cases, there shall be no comparison between wages paid to employees in different establishments.

(b) Although not expressly defined in the law, the term establishment has a well settled meaning in the application of the statute's provisions. It refers to a distinct physical place of business rather than to an entire business or enterprise which may include several separate places of business. Each physically separate place of business is ordinarily considered a separate establishment.

(c) Application to employees. There shall[~~must~~] be compliance by the employer with the equal pay requirements within the same establishment in which employees are employed [~~by him~~]. The statute speaks of the employment of employees in the establishment rather than of their engagement in work there. The statute applies to all work performed in the establishment even if the work is performed away from the physical premises of the establishment in which they are employed.

Section 2. Meaning of Wage Rate. The term "wage rate" used in KRS 337.420(3) shall include all payments made to or on behalf of the employee as remuneration for employment. This shall include [~~such~~] payments referred to as fringe benefits. Thus, vacation and holiday pay, and premium payments for work on Saturdays, Sundays, holidays, regular days of rest, pension benefits, insurance benefits, and other fringe benefits paid as remuneration for employment must be considered in applying the equal pay provisions of the law. On the other hand, payments made by an employer to an employee which do not constitute remuneration for employment are not wages to be compared for equal pay purposes. Examples are payments related to maternity, and [~~such~~] reasonable payments for reimbursable expenses of traveling on the employer's business.

Section 3. Male Jobs and Female Jobs.

(1) Wage classification systems which designate certain jobs as male jobs and other jobs as female jobs frequently specify markedly lower rates for the female jobs. Because this[~~such a~~] practice frequently indicates a pay practice of discrimination based on sex, where the[~~such~~] system exists a serious question would be raised as to whether prohibited wage differentials are involved.

(2) The law was intended to eliminate sex as a basis for wage differentials between employees performing comparable work on jobs within the establishment, and if the rates paid for the same jobs are lower when occupants of the jobs are of one (1) sex than they are when the jobs are filled by employees of the opposite sex, the[~~such~~] discrimination within the establishment is equally in violation of the statutory prohibition whether or not employees of both sexes are employed in the[~~such~~] jobs at the same time. Accordingly, where an employee of one (1) sex is hired or assigned to a particular job to replace an employee of the opposite sex, comparison of the newly assigned employee's wage rate with that of the replaced former employee is required, whether or not the job is performed concurrently by employees of both sexes. For example, if a particular job which in the past has been performed by a male employee becomes vacant and is then filled by a female employee, it would be contrary to the equal pay requirement to pay the female employee a lower wage rate than was paid for the same job when performed by the male employee, even though employees of both sexes may not be performing the job at the same time. Payment of the lower wage rate in these[~~such~~] circumstances is a prohibited wage differential. The same principle is involved if all employees of one (1) sex are removed from a particular job by transfer or discharge so as to retain employees of only one (1) sex in a job previously performed interchangeably or concurrently by employees of both sexes. If a prohibited sex-based wage differential had been established or maintained in violation of the law when the same job was being performed by employees of both sexes, the employer's obligation to pay the higher rate for the job cannot be avoided or evaded by the device of confining the job to members of the lower paid sex. Compliance with the law in these[~~such~~] circumstances can be achieved only by increasing the wage rate to the higher rate paid for the job when performed by employees of the opposite sex.

Section 4. Inequalities in Pay That Raise Questions Under the Law. It is necessary to scrutinize with special care those inequalities in pay between employees of opposite sexes which may indicate a pattern of discrimination in wage payment that is based on sex. Thus, a serious question would be raised where [~~such~~] an inequality, allegedly based on a difference in job content, is in fact one on which the employee occupying the job purportedly requiring the higher degree of skill, effort, or responsibility receives the lower wage rate. Likewise, because the equal pay amendment was designed to eliminate wage rate differentials which are based on sex; situations will be carefully scrutinized where employees of only one (1) sex are concentrated in the lower grades of the wage scale, and where there does not appear to be any material relationship other than sex between the lower wage rates paid to [~~such~~] employees and the higher rates paid to employees of the opposite sex. Such concentrations in rate range situations may occur also where an employer follows a practice of paying a range of rates to newly hired employees. Differentials in entrance rates shall[~~will~~] not constitute a violation of the equal pay principle if the factors taken into consideration in determining which rate is to be paid each employee are[~~or~~] applied equally to men and women. This would be true, for example, if all persons who have a parent employed by the firm are paid at the highest rate of the rate range whether they are men or women. However, if in a particular establishment all persons of one (1) sex tend to be paid at the lowest rate of the range and employees of the opposite sex hired to perform the same work tend to be paid at the highest rate of the range, and if no specific factor or factors other than sex appear to be associated with the difference in pay, a serious question would be raised as to whether the pay practice involves prohibited wage differentials.

Section 5. Equality and Inequality of Pay in Particular Situations.

(1) Overtime work. Because overtime premiums are a part of wages for purposes of the equal pay provisions, where men and women receive the same straight-time rates for work subject to the equal pay standards, but the men receive an overtime premium rate of twice the straight-time rate while the women receive only one and one-half (1 1/2) times the straight-time rate for overtime, a prohibited wage rate differential is being paid. On the other hand, where male and female employees perform comparable work during regular hours but employees of one (1) sex only continue working overtime into another work period, work performed during this later period may be compensated at a higher rate where such is required by law or is the customary practice of the employer. However, in such a situation the payment of the higher rate to employees of one (1) sex for all hours worked, including the nonovertime hours when they are performing comparable work with employees of the opposite sex would result in a violation of the equal pay provisions. If male and female employees are performing equal work in the establishment during regular hours but only some of these employees continue working into an overtime period, payment of a higher wage rate for the overtime worked would not be in violation of the equal pay standard so long as it were paid for the actual overtime hours worked by the employees, whether male or female.

(2) Special assignments. The fact that an employee may be required to perform an additional task outside [~~his~~] regular working hours would not justify payment of a higher wage rate to that employee for all hours worked. However, employees who are assigned a different and unrelated task to be performed outside the regular workday may under some circumstances be paid at a different rate of pay for the time spent in performing such additional duty provided the[~~such~~] rate is commensurate with the task performed. For example, suppose a male employee is regularly employed in the same job with female employees in the same establishment in work which requires comparable skill, effort, and responsibility, except that the male employee must carry money to a bank after the establishment closes at night. The[~~Such an~~] employee may be paid at a different rate for the time spent in performing this unrelated task if the rate is appropriate to the task performed and the payment is bona fide and not simply used as a device to escape the equal pay requirements of the statute.

(3) Vacation or holiday pay. Since vacation or holiday pay is deemed to be remuneration for employment included in wages within the meaning of the law, if employees of one (1) sex receive vacation pay for a greater number of hours than employees of the opposite sex, a prohibited wage rate differential is being paid if their work is subject to the equal pay standard and the differential is not shown to come within any of the specified exceptions.

(4) Contributions to employee benefit plans. If employer contributions to a plan providing insurance or similar benefits to employees are equal for both men and women, no wage differential prohibited by the equal pay provisions will result from such payments, even though the benefits which accrue to the employees in question are greater for one (1) sex than for the other. The mere fact that the employer may make unequal contributions for employees of opposite sexes in this[~~such a~~] situation will not, however, be considered to indicate that the employer's payments are in violation of the law, if the resulting benefits are equal for the[~~such~~] employees.

(5) Commissions. The establishment of different rates of commission on different types of merchandise shall[~~would~~] not result in a violation of the equal pay provisions where the factor of sex provides no part of the basis for the differential. For example, suppose that a retail store maintains two (2) shoe departments, each having employees of both sexes, that the shoes carried in the two (2) departments differ in style, quality, and price, and that the male and female sales clerks in the one (1) department are performing comparable work with those in the other. In such a situation, a prohibited differential would not result from payment of a lower commission rate in the department where a lower price line with a lower markup is sold than in the other department where the merchandise is higher priced and has a higher markup, if the employer can show that the commission rates paid in each department are applied equally to the employees of both sexes in the establishment for all employment in that department and that the factor of sex has played no part in the setting of the different rates.

Section 6. The Equal Pay for Equal Work Standard; Generally.

(1) The job concept in general. KRS 337.423 prohibits an employer from paying to employees of one (1) sex wages at rates lower than paid[~~he pays~~] employees of the opposite sex for comparable work on jobs described by the statute in terms of equality of the skill, effort, and responsibility required for performances and similarity of the working conditions under which they are performed. This descriptive language refers to jobs. In applying the various tests of equality to the requirements for the performance of the[~~such~~] jobs, it will generally be necessary to scrutinize the job as a whole and to look at the characteristics of the jobs being compared over a full work cycle. This will be true because the kinds of activities required to perform a given job and the amount of time devoted to such activities may vary from time to time.

(2) Effect of differences between jobs in general. The statute requires that jobs with comparable requirements shall[~~should~~] be compared in applying the equal pay for equal work standard. Jobs that require comparable skill, effort, and responsibility in their performance within the meaning of the law are usually not identical in every respect. Inconsequential differences in job content shall[~~would~~] not be a valid excuse for payment of a lower wage to an employee of one (1) sex than to an employee of the opposite sex if the two (2) are performing comparable work on essentially the same jobs in the same establishment.

(3) Job content controlling. Application of the equal pay standard is not dependent on job classifications or titles but depends rather on actual job requirements and performance. For example, the fact that jobs performed by male and female employees may have the same total point value under an evaluation system in use by the employer does not in itself mean that the jobs concerned are comparable according to the terms of the statute. Conversely, although the point values allocated to jobs may add up to unequal totals, it does not necessarily follow that the

work being performed in such jobs is unequal when the statutory tests of the equal pay standard are applied. Job titles are frequently of such a general nature as to provide very little guidance in determining the application of the equal pay standard. For example, the job title "clerk" may be applied to employees who perform a variety of duties so dissimilar as to place many of them beyond the scope of comparison under the statute. Clearly, the equal pay standard would not apply where jobs require such substantially different duties, even though the job titles are identical.

(4) General guides for testing equality of jobs:

(a) What constitutes comparable skill, comparable effort, or comparable responsibility cannot be precisely defined. In interpreting these key terms of the statute, the broad remedial purpose of the law shall[~~must~~] be taken into consideration. The terms are considered to constitute three (3) separate tests, each of which must be met in order for the equal pay standard to apply. In applying the tests it shall[~~should~~] be kept in mind that comparable does not mean identical. Insubstantial or minor differences in the degree or amount of skill, or effort, or responsibility required for the performance of jobs will not render the equal pay standard inapplicable. On the other hand, substantial differences, such as those customarily associated with differences in wage levels when the jobs are performed by persons of one (1) sex only, will ordinarily demonstrate an inequality as between the jobs justifying differences in pay. In determining whether job differences are so substantial as to make jobs unequal, it is pertinent to inquire whether and to what extent significance has been given to such differences in setting the wage levels for the[~~such~~] jobs. This[~~Such an~~] inquiry may, for example, disclose that apparent differences between jobs have not been recognized as relevant for wage purposes and that the facts as a whole support the conclusion that the differences are too insubstantial to prevent the jobs from being comparable in all significant respects under the law.

(b) In determining whether differences in job content are substantial in order to establish whether or not employees are performing comparable work, the amounts of time which employees spend in the performance of different duties shall not be[~~are not~~] the sole criteria. It is also necessary to consider the degree of difference in terms of skill, effort, and responsibility. These factors are related in such a manner that a general standard to determine comparability of jobs cannot be set up solely on the basis of a percentage of time.

Section 7. Comparable Skill.

(1) Jobs requiring comparable skill in performance. The jobs to which the equal pay standard is applicable are jobs requiring comparable skill in their performance. Where the amount or degree of skill required to perform one (1) job is substantially greater than that required to perform another job, the equal pay standard shall not[~~cannot~~] apply even though the jobs may be comparable in all other respects. Skill includes consideration of such factors as experience, training, education, and ability. It shall[~~must~~] be measured in terms of the performance requirements of the job. If an employee must have essentially the same skill in order to perform either of two (2) jobs, the jobs shall[~~will~~] qualify under the statute as jobs the performance of which requires comparable skill, even though the employee in one (1) of the jobs may not exercise the required skill as frequently or during as much of his or her working time as the employee in the other job. Possession of a skill not needed to meet requirements of the job shall not[~~cannot~~] be considered in making a determination regarding comparability of skill. The efficiency of the employee's performance in the job is not in itself an appropriate factor to consider in evaluating skill.

(2) Comparing skill requirements of jobs. As an illustration of the principle of comparable skill, suppose that a man and a woman have jobs classified as typists. Both jobs require them to spend two-thirds (2/3) of their working time in typing and related activities such as proofreading and filing, and the remaining one-third (1/3) in diversified tasks, not necessarily the same. Since there is no difference in the skills required for most of their work, whether or not these jobs require comparable skill in performance will depend upon the nature of the work the employees must actually perform during this latter period to meet the requirements of the jobs. If it happens that the man, during the remaining one-third (1/3) of the time, spends twice as much time operating a calculator as does the woman who prefers and is allowed to do most of the copying work required in the office, this would not preclude a conclusion that the performance of the two (2) jobs requires comparable skill if there is actually no distinction in the performance requirements of such jobs so far as the skills utilized in these tasks are concerned. Even if the man were required to do all of the calculating work in order to perform his job, it is not at all apparent that the jobs would require substantially different degrees of skill unless it should appear that operation of that calculator requires more training and can command a higher wage than the typing and related work performed by both the man and the woman and that the work required to be done by the woman in the remaining one-third (1/3) of the time requires less training and is recognized as commanding a lower wage whether performed by a man or a woman.

Section 8. Comparable Effort.

(1) Jobs requiring comparable effort in performance. The jobs to which the equal pay standard is applicable are jobs that require comparable effort to perform. Where substantial differences exist in the amount or degree of effort required to be expended in the performance of jobs, the equal pay standard shall not[~~cannot~~] apply even though the jobs may be comparable in all other respects. Effort is concerned with the measurement of the physical or mental exertion needed for the performance of a job. Where jobs are otherwise comparable under the statute, and there is no substantial difference in the amount or degree of effort which must be expended in performing the jobs under comparison, the jobs may require comparable effort in their performance even though the effort may be exerted in different ways on the two (2) jobs. Differences only in the kind of effort required to be expended in such a situation shall[~~will~~] not justify wage differentials.

(2) Comparing effort requirements of jobs. To illustrate the principle of comparable effort exerted in different ways, suppose that a male checker employed by a supermarket is required to spend part of his time carrying out heavy packages or replacing stock involving the lifting of heavy items whereas a female checker is required to devote a comparable degree of effort during a similar portion of her time to performing fill-in work requiring greater dexterity, such as rearranging displays of spices or other small items. The difference in kind of effort required of the employees does not appear to make their efforts unequal in any respect which would justify a wage differential, where such differences in kind of effort expended to perform the job are not ordinarily considered a factor in setting wage levels. Further, the occasional or sporadic performance of an activity which may require extra physical or mental exertion is not alone sufficient to justify a finding of unequal effort. Suppose, however, that men and women are working side by side on a line assembling parts. Suppose further that one (1) of the men who performs the operations at the end of the line must also lift the assembly, as he completes his part of it and place it on a waiting pallet. In such a situation, a wage rate differential might be justified for the person who is required to expend the extra effort in the performance of his job, provided that the extra effort so expended is substantial and is performed over a considerable portion of the work cycle. However, a serious question would be raised about the bona fides of wage differential if it is paid to a male employee who is otherwise performing comparable work with female employees on the basis that the male is required to do some heavy lifting, unless a similar distinction in wage rates is made in the establishment as between male employees only where some do heavy lifting and others do not. In general, a wage rate differential based on differences in the degree or amount of effort required for performance of jobs shall[~~must~~] be applied uniformly to men and women. For example, if all women and some of the men performing a particular type of job do not perform heavy lifting, and some men do, payment of a higher wage rate to all of the men than to the women would constitute a prohibited wage rate differential if the equal pay provisions otherwise apply.

Section 9. Comparable Responsibility. Jobs requiring

comparable responsibility in performance. The jobs to which the equal pay standard applies are jobs in the performance of which comparable responsibility is required. Responsibility is concerned with the degree of accountability required in the performance of the job, with emphasis on the importance of the job obligation. Differences in the degree of responsibility required in the performance of otherwise comparable jobs cover a wide variety of situations. The following illustrations, which are by no means exhaustive, may suggest the nature or degree of differences in responsibility which shall[~~will~~] constitute uncomparable work:

(1) There are many situations where one (1) employee of a group performing jobs which are comparable in other respects is required from time to time to assume supervisory duties for reasons such as the absence of the regular supervisor. Suppose, for instance, that it is the employer's practice to pay a higher wage rate to [~~such~~] a relief supervisor with the understanding that during the intervals in which the employee[~~he~~] performs supervisory duties the employee[~~he~~] is in training for a supervisory position. In such a situation, payment of the higher rate to the employee[~~him~~] might well be based solely on the additional responsibility required to perform the[~~his~~] job and the equal pay provisions would not require the same rates to be paid to an employee of the opposite sex in the group who does not have a comparable responsibility. There would clearly be no question concerning such a wage rate differential if the employer pays the higher rate to both men and women who are called upon from time to time to assume such supervisory responsibilities.

(2) Other differences in responsibilities of employees in generally similar jobs may require similar conclusions. Sales clerks, for example, who are engaged primarily in selling identical or similar merchandise may be given different responsibilities. Suppose that one (1) employee of such a group is authorized and required to determine whether to accept payment for purchases by personal checks of customers. The person having this authority to accept personal checks may have a considerable additional degree of responsibility which may materially affect the business operations of the employer. In this situation, payment of a higher wage rate to this employee shall[~~would~~] be permissible.

(3) On the other hand, there are situations where one (1) employee of the group may be given some minor responsibility which the others do not have but which is not of sufficient consequence or importance to justify a finding of unequal responsibility.

Section 10. Exceptions to Equal Pay Standards.

(1) The specified exceptions. KRS 337.423(1) provides two (2) specific exceptions to its general standard requiring that employees doing comparable work be paid equal wages, regardless of sex. Under these exceptions, where it can be established that a differential in pay is the result of a wage payment made pursuant to an established seniority system or merit increase system which does not discriminate on the basis of sex, the differential is expressly excluded from the statutory prohibition of wage discrimination based on sex.

(2) Establishing application of an exception. The facts necessary to establish that a wage differential has a basis specified in any of the exceptions are peculiarly within the knowledge of the employer. If the employer[~~he~~] relies on the excepting language to exempt a differential in pay from the operation of the equal pay provisions, the employer[~~he~~] will be expected to show the necessary facts. Thus, [~~such~~] a showing will be required to demonstrate that a payment of wages to employees at a rate less than the rate at which is paid[~~he pays~~] employees of the opposite sex is based on a factor other than sex where it appears that the[~~such~~] payments are for comparable work on jobs the performance of which requires comparable skill, effort, and responsibility.

(3) Sex shall[~~must~~] not be a factor in excepted wage differentials. While differentials in the payment of wages are permitted when it can be shown that they are based on an established seniority system or merit increase system, the requirements for [~~such~~] an exception are not met unless the factor of sex provides no part of the basis for the wage differential. If these conditions are met, the fact that application of the system for measuring earnings results in higher average earnings for employees of one (1) sex than for employees of the opposite sex performing comparable work shall[~~would~~] not constitute a prohibited wage differential. However, to come within the exempting provisions, any system or factor of the type described pursuant to which a wage rate differential is paid shall[~~must~~] be applied equally to men and women whose jobs require comparable skill, effort and responsibility.

(4) Establishing absence of sex as a factor. A showing that a wage differential is based on a factor other than sex, so as to be exempt from the statute, may sometimes be incomplete without a showing that there is a reasonable relationship between the amount of the differential and the weight properly attributable to the factor other than sex. To illustrate, suppose that male clerks who work forty (40) hours each week and female clerks who work thirty-five (35) hours each week are performing comparable work on jobs the performance of which requires comparable skill, effort and responsibility. If they are paid weekly salaries for this work, a differential in the amounts could be justified as based on a difference in hours of work. But if the difference in salaries paid is too great to be accounted for by the difference in hours of work, as where the male clerks are paid $320[~~ninety (90) dollars~~] for their forty (40) hour week (equal to eight (8) dollars[~~two (2) dollars and twenty-five (25) cents~~] an hour) and the female clerks receive only $262[~~seventy (70) dollars~~] and fifty (50) cents for their thirty-five (35) hour week (equal to seven (7)[~~two (2)~~] dollars and fifty (50) cents an hour), then it shall[~~would~~] be necessary to show some other factor other than sex as the basis for the unexplained portion of the wage differential. To illustrate further, a compensation plan which provides for a higher rate of commission, draw, advance or guarantee for sales employees of one (1) sex than for employees of the opposite sex would be in violation of the equal pay provisions of the statute unless the employer can establish that the differential in pay is pursuant to an established seniority system, merit increase system, or is based on any other factor other than sex. A compensation plan which provides for a "draw" based on a percentage of each employee's earnings during a specified prior period would not be in violation of the statute if the plan is applied equally to men and women. However, for all men to receive a higher draw, because it is the employer's experience that men generally earn more in commissions than women, shall[~~would~~] not be sufficient indication that the differential is based on a factor other than sex.

(5) Application of exceptions illustrated; in general. When applied without distinction to employees of both sexes, shift differentials, incentive payments, production bonuses, performance and longevity raises and the like will not result in equal pay violations. For example, in an establishment where men and women are employed on a job, but only men work in the night shift for which a night shift differential is paid, such a differential shall[~~would~~] not be prohibited. However, the payment of a higher hourly rate to all men on that job for all hours worked because some of the men may occasionally work nights would result in a prohibited wage differential. The examples in the following paragraphs illustrate a few applications of the exception provisions.

(a) Examples; "red circle" rates, in general. The term "red circle" rates describes certain unusual, higher than normal wage rates which are maintained for many reasons. An example of the use of a "red circle" rate might arise in a situation where a company wishes to transfer a long-service male employee, who can no longer perform his regular job because of ill health, to different work which is now being performed by women. Under the "red circle" principle the employer may continue to pay the male employee his present salary, which is greater than that paid to the women employees, for the work both will be doing. Under such circumstances, maintaining an employee's established wage rate despite a reassignment to a less demanding job, is a valid reason for the differential even though other employees performing the less demanding work would be paid at a lower rate, since the differential is based on a factor other than sex. However, where wage rate differentials have been or are being paid on the basis of sex to employees performing comparable work, rates of the higher

paid employees shall[~~may~~] not be "red circled" in order to comply with the statute.

(b) Examples; temporary reassignments. For a variety of reasons an employer may require an employee, for a short period, to perform the work of a job classification other than the employee's regular classification. If the employee's rate for the[~~his~~] regular job is higher than the rate usually paid for the work to which the employee[~~he~~] is temporarily reassigned, the employer may continue to pay the employee[~~him~~]the higher rate, under the "red circle" principle. For instance an employer who must reduce help in a skilled job may transfer employees to less demanding work without reducing their pay, in order to have them available when they are again needed for their former jobs. Although employees traditionally engaged in performing the less demanding work would be paid at a lower rate than those employees transferred from the more skilled jobs, the resultant wage differential shall[~~would~~] not constitute a violation of the equal pay provisions since the differential is based on factors other than sex. This would be true during the period of time for which the "red circle" rate is bona fide. Temporary reassignments may also involve the opposite relationship of wage rates. Thus, an employee may be required, during the period of temporary reassignment, to perform work for which employees of the opposite sex are paid a higher wage rate than that paid for the duties of the employee's regular job classification. In this[~~such a~~] situation, the employer may continue to pay the reassigned employee at the lower rate, if the rate is not based on quality or quantity of production, and if the reassignment is in fact a temporary one. If a piece rate is paid employees of the opposite sex who perform the work to which the employer in question is reassigned, failure to pay that employee the same piece rate paid such other employees would discriminate on the basis of sex. Also, failure to pay the higher rate to the reassigned employee after it becomes known that the reassignment will not be of a temporary nature would raise a question whether sex rather than the temporary nature of the assignment is the real basis for the wage differential. Generally, failure to pay the higher rate for a period longer than one (1) month will raise questions as to whether the reassignment was in fact intended to be a temporary one.

(c) Examples; training programs. Employees employed under a bona fide training program may, in the furtherance of their training, be assigned from time to time to various types of work in the establishment. At these[~~such~~] times, the employee in training status may be performing comparable work with nontrainees of the opposite sex whose wages or wage rates may be unequal to those of the trainee. Under these circumstances, provided the rate paid to the employee in training status is paid, regardless of sex, under the training program, the differential can be shown to be attributable to a factor other than sex and no violation of the equal pay standard will result.

(d) Examples; head of household. Sometimes differentials in pay to employees performing comparable work are said to be based on the fact that one (1) employee is head of a household and the other, of the opposite sex, is not. Accordingly, since the normal pay practice is to set a wage rate in accordance with the requirements of the job itself and since a "head of household" status bears no relationship to the requirements of the job or to the individual's performance on the job, the position of the Department[~~Office~~] of Workplace Standards is that they are not prepared to conclude that any differential allegedly based on such status is based on a factor other than sex within the intent of the statute.

(e) Examples; temporary and part-time employees. The payment of different wage rates to permanent employees than to temporary employees such as may be hired during the holiday season would not necessarily be a violation of the equal pay provisions even though comparable work is performed by both groups of workers. For example, no violation shall[~~would~~] result where payment of such a differential conforms with the nature and duration of the job and with the customary practice in the industry and the establishment, and the pay practice is applied uniformly to both male and female. Generally, employment for a period longer than one (1) month will raise questions as to whether the employment is in fact temporary. Likewise, the payment of a different wage to employees who work only a few hours a day than to employees of the opposite sex who work a full day will not necessarily involve noncompliance with the equal pay provisions, even though both groups of workers are performing comparable work in the same establishment. No violation of the equal pay standards shall[~~would~~] result if, for example, the difference in working time is the basis for the pay differential, and the pay practice is applied uniformly to both male and female. However, if employees of one (1) sex work thirty (30) to thirty-five (35) hours a week and employees of the other sex work forty (40) to forty-five (45) hours, a question would be raised as to whether the differential is not in fact based on sex since different rates for part-time work are usually for workweeks of twenty (20) hours or less.

KIMBERLEE C. PERRY, Commissioner
LARRY L. ROBERTS, Secretary

APPROVED BY AGENCY: June 14, 2021

FILED WITH LRC: June 14, 2021 at 2:11 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2021 at 2:00 p.m. (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/83102207739?pwd=dUFjQzE0ZnJJdkpwME51ZWtQdUlydz09, password 265686 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 August 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: Anthony Russell, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-3534, fax (502) 564-5484, email anthony.russell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Anthony Russell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides official interpretations of the Department of Workplace Standards for the meaning and application of the equal pay provisions in KRS 337.420 to 337.433.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify the Department's interpretation of the meaning and application of equal pay provisions in KRS 337.420 to 337.433 to ensure employers are compliant with statutes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 337.425 authorizes the commissioner to promulgate administrative regulations to carry out the purpose of KRS 337.420 to 337.433.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance on how the department interprets the meaning and application of equal pay provisions set forth in KRS 337.420 to 337. 433 which helps ensure compliance with statutes.

(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: The amendment updates the administrative regulation to

match the current language that is utilized by the department. Further, the amendment updates dollar amounts in the examples provided to more closely match current minimum wage requirements. This amendment does not change any existing wage standards.

(b) The necessity of the amendment to this administrative regulation: This amendment updates language to ensure compliance with KRS Chapter 13A and ensures effective guidance for KRS 337.420 to 337.433.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 337.425 authorizes the commissioner to promulgate administrative regulations to carry out the purpose of KRS 337.420 to 337.433. This amendment updates the administrative regulation to match current language utilized by the department.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates language to clarify the guidance provided in the administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all subject employers who employ employees in the Commonwealth subject to KRS Chapter 337, as well as, their employees.

(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 required by this amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection and guidance of the equal pay provisions so employers can ensure compliance with applicable statutes.

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

(a) Initially: This administrative regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This administrative regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state 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: This administrative regulation, as amended, is not anticipated to generate any increase in fees or funding.

(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 subject employers and employees covered by KRS Chapter 337 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? Most state and local governmental entities are subject to KRS Chapter 337.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 337.425.

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 the first year? There is no cost to this amendment.

(d) How much will it cost to administer this program for subsequent years? There is no cost to 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 explanations: This amendment does not impose any additional requirements or expenditures.

LABOR CABINET
Department of Workplace Standards
(Amendment)

803 KAR 1:060. Overtime pay requirements.

RELATES TO: KRS 337.285

STATUTORY AUTHORITY: KRS 337.295

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation constitutes the official interpretations of the Department[~~Office~~] of Workplace Standards, Kentucky Labor Cabinet[~~Department of Labor~~], with respect to the meaning and application of the overtime pay requirements contained in KRS 337.285. It is the function of this administrative regulation to make available in one place the interpretations of these provisions which will guide the Department[~~Office~~] of Workplace Standards in the performance of its duties under the law unless and until it is otherwise directed by authoritative decisions of the courts or conclude, upon reexamination of an interpretation, that it is incorrect.

Section 1. Application of Overtime Provisions Generally. Since there is no absolute limitation in KRS 337.285 on the number of hours that an employee may work in any workweek, the employee[~~he~~] may work as many hours a week as the employee and the[~~he and his~~] employer see fit, so long as the required overtime compensation is paid the employee[~~him~~] for hours worked in excess of forty (40) hours as prescribed in KRS 337.285. This statute does not require, however, that an employee be paid overtime compensation for hours in excess of eight (8) per day, or for work on Saturdays, Sundays, holidays or regular days of rest. If no more than forty (40) hours are actually worked in the workweek, overtime compensation pursuant to KRS 337.285 need not be paid. Nothing in the statute, however, will relieve an employer of any obligation the employer[~~he~~] may have assumed by agreement[~~contract~~] or of any obligation imposed by other state or federal laws to limit overtime hours of work or to pay premium rates for work in excess of a daily standard or for work on Saturdays, Sundays, holidays, or other periods outside of or in excess of the normal or regular workweek or work day.

Section 2. The Workweek as the Basis for Applying KRS 337.285. If in any workweek an employee is covered by KRS 337.285 and is not exempt from its overtime pay requirements, the employer shall[~~must~~] total all the hours worked by the employee [~~for him~~] in that workweek, and pay overtime compensation for each hour worked in excess of the forty (40) hours.

Section 3. Each Workweek Stands Alone. The statute takes a single workweek as its standard and does not permit averaging of hours over two (2) or more weeks. Thus, if an employee works thirty (30) hours one week and the fifty (50) hours the next, the

employee shall[~~he must~~] receive overtime compensation for the overtime hours worked beyond the applicable maximum in the second week, even though the average number of hours worked in the two (2) weeks is forty (40). This is true regardless of whether the employee works on a standard or swing-shift schedule and regardless of whether the employee[~~he~~] is paid on a daily, weekly, biweekly, monthly, or other basis. The rule is also applicable to pieceworkers and employees paid on a commission basis. It is therefore necessary to determine the hours worked and the compensation earned by pieceworkers and commission employees on a work week[~~weekly~~] basis.

Section 4. Determining the Workweek. An employee's workweek is a fixed and regularly recurring period of 168 hours, seven (7) consecutive twenty-four (24) hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of the day. For purposes of computing pay due under this statute, a single workweek may be established for a plant or other establishment as a whole or different workweeks may be established for different employees or groups of employees. Once the beginning time of an employee's workweek is established, it remains fixed regardless of the schedule of hours worked [~~by him~~]. The beginning of the workweek may be changed if the change is intended to be permanent and is not[~~no~~] designed to evade the overtime requirements of the statute. The proper method of computing overtime pay in a period in which a change in the time of commencement of the workweek is made, is explained in Section 12 of this administrative regulation.

Section 5. General Standard for Overtime Pay. The general overtime pay standard in KRS 337.285 requires that overtime shall[~~must~~] be compensated at a rate not less than one and one-half (1 1/2) times the hourly rate at which the employee is employed but shall not[~~may in no event~~] be less than the statutory minimum. If the employee's hourly rate of pay is higher than the statutory minimum, the[~~his~~] overtime compensation shall[~~must~~] be computed at a rate not less than one and one-half (1 1/2) times the[~~such~~] higher rate.

Section 6. The overtime compensation is an hourly rate. The overtime compensation under KRS 337.285 is based on the rate per hour. The statute does not require employers to compensate employees on an hourly rate basis; their earnings may be determined on a piece-rate, salary, commission, or other basis, but in such case the overtime compensation due to employees shall[~~must~~] be computed on the basis of the hourly rate derived therefrom and, therefore, it is necessary to compute the hourly rate of [~~such~~] employees during each workweek. The hourly rate of pay of an employee shall be[~~is~~] determined by dividing [~~his~~] total remuneration for employment in any workweek by the total number of hours actually worked by the employee[~~him~~] in that workweek for which the[such] compensation was paid. The following section gives some examples of the proper method of determining the regular hourly rate of pay in particular instances.

Section 7. (1) Hour rate employee. If the employee is employed solely on the basis of a single hourly rate the overtime work the employee shall[~~he must~~] be paid, in addition to [~~his~~] straight-time hourly earnings, a sum determined by multiplying one-half (1/2) the hourly rate by the number of hours worked in excess of forty (40) in the workweek. If the employee receives, in addition to [~~his~~] earnings at the hourly rate, an additional production bonus, the overtime shall[~~must~~] be paid on the total hourly rate received by the employee. This shall[~~would~~] be computed by adding the additional pay to the regular hourly rate and dividing by the total number of hours worked.

(2) Pieceworker. When an employee is employed on a piece-rate basis, the[~~his~~] hourly rate of pay shall be[~~is~~] computed by adding together [~~his~~] total earnings for the workweek from piece rate and all other sources. This sum shall[~~is~~] then divided by the number of hours worked in the week for which compensation was paid, to yield the pieceworker's hourly rate for that week. For the[~~his~~] overtime work the pieceworker is entitled to be paid, in addition to this total weekly earnings at this hourly rate for all hours worked, a sum equivalent to one-half (1/2) this rate of pay multiplied by the number of hours worked in excess of forty (40) in the week.

(3) Day rates and job rates. If the employee is paid a flat sum for a day's work or for doing a particular job, without regard to the number of hours worked in the day or at the job, and if the employee[~~he~~] receives no other form of compensation for services, the[~~his~~] hourly rate shall be[~~is~~] determined by totaling all the sums received at the[~~such~~] day rates or job rates in the workweek and dividing by the total hours actually worked. The employee[~~He~~] is then entitled to extra half-time pay at this rate for all hours worked in excess of forty (40) in the workweek.

(4) Salaried employee.

(a) If the employee is employed solely on a weekly salary basis, the[~~his~~] hourly rate of pay, on which time and a half shall[~~must~~] be paid, shall be[~~is~~] computed by dividing the salary by the number of hours which the salary is intended to compensate. If an employee is hired at a salary of $350[~~seventy (70) dollars~~] and it is understood that this salary is compensation for a regular workweek of thirty-five (35) hours, the employee's rate of pay shall be[~~is~~] 350[~~seventy (70)~~] divided by thirty-five (35) hours, or ten (10)[~~two (2)~~] dollars an hour, and when the employee[~~he~~] works overtime the employee[~~he~~] is entitled to receive ten (10)[~~two (2)~~] dollars for each of the forty (40) hours and fifteen (15)[~~three (3)~~] dollars for each hour thereafter. If an employee is hired at a salary of $375[~~seventy (70) dollars~~] for a forty (40) hour week, the[~~his~~] rate shall be[~~is~~] nine (9) dollars[~~one (1) dollar~~] and thirty eight (38)[~~seventy-five (75)~~] cents an hour.

(b) Where the salary covers a period longer than a workweek, such as a month, it shall[~~must~~] be reduced to its workweek equivalent. A monthly salary is subject to translation to its equivalent weekly wage by multiplying by twelve (12) (the number of months) and dividing by fifty-two (52) (the number of weeks). A semimonthly salary is translated into its equivalent weekly wage by multiplying by twenty-four (24) and dividing by fifty-two (52). Once the weekly wage is arrived at, the hourly rate of pay shall[~~will~~] be calculated as indicated in the previous paragraph. An alternative method may be used to compute the hourly rate by dividing the monthly salary by the number of working days in the month and then by the number of hours of the normal or regular workday. Of course, the resultant rate in such a case shall[~~must~~] not be less than the statutory minimum wage.

(c)1. An employee employed on a salary basis may have hours of work which fluctuate from week to week and the salary may be paid [~~him~~] pursuant to an understanding with the[~~his~~] employer that the employee[~~he~~] will receive a[~~such~~] fixed amount as straight time pay for whatever hours the employee[~~he~~] is called upon to work in a workweek, whether few or many. Where there is a clear mutual understanding of the parties that the fixed salary is compensation (apart from overtime premiums) for the hours worked each workweek, whatever their number, rather than for working forty (40) hours or some other fixed weekly work period, the[~~such a~~] salary arrangement is permitted if the amount of the salary is sufficient to provide compensation to the employee at a rate not less than the applicable minimum wage rate for every hour worked in those workweeks in which the number of hours the employee[~~he~~] works is greatest, and if the employee[~~he~~] receives extra compensation, in addition to the[~~such~~] salary, for all overtime hours worked at a rate not less than one-half (1/2) the[~~his~~] rate of pay. Since the salary in this[~~such a~~] situation is intended to compensate the employee at straight time rates for whatever hours are worked in the workweek, the regular hourly rate of the employee will vary from week to week and shall be[~~is~~] determined by dividing the number of hours worked in the workweek into the amount of the salary to obtain the applicable hourly rate for the week. Payment for overtime at one-half (1/2) the[~~such~~] rate in addition to the salary satisfies the overtime pay requirement because the[~~such~~] hours have already been compensated at the straight time rate, under the salary arrangement.

2. The application of the principles stated in the previous paragraph may be illustrated by the case of an employee whose hours of work do not customarily follow a regular schedule but vary

from week to week, whose overtime work is never in excess of fifty (50) hours in a workweek, and whose salary of $600[~~eighty (80) dollars~~] a week is paid with the understanding that it constitutes [~~his~~] compensation, except for overtime premiums, for whatever hours are worked in the workweek. If during the course of four (4) weeks this employee works forty (40), thirty seven and one-half (37 1/2) [~~forty-four (44)~~], fifty (50), and forty-eight (48) hours, the[~~his~~] hourly rate of pay in each of these weeks is $15[~~$2~~], $16[~~$1.818~~], $12[~~$1.60~~], and $12.50[~~$1.667~~], respectively. Since the employee has already received straight-time compensation on a salary basis for all hours[~~hour~~] worked, only additional half-time pay is due.

3. The fluctuating workweek method of overtime payment shall[~~may~~] not be used unless the salary is sufficiently large to assure that no workweek will be worked in which the employee's average hourly earnings from the salary fall below the applicable minimum wage, and unless the employee clearly understands that the salary covers whatever hours the job may demand in a particular workweek and the employer pays the salary even though the workweek is one in which a full schedule of hours is not worked. Typically, the[~~such~~] salaries are paid to employees who do not customarily work a regular schedule of hours and are in amounts agreed on by the parties as adequate straight-time compensation for long workweeks as well as short ones, under the circumstances of the employment as a whole. Where all the prerequisites for use of the "fluctuating workweek" method of overtime payment are present, the law, in requiring that not less than the prescribed premium of fifty (50) percent for overtime hours worked be paid, does not prohibit paying more. On the other hand, where all the facts indicate that an employee is being paid for [~~his~~] overtime hours at a rate no greater than that which is received[~~he receives~~] for nonovertime hours, compliance with the law cannot be rested on any application of the fluctuating workweek overtime formula.

(5) Employees working at two (2) or more rates. Where an employee in a single workweek works at two (2) or more different types of work for which different nonovertime rates of pay have been established, the[~~his~~] hourly rate for that week is the weighted average of the[~~such~~] rates. That is, the[~~his~~] total earnings are computed to include [~~his~~] compensation during the workweek from all the[~~such~~] rates, and are then divided by the total number of hours worked at all jobs.

(6) Payments other than cash. Where payments are made to employees in the form of goods or facilities which are regarded as part of wages, the reasonable cost to the employer or the fair value of the[~~such~~] goods or of furnishing the[~~such~~] facilities shall[~~must~~] be included in the hourly rate. Where, for example, an employer furnishes lodging to [~~his~~] employees in addition to cash wages, the reasonable cost or the fair value of the lodging shall[~~must~~] be added to the cash wages before the hourly rate is determined.

(7) Commission payments.

(a) Commissions (whether based on a percentage of total sales or of sales in excess of a specified amount, or on some other formula) are payments for hours worked and shall[~~must~~] be included in the hourly rate. This is true regardless of whether the commission is the sole source of the employee's compensation or is paid in addition to a guaranteed salary or hourly rate, or on some other basis, and regardless of the method, frequency, or regularity of computing, allocating and paying the commission. It shall[~~does~~] not matter whether the commission earnings are computed daily, weekly, biweekly, semimonthly, monthly, or at some other interval. The fact that the commission is paid on a basis other than weekly, and that payment is delayed for a time past the employee's normal payday or pay period, shall[~~does~~] not excuse the employer from including this payment in the employee's hourly rate.

(b) When the commission is paid on a weekly basis, it shall be[~~is~~] added to the employee's other earnings for that workweek, and the total shall be[~~is~~] divided by the total number of hours worked in the workweek to obtain the employee's hourly rate for the particular workweek. The employee shall[~~must~~] then be paid extra compensation at one-half (1/2) of that rate for each hour worked in excess of forty (40) hours in the workweek.

(c) If the calculation and payment of the commission cannot be completed until sometime after the regular payday for the workweek, the employer may disregard the commission in computing the hourly rate until the amount of commission can be ascertained. Until that is done the employer[~~he~~] may pay compensation for overtime at a rate of not less than one and one-half (1 1/2) the hourly rate paid the employee, exclusive of the commission. When the commission can be computed and paid, additional overtime compensation due by reason of the inclusion of the commission in the employee's regular hourly rate shall[~~must~~] be paid. To compute this additional overtime compensation, it shall be[~~is~~] necessary, as a general rule, that the commission be apportioned back over the workweeks of the period during which it was earned. The employee shall[~~must~~] then receive additional overtime compensation for each week during the period in which the employee[~~he~~] worked in excess of the forty (40) hours. The additional compensation for that workweek shall[~~must be~~] not be less than one-half (1/2) of the increase in the hourly rate of pay attributable to the commission for that week multiplied by the number of hours worked in excess of the forty (40) hours in that workweek.

(d) If it is not possible or practicable to allocate the commission among the workweeks or the period in proportion to the amount of commission actually earned or reasonably presumed to be earned each week, some other reasonable and equitable method shall[~~must~~] be adopted. The following methods shall[~~must~~] be used:

1. Allocation of equal amounts to each week. Assume that the employee earned an equal amount of commission in each week of the commission computation period and compute any additional overtime compensation due on this amount. This may be done as follows: For a commission computation period of one (1) month, multiply the commission payment by twelve (12) and divide by fifty-two (52) to get the amount of commission allocable to a single week. If there is a semimonthly computation period, multiply the commission payment by twenty-four (24) and divide by fifty-two (52) to get each week's commission. For a commission computation period of a specific number of workweeks, such as every four (4) weeks (as distinguished from every month) divide the total amount of commission by the number of weeks for which it represents additional compensation to get the amount of commission allocable to each week. Once the amount of commission allocable to a workweek has been ascertained for each week in which overtime was worked, the commission for that week shall be[~~is~~] divided by the total number of hours worked in that week, to get the increase in the hourly rate. Additional overtime due shall be[~~is~~] computed by multiplying one-half (1/2) of this figure by the number of overtime hours worked in the week.

2. Allocation of equal amounts to each hour worked. If there are facts which make it inappropriate to assume equal commission earnings for each workweek, assume that the employee earned an equal amount of commission in each hour [~~that he~~] worked during the commission computation period, and divide the amount of the commission payment by the number of hours worked in the period to obtain the amount of increase in the regular rate allocable to the commission payment. One-half (1/2) of this figure shall[~~should~~] be multiplied by the number of overtime hours worked by the employee in the overtime workweek of the commission computation period to get the amount of additional overtime compensation due for this period.

3. If there are delays in crediting sales or debiting returns or allowances which affect the computation of commissions, the amounts paid to the employee for the computation period will be accepted as the total commission earnings of the employee during the[~~such~~] period, and the commission may be allocated over the period from the last commission computation date to the present commission computation date, even though there may be credits or debits resulting from work which actually occurred during a previous period. The hourly increase resulting from the commission shall[~~may~~] be computed as outlined in the preceding paragraphs pertaining to commission payments.

(8) Other methods of determining the regular hourly rate are permitted as long as they provide for each employee employed by an employer to be paid a rate of not less than one and one-half (1 1/2) times the hourly rate at which the employee is employed and

does not attempt to evade the provisions of KRS 337.285.

Section 8. Payments Excluded From Computing Hourly Rate. As used in KRS 337.285 the "hourly rate at which he is employed" shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include:

(1) Sums paid as gifts; payments in the nature of gifts made at holiday times[~~Christmas time~~] or on other special occasions as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency. The[~~Such~~] sums shall[~~may~~] not, however, be credited toward overtime compensation due under the statute. To qualify for this exclusion the bonus shall[~~must~~] be actually a gift or in the nature of a gift. If it is measured by hours worked, production, or efficiency, the payment is geared to wages and hours during the bonus period and is no[~~not~~] longer to be considered as in the nature of a gift. If the payment is so substantial that it can be assumed that employees consider it a part of the wages for which they work, the bonus shall not[~~cannot~~] be considered to be in the nature of a gift. Obviously, if the bonus is paid pursuant to contract, it is not in the nature of a gift.

(2) Payments made for occasional[~~occasionally~~] period when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of the[~~his~~] employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for the[~~his~~] hours of employment. However, since the[~~such~~] payments are not made as compensation for the employee's hours worked in any workweek, no part of the[~~such~~] payments shall[~~can~~] be credited toward overtime compensation due under the statute.

(3) Sums paid in recognition of services performed during a given period if either:

(a) Both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect the[~~such~~] payments regularly; or

(b) The payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan. The[~~Such~~] sums may not, however, be credited toward overtime compensation due under the statute. In order for a bonus to qualify for exclusion as a discretionary bonus the employer shall[~~must~~] retain discretion both as to the fact of payment and as to the amount until a time quite close to the end of the period for which the bonus is paid. The sum to be paid as a bonus is determined by the employer without prior promise or agreement. The employee has no contract right, express or implied, to any amount. If the employer promises in advance to pay a bonus, the employer[~~he~~] has abandoned [~~his~~] discretion with regard to it.

(4) Contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees. The[~~Such~~] sums may not, however, be credited toward overtime compensation under the statute.

(5) Extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because the[~~such~~] hours are hours worked in excess of eight (8) in a day or in excess of the maximum workweek applicable to the[~~such~~] employee's normal working hours. Extra compensation paid for these hours shall be creditable toward overtime compensation under the statute.

(6) Extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regulation days of rest, or on the sixth or seventh day of the workweek, where the[~~such~~] premium rate is not less than one and one-half (1 1/2) times the rate established in good faith for like work performed in nonovertime hours on other days. Extra compensation paid for these hours shall be creditable toward overtime compensation under the statute.

(7) Extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday, where the[~~such~~] premium rate is not less than one and one-half (1 1/2) times the rate established in good faith by the contract or agreement for like work performed during the[~~such~~] workday or workweek. Extra compensation paid for these hours shall be creditable toward overtime compensation under the statute.

Section 9. Requirements of a "Bona Fide Profit-sharing Plan or Trust."

(1) A bona fide profitsharing plan or trust shall[~~is required to~~] meet all of the standards set forth in the following paragraphs:

(a) The profit sharing plan or trust constitutes a definite program or arrangement in writing, communicated or made available to the employees, which is established and maintained in good faith for the purpose of distributing to the employees a share of profits as additional remuneration over and above the wages or salaries paid to employees which wages or salaries are not dependent upon or influenced by the existence of the[~~such~~] profit-sharing plan or trust or the amount of the payments made pursuant thereto.

(b) All contributions or allocations by the employer in the fund or trust to be distributed to the employees are:

1. Derived solely from profits of the employer's business as a whole, or an established branch or division of the business which is recognized [~~as such~~] for general business purposes and for which profits are separately and regularly calculated in accordance with accepted accounting practice; and

2. Made periodically, but not more frequently than is customary or consonant with accepted accounting practice to make periodic determinations of profit.

(c) Eligibility to share in profits extends:

1. At least to all employees who are subject to the minimum wage and overtime provisions of the statute[~~act~~], or to all [~~such~~] employees in an established part of the employer's business as described in paragraph (b) of this subsection: provided, however, that [~~such~~] eligibility may be determined by factors such as length of service or minimum schedule of hours or days of work which are specified in the plan or trust, and further, that eligibility need not extend to officers of the employer; or

2. To [~~such~~] classifications of employees as the employer may designate with the approval of the commissioner[~~executive director~~] upon a finding, after notice to interested persons, including employee representatives, and an opportunity to present their views either orally or in writing.

(d) The amounts paid to individual employees are determined in accordance with a definite formula or method of calculation specified in the plan or trust. The formula or method of calculation may be based on any one or more of such factors as straight-time earnings, total earnings, base rate of pay of the employee, straight-time hours or total hours worked by employees, or length of service, or distribution may be made on a per capita basis.

(e) An employee's total share determined in accordance with paragraph (d) of this subsection shall[~~may~~] not be diminished because of any other remuneration received by him.

(f) Provision is made either for payment to the individual employees of their respective shares of profits within a reasonable period after the determination of the amount of profits to be distributed, or for the irrevocable deposit by the employer of the[~~his~~] employee's distributive shares of profits with a trustee for deferred distribution to the[~~such~~] employees of their respective shares after a stated period of time or upon the occurrence of appropriate contingencies specified in the plan or trust; provided, however, that the right of an employee to receive his or her share is not made dependent upon [~~his~~] continuing in the employ of the employer after the period for which the determination of profits has been made.

(2) No plan or trust which contains any one (1) of the following provisions shall be deemed to meet the requirements of a bona fide profit-sharing plan or trust:

(a) If the share of any individual employee is determined in substance on the basis of attendance, quality or quantity of work, rate of production, or efficiency;

(b) If the amount to be paid periodically by the employer into the fund or trust to be distributed to the employees is a fixed sum;

(c) If periodic payments of minimum amounts to the employees are guaranteed by the employer;

(d) If any individual employee's share, by the terms of the plan or trust, is set at a predetermined fixed sum or is so limited as to provide in effect for the payment of a fixed sum, or is limited to or set at a predetermined specified rate per hour or other unit of work or worktime;

(e) If the employer's contributions or allocations to the fund or trust to be distributed to the employees are based on factors other than profits such as hours of work, production, efficiency, sales or savings in cost.

(3) As used in this section a "profit-sharing plan" means any [~~such~~] program or arrangement [~~as qualifies hereunder~~] which provides for the distribution by the employer to the[~~his~~] employees of their respective shares of profits; and "profit-sharing trust" means any [~~such~~] program or arrangement as qualifies under this part which provides for the irrevocable deposit by the employer of the[~~his~~] employee's distributive shares of profits with a trustee for deferred distribution to the[~~such~~] employees of their respective shares.

Section 10. Requirements of a "Bona Fide Thrift or Savings Plan."

(1) A bona fide thrift or savings plan shall[~~is required to~~] meet all of the standards set forth in the following paragraphs:

(a) The thrift or savings plan constitutes a definite program or arrangement in writing, adopted by the employer or by contract as a result of collective bargaining and communicated or made available to the employees, which is established and maintained, in good faith, for the purpose of encouraging voluntary thrift or savings by employees by providing an incentive to employees to accumulate regularly and retain cash savings for a reasonable period of time or to save through the regular purchase of public or private securities.

(b) The plan specifically shall set forth the category or categories of employees participating and the basis of their eligibility. Eligibility shall[~~may~~] not be based on such factors as hours of work, production, or efficiency of the employees; provided, however, that hours of work may be used to determine eligibility of part-time or casual employees.

(c) The amount any employee may save under the plan shall be specified in the plan or determined in accordance with a definite formula specified in the plan, which formula may be based on one or more factors such as the straight-time earnings or total earnings, base rate of pay, or length of service of the employee.

(d) The employer's total contribution in any year shall[~~may~~] not exceed fifteen (15) percent of the participating employees' total earnings during that year. In addition, the employer's total contribution in any year shall[~~may~~] not exceed the total amount saved or invested by the participating employees during that year; provided, however, that a plan permitting a greater contribution may be submitted [~~to the executive director~~] and approved by the commissioner[~~him~~] as a bona fide thrift or savings plan.

(e) The employer's contributions shall be apportioned among the individual employees in accordance with a definite formula or method of calculation specified in the plan, which formula or method of calculation is based on the amount saved or the length of time the individual employee retains [~~his~~] savings or investment in the plan; provided, that no employee's share determined because of any other remuneration received by the employee[~~him~~].

(2)(a) No employee's participation in the plan shall be on other than a voluntary basis.

(b) No employee's wages or salary shall be dependent upon or influenced by the existence of the[~~such~~] thrift or savings plan or the employer's contributions to the plan[~~thereto~~].

(c) The amounts any employee may save under the plan, or the amounts paid by the employer under the plan shall[~~may~~] not be based upon the employee's hours of work, production or efficiency.

Section 11. Conditions for Exclusion of Benefit-plan Contributions under Section 8(4) of this Administrative Regulation.

(1) In order for an employer's contribution to qualify for exclusion from the regular hourly rate the following conditions shall[~~must~~] be met:

(a) The contributions shall[~~must~~] be made pursuant to a specific plan or program adopted by the employer, or by contract as a result of collective bargaining, and communicated to the employees. This shall[~~may~~] be either a company-financed plan or an employer-employee contributory plan.

(b) The primary purpose of the plan shall[must] be to provide systematically for the payment of benefits to employees on account of death, disability, advanced age, retirement, illness, medical expenses, hospitalization, and the like.

(c) In the plan or trust, either:

1. The benefits shall[~~must~~] be specified or definitely determinable on an actuarial basis; or

2. There shall[~~must~~] be both a definite formula for determining the amount to be contributed by the employer and a definite formula for determining the benefits for each of the employees participating in the plan; or

3. There shall[~~must~~] be both a formula for determining the amount to be contributed by the employer and a provision for determining the individual benefits by a method which is consistent with the purposes of the plan or trust.

(d) The employer's contributions shall[~~must~~] be paid irrevocably to a trustee or third person pursuant to an insurance agreement, trust or other funded arrangement. The trustee shall[~~must~~] assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust or fund shall[~~must~~] be set up in such a way that in no event will the employer be able to recapture any of the contributions paid in nor in any way divert the funds to the employer's[~~his~~] own use or benefit. (It should also be noted that in the case of joint employer-employee contributory plans, where the employee contributions are not paid over to a third person or to a trustee unaffiliated with the employer, violations of the statute may result if the employee contributions cut into the required minimum or overtime wages.) Although an employer's contributions made to a trustee or third person pursuant to a benefit plan shall[~~must~~] be irrevocably made, this does not prevent return to the employer of [~~such~~] sums which have been[~~he had~~] paid in excess of the contributions actually called for by the plan, as where the[~~such~~] excess payments result from error or from the necessity of making payments to cover the estimated cost of contributions at a time when the exact amount of the necessary contributions under the plan is not yet ascertained.

(e) The plan shall[~~must~~] not give an employee the right to assign [~~his~~] benefits under the plan nor the option to receive any part of the employer's contributions in cash instead of the benefits under the plan; provided, however, that if a plan otherwise qualifies as a bona fide benefit plan, it will still be regarded as a bona fide part thereof, for the payment to an employee in cash of all or a part of the amount standing to the employee's[~~his~~] credit:

1. At the time of the severance of the employment relation due to causes other than retirement, disability, or death; or

2. Upon proper termination of the plan; or

3. During the course of [~~his~~] employment under circumstances specified in the plan and not inconsistent with the general purposes of the plan to provide the benefits.

(2) Where the benefit plan or trust has been approved by the Bureau of Internal Revenue as satisfying the requirements of section 401(1) of the Internal Revenue Code in the absence of evidence to the contrary, the plan or trust shall[~~will~~] be considered to meet the conditions specified in subsection (1)(a), (d) and (e) of this section.

Section 12. Overlapping when Change of Workweek is Made.

(1) As stated in Section 4 of this administrative regulation, the beginning of the workweek may be changed for an employee or[~~of~~] for a group of employees if the change is intended to be permanent and is not designed to evade the overtime requirements of the statute. A change in the workweek necessarily results in a situation

in which one or more hours or days fall in both the old workweek as previously constituted and the new workweek. Thus, if the workweek in a plant commenced at 7 a.m. on Monday and it is now proposed to begin the workweek at 7 a.m. on Sunday, the hours worked from 7 a.m. Sunday to 7 a.m. Monday will constitute both the last hours of the old workweek and the first hours of the newly established workweek.

(2) When the beginning of the workweek is changed, if the hours which fall within both old and new workweeks as explained in the subsection (1) of this section are hours in which the employee does no work, the[~~his~~] overtime compensation for each workweek is, of course, determinable in precisely the same manner as it would be if no overlap existed. If, on the other hand, some of the employee's working time falls within hours which are included in both workweeks, the Department of Workplace Standards[~~Department of Labor~~], as an enforcement policy, shall[~~will~~] assume that the overtime requirements of the statute have been satisfied if computation is made as follows:

(a) Assume first that the overlapping hours are to be counted as hours worked only in the old workweek and not in the new; compute straight-time and overtime compensation due for each of the two (2) workweeks on this basis and total their sums.

(b) Assume now that the overlapping hours are to be counted as hours worked only in the new workweek and not in the old, and complete the total computation accordingly.

(c) Pay the employee an amount not less than the greater of the amounts computed by methods in paragraphs (a) and (b) of this subsection. To illustrate overlapping hours when a work week is changed, suppose that, the employee who receives $8 an hour and is subject to overtime pay after (forty) 40 hours a week, worked 5 (five) hours on Sunday, March 7. The employee's last "old" work week commenced at 7 a.m. on Monday, March 1, and worked (forty) 40 hours March 1 through March 5 so that for the work week ending March 7, the employee would be owed straight time and overtime compensation for (forty five) 45 hours. The proposal is to commence the "new" work week at 7 a.m. on March 7. If in the "new" work week of Sunday, March 7, through Saturday, March 13, the employee worked a total of (forty) 40 hours, including the (five) 5 hours worked on Sunday. The allocation of the Sunday hours to the old work week will result in the higher total compensation to the employee for the (thirteen) 13 day period. The employee shall be paid $380 (40 x $8 + 5 x $12.00) for the period of March 1 through March 7 and $280 (35 x $8) for the period of March 8 through March 13.

KIMBERLEE C. PERRY, Commissioner
LARRY L. ROBERTS, Secretary

APPROVED WITH AGENCY: June 14, 2021

FILED WITH LRC: June 14, 2021 at 2:11 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2021 at 2:00 p.m. (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/83102207739?pwd=dUFjQzE0ZnJJdkpwME51ZWtQdUlydz09, password 265686 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 August 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: Anthony Russell, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-3534, fax (502) 564-5484, email anthony.russell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Anthony Russell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides guidance on the meaning and application of overtime pay requirements in KRS 337.285

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide interpretation of the meaning of overtime pay requirements in KRS 337.285 to ensure employers are compliant with the statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 337.295 authorizes the commissioner to promulgate administrative regulations under KRS 337.275 to 337.325, 337.345, and 337.385 to 337.405.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance on how the Department will interpret the overtime pay requirements in KRS 337.285 to ensure employers are compliant with the statute.

(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: The amendment updates the administrative regulation to match the current language that is utilized by the department. Further, the amendment updates dollar amounts in the examples provided to more closely match current minimum wage requirements. This amendment does not change any existing wage standards.

(b) The necessity of the amendment to this administrative regulation: This amendment updates language to ensure compliance with KRS Chapter 13A and ensures effective guidance for the statutory provisions under KRS Chapter 337.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 337.295 authorizes the commissioner to promulgate administrative regulations under KRS 337.275 to 337.325, 337.345, and 337.385 to 337.405. This amendment updates the administrative regulation to match current language utilized by the department.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates language to clarify the guidance provided in the administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all subject employers who employ employees in the Commonwealth subject to KRS Chapter 337, as well as, their employees.

(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 required by this amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection and guidance for overtime pay requirements.

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

(a) Initially: This administrative regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This administrative regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state 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: This administrative regulation, as amended, is not anticipated to generate any increase in fees or funding.

(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 and employees covered by KRS Chapter 337 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? Most state and local governmental entities are subject to KRS Chapter 337.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 337.295.

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

(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 the first year? There is no cost to this amendment.

(d) How much will it cost to administer this program for subsequent years? There is no cost to 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 explanations: This amendment does not impose any additional requirements or expenditures.

LABOR CABINET
Department of Workplace Standards
(Amendment)

803 KAR 1:063. Trading time.

RELATES TO: KRS 337.275, 337.285, 45 U.S.C. 181

STATUTORY AUTHORITY: KRS 337.295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.295 authorizes the commissioner[~~executive director~~] to issue administrative regulations for special items usual in a particular employer-employee relationship. The function of this administrative regulation is to define the criteria to be met by public employers who wish to permit employees engaged in fire protection activities and any employee of a carrier by air subject to the provisions of 45 U.S.C. 181 (title II of the Railway Labor Act) to use the practice of "trading time."

Section 1. A common practice or agreement among employees engaged in fire protection activities and employees of a carrier by air subject to the provisions of 45 U.S.C. 181 (title II of the Railway Labor Act) is that of substituting for one another on regularly scheduled tours of duty (or for some part thereof) in order to permit an employee to absent himself or herself from work to attend to purely personal pursuits. This practice is commonly referred to as "trading time."

Section 2. The practice of "trading time" shall[~~will~~] be deemed to have no effect on hours of work if the following criteria are met:

(1) The trading of time is done voluntarily by the employees participating in the program and not at the behest of the employer;

(2) The reason for trading time is due, not to the employer's business operations, but to the employee's desire or need to attend to personal matters; and

(3) A record is maintained by the employer of all time traded by [~~his~~] employees.

KIMBERLEE C. PERRY, Commissioner
LARRY L. ROBERTS, Secretary

APPROVED BY AGENCY: June 14, 2021

FILED WITH LRC: June 14, 2021 at 2:11 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2021 at 2:00 p.m. (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/83102207739?pwd=dUFjQzE0ZnJJdkpwME51ZWtQdUlydz09, password 265686 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 August 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: Anthony Russell, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-3534, fax (502) 564-5484, email anthony.russell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Anthony Russell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines criteria that must be met by public employers who allow employees engaged in fire protection activities and any employee of a carrier by air subject to provisions of 45 U.S.C. 181(title II of the Railway Labor Act) to participate in the practice of trading time.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define language to determine how to calculate time properly for public employers who allow employees engaged in fire protection activities and any employee of a carrier by air subject to provisions of 45 U.S.C. 181(title II of the Railway Labor Act) to participate in the practice of trading time.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 337.295 authorizes the commissioner to promulgate administrative regulations under KRS 337.275 to 337.325, 337.345, and 337.385 to 337.405.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the guidance for how to properly calculate time for subject employers and employees participating in the practice of trading time.

(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: This amendment updates the administrative regulation to match the current language that is utilized.

(b) The necessity of the amendment to this administrative regulation: This amendment updates language to ensure compliance with KRS Chapter 13A and ensures effective guidance for the statutory provisions under KRS Chapter 337.275 and 337.285.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 337.295 authorizes the commissioner to promulgate administrative regulations under KRS 337.275 to 337.325, 337.345, and 337.385 to 337.405. This amendment updates the administrative regulation to match current language utilized by the department.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates language to clarify the criteria provided in the administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all subject employers who employ employees in the Commonwealth subject to KRS Chapter 337, as well as, their employees.

(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 required by this amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection and guidance to ensure the correct calculation of time for subject employers and employees.

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

(a) Initially: This administrative regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This administrative regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state 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: This administrative regulation, as amended, is not anticipated to generate any increase in fees or funding.

(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 public employers who allow employees engaged in fire protection activities and any employee of a carrier by air subject to provisions of 45 U.S.C. 181(title II of the Railway Labor Act) 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? Most state and local governmental entities are subject to KRS Chapter 337.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 337.295, KRS 337.285, KRS 337.295.

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

(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 the first year? There is no cost to this amendment.

(d) How much will it cost to administer this program for subsequent years? There is no cost to 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 explanations: This amendment does not impose any additional requirements or expenditures.

LABOR CABINET
Department of Workplace Standards
(Amendment)

803 KAR 1:065. Hours worked.

RELATES TO: KRS 337.275, 337.285

STATUTORY AUTHORITY: KRS 337.295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.275 requires that each employee, not specifically exempted, to receive a specified minimum wage. KRS 337.285 provides that employees shall[~~may~~] not be employed for more than a stated number of hours a week without receiving at least one and one-half (1 1/2) times their rate of pay for the overtime hours. The amount of money an employee should receive cannot be determined without knowing the number of hours worked. The function of this administrative regulation is to discuss the principles involved in determining what constitutes working time for the purpose of applying this to KRS 337.275 and 337.285. By providing these interpretations, it will guide the department[~~office~~] in the performance their duties under the law[~~, unless and until they are otherwise directed by decisions of the courts, or conclude, upon reexamination of an interpretation, that it is incorrect~~].

Section 1. Definition of Employee. Pursuant to KRS 337.010[~~By statutory definition~~] the term "employee" is any person employed by or suffered or permitted to work for an employer as further defined in 803 KAR 1:005. The statute, however, contains no definition of work. The following sections are determined to give interpretations as to the meaning of "suffered or permitted to work."

Section 2. Suffered or Permitted to Work. (1) General. Work not requested but suffered or permitted to work time. For example, an employee may voluntarily continue to work at the end of the shift, the employee[~~he~~] may be a pieceworker, and[~~he~~] may desire to finish an assigned task or [~~he~~] may wish to correct errors, paste work tickets, prepare time reports or other records. The reason is immaterial. The employer knows or has reason to believe that the employee[~~he~~] is continuing to work and the time is working time.

(2) Work performed away from premises. The rule is also applicable to work performed away from the premises or the job site, or even at home. If the employer knows or has reason to believe that the work is being performed the employer shall[~~he must~~] count the time as hours worked.

(3) Duty of management. In all [~~such~~] cases it is the duty of the management to exercise its control and see that the work is not performed if it does not want it to be performed. It cannot sit back and accept the benefits without compensating for them. The mere promulgation of a rule against such work is not enough. Management has the power to enforce the rule and shall[~~must~~]

make every effort to do so.

Section 3. Waiting Time. (1) General. Whether waiting time is worked under the statutes[~~act~~] depends upon particular circumstances. The determination involves scrutiny and construction of the agreements between particular parties, appraisal of their practical construction of the working agreement by conduct, consideration of the nature of the service, and its relation to the waiting time, and all of the circumstances. Facts may show that the employee was engaged to wait, or they show that he waited to be engaged. The[~~Such~~] questions shall[~~must~~] be determined in accordance with common sense and the general concept of work or employment.

(2) On duty. A stenographer who reads a book while waiting for dictation, a messenger who works a crossword puzzle while awaiting assignments, a firefighter[~~fireman~~] who plays checkers while waiting for alarms and a factory worker who talks to [~~his~~] fellow employees while waiting for machinery to be repaired are all working during their period of inactivity. The rule also applies to employees who work away from the plant[~~plan~~]. For example, a repair person[~~man~~] is working while waiting for the[~~he waits for his~~] employer's customer to get the premises in readiness. The time is worktime even though the employee is allowed to leave the premises or the job site during the[~~such~~] periods of inactivity. The periods during which these occur are unpredictable. They are usually of short duration. In either event the employee is unable to use the time effectively for his or her own purpose. It belongs to and is controlled by the employer. In all of these cases waiting is an integral part of the job. The employee is engaged to wait.

(3) Off duty.

(a) Periods[~~Period~~] during which an employee is completely relieved from duty and which are long enough to enable the employee[~~him~~] to use the time effectively for his or her own purposes are not hours worked. The employee[~~He~~] is not completely relieved from duty and cannot use the time effectively for his or her own purposes unless the employee[~~he~~] is definitely told in advance that the employee[~~he~~] may leave the job and [~~that he~~] will not have to commence work until a definitely specified hour has arrived. Whether the time is long enough to enable the employee[~~him~~] to use the time effectively for the employee's[~~his~~] own purposes depends upon all of the facts and circumstances of the case.

(b) A truck driver who has to wait at or near the job site for goods to be loaded is working during the loading period. If the driver reaches the[~~his~~] destination and while awaiting the return trip is required to take care of the[~~his~~] employer's property, the driver[~~he~~] is also working while waiting. In both cases the employee is engaged to wait. Waiting is an integral part of the job. On the other hand, for example, if the truck driver is sent from Louisville to Paducah, leaving at 9 a.m. and arriving at 2 p.m., and is completely and specifically relieved from all duty until 8 p.m. when the employee[~~he~~] again goes on duty for the return trip, the idle time is not working time. The employee[~~He~~] is waiting to be engaged.

(4) On-call time. An employee who is required to remain on call on the employer's premises or so close thereto that the employee[~~he~~] cannot use the time effectively for the employee's[~~his~~] own purposes is working while on call. An employee who is not required to remain on the employer's premises but is merely required to leave word at [~~his~~] home or with company officials where the employee[~~he~~] may be reached is not working while on call.

Section 4. Rest and Meal Periods. (1) Rest. Rest periods of short duration, running from five (5) minutes to about twenty (20) minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They shall[~~must~~] be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time.

(2) Meals. Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee shall[~~must~~] be completely relieved from duty for the purpose of eating regular meals. Ordinarily, thirty (30) minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he or she is required to perform any duties, whether active or inactive, while eating. It is not necessary that an employee be permitted to leave the premises if he or she is otherwise completed freed from duties during the meal period.

Section 5. Sleeping Time and Certain Other Activities. (1) Under certain conditions an employee shall be[~~is~~] considered to be working even though some of the employee's[~~his~~] time is spent in sleeping or in certain other activities.

(2) An employee who is required to be on duty is working even though [~~he is~~] permitted to sleep or engage in other personal activities when not busy. An employee[~~A telephone operator~~], for example, who is required to be on duty for specified hours is working even though [~~she is~~] permitted to sleep when not busy answering calls. It makes no difference that the employee is[~~she is~~] furnished facilities for sleeping. The[~~Her~~] time is given to the[~~her~~] employer. The employee[~~She~~] is required to be on duty and the time is worktime.

(3) Residing on employer's premises or working at home. An employee who resides on the[~~his~~] employer's premises on a permanent basis or for extended period of time is not considered as working all the time [~~he is~~] on the premises. Ordinarily, the employee[~~he~~] may engage in normal private pursuits and thus have enough time for eating, sleeping, entertaining, and other periods of complete freedom from all duties when the employee[~~he~~] may leave the premises for purposes of the employee's[~~his~~] own. It is, of course, difficult to determine the exact hours worked under these circumstances and any reasonable agreement of the parties which takes into consideration all of the pertinent facts will be accepted. [~~This rule would apply, for example, to the pumper of a stripper well who resides on the premises of his employer and also to a telephone operator who has the switchboard in her own home.~~]

Section 6. Lectures, Meetings and Training Programs. (1) General. Attendance at lectures, meetings, training programs and similar activities may[~~need~~] not be counted as working time if the following criteria are met:

(a) Attendance is outside of the employee's regular working hours;

(b) Attendance is in fact voluntarily;

(c) The course, lecture, or meeting is not directly related to the employee's job; and

(d) The employee does not perform any productive work during [~~such~~] attendance.

(2) Involuntary attendance. Attendance is not voluntary if it is required by the employer. It is not voluntary if the employee is given to understand or led to believe that the employee's[~~his~~] present working conditions or the continuance of the employee's[~~his~~] employment would be adversely affected by nonattendance.

(3) Training directly related to employee's job. The training is directly related to the employee's job if it is designed to make the employee handle the employee's[~~his~~] job more effectively as distinguished from training the employee[~~him~~] for another job, or to a new or additional skill. Where a training course is instituted for the bona fide purpose of preparing for advancement through upgrading the employee to a higher skill, and is not intended to make the employee more efficiently related to the employee's job, the training is not considered directly related to the employee's job even though the course incidentally improves the employee[~~his~~] skill in doing the[~~his~~] regular work. If an employee on their[~~his~~] own initiative attends an independent school, college or independent trade school after hours, the time is not hours worked for the[~~his~~] employer even if the courses are related to the[~~his~~] job.

(4) Special situations. There are some special situations where the time spent in attending lectures, training sessions and courses of instruction is not regarded as hours worked. For example, an employer may establish for the benefit of the[~~his~~] employees a

program of instruction which corresponds to courses offered by independent bona fide institutions of learning. Voluntary attendance by an employee at [~~such~~] courses outside of working hours would not be hours worked even if they are directly related to the[~~his~~] job, or paid for by the employer.

(5) Apprenticeship training. Time spent in an organized program of related, supplemental instruction by employees working under bona fide apprenticeship programs may be excluded from working time if the following criteria are met:

(a) The apprentice is employed under a written apprenticeship agreement or program which has been approved by the Supervisor of Apprenticeship for the state of Kentucky [~~and Training, Kentucky Department of Labor~~]; and

(b) The[~~Such~~] time does not involve productive work or performance of the apprentice's regular duties. If the above criteria are met, the time spent in [~~such~~] related supplemental training shall not be counted as hours worked unless the written agreement specifically provides that it is hours worked. The mere payment or agreement to pay for time spent in related instruction shall[~~does~~] not constitute an agreement that the[~~such~~] time is hours worked.

Section 7. Travel Time. (1) General. The principles which apply in determining whether or not time spent in travel is working depend upon the kind of travel involved.

(2) Home to work. An employee who travels from home before the[~~his~~] regular workday and returns [~~to his~~] home at the end of the workday is engaged in ordinary home-to-work travel which is a normal incident of employment. This is true whether the employee[~~he~~] works at a fixed location or at different job sites. Normal travel from home to work is not worktime.

(3) Travel that is worktime. Time spent by an employee is travel as part of his principal activity, such as travel from job site to job site during the workday, shall[~~must~~] be counted as hours worked. Where an employee is required to report at a meeting place to receive instructions or to perform other work there, or to pick up and to carry tools, materials or employees, the travel from the designated place to the work place is part of the day's work, and shall[~~must~~] be counted as hours worked. If an employee normally finishes the work on the premises at 5 p.m. and is sent to another job which is finished at 8 p.m. and is required to return to the employer's premises arriving at 9 p.m., all of the time is working time. However, if an employee goes home instead of returning to the employer's premises, the travel after 8 p.m. is home-to-work travel and is not hours worked.

(4) Travel away from home. Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is worktime when it cuts across the employee's workday. The employee is simply substituting travel for other duties. The time is not only hours worked on regular working days during the corresponding hours but also during the corresponding hours on nonworking days. Thus, if an employee regularly works from 9 a.m to 5 p.m from Monday through Friday the travel time during these hours on Saturday and Sunday is worktime as well as on the other days. Regular meal period time is not counted.

Section 8. Recording Working Time. KRS 337.320 [~~The law~~] does not require any special method of keeping a record of time worked by employees and further requirements are set out in 803 KAR 1:066. In cases where time clocks are used or other methods whereby the employee records the starting and ending time, employees who voluntarily come in before their regular starting time or remain after their closing time, do not have to be paid for those[~~such~~] periods provided, of course, that they do not engage in any work. Their early or late recording of their time may be disregarded. Minor differences between the time clock or sign-in record and actual hours worked cannot ordinarily be avoided, but major discrepancies shall[~~should~~] be discouraged since they raise a doubt as to the accuracy of the hours actually worked. In some industries, particularly where time clocks are used, there has been the practice for many years of recording the employee's starting time and stopping time to the nearest (five) 5 minutes, or to the nearest one-tenth or quarter of an hour. Presumably, this arrangement averages out so that employees are fully compensated for all the time they actually work. For enforcement purposes, this practice of computing working time will be accepted, provided that it is used in a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time the employee has actually worked.

Section 9. The principles discussed in this administrative regulation are intended to guide the department[~~office~~] in the enforcement of the statutes and to assist employees, employers, and other persons who may be concerned with the provisions of the law. Special situations not discussed in this administrative regulation may arise in determining hours worked by employees. In making a determination of these situations, the department shall[~~office will~~] make the determination in accordance with common sense and the general concept of work or employment.

KIMBERLEE C. PERRY, Commissioner
LARRY L. ROBERTS, Secretary

APPROVED BY AGENCY: June 14, 2021

FILED WITH LRC: June 14, 2021 at 2:11 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2021 at 2:00 p.m. (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/83102207739?pwd=dUFjQzE0ZnJJdkpwME51ZWtQdUlydz09, password 265686 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 August 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: Anthony Russell, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone: (502) 564-3534, Facsimile: (502) 564-5484, Email: anthony.russell@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Anthony Russell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides guidance for determining what constitutes working time pursuant to KRS 337.275 and 337.285.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify the meaning of working time pursuant to KRS 338.275 and 337.285 in order to help determine hours worked.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 337.295 authorizes the commissioner to promulgate administrative regulations under KRS 337.275 to 337.325, 337.345, and 337.385 to 337.405.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance that will help determine working time requirements pursuant to KRS 337.275 and 337.285.

(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: The amendment updates the administrative regulation to match the current language that is utilized.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation has not been updated since 2007. This amendment updates language to ensure compliance with KRS Chapter 13A and ensures effective guidance for the statutory provisions under KRS Chapter 337.275 and 337.285.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 337.295 authorizes the commissioner to promulgate administrative regulations under KRS 337.275 to 337.325, 337.345, and 337.385 to 337.405. This amendment updates the administrative regulation to match current language utilized by the department.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates language to clarify the guidance provided in the administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all subject employers who employ employees in the Commonwealth subject to KRS Chapter 337, as well as, their employees.

(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 required by this amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection and guidance for employers for what constitutes working time.

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

(a) Initially: This administrative regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This administrative regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state 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: This administrative regulation, as amended, is not anticipated to generate any increase in fees or funding.

(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 subject employers and employees covered by KRS Chapter 337 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? Most state and local governmental entities are subject to KRS Chapter 337.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 337.295.

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

(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 the first year? There is no cost to this amendment.

(d) How much will it cost to administer this program for subsequent years? There is no cost to 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 explanations: This amendment does not impose any additional requirements or expenditures.

LABOR CABINET
Department of Workplace Standards
(Amendment)

803 KAR 1:066. Recordkeeping requirements.

RELATES TO: KRS 337.275, 337.285

STATUTORY AUTHORITY: KRS 337.295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.320 requires employers to keep records of hours of work and wages paid to employees subject to the provisions of the law. The statute provides that the commissioner[~~executive director~~] determine what information is needed. The function of this administrative regulation is to set forth the recordkeeping requirements for employers subject to the law.

Section 1. No particular order or form of records is prescribed by this administrative regulation. However, every employer who is subject to any of the relevant provisions of the statute[~~Act~~] shall[~~is required to~~]maintain records for at least one (1) year after entry. Each employer shall keep the records required by this[~~these~~] administrative regulation safe and accessible at the place or places of employment, or at one or more established central recordkeeping offices where such records are customarily maintained. Where the records are maintained at a central recordkeeping office, other than in the place or places of employment, such records shall be made available within seventy-two (72) hours following notice from the commissioner[~~executive director~~] or the commissioner's[~~his~~] authorized representative.

Section 2. Every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each and every employee subject to the statute[~~Act~~]:

(1) Name in full, and on the same record, the employee's identifying symbol or number if [~~such is~~] used in place of name on any time, work, or payroll records;

(2) Social Security number;

(3) Home address, including zip code;

(4) Date of birth, if under eighteen (18);

(5) Sex and occupation in which employed;

(6) Time of day and day of week on which the employee's workweek begins. If the employee is part of a work force or employed in or by an employer all of whose workers have a workweek beginning at the same time on the same day, a single notation of the time of[~~off~~] the day and beginning day of the workweek for the whole work force shall[~~will~~] suffice. If, however, any employee or group of employees has a workweek beginning and ending at a different time, a separate notation shall [~~then~~] be kept for that employee or group of employees;

(7) Hours worked each workday and each workweek (for purposes of this section, a "workday" shall be any consecutive twenty-four (24) hours);

(8) Regular rate of pay and total straight-time earnings or wages for all hours worked during the workweek;

(9) Total overtime excess compensation for the workweek; that

is, the excess compensation for overtime worked which amount is over and above all straight-time earnings and wages for the workweek;

(10) Total additions to or deductions from wages paid each pay period. Every employer making additions to or deductions from wages shall also maintain, in individual employee accounts, a record of the dates, amounts, and nature of the items which make up the total addition and deductions;

(11) Total wages paid each pay period and date of payment.

Section 3. Every employer who makes retroactive payment of wages or compensation due under KRS 337.275 and 337.285 shall:

(1) Prepare a report of each [~~such~~] payment showing the amount of [~~such~~] payment to each employee, the period covered by the[~~such~~] payment, and the date of payment.

(2) The employer shall:

(a) File the original, which shall evidence payment by the employer and receipt by the employee, with the commissioner[~~executive director~~] or the commissioner's[~~his~~] authorized representative within ten (10) days after payment is made;

(b) Deliver a copy to the employee; and

(c) Preserve a copy as part of the employee's records.[

~~Section 4. With respect to employees working on fixed schedules, an employer may maintain records showing instead of the hours worked each day and each week, the schedule of daily and weekly hours the employee normally works; and~~

~~(1) In weeks in which an employee adheres to this schedule, indicate by checkmark, statement, or other method that such hours were in fact actually worked by him; and~~

~~(2) In weeks in which more and less than the scheduled hours are worked, shows the exact number of hours worked each day and each week.~~]

KIMBERLEE C. PERRY, Commissioner
LARRY L. ROBERTS, Secretary

APPROVED BY AGENCY: June 14, 2021

FILED WITH LRC: June 14, 2021 at 2:11 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2021 at 2:00 p.m. (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/83102207739?pwd=dUFjQzE0ZnJJdkpwME51ZWtQdUlydz09, password 265686 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 August 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: Anthony Russell, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-3534, fax (502) 564-5484, email anthony.russell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Anthony Russell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the recordkeeping requirements for employers subject to KRS 337.320 in order to provide evidence that records are maintained.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish recordkeeping requirements for employers subject to KRS 337.320 in order for employers keep proper records which helps ensure proper pay to employees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 337.295 authorizes the commissioner to promulgate administrative regulations under KRS 337.275 to 337.325, 337.345, and 337.385 to 337.405.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation clarifies what the requirements are for recordkeeping pursuant to KRS 337.320.

(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: The amendment updates the administrative regulation to match the current language that is utilized. It removes Section 4 which provided an alternative recordkeeping method for employees who worked fix schedules.

(b) The necessity of the amendment to this administrative regulation: This amendment updates language to ensure compliance with KRS Chapter 13A and ensures effective guidance for the statutory provisions under KRS Chapter 337. The amendment removes Section 4 to avoid confusion and keep consistency in recordkeeping requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 337.295 authorizes the commissioner to promulgate administrative regulations under KRS 337.275 to 337.325, 337.345, and 337.385 to 337.405. This amendment updates the administrative regulation to match current language and practices utilized by the department.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates language to clarify the requirements for employers subject to KRS 337.320 and removes provisions that have previously caused confusion.

(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 subject employers who employ employees in the Commonwealth subject to KRS Chapter 337, as well as, their employees.

(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 required by this amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection and guidance for employers on requirements for compliance of KRS 337.320.

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

(a) Initially: This administrative regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This administrative regulation, as amended, is not anticipated to generate any new or additional costs.

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

administrative regulation, as amended, is not anticipated to generate any increase in fees or funding.

(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 and employees covered by KRS Chapter 337 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? Most state and local governmental entities are subject to KRS Chapter 337.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 337.295.

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

(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 the first year? There is no cost to this amendment.

(d) How much will it cost to administer this program for subsequent years? There is no cost to 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 explanations: This amendment does not impose any additional requirements or expenditures.

LABOR CABINET
Department of Workplace Standards
(Amendment)

803 KAR 1:070. Executive, administrative, supervisory or professional employees; salesmen.

RELATES TO: KRS 337.275, 337.285

STATUTORY AUTHORITY: KRS 337.010(2)(a)2, 337.295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.010(2)(a)2 exempts any individual employed in a bona fide executive, administrative, supervisory, or professional capacity, or in the capacity of outside salesman, or as an outside collector as the terms are defined by administrative regulations of the commissioner[~~executive director~~] from both the minimum wage and overtime requirements set forth in KRS 337.275 and 337.285. This administrative regulation defines what constitutes an individual employed in a bona fide executive, administrative, supervisory, or professional capacity, or in the capacity of an outside salesman or outside collector.

Section 1. Scope. (1) The exemptions set forth in KRS 337.010(2)(a)2, as defined by this administrative regulation, shall not[~~do not~~] apply to manual laborers or other "blue collar" workers who perform work involving repetitive operations with their hands, physical skill, and energy. These nonexempt "blue collar" employees gain the skills and knowledge required for performance of their routine manual and physical work through apprenticeships and on-the-job training, not through the prolonged course of specialized intellectual instruction required for exempt learned professionals such as medical doctors, architects, and archeologists. Thus, for example, nonmanagement production line employees and nonmanagement employees in maintenance, construction, and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers, and laborers are entitled to minimum wage and overtime premium pay under KRS Chapter 337, and shall not be[~~are not~~] exempt under this administrative regulation no matter how highly paid they are.

(2)(a) The KRS 337.010(2)(a)2 exemptions and this administrative regulation also shall[~~do~~] not apply to police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers, and similar employees, regardless of rank or pay level, who perform work such as preventing, controlling, or extinguishing fires of any type; rescuing fire, crime, or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining, and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work.

(b) These employees shall[~~do~~] not qualify as exempt executive employees, because their primary duty is not management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof as required under Section 2 of this administrative regulation. Thus, for example, a police officer or fire fighter whose primary duty is to investigate crimes or fight fires shall[~~is~~] not be exempt under KRS 337.010(2)(a)(2) merely because the police officer or fire fighter also directs the work of other employees in the conduct of an investigation or fighting a fire.

(c) These employees shall[~~do~~] not qualify as exempt administrative employees, because their primary duty is not the performance of work directly related to the management or general business operations of the employer or the employer's customers as required under Section 3 of this administrative regulation.

(d) These employees shall[~~do~~] not qualify as exempt professionals, because their primary duty is not the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction or the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor as required under Section 4 of this administrative regulation. Although some police officers, fire fighters, paramedics, emergency medical technicians, and similar employees have college degrees, a specialized academic degree is not a standard prerequisite for employment in these occupations.

Section 2. General Rule for Executive Employees. (1) The term "individual employed in a bona fide executive capacity" in KRS 337.010(2)(a)2 shall mean an employee:

(a) Compensated on a salary basis at a rate of not less than $684[~~$455~~] per week, exclusive of board, lodging, or other facilities;

(b) Whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof;

(c) Who customarily and regularly directs the work of two (2) or more other employees; and

(d) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees are given particular weight.

(2) Business owner. The term "employee employed in a bona fide executive capacity" in KRS 337.010(2)(a)2 also includes[~~include~~] any employee who owns at least a bona fide twenty (20) percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively

engaged in its management. The salary requirements of Section 8 of this administrative regulation shall not apply to business owners described in this subsection.

(3) Management. "Management" shall include, but is not limited to, activities such as interviewing, selecting, and training employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising employees' productivity and efficiency for the purpose of recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among the employees; determining the types of material, supplies, machinery, equipment, or tools to be used or merchandise to be bought, stocked, or sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety and security of the employees or the property; planning and controlling the budget; and monitoring or implementing legal compliance measures.

(4) Department or subdivision.

(a) The phrase "a customarily-recognized department or subdivision" distinguishes between a mere collection of employees assigned from time to time to a specific job or series of jobs and a unit with permanent status and function. A customarily-recognized department or subdivision shall have a permanent status and continuing function. For example, a large employer's human resources department may[~~might~~] have subdivisions for labor relations, pensions and other benefits, equal employment opportunity, and personnel management, each of which has a permanent status and function.

(b) If an enterprise has more than one (1) establishment, the employee in charge of each establishment may be considered in charge of a recognized subdivision of the enterprise.

(c) A recognized department or subdivision may be physically outside the employer's establishment and may move from place to place. The mere fact that the employee works in more than one (1) location shall[~~does~~] not invalidate the exemption if other factors show that the employee is actually in charge of a recognized unit with a continuing function in the organization.

(d) Continuity of the same subordinate personnel is not essential to the existence of a recognized unit with a continuing function. An otherwise exempt employee shall[~~does~~] not lose the exemption merely because the employee draws and supervises workers from a pool or supervises a team of workers drawn from other recognized units, if other factors are present that indicate that the employee is in charge of a recognized unit with a continuing function.

(5) Two (2) or more other employees.

(a) To qualify as an exempt executive under this section, the employee shall customarily and regularly direct the work of two (2) or more other employees. The phrase "two (2) or more other employees" means two (2) full-time employees or their equivalent. One (1) full-time and two (2) half-time employees, for example, are equivalent to two (2) full-time employees. Four (4) half-time employees are also equivalent.

(b) The supervision may be distributed among two (2), three (3), or more employees, but each employee shall customarily and regularly direct the work of two (2) or more other full-time employees or the equivalent. Thus, for example, a department with five (5) full-time, nonexempt workers may have up to two (2) exempt supervisors if each such supervisor customarily and regularly directs the work of two (2) of those workers.

(c) An employee who merely assists the manager of a particular department and supervises two (2) or more employees only in the actual manager's absence shall[~~does~~] not meet this requirement.

(d) Hours worked by an employee shall not be credited more than once for different executives. Thus, a shared responsibility for the supervision of the same two (2) employees in the same department shall[~~does~~] not satisfy this requirement. However, a full-time employee who works four (4) hours for one (1) supervisor and four (4) hours for a different supervisor, for example, may be credited as a half-time employee for both supervisors.

(6) Particular weight. To determine whether an employee's suggestions and recommendations are given "particular weight," factors to be considered include, but are not limited to, whether it is part of the employee's job duties to make the suggestions and recommendations; the frequency with which the suggestions and recommendations are made or requested; and the frequency with which the employee's suggestions and recommendations are relied upon. An executive's suggestions and recommendations shall pertain to employees whom the executive customarily and regularly directs. It shall not include an occasional suggestion with regard to the change in status of a coworker. An employee's suggestions and recommendations may be deemed to have "particular weight" even if a higher level manager's recommendation has more importance and even if the employee does not have authority to make the ultimate decision as to the employee's change in status.

(7) Concurrent duties.

(a) Concurrent performance of exempt and nonexempt work shall[~~does~~] not disqualify an employee from the executive exemption if the requirements of this administrative regulation are otherwise met. Whether an employee meets the requirements of this administrative regulation when the employee performs concurrent duties is determined on a case-by-case basis. Exempt executives shall make the decision regarding when to perform nonexempt duties and remain responsible for the success or failure of business operations under their management while performing the nonexempt work. In contrast, the nonexempt employee shall be directed by a supervisor to perform the exempt work or performs the exempt work for defined time periods. An employee whose primary duty is ordinary production work or routine, recurrent, or repetitive tasks shall not qualify for exemption as an executive.

(b) For example, an assistant manager in a retail establishment may perform work such as serving customers, cooking food, stocking shelves, and cleaning the establishment, except performance of the nonexempt work shall[~~does~~] not preclude the exemption if the assistant manager's primary duty is management. An assistant manager may supervise employees and serve customers at the same time without losing the exemption. An exempt employee may also simultaneously direct the work of other employees and stock shelves.

(c) In contrast, a relief supervisor or working supervisor whose primary duty is performing nonexempt work on the production line in a manufacturing plant shall[~~does~~] not become exempt merely because the nonexempt production line employee occasionally has some responsibility for directing the work of other nonexempt production line employees if, for example, the exempt supervisor is unavailable. Similarly, an employee whose primary duty is to work as an electrician is not an exempt executive even if the employee also directs the work of other employees on the job site, orders parts and materials for the job, and handles requests from the prime contractor.

Section 3. General Rule for Administrative Employees. (1) The term "individual employed in a bona fide administrative capacity" in KRS 337.010(2)(a)2 shall mean any employee:

(a) Compensated on a salary or fee basis at a rate of not less than $684[~~$455~~] per week, exclusive of board, lodging, or other facilities;

(b) Whose primary duty is the performance of office or nonmanual work directly related to the management or general business operations of the employer or the employer's customers; and

(c) Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

(2) Directly related to management or general business operations.

(a) To qualify for the administrative exemption, an employee's primary duty shall be the performance of work directly related to the management or general business operations of the employer or the employer's customers. The phrase "directly related to the management or general business operations" refers to the type of work performed by the employee. To meet this requirement, an employee shall perform work directly related to assisting with the

running or servicing of the business, as distinguished, for example, from working on a manufacturing production line or selling a product in a retail or service establishment.

(b) Work directly related to management or general business operations includes, but is not limited to, work in functional areas such as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations; government relations; computer network; internet and database administration; legal and regulatory compliance; and similar activities. Some of these activities may be performed by employees who also would qualify for another exemption.

(c) An employee may qualify for the administrative exemption if the employee's primary duty is the performance of work directly related to the management or general business operations of the employer's customers. Thus, for example, employees acting as advisers or consultants to their employer's clients or customers (as tax experts or financial consultants, for example) may be exempt.

(3) Discretion and independent judgment.

(a) To qualify for the administrative exemption, an employee's primary duty shall include the exercise of discretion and independent judgment with respect to matters of significance. The exercise of discretion and independent judgment shall involve the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered. The term "matters of significance" refers to the level of importance or consequence of the work performed.

(b) The phrase "discretion and independent judgment" shall be applied in the light of all the facts involved in the particular employment situation in which the question arises. Factors to consider if determining whether an employee exercises discretion and independent judgment with respect to matters of significance include, but are not limited to: whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices; whether the employee carries out major assignments in conducting the operations of the business; whether the employee performs work that affects business operations to a substantial degree, even if the employee's assignments are related to operation of a particular segment of the business; whether the employee has authority to commit the employer in matters that have significant financial impact; whether the employee has authority to waive or deviate from established policies and procedures without prior approval; whether the employee has authority to negotiate and bind the company on significant matters; whether the employee provides consultation or expert advice to management; whether the employee is involved in planning long- or short-term business objectives; whether the employee investigates and resolves matters of significance on behalf of management; and whether the employee represents the company in handling complaints, arbitrating disputes, or resolving grievances.

(c) For the exercise of discretion and independent judgment, the employee shall have authority to make an independent choice, free from immediate direction or supervision. Except, employees may exercise discretion and independent judgment even if their decisions or recommendations are reviewed at a higher level. Thus, the term "discretion and independent judgment" shall[~~does~~] not require that the decisions made by an employee have a finality that goes with unlimited authority and a complete absence of review. The decisions made as a result of the exercise of discretion and independent judgment may consist of recommendations for action rather than the actual taking of action. The fact that an employee's decision may be subject to review and that upon occasion the decisions are revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment. For example, the policies formulated by the credit manager of a large corporation may be subject to review by higher company officials who may approve or disapprove these policies. The management consultant who has made a study of the operations of a business and who has drawn a proposed change in organization may have the plan reviewed or revised by superiors before it is submitted to the client.

(d) An employer's volume of business may make it necessary to employ a number of employees to perform the same or similar work. The fact that many employees perform identical work or work of the same relative importance shall[~~does~~] not mean that the work of each employee does not involve the exercise of discretion and independent judgment with respect to matters of significance.

(e) The exercise of discretion and independent judgment shall be more than the use of skill in applying well-established techniques, procedures, or specific standards described in manuals or other sources. The exercise of discretion and independent judgment also shall not include clerical or secretarial work, recording, or tabulating data, or performing other mechanical, repetitive, recurrent, or routine work. An employee who simply tabulates data is not exempt, even if labeled as a "statistician".

(f) An employee does not exercise discretion and independent judgment with respect to matters of significance merely because the employer will experience financial losses if the employee fails to perform the job properly. For example, a messenger who is entrusted with carrying large sums of money does not exercise discretion and independent judgment with respect to matters of significance even though serious consequences may flow from the employee's neglect. Similarly, an employee who operates very expensive equipment does not exercise discretion and independent judgment with respect to matters of significance merely because improper performance of the employee's duties may cause serious financial loss to the employer.

(4) Administrative exemption examples.

(a) Insurance claims adjusters meet the duties requirements for the administrative exemption, whether they work for an insurance company or other type of company, if their duties include activities such as interviewing insureds, witnesses, and physicians; inspecting property damage; reviewing factual information to prepare damage estimates; evaluating and making recommendations regarding coverage of claims; determining liability and total value of a claim; negotiating settlements; and making recommendation regarding litigation.

(b) Employees in the financial services industries meet the duties requirements for the administrative exemption if their duties include work such as collecting and analyzing information regarding the customer's income, assets, investments, or debts; determining which financial products best meet the customer's needs and financial circumstances; advising the customer regarding the advantages and disadvantages of different financial products; and marketing, servicing, or promoting the employer's financial products. Except, an employee whose primary duty is selling financial products shall[~~does~~] not qualify for the administrative exemption.

(c) An employee who leads a team of other employees assigned to complete major projects for the employer (such as purchasing, selling, or closing all or part of the business, negotiating a real estate transaction or a collective bargaining agreement, or designing and implementing productivity improvements) meets the duties requirements for the administrative exemption, even if the employee does not have direct supervisory responsibility over the other employees on the team.

(d) An executive assistant or administrative assistant to a business owner or senior executive of a large business generally meets the duties requirements for the administrative exemption if the employee, without specific instructions or prescribed procedures, has been delegated authority regarding matters of significance.

(e) Human resources managers who formulate, interpret, or implement employment policies and management consultants who study the operations of a business and propose changes in organization meet the duties requirements for the administrative exemption. However, personnel clerks who "screen" applicants to obtain data regarding their minimum qualifications and fitness for employment shall[~~do~~] not meet the duties requirements for the administrative exemption. The personnel clerks typically will reject all applicants who do not meet minimum standards for the particular job or for employment by the company. The minimum

standards are usually set by the exempt human resources manager or other company official, and the decision to hire from the group of qualified applicants who do meet the minimum standards is similarly made by the exempt human resources manager or other company officials. Thus, if the interviewing and screening functions are performed by the human resources manager or personnel manager who makes the hiring decision or makes recommendations for hiring from the pool of qualified applicants, the duties constitute exempt work, even though routine, because this work is directly and closely related to the employee's exempt functions.

(f) Purchasing agents with authority to bind the company on significant purchases meet the duties requirements for the administrative exemption even if they are required[~~must~~] consult with top management officials when making a purchase commitment for raw materials in excess of the contemplated plant needs.

(g) Ordinary inspection work shall[~~does~~] not meet the duties requirements for the administrative exemption. Inspectors normally perform specialized work along standardized lines involving well-established techniques and procedures which may have been catalogued and described in manuals or other sources. The inspectors rely on techniques and skills acquired by special training or experience. They have some leeway in the performance of their work but only within closely prescribed limits.

(h) Employees usually called examiners or graders, such as employees that grade lumber, shall[~~do~~] not meet the duties requirements for the administrative exemption. The employees usually perform work involving the comparison of products with established standards which are frequently catalogued. Often, after continued reference to the written standards, or through experience, the employee acquires sufficient knowledge so that reference to written standards is unnecessary. The substitution of the employee's memory for a manual of standards shall[~~does~~] not convert the character of the work performed to exempt work requiring the exercise of discretion and independent judgment.

(i) Comparison shopping performed by an employee of a retail store who merely reports to the buyer the prices at a competitor's store shall[~~does~~] not qualify for the administrative exemption. Except, the buyer who evaluates the reports on competitor prices to set the employer's prices meets the duties requirements for the administrative exemption.

(j) Public sector inspectors or investigators of various types, such as fire prevention or safety, building or construction, health or sanitation, environmental or soils specialists, and similar employees, shall[~~do~~] not meet the duties requirements for the administrative exemption because their work typically does not involve work directly related to the management or general business operations of the employer. The employees also shall[~~do~~] not qualify for the administrative exemption because their work involves the use of skills and technical abilities in gathering factual information, applying known standards or prescribed procedures, determining which procedure to follow, or determining whether prescribed standards or criteria are met.

(5) Educational establishments.

(a) The term "individual employed in a bona fide administrative capacity" shall also include employees:

1. Compensated for services on a salary or fee basis at a rate of not less than $684[~~$455~~] per week, exclusive of board, lodging, or other facilities, or on a salary basis which is at least equal to the entrance salary for teachers in the educational establishment by which employed; and

2. Whose primary duty is performing administrative functions directly related to academic instruction or training in an educational establishment, department, or subdivision thereof.

(b) The term "educational establishment" means an elementary or secondary school system, an institution of higher education, or other educational institution. Elementary and secondary schools are those day or residential schools that provide elementary or secondary education, as determined by state law. The term "other educational establishment" includes special schools for mentally or physically disabled or gifted children, regardless of any classification of the schools as elementary, secondary, or higher. Factors relevant in determining whether post-secondary career programs are educational institutions include whether the school is licensed by a state agency responsible for the state's educational system or accredited by a nationally-recognized accrediting organization for career schools. Also, for the purposes of the exemption, a distinction shall not be drawn between public and private schools, or between those operated for profit and those that are not for profit.

(c) The phrase "performing administrative functions directly related to academic instruction or training" means work related to the academic operations and functions in a school rather than to administration along the lines of general business operations. Academic administrative functions include operations directly in the field of education. Jobs relating to areas outside the educational field are not within the definition of academic administration.

1. Employees engaged in academic administrative functions include: the superintendent or other head of an elementary or secondary school system, and any assistants, responsible for administration of matters such as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards, and other aspects of the teaching program; the principal and any vice-principals; department heads in institutions of higher education; academic counselors who perform work such as administering school testing programs, assisting students with academic problems, and advising students concerning degree requirements; and other employees with similar responsibilities;

2. Jobs relating to building management and maintenance, jobs relating to the health of the students, and academic staff such as social workers, psychologists, lunch room managers, or dieticians do not perform academic administrative functions. Although the work is not considered academic administration, the employees may qualify for another exemption, if the requirements for the exemption are met.

Section 4. General Rule for Professional Employees. (1) The term "individual employed in a bona fide professional capacity" in KRS 337.010(2)(a)(2) shall mean any employee:

(a) Compensated on a salary or fee basis at a rate of not less than $684[~~$455~~] per week, exclusive of board, lodging, or other facilities; and

(b) Whose primary duty is the performance of work:

1. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or

2. Requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

(2) Learned professionals.

(a) To qualify for the learned professional exemption, an employee's primary duty shall be the performance of work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction. This primary duty test includes three (3) elements:

1. The employee shall perform work requiring advanced knowledge;

2. The advanced[~~advance~~] knowledge shall be in a field of science or learning; and

3. The advanced knowledge shall be customarily acquired by a prolonged course of specialized intellectual instruction.

(b) The phrase "work requiring advanced knowledge" means work which is predominantly intellectual in character, and which includes work requiring the consistent exercise of discretion and judgment, as distinguished from performance of routine mental, manual, mechanical, or physical work. An employee who performs work requiring advanced knowledge uses the advanced knowledge to analyze, interpret, or make deductions from varying facts or circumstances. Advanced knowledge shall not be attained at the high school level.

(c) The phrase "field of science or learning" includes the traditional professions of law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, various

types of physical, chemical and biological sciences, pharmacy, and other similar occupations that have a recognized professional status as distinguished from the mechanical arts or skilled trades where in some instances the knowledge is of a fairly advanced type, but is not in a field of science or learning.

(d) The phrase "customarily acquired by a prolonged course of specialized intellectual instruction" restricts the exemption to professions where specialized academic training is a standard prerequisite for entrance into the profession. The best prima facie evidence that an employee meets this requirement is possession of the appropriate academic degree. Except, the word[~~work~~] "customarily" means that the exemption shall also be available to employees in those professions who have substantially the same knowledge level and perform substantially the same work as the degreed employees, but who attained the advanced knowledge through a combination of work experience and intellectual instruction. Thus, for example, the learned professional exemption is available to the occasional lawyer who has not gone to law school, or the occasional chemist who does not possess a degree in chemistry. Except, the learned professional exemption shall not be available for occupations that customarily may be performed with only the general knowledge acquired by an academic degree in any field, with knowledge acquired through an apprenticeship, or with training in the performance of routine mental, manual, mechanical, or physical processes. The learned professional exemption also shall not apply to occupations in which most employees have acquired their skill by experience rather than by advanced, specialized, intellectual instruction.

(e) Registered or certified medical technologists. Registered or certified medical technologists who have successfully completed three (3) academic years of preprofessional study in an accredited college or university plus a fourth year of professional course work in a school of medical technology approved by the Council of Medical Education of the American Medical Association meet the duties requirements of the learned professional exemption.

(f) Nurses. Registered nurses who are registered by the state examining board meet the duties requirements for the learned professional exemption. Licensed practical nurses and other similar health care employees, shall[~~do~~] not qualify as exempt learned professionals, because possession of a specialized, advanced, academic degree is not a standard prerequisite for entry into the occupations.

(g) Dental hygienists. Dental hygienists who have successfully completed four (4) academic years of preprofessional and professional study in an accredited college or university approved by the Commission on Accreditation of Dental and Dental Auxiliary Educational Programs of the American Dental Association meet the duties requirements for the learned professional exemption.

(h) Physician assistants. Physician assistants who have successfully completed four (4) academic years of preprofessional and professional study, including graduation from a physician assistant program accredited by the Accreditation Review Commission on Education for the Physician Assistant, and who are certified by the National Commission on Certification of Physician Assistants meet the duties requirements for the learned professional exemption.

(i) Accountants. Certified public accountants meet the duties requirements for the learned professional exemption. In addition, many other accountants who are not certified public accountants but perform similar job duties may qualify as exempt learned professionals. Except, accounting clerks, bookkeepers, and other employees who normally perform a great deal of routine work do not qualify as exempt professionals.

(j) Chefs. Chefs, such as executive chefs and sous chefs, who have attained a four (4) year specialized academic degree in a culinary arts program, meet the duties requirements for the learned professional exemption. The learned professional exemption shall not be available to cooks who perform predominantly routine mental, manual, mechanical, or physical work.

(k) Paralegals. Paralegals and legal assistants shall[~~do~~] not qualify as exempt learned professionals, because an advanced, specialized, academic degree is not a standard prerequisite for entry into the field. Although many paralegals possess general four (4) year advanced degrees, most specialized paralegal programs are two (2) year associate degree programs from a community college or equivalent institution. Except, the learned professional exemption is available for paralegals who possess advanced specialized degrees in other professional fields and apply advanced knowledge in that field in the performance of their duties. For example, if a law firm hires an engineer as a paralegal to provide expert advice on product liability cases or to assist on patent matters, that engineer qualifies for exemption.

(l) Athletic trainers. Athletic trainers who have successfully completed four (4) academic years of preprofessional and professional study in a specialized curriculum accredited by the Commission on Accreditation of Allied Health Education programs and who are certified by the Board of Certification of the National Athletic Trainers Association meet the duties requirements for the learned professional exemption.

(m) Funeral directors or embalmers. Licensed funeral directors and embalmers meet the duties requirements for the learned professional exemption only if they are required to complete successfully four (4) academic years of preprofessional and professional study, including graduation from a college of mortuary science accredited by the American Board of Funeral Service Education, in order to be licensed.

(n) The areas in which the professional exemption may be available are expanding. As knowledge is developed, academic training is broadened, and specialized degrees are offered in new and diverse fields, thus creating new specialists in particular fields of science or learning. When an advanced, specialized degree has become a standard requirement for a particular occupation, that occupation may have acquired the characteristics of a learned profession. Accrediting and certifying organizations similar to those listed in this section also may be created in the future. Those organizations may develop similar specialized curriculums and certification programs which, if a standard requirement for a particular occupation, may indicate that the occupation has acquired the characteristics of a learned profession.

(3) Creative professionals.

(a) To qualify for the creative professional exemption, an employee's primary duty shall be the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor as opposed to routine mental, manual, mechanical, or physical work. The exemption shall not apply to work which can be produced by a person with general manual or intellectual ability and training.

(b) To qualify for exemption as a creative professional, the work performed shall be "in a recognized filed of artistic or creative endeavor". This includes fields such as music, writing, acting, and the graphic arts.

(c) The requirement of "invention, imagination, originality, or talent" distinguishes the creative professions from work that primarily depends on intelligence, diligence, and accuracy. The duties of employees vary widely, and exemption as creative professional depends on the extent of the invention, imagination, originality, or talent exercised by the employee. Determination of exempt creative professional status, therefore, shall be made on a case-by-case basis. This requirement is met by actors, musicians, composers, conductors, and soloists; painters who at most are given the subject matter of their painting; cartoonists who are merely told the title or underlying concept of a cartoon and rely on their own creative ability to express the concept; essayists, novelists, short-short writers, and screenplay writers who choose their own subjects and hand in a finished piece of work to their employers (the majority of these persons are, not employees but self-employed); and persons holding the more responsible writing positions in advertising agencies. This requirement is not met by a person who is employed as a copyist, as an "animator" of motion-picture cartoons, or as a retoucher of photographs, since the work is not properly described as creative in character.

(d) Journalists may satisfy the duties requirements for the creative professional exemption if their primary duty is work requiring invention, imagination, originality, or talent, as opposed to work which depends primarily on intelligence, diligence, and accuracy. Employees of newspapers, magazines, television, and

other media shall not be[~~are not~~] exempt creative professionals if they only collect, organize, and record information that is routine or already public, or if they do not contribute a unique interpretation or analysis to a news product. Thus, for example, newspaper reporters who merely rewrite press releases or who write standard recounts of public information by gathering facts on routine community events shall not be[~~are not~~] exempt creative professionals. Reporters also shall[~~do~~] not qualify as exempt creative professionals if their work product is subject to substantial control by the employer. Except, journalists may qualify as exempt creative professionals if their primary duty is performing on the air in radio, television, or other electronic media; conducting investigative interviews; analyzing or interpreting public events; writing editorials, opinion columns, or other commentary; or acting as a narrator or commentator.

(4) Teachers.

(a) The term "individual employed in a bona fide professional capacity" in KRS 337.010(2)(a)2 shall also mean any employee with a primary duty of teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an educational establishment by which the employee is employed.

(b) Exempt teachers include, but are not limited to: regular academic teachers; teachers of kindergarten or nursery school pupils; teachers of gifted or disabled children; teachers of skilled and semiskilled trades and occupations; teachers engaged in automobile driving instruction; aircraft flight instructors; home economics teachers; and vocal or instrumental music instructors. Those faculty members who are engaged as teachers but also spend a considerable amount of their time in extracurricular activities such as coaching athletic teams or acting as moderators or advisors in [~~such~~] areas such as drama, speech, debate, or journalism are engaged in teaching. Those activities are a recognized part of the schools' responsibility in contributing to the educational development of the student.

(c) The possession of an elementary or secondary teacher's certificate provides a clear means of identifying the individuals contemplated as being within the scope of the exemption for teaching professionals. Teachers who possess a teaching certificate shall qualify for the exemption regardless of the terminology (e.g., permanent, conditional, standard, provisional, temporary, emergency, or unlimited) used by the state to refer to different kinds of certificates. Private[~~private~~] schools and public schools are not uniform in requiring a certificate for employment as an elementary or secondary school teacher, and a teacher's certificate is not generally necessary for employment in institutions of higher education or other educational establishments. Therefore, a teacher who is not certified may be considered for exemption, if that individual is employed as a teacher by the employing school or school system.

(d) The salary requirements of Section 8 of this administrative regulation shall not apply to the teaching professionals described in this subsection.

(5) Practice of law or medicine.

(a) The term "individual employed in a bona fide professional capacity" in KRS 337.010(2)(a)2 shall also mean:

1. Any employee who holds a valid license or certificate to practice law or medicine, or any of their branches, and is actually engaged in that practice; and

2. Any employee who holds the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of the profession.

(b) For medicine, the exemption shall apply to physicians and other practitioners licensed and practicing in the field of medicine, medical science, and healing, or any of the medical specialties practiced by physicians or practitioners. The term "physicians" includes medical doctors, including general practitioners and specialists, osteopathic physicians (doctors of osteopathy), podiatrists, dentists (doctors of dental medicine), and optometrists (doctors of optometry or bachelors of science in optometry).

(c) Employees engaged in internship or resident programs, whether or not licensed to practice prior to commencement of the program, shall qualify as exempt professionals if they enter the internship or resident programs after earning the appropriate degree required for the general practice of their profession.

(d) The salary requirements of Section 8 of this administrative regulation shall not apply to the employees described in this subsection.

Section 5. The term "individual employed in a bona fide supervisory capacity" in KRS 337.010(2)(a)2 shall mean any employee:

(1) Whose primary duty consists of customarily and regularly directing the work of two (2) or more other employees, as defined in Section 2(5) of this administrative regulation, where he or she is employed; and

(2) Who is compensated for their[~~his~~] services on a salary basis at a rate of not less than $684[~~$455~~] per week, exclusive of board, lodging, or other facilities.

Section 6. General Rule for Outside Sales Employees. (1) The term "individual employed in the capacity of outside salesman" shall mean any employee:

(a) Whose primary duty is:

1. Making sales; or

2. Obtaining orders or contracts for services or for the use of facilities for which consideration will be paid by the client or customer; and

(b) Who is customarily and regularly engaged away from the employer's place or places of business in performing the employee's primary duty.

(2) In determining the primary duty of an outside sales employee, work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, shall be regarded as exempt outside sales work. Other work that furthers the employee's sales efforts also shall be regarded as exempt work including, for example, writing sales reports, updating or revising the employee's sales or display catalogue, planning itineraries and attending sales conferences.

(3) The salary requirements of Section 8 of this administrative regulation shall not apply to the outside sales employees described in this section.

(4) Making sales or obtaining orders.

(a) Making sales within the meaning of this section includes the transfer of title to tangible property, and in certain cases, of tangible and valuable evidences of intangible property. Sales [~~Sale~~] includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

(b) Obtaining orders for the use of facilities includes the selling of time on radio or television, the solicitation of advertising for newspapers and other periodicals, and the solicitation of freight for railroads and other transportation agencies.

(c) The word "services" extends the outside sales exemption to employees who sell or take orders for a service, which may be performed for the customer by someone other than the person taking the order.

(5) Away from the employer's place of business. An outside sales employee shall be customarily and regularly engaged "away from the employer's place or places of business". The outside sales employee shall be an employee who makes sales at the customer's place of business or, if selling door-to-door, at the customer's home. Outside sales shall not include sales made by mail, telephone, or the Internet unless the contact is used merely as an adjunct to personal calls. Thus, any fixed site, whether home or office, used by a salesperson as a headquarters for telephonic solicitation of sales shall be[~~is~~] considered one (1) of the employer's places of business, even though the employer is not in any formal sense the owner or tenant of the property. Except, an outside sales employee shall[~~does~~] not lose the exemption by displaying samples in hotel sample rooms during trips from city to city; these sample rooms shall not be considered as the employer's places of business. Similarly, an[~~on~~] outside sales employee shall[~~does~~] not lose the exemption by displaying the employer's products at a trade show. If selling actually occurs, rather than just sales promotion, trade shows of short duration (i.e., one (1) or two

(2) weeks) shall not be considered as the employer's place of business.

(6) Promotion work.

(a) Promotion work is one (1) type of activity often performed by persons who make sales, which may or may not be exempt outside sales work, depending upon the circumstances under which it is performed. Promotional work that is actually performed incidental to and in conjunction with an employee's own outside sales or solicitations shall be[~~is~~] exempt work. On the other hand, promotional work that is incidental to sales made, or to be made, by someone else shall not be[~~is not~~] exempt outside sales wok. An employee who does not satisfy the requirements of this section may still qualify as an exempt employee under other sections of this administrative regulation.

(b) A manufacturer's representative, for example, may perform various types of promotional activities such as putting up displays and posters, removing damaged or spoiled stock from the merchant's shelves, or rearranging the merchandise. That employee may be considered an exempt outside sales employee if the employee's primary duty is making sales or contracts. Promotion activities directed toward consummation of the employee's own sales shall be[~~are~~] exempt. Promotional activities designed to stimulate sales that will be made by someone else shall not be[~~are not~~] exempt outside sales work.

(c) Another example is a company representative who visits chain stores, arranges the merchandise on shelves, replenishes stock by replacing old with new merchandise, sets up displays and consults with the store manager when inventory runs low, but does not obtain a commitment for additional purchases. The arrangement of merchandise on the shelves or the replenishing of stock shall not be[~~is not~~] exempt work unless it is incidental to and in conjunction with the employee's own outside sales. Because the employee in this instance does not consummate the sale nor direct efforts toward the consummation of a sale, the work shall not be[~~is not~~] exempt outside sales work.

(7) Drivers who sell.

(a) Drivers who deliver products and also sell the products may qualify as exempt outside sales employees only if the employee has a primary duty of making sales. In determining the primary duty of drivers who sell, work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including loading, driving, or delivering products, shall be regarded as exempt outside sales work.

(b) Several factors shall be considered in determining if a driver has a primary duty of making sales, including, but not limited to: a comparison of the driver's duties with those of other employees engaged as truck drivers and as salespersons; possession of a selling or solicitor's license when the license is required by law or ordinances; presence or absence of customary or contractual arrangements concerning amount of products to be delivered; description of the employee's occupation in collective bargaining agreements; the employer's specifications as to qualifications for hiring; sales training; attendance at sales conferences; methods of payment; and proportion of earnings directly attributable to sales.

(c) Drivers who may qualify as exempt outside sales employees include:

1. A driver who provides the only sales contact between the employer and the customers visited, who calls on customers and takes orders for products, who delivers products from stock in the employee's vehicle or procures and delivers the product to the customer on a later trip, and who receives compensation commensurate with the volume of products sold.

2. A driver who obtains or solicits orders for the employer's products from persons who have authority to commit the customer for purchases.

3. A driver who calls on new prospects for customers along the employee's route and attempts to convince them of the desirability of accepting regular delivery of goods.

4. A driver who calls on established customers along the route and persuades regular customers to accept delivery of increased amounts of goods or of new products, even though the initial sale or agreement for delivery was made by someone else.

(d) Drivers who shall[~~do~~] not qualify as exempt outside sales employees include:

1. A route driver whose primary duty is to transport products sold by the employer through vending machines and to keep the machines stocked, in good operating condition, and in good locations.

2. A driver who often calls on established customers day after day or week after week, delivering a quantity of the employer's products at each call if the sale was not significantly affected by solicitations of the customer by the delivering driver, or the amount of the sale is determined by the volume of the customer's sales since the previous delivery.

3. A driver primarily engaged in making deliveries to customers and performing activities intended to promote sales by customers (including placing point-of-sale and other advertising materials, price stamping commodities, arranging merchandise on shelves, in coolers or in cabinets, rotating stock according to date, and cleaning and otherwise servicing display cases), unless the work is in furtherance of the driver's own sales efforts.

Section 7. The term "individual employed as an outside collector" shall mean any employee:

(1) Who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place or places of business and whose primary duty is:

(a) Collecting money for goods or services previously or presently furnished by his employer; or

(b) Collecting money for an account placed in the hands of his employer for collection.

(2) In determining the primary duty of an outside collector, work performed incidental to and in conjunction with the employee's outside collection activities shall be regarded as exempt work.

(3) The salary requirements of Section 8 of this administrative regulation shall[~~do~~] not apply to the outside collector employees described in this section.

Section 8. Salary Requirements. Amount of salary required.

(1) To qualify as an exempt executive, administrative, professional, or supervisory employee under KRS 337.010(2)(a)2, an employee shall be compensated on a salary basis at a rate of not less than $684[~~$455~~] per week, exclusive of board, lodging, or other facilities. Administrative and professional employees may also be paid on a fee basis as defined in Section 12 of this administrative regulation.

(2) The $684[~~$455~~] a week may be translated into equivalent amounts for periods longer than one (1) week. The requirement shall[~~will~~] be met if the employee is compensated biweekly on a salary basis of $1,368[~~$910~~], semimonthly on a salary basis of $1,482[~~$985.83~~], or monthly on a salary basis of $2,964[~~$1,971.66~~]. Except, the shortest period of payment that meets this compensation requirement is one (1) week.

(3) For academic administrative employees, the compensation requirement also may be met by compensation on a salary basis at a rate at least equal to the entrance salary for teachers in the educational establishment by which the employee is employed, as provided in Section 3(4) of this administrative regulation.

(4) For computer employees, the compensation requirement also may be met by compensation on an hourly basis at a rate not less than twenty-seven (27) dollars and sixty-three (63) cents an hour, as provided in Section 14 of this administrative regulation.

(5) For professional employees, the compensation requirements in this section shall not apply to employees engaged as teachers; employees who hold a valid license or certificate permitting the practice of law or medicine or any of their branches and are actually engaged in the practice thereof; or to employee who hold the requisite academic degree for the general practice of medicine and are engaged in an internship or resident program pursuant to the practice of the profession. In the case of medical occupations, the exception from the salary or fee requirement shall not apply to pharmacists, nurses, therapists, technologists, sanitarians, dietitians, social workers, psychologists, psychometrists, or other professions which service the medical profession.

Section 9. Highly-Compensated Employees. (1) An employee with total annual compensation of at least $107,432[~~$100,000~~] shall be[~~is deemed~~] exempt under KRS 337.010(2)(a)2 if the employee customarily and regularly performs any one (1) or more of the exempt duties or responsibilities of an executive, administrative, or professional employee identified in this administrative regulation. Where the annual period covers periods both prior to and after the date this administrative regulation is effected, the amount of total annual compensation due will be determined on a proportional basis.

(2)(a) "Total annual compensation" shall include at least $684[~~$455~~] per week paid on a salary or fee basis. Total annual compensation may also include commissions, nondiscretionary bonuses, and other nondiscretionary compensation earned during a fifty-two (52) week period. Total annual compensation shall not include board, lodging, or other facilities as defined in Section 13 of this administrative regulation, and shall not include payments for medical insurance, payments for life insurance, contributions to retirement plans, and the cost of other fringe benefits.

(b) If an employee's total annual compensation does not total at least the minimum amount established in subsection (1) of this section by the last pay period of the fifty-two (52) week period, the employer may, during the last pay period or within one (1) month after the end of the fifty-two (52) week period, make one (1) final payment sufficient to achieve the required level. For example, an employee may earn $90,000[~~$80,000~~] in base salary, and the employer may anticipate based upon past sales that the employee also will earn $17,432[~~$20,000~~] in commissions. Except, due to poor sales in the final quarter of the year, the employee actually only earns $12,000[~~$10,000~~] in commissions. In this situation, the employer may within one (1) month after the end of the year make a payment of at least $5,432[~~$10,000~~] to the employee. The final payment made after the end of the fifty-two (52) week period shall count only toward the prior year's total annual compensation and not toward the total annual compensation in the year it was paid. If the employer fails to make the payment, the employee shall not qualify as a highly compensated employee, but may still qualify as exempt under other sections of this administrative regulation.

(c) An employee who does not work a full year for the employer, either because the employee is newly hired after the beginning of the year or ends the employment before the end of the year, may qualify for exemption under this section if[~~is~~] the employee receives a pro rata portion of the minimum amount established in subsection (1) of this section, based upon the number of weeks that the employee will be or has been employed. An employer may make one (1) final payment as under paragraph (b) of this subsection within one (1) month after the end of employment.

(d) The employer may use any fifty-two (52) week period as the year, such as a calendar year, a fiscal year, or an anniversary of hire year. If the employer does not identify some other year period in advance, the calendar year shall apply.

(3) A high level of compensation is a strong indicator of an employee's exempt status, thus eliminating the need for a detailed analysis of the employee's job duties. Thus, a highly compensated employee shall qualify for exemption if the employee customarily and regularly performs any one (1) of the exempt duties or responsibilities of an executive, administrative, or professional employee identified in this administrative regulation. An employee shall[~~may~~] qualify as a highly compensated executive employee, for example, if the employee customarily and regularly directs the work of two (2) or more other employees, even though the employee does not meet all of the other requirements for the executive exemption under Section 2 of this administrative regulation.

(4) This section shall apply only to employees whose primary duty includes performing office or nonmanual work. Thus, for example, nonmanagement production line workers and nonmanagement employees in maintenance, construction, and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers, laborers, and other employees who perform work involving repetitive operations with their hands, physical skill, and energy shall not be[~~are not~~] exempt under this section no matter how highly paid they might be.

Section 10. Salary Basis. (1)(a) An employee will be considered to be paid "on a salary basis" within the meaning of this administrative regulation if the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Subject to the exceptions in subsection 2 of this section, the employee shall receive the employee's[~~his or her~~] full salary for any week in which the employee performs any work without regard to the number of days or hour worked. Exempt employees need not be paid for any workweek in which they perform no work.

(b) An employee shall not be considered to be "on a salary basis" if deductions from the employee's predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. Accordingly, if the employee is ready, willing and able to work, deductions shall not be made for time when work is not available.

(c) Up to ten percent (10) of the salary amount required may be satisfied by the payment of nondiscretionary bonuses, incentives and commissions, that are paid annually or more frequently. The employer may utilize any fifty-two week period as the year, such as a calendar year, fiscal year, or an anniversary of hire year. If the employer does not identify some other year period in advance, the calendar year shall apply. This provision shall not apply to highly compensated employees. If by the last pay period of the fifty-two week period the sum of the employee's weekly salary plus nondiscretionary bonus, incentive and commission payments received is less than fifty-two (52) times the weekly salary amount required, the employer may make one final payment sufficient to achieve the required level no later than the next pay period after the end of the year. Any final payment made after the end of the fifty-two week period may count only toward the prior year's salary amount and not toward the salary amount in the year it was paid. An employee who does not work a full fifty-two week period for the employer, either because the employee is newly hired after the beginning of this period or ends the employment before the end of this period, may qualify for exemption if the employee receives a pro rata portion of the minimum amount established, based upon the number of weeks that the employee will be or has been employed. An employer may make one final payment of this section within on pay period after the end of employment.

(2) The prohibition against deductions from pay in the salary basis requirement shall be[~~is~~] subject to the following exceptions:

(a) Deductions from pay may be made, if an exempt employee is absent from work for one (1) or more full days for personal reasons, other than sickness or disability. Thus, if an employee is absent for two (2) full days to handle personal affairs, the employee's salaried status shall[~~is~~] not be affected if deductions are made from the employee's[~~his~~] salary for two (2) full days. Except, if an exempt employee is absent for one and one-half (1 1/2) days for personal reasons, the employer may deduct only for the one (1) full-day absence.

(b) Deductions may also be made for absences of one (1) or more full days occasioned by
sickness or disability, if the deduction is made in accordance with a bona fide plan, policy, or practice of providing compensation for loss of salary occasioned by both sickness and disability. Thus, if the employer's particular plan, policy or practice provides compensation for the absences, deductions for absences of one (1) or more full days because of sickness or disability may be made before an employee has qualified under the plan, policy, or practice, and after the employee has exhausted his or her leave allowance thereunder. It is not required that the employee be paid any portion of his or her salary for the day or days for which the employee receives compensation for leave under the plan, policy or practice. Similarly, if the employer operates under a state sickness and disability insurance law, or a private sickness and

disability insurance plan, deductions may be made for absences of one (1) or more full days if benefits are provided in accordance with the particular law or plan. For an industrial accident, the "salary basis" requirement shall[~~will~~] be met if the employee is compensated for loss of salary in accordance with the applicable compensation law or the plan adopted by the employer; if, the employer also has some plan, policy or practice of providing compensation for sickness and disability other than that relating to industrial accidents.

(c) Deductions shall[~~may~~] not be made for absences of an employee caused by jury duty, attendance as a witness, or temporary military leave. Except the employer may, offset any amounts received by an employee as jury or witness fees or military pay for a particular week against the salary due for that particular week without loss of the exemption.

(d) Deductions from pay of exempt employees may be made for penalties imposed in good faith for infractions of safety rules of major significance. Safety rules of major significance include those relating to the prevention of serious danger in the workplace or to other employees, such as rules prohibiting smoking in explosive plants, oil refineries, and coal mines.

(e) Deductions from pay of exempt employees may be made for unpaid disciplinary suspensions of one (1) or more full days imposed in good faith for infractions of workplace conduct rules. These suspensions shall be imposed pursuant to a written policy applicable to all employees. Thus, for example, an employer may suspend an exempt employee without pay for three (3) days for violating a generally applicable written policy prohibiting sexual harassment. Similarly, an employer may suspend an exempt employee without pay for twelve (12) days for violating a generally applicable written policy prohibiting workplace violence.

(f) An employer is not required to pay the full salary in the initial or terminal week of employment. Rather, an employer may pay a proportionate part of an employee's full salary for the time actually worked in the first and last week of employment. In those weeks, the payment of an hourly or daily equivalent of the employee's full salary for the time actually worked shall[~~will~~] meet the requirement. Except, employees are not paid on a salary basis within the meaning of these administrative regulations if they are employed occasionally for a few days, and the employer pays them a proportionate part of the weekly salary when so employed.

(g) An employer is not required to pay the full salary for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act. Rather, if an exempt employee takes unpaid leave under the Family and Medical Leave Act, an employer may pay a proportionate part of the full salary for time actually worked. For example, if an employee who normally works forty (40) hours per week uses four (4) hours of unpaid leave under the Family and Medical Leave Act, the employer may deduct ten (10) percent of the employee's normal salary that week. (3) If calculating the amount of a deduction from pay allowed under subsection (2) of this section, the employer may use the hourly or daily equivalent of the employee's full weekly salary or any other amount proportional to the time actually missed by the employee. A deduction from pay as a penalty for violations of major safety rules allowed under subsection (2)(d) of this section may be made in any amount.

(4) Effect of improper deductions from salary.

(a) An employer who makes improper deductions from salary shall lose the exemption if the facts demonstrate that the employer did not intend to pay employees on a salary basis. An actual practice of making improper deductions demonstrates that the employer did not intend to pay employees on a salary basis. The factors to consider if determining whether an employer has an actual practice of making improper deductions include, but are not limited to: the number of improper deductions, particularly as compared to the number of employee infractions warranting discipline; the time period during which the employer make improper deductions; the number and geographic location of employees whose salary was improperly reduced; the number and geographic location of managers responsible for taking the improper deductions; and whether the employer has a clearly communicated policy permitting or prohibiting improper deductions.

(b) If the facts demonstrate that the employer has an actual practice of making improper deductions, the exemption shall be[~~is~~] lost during the time period in which the improper deductions were made for employees in the same job classification working for the same managers responsible for the actual improper deductions. Employees in different job classifications or who work for different manager shall not lose their status as exempt employees. Thus, for example, if a manager at a company facility routinely docks the pay of engineers at that facility for partial-day personal absences, then all engineers at that facility whose pay could have been improperly docked by the manager shall lose the exemption; except engineers at other facilities or working for other manager, remain exempt.

(c) Improper deductions that are either isolated or inadvertent shall not result in loss of the exemption for any employees subject to the improper deductions, if the employer reimburses the employees for the improper deductions.

(d) If an employer has a clearly communicated policy that prohibits the improper pay deductions specified in this section and includes a complaint mechanism, reimburses employees for any improper deductions, and makes a good faith commitment to comply in the future, the employer shall not lose the exemption for any employees unless the employer willfully violates the policy by continuing to make improper deductions after receiving employee complaints. If an employer fails to reimburse employees for any improper deductions or continues to make improper deductions after receiving employee complaints, the exemption shall be[~~is~~] lost during the time period in which the improper deductions were made for employees in the same job classification working for the same managers responsible for the actual improper deductions. The best evidence of a clearly communicated policy is a written policy that was distributed to employees prior to the improper pay deductions by, for example, providing a copy of the policy to employees at the time of hire, publishing the policy in an employee handbook; or publishing the policy on the employer's Intranet.

(e) This subsection shall not be construed in an unduly technical manner so as to defeat the exemption.

Section 11. Minimum Guarantee Plus Extra. (1) An employer may provide an exempt employee with additional compensation without losing the exemption or violating the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly-required amount paid on a salary basis. Thus, for example, an exempt employee guaranteed at least $684[~~$455~~] each week paid on a salary basis may also receive additional compensation of a one (1) percent commission on sales. An exempt employee also may receive a percentage of the sales or profits of the employer if the employment arrangement also includes a guarantee of at least $684[~~$455~~] each week paid on a salary basis. Similarly, the exemption shall not be[~~is not~~] lost if an exempt employee who is guaranteed at least $684[~~$455~~] each week paid on a salary basis also receives additional compensation based on hours worked for work beyond the normal workweek. The additional compensation may be paid on any basis (e.g., flat sum, bonus payment, straight-time hourly amount, time and one-half (1/2), or any other basis), and may include paid time off.

(2) An exempt employee's earnings may be computed on an hourly, a daily, or a shift basis, without losing the exemption or violating the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly required amount paid on a salary basis regardless of the number of hours, days, or shifts worked, and a reasonable relationship exists between the guaranteed amount and the amount actually earned. The reasonable relationship test is met if the weekly guarantee is roughly equivalent to the employee's usual earnings at the assigned hourly, daily, or shift rate for the employee's normal scheduled workweek. Thus, for example, an exempt employee guaranteed compensation of at least $725[~~$500~~] for any week in which the employee performs any work, and who normally works four (4) or five (5) shifts each week, may be paid $210[~~$150~~] per shift without violating the salary basis requirement. The reasonable relationship requirement shall apply only if the employee's pay is computed on an hourly, daily, or shift basis. It

shall not apply, for example, to an exempt store manager paid a guaranteed salary [~~of $650~~] per week that exceeds the current salary level who also receives a commission of one-half (1/2) percent of all sales in the store or five (5) percent of the store's profits, which in some weeks may total as much as, or even more than, the guaranteed salary.

Section 12. Fee Basis. (1) Administrative and professional employees may be paid on a fee basis, rather than on a salary basis. An employee shall be considered to be paid on a "fee basis" within the meaning of this administrative regulation if the employee is paid an agreed sum for a single job regardless of the time required for its completion. These payments resemble piecework payments with the important distinction that generally a "fee" is paid for the kind of job that is unique rather than for a series of jobs repeated an indefinite number of times and for which payment on an identical basis is made over and over again. Payments based on the number of hours or days worked and not on the accomplishment of a given single task shall not be considered payments on a fee basis.

(2) To determine whether the fee payment meets the minimum amount of salary required for exemption under this administrative regulation, the amount paid to the employee shall be tested by determining the time worked on the job and whether the fee payment is at a rate that would amount to at least the current minimum salary[~~$455~~] per week if the employee worked forty (40) hours. Thus, an artist paid $350[~~$250~~] for a picture that took twenty (20) hours to complete shall meet[~~meets~~] the minimum salary requirements for exemption since earnings at this rate would yield the artist $700[~~$500~~] if forty (40) hours were worked.

Section 13. Board, Lodging, or Other Facilities. (1) The phrase "exclusive of board, lodging, or other facilities" shall mean "free and clear" or independent of any claimed credit for noncash items of value that an employer may provide to an employee. Thus, the costs incurred by an employer to provide an employee with board, lodging, or other facilities shall not count towards the minimum salary amount required for exemption under this administrative regulation. Separate transactions are not prohibited between employers and their employees, but the costs to employers associated with the transactions may not be considered in determining if an employee has received the full required minimum salary payment.

(2) "Other facilities" refers to items similar to board and lodging, such as meals furnished at company restaurants or cafeterias or by hospitals, hotels, or restaurants to their employees; meals, dormitory rooms, and tuition furnished by a college to its student employees; merchandise furnished at company stores or commissaries, including articles of food, clothing, and household effects; housing furnished for dwelling purposes; and transportation furnished to employees for ordinary commuting between their homes and work.

Section 14. General Rule for Computer Employees. (1) Computer system analysts, computer programmers, software engineers, or other similarly skilled workers in the computer field shall be eligible for an exemption as professionals under KRS 337.010(2)(a)2. Because job titles vary widely and change quickly in the computer industry, job titles shall not be determinative of the applicability of this exemption.

(2) The exemption shall apply to any computer employee compensated on a salary or fee basis at a rate of not less than $684[~~$455~~] per week, exclusive of board, lodging, or other facilities, or on an hourly basis at a rate of not less than twenty-seven (27) dollars and sixty-three (63) cents an hour, whose primary duty consists of:

(a) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;

(b) The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(c) The design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or

(d) A combination of the aforementioned duties, the performance of which requires the same level of skills.

(3) The exemption for employees in computer occupations shall not include employees engaged in the manufacture or repair of computer hardware and related equipment. Employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs (e.g., engineers, drafters, and others skilled in computer-aided design software), but who are not primarily engaged in computer systems analysis and programming or other similarly skilled computer-related occupations shall also not be exempt computer professionals.

(4) Computer employees, either within or outside the scope of this exemption, may also have executive and administrative duties which qualify the employees for exemption under Sections 2 and 3 of this administrative regulation. For example, systems analysts and computer programmers shall meet the duties requirements for the administrative exemption if their primary duty includes work such as planning, scheduling, and coordinating activities required to develop systems to solve complex business, scientific, or engineering problems of the employer or the employer's customers. Similarly, a senior or lead computer programmer who manages the work of two (2) or more other programmers in a customarily recognized department or subdivision of the employer, and whose recommendations as to the hiring, firing, advancement, promotion, or other change of status of the other programmers are given particular weight, shall meet[~~meets~~] the duties requirements for the executive exemption.

Section 15. Miscellaneous Provisions. (1) Primary duty.

(a) To qualify for exemption under this administrative regulation, an employee's "primary duty" shall be the performance of exempt work. The term "primary duty" shall mean the principal, main, major, or most important duty that the employee performs. Determination of an employee's primary duty shall be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole. Factors to consider if determining the primary duty of an employee include, but are not limited to, the relative importance of the exempt duties as compared with other types of duties; the amount of time spent performing exempt work; the employee's relative freedom from direct supervision; and the relationship between the employee's salary and the wages paid to other employees for the kind of nonexempt work performed by the employee.

(b) The amount of time spent performing exempt work may be a useful guide in determining whether exempt work is the primary duty of an employee. Thus, employees who spend more than fifty (50) percent of their time performing exempt work shall satisfy the primary duty requirement. Except time alone, is not the sole test, and nothing in this subsection requires that exempt employees spend more than fifty (50) percent of their time performing exempt work. Employees who do not spend more than fifty (50) percent of their time performing exempt duties may nonetheless meet the primary duty requirement if the other factors support that conclusion.

(c) Thus, for example, assistant managers in retail establishment who perform exempt executive work such as supervising and directing the work of other employees, ordering merchandise, managing the budget, and authorizing payment of bills may have management as their primary duty even if the assistant managers spend more than fifty (50) percent of the time performing nonexempt work such as running the cash register. Except, if the assistant managers are closely supervised and earn little more than the nonexempt employees, the assistant managers shall[~~do~~] not satisfy the primary duty requirement.

(2) Customarily and regularly. The phrase "customarily and regularly" shall mean a frequency that shall be greater than occasional but which, may be less than constant. Tasks or work performed "customarily and regularly" includes work normally and recurrently performed every workweek; it shall[~~does~~] not include isolated or one (1) time tasks.

(3) Exempt or nonexempt work. The term "exempt work" shall mean all work described in this administrative regulation and the activities directly and closely related to the work. All other work shall be considered "nonexempt".

(4) Directly and closely related.

(a) Work that is "directly and closely related" to the performance of exempt work shall also be considered exempt work. The phrase "directly and closely related" means tasks that are related to exempt duties and that contribute to or facilitate performance of exempt work. Thus, "directly and closely related" work may include physical tasks and menial tasks that arise out of exempt duties, and the routine work without which the exempt employee's exempt work cannot be performed properly. Work "directly and closely related" to the performance of exempt duties may also include recordkeeping; monitoring and adjusting machinery; taking notes; using the computer to create documents or presentations; opening the mail for the purpose of reading it and making decisions; and using a photocopier or fax machine. Work is not "directly and closely related" if the work is remotely related or completely unrelated to exempt duties.

(b) The following examples further illustrate the type of work that is and is not normally considered as directly and closely related to exempt work:

1. Keeping time, production, or sales records for subordinates is work directly and closely related to an exempt executive's function of managing a department and supervising employees.

2. The distribution of materials, merchandise, or supplies to maintain control of the flow of and expenditures for the items is directly and closely related to the performance of exempt duties.

3. A supervisor who spot checks and examines the work of subordinates to determine whether they are performing their duties properly, and whether the product is satisfactory, is performing work which is directly and closely related to managerial and supervisory functions, if the checking is distinguishable from the work ordinarily performed by a nonexempt inspector.

4. A supervisor who sets up a machine may be engaged in exempt work, depending upon the nature of the industry and the operation. In some cases the setup work, or adjustment of the machine for a particular job, is typically performed by the same employees who operate the machine. That setup work is part of the production operation and is not exempt. In other cases, the setting up of the work is a highly skilled operation which the ordinary production worker or machine tender typically does not perform. In large plants, nonsupervisors may perform the work. In small plants, the work may be a regular duty of the executive and is directly and closely related to the executive's responsibility for the work performance of subordinates and for the adequacy of the final product. Under those circumstances, it is exempt work.

5. A department manager in a retail or service establishment who walks about the sales floor observing the work of sales personnel under the employee's supervision to determine the effectiveness of their sales techniques, checks on the quality of customer service being given, or observes customer preferences is performing work which is directly and closely related to managerial and supervisory functions.

6. A business consultant may take extensive notes recording the flow of work and materials through the office or plant of the client; after returning to the office of the employer, the consultant may personally use the computer to type a report and create a proposed table of organization. Standing alone, or separated from the primary duty, the note-taking and typing would be routine in nature. Except, because this work is necessary for analyzing the data and making recommendations, the work is directly and closely related to exempt work. While it is possible to assign note-taking and typing to nonexempt employees, and in fact it is frequently the practice to do so, delegating those routine tasks is not required as a condition of exemption.

7. A credit manager who makes and administers the credit policy of the employer, establishes credit limits for customers, authorizes the shipment of orders on credit, and makes decisions on whether to exceed credit limits is performing exempt work. Work that is directly and closely related to these exempt duties may include checking the status of accounts to determine whether the credit limit would be exceeded by the shipment of a new order, removing credit reports from the files for analysis, and writing letters giving credit data and experience to other employers or credit agencies.

8. A traffic manager in charge of planning a company's transportation, including the most economical and quickest routes for shipping merchandise to and from the plant, contracting for common-carrier and other transportation facilities, negotiating with carriers for adjustments for damages to merchandise, and making the necessary rearrangements resulting from delays, damages or irregularities in transit, is performing exempt work. If the employee also spends part of the day taking telephone orders for local deliveries, the order-taking is a routine function and is not directly related to the exempt work.

9. An example of work directly and closely related to exempt professional duties is a chemist performing menial tasks such as cleaning a test tube in the middle of an original experiment, even though the menial tasks can be assigned to laboratory assistants.

10. A teacher performs work directly and closely related to exempt duties if, while taking students on a field trip, the teacher drives a school van or monitors the students' behavior in a restaurant.

(5) Use of manuals. The use of manuals, guidelines, or other established procedures containing or relating to highly technical, scientific, legal, financial, or other similarly complex matters that can be understood or interpreted only by those with advanced or specialized knowledge or skills shall not preclude exemption under KRS 337.010(2)(a)(2) or this administrative regulation. The manuals and procedures provide guidance in addressing difficult or novel circumstances and thus use of the reference material does not affect an employee's exempt status. Except the exceptions set forth in KRS 337.101(2)(a)(2) are not available, for employees who simply apply well-established techniques or procedures described in manuals or other sources within closely prescribed limits to determine the correct response to an inquiry or set of circumstances.

(6) Trainees. The executive, administrative, professional, supervisory, outside sales, and computer employee exemptions shall not apply to employees training for employment in an executive, administrative, professional, supervisory, outside sales, or computer employee capacity who are not actually performing the duties of an executive, administrative, professional, supervisory, outside sales or computer employee.

(7) Emergencies.

(a) An exempt employee shall not lose the exemption by performing work of a normally nonexempt nature because of the existence of an emergency. Thus, if emergencies arise that threaten the safety of employees, a cessation of operations, or serious damage to the employer's property, any work performed in an effort to prevent those results is considered exempt work.

(b) An "emergency" shall not include occurrences that are not beyond control or for which the employer can reasonably provide in the normal course of business. Emergencies generally occur only rarely, and are events that the employer cannot reasonably anticipate.

(c) The following examples illustrate the distinction between emergency work considered exempt work and routine work that is not exempt work:

1. A mine superintendent who pitches in after an explosion and digs out workers who are trapped in the mine is still a bona fide executive.

2. Assisting nonexempt employees with their work during periods of heavy workload or to handle rush orders is not exempt work.

3. Replacing a nonexempt employee during the first day or partial day of an illness may be considered exempt emergency work depending upon factors such as the size of the establishment and of the executive's department, the nature of the industry, the consequences that would flow from the failure to replace the ailing employee immediately, and the feasibility of filling the employee's place promptly.

4. Regular repair and cleaning of equipment is not emergency work, even if necessary to prevent fire or explosion; except,

repairing equipment may be emergency work if the breakdown of or damage to the equipment was caused by accident or carelessness that the employer could not reasonably anticipate.

(8) Occasional tasks. Occasional, infrequently recurring tasks that cannot practicably be performed by nonexempt employees, but are the means for an exempt employees to carry out properly exempt functions and responsibilities, shall be considered exempt work. The following factors shall be considered in determining whether the work is exempt work: Whether the same work is performed by any of the exempt employee's subordinates; practicability of delegating the work to a nonexempt employee; whether the exempt employee performs the task frequently or occasionally; and existence of an industry practice for the exempt employee to perform the task.

(9) Combination exemptions. Employees who perform a combination of exempt duties as set forth in this administrative regulation for executive, administrative, professional, supervisory, outside sales, and computer employees may qualify for exemption. Thus, for example, an employee whose primary duty involves a combination of exempt administrative and exempt executive work may qualify for exemption. In other words, work that is exempt under one (1) section of this administrative regulation shall not defeat the exemption under any other section.

(10) Motion picture producing industry. The requirement that the employee be paid "on a salary basis" shall not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least $1,043[~~$695~~] a week (exclusive of board, lodging, or other facilities). Thus, an employee in this industry who is otherwise exempt under Sections 2, 3, or 4 of this administrative regulation, and who is employed at a base rate of at least $1,043[~~$695~~] a week is exempt if paid a proportionate amount (based on a week of not more than six (6) days) for any week in which the employee does not work a full workweek for any reason. Moreover, an otherwise exempt employee in this industry qualifies for exemption if the employee is employed at a daily rate under the following circumstances:

(a) The employee is in a job category for which a weekly base rate is not provided, and the daily base rate would yield at least $1,043[~~$695~~] if six (6) days were worked; or

(b) The employee is in a job category having a weekly base rate of at least $1,043[~~$695~~], and the daily base rate is at least one-sixth (1/6) of such weekly base rate.

(11) Employees of public agencies.

(a) An employee of a public agency who otherwise meets the salary basis requirements of Section 10 of this administrative regulation shall not be disqualified from exemption under Sections 2, 3, 4, 5, or 14 of this administrative regulation on the basis that the employee is paid according to a pay system established by statute, ordinance, or administrative regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and which requires the public agency employee's pay to be reduced or the employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one (1) work-day if accrued leave is not used by an employee because:

1. Permission for its use has not been sought or has been sought and denied;

2. Accrued leave has been exhausted; or

3. The employee chooses to use leave without pay.

(b) Deductions from the pay of an employee of a public agency for absences due to a budget required furlough shall not disqualify the employee from being paid on a salary basis except in the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.

KIMBERLEE C. PERRY, Commissioner
LARRY L. ROBERTS, Secretary

APPROVED BY AGENCY: June 14, 2021

FILED WITH LRC: June 14, 2021 at 2:11 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2021 at 2:00 p.m. (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/83102207739?pwd=dUFjQzE0ZnJJdkpwME51ZWtQdUlydz09, password 265686 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 August 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: Anthony Russell, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-3534, fax (502) 564-5484, email anthony.russell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Anthony Russell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines criteria for qualifying as an individual employed in a bona fide executive, administrative, supervisory, or professional capacity, or in the capacity of an outside salesman or collector, all of which are exempt from overtime and minimum wage requirements.

(b) The necessity of this administrative regulation: KRS 337.010(2)(a)(2) and 337.295 require the commissioner to define criteria for those exempted from overtime and minimum wage and overtime in the statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 337.295 authorizes the commissioner to promulgate administrative regulations under KRS 337.275 to 337.325, 337.345, and 337.385 to 337.405. KRS 337.010(2)(a)(2) requires the commissioner to define what constitutes an individual employed in a bona fide executive, administrative, supervisory, or professional capacity, or in the capacity of an outside salesman or collector. This administrative regulation defines those terms.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to define and provide guidance on the exemptions to KRS 337.275 and 337.285. It helps employers and employees in understanding their obligations and rights under the law.

(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: The amendment updates the administrative regulation to match the current language that is utilized by the department and to ensure compliance with KRS Chapter 13A. Dollar amounts in examples are updated to more accurately reflect current minimum wage requirements. Further, more guidance is provided in how to calculate time. This amendment does not change any wage standards.

(b) The necessity of the amendment to this administrative regulation: This amendment updates language to ensure compliance with KRS Chapter 13A and ensures effective guidance for the statutory provisions under KRS Chapter 337.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 337.295 authorizes the commissioner to promulgate administrative regulations under KRS 337.275 to 337.325, 337.345, and 337.385 to 337.405. KRS 337.010(2)(a)(2) requires the commissioner to define what constitutes an individual

employed in a bona fide executive, administrative, supervisory, or professional capacity, or in the capacity of an outside salesman or collector. This administrative regulation defines those terms.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates language to clarify the guidance provided in the administrative regulation to ensure that employees are paid in accordance with statutory requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all subject employers who employ employees in the Commonwealth subject to KRS Chapter 337, as well as, their employees.

(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 required by this amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection and guidance for employers on when employees are exempt from KRS 337.275 and 337.285.

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

(a) Initially: This administrative regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This administrative regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state 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: This administrative regulation, as amended, is not anticipated to generate any increase in fees or funding.

(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 and employees covered by KRS Chapter 337 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? Most state and local governmental entities are subject to KRS Chapter 337.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 337.295 and 337.010(2)(a)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 the first year? There is no cost to this amendment.

(d) How much will it cost to administer this program for subsequent years? There is no cost to 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 explanations: This amendment does not impose any additional requirements.

LABOR CABINET
Department of Workplace Standards
(Amendment)

803 KAR 1:075. Exclusions from minimum wage and overtime.

RELATES TO: KRS 337.275, 337.285

STATUTORY AUTHORITY: KRS 337.295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.010 excludes certain types of employees from being subject to the minimum wage and overtime provisions of KRS 337.275[~~the act~~] and KRS 337.285 excludes certain employees from its coverage. The function of this administrative regulation is to define these exclusions. These definitions will guide the department[~~office~~] in carrying out its responsibilities under the law and assist employers who may be concerned with the provisions of the law in understanding their obligations under the law.

Section 1. Definitions. (1) "Excise taxes" means taxes that are levied on the manufacture, sale or consumption of a commodity, and taxes levied on license to pursue certain occupations and corporate privileges[~~(1) The term "retail store or service industry" shall mean an establishment seventy-five (75) percent of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry~~].

(2) "Hotel" [~~The term "hotel"~~] means an establishment known to the public as a hotel, which is primarily engaged in providing lodging or lodging and meals for the general public. Included are hotels operated by membership organizations and open to the general public and apartment hotels which provide accommodations for transients. However, an establishment whose income is primarily from providing a permanent place of residence or from providing residential facilities complete with bedrooms and kitchen for prolonged periods shall[~~would~~] not be considered a hotel.

(3) "Motel" [~~The term "motel"~~] means an establishment which provides services similar to that of a hotel described in subsection (2) of this section, but which caters mostly to the motoring public, providing it with motor car parking facilities either adjacent to the room or cabin rented or at some other easily accessible place. Included in the term "motel" are those establishments known to the public as motor hotels, motor lodges, motor courts, motor inns, tourist courts, and tourist lodges.

(4) "Restaurant" [~~The Term "restaurant"~~] means an establishment which is primarily engaged in selling and serving to purchasers at retail prepared food and beverages for consumption. This includes [~~such~~] establishments commonly known as lunch counters, refreshment stands, cafes, cafeterias, coffee shops, diners, dining rooms, lunch rooms, or tea rooms. The term "restaurant" shall[~~does~~] not include drinking establishments, such as bars or cocktail lounges, whose sale of alcoholic beverages exceed the receipts from sales of prepared foods and nonalcoholic beverages or establishments offering meal service on a boarding or term basis or providing the[~~such~~] service only as an incident to the operation of a business of another kind and primarily to meet institutional needs for continuing meal service to persons whose continued presence is required for [~~such~~] operation, such as a boarding house, dining facilities of a boarding school, college or university which serves its students and faculty, lunchroom

facilities for private and public day school students, and other institutional food service facilities providing long-term meal service to stable groups of individuals as an incident to institutional operations in a manner wholly dissimilar to the typical transactions between a restaurant and its customers.

(5) "Retail store or service industry" shall mean an establishment seventy-five (75) percent of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry[~~(5) "Excise taxes" are taxes levied on the manufacture, sale or consumption of a commodity, and taxes levied on license to pursue certain occupations and corporate privileges~~].

Section 2. Hotel or Motel. The primary function of a hotel or motel, is to provide lodging facilities to the public. In addition, most hotels or motels provide food for their guests and many sell alcoholic beverages. These establishments also may engage in some minor revenue producing activities; such as, the operation of valet services offering cleaning and laundering service for the garments of their guests, news stands, hobby shops, renting out of their public rooms for meetings, lectures, dances, trade exhibits and weddings. The exemption provided for hotels and motels in KRS 337.010(2)(a)(vi) and KRS 337.285 shall[~~will~~] not be defeated simply because a hotel or a motel engages in all or some of these activities, if it is primarily engaged in providing lodging facilities, food and drink to the public.

Section 3. Exemptions from Minimum Wage and Overtime. (1) Employees of retail stores, service industries, hotels, motels, and restaurant operations whose average annual gross volume of sales made for business done is less than $95,000 for the five (5) preceding years exclusive of excise taxes at the retail level shall be[~~are~~] exempt from both the minimum wage and overtime provisions of the statutes[~~act~~].

(2) To qualify for this exemption, the establishment shall[~~must~~] be recognized as retail in the particular industry. Typically a retail or service establishment is one which sells goods or services to the general public. It serves the everyday needs of the community in which it is located. The retail or service establishment performs a function in the business organization which is at the [~~very~~] end of the stream of distribution, disposing in small quantities of the products and skills of the[such] organization and does not take part in the manufacturing process.

(3)(a) To compute the average annual gross volume of sales made for business done, [~~it will be necessary for~~] the business shall[~~to~~] add all the sales made for business done for the five (5) preceding years, exclusive of excise taxes at the retail level, and divide by five (5). If this average is less than $95,000, the establishment shall[~~would~~] be exempt.

(b) If the establishment has been in business for less than five (5) years, the gross sales shall[~~will~~] be totaled for the years the establishment has been in business and divided by the number of years. If this average is less than $95,000, the establishment shall[~~would~~] be exempt.

(c) If the establishment has been in business for less than one (1) year, the gross sales shall[~~will~~] be totaled for the number of months the establishment has been in business and divided by the number of months. This amount shall[~~will~~] then be multiplied by twelve (12). If this amount is less than $95,000, the establishment shall[~~would~~] be exempt.

(d) Excise taxes at the retail level shall[~~are~~] not be computed in totaling the gross volume of sales. Excise taxes which are levied at the manufacturers[~~manufacturer's~~], wholesalers[~~wholesaler's~~] or other distributive level shall[~~will~~] not be excluded in calculating the dollar volume of sales.

Section 4. Exemptions from Overtime. (1) Employees of retail stores whose principal duties are connected with the selling, purchasing, and distributing of goods and employees of a restaurant, hotel and motel operation; any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935; any sales person[~~salesman~~], parts person[~~man~~], or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if the employee[~~he~~] is employed by a nonmanufacturing establishment primarily engaged in the business of selling the[~~such~~] vehicles or implements to ultimate purchasers; or any sales person[~~salesman~~] primarily engaged in selling trailers, boats, or aircraft, if the employee[~~he~~] is employed by a nonmanufacturing establishment primarily in the business of selling trailers, boats, or aircraft to ultimate purchasers; [~~and~~] any driver employed by an employer engaged in the business of operating taxi cabs; [~~or to~~] employees whose function is to provide twenty-four (24) hour residential care on the employer's premises in a parental role to children who are primarily dependent, neglected and abused and who are in the care of private nonprofit child caring facilities licensed by the Cabinet for Health and Family Services under KRS Chapter 199, and any individual who is employed by a third-party employer or agency other than the family or household using his or her services to provide in-home companionship services for a sick, convalescing, or elderly person shall be [~~are~~] exempt from the overtime provisions of KRS 337.285.

(2) Employees of a retail store whose principal duties are not connected with the selling, purchasing, and distributing of the goods shall[~~will~~] not be considered as exempt employees, nor will employees of a service establishment which does not sell goods, but is in the business of selling a service.

Kimberlee C. Perry, Commissioner
Larry L. Roberts, Secretary

APPROVED BY AGENCY: June 14, 2021

FILED WITH LRC: June 14, 2021 at 2021 at 2:11 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2021 at 2:00 p.m. (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/83102207739?pwd=dUFjQzE0ZnJJdkpwME51ZWtQdUlydz09, password 265686 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 August 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: Anthony Russell, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-3534, fax (502) 564-5484, email anthony.russell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Anthony Russell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines exclusions contained in KRS 337.275 and 337.285.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define the exclusions defined in KRS 337.275 and 337.285 to help guide the department and assist employers in understanding the requirements under the law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 337.295 authorizes the commissioner to promulgate administrative regulations under KRS

337.275 to 337.325, 337.345, and 337.385 to 337.405.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides clarification on employees who are excluded from requirements in KRS 337.275 and 337.285.

(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: The amendment updates the administrative regulation to match the current language that is utilized by the department, ensure compliance with KRS Chapter 13A, and exempts from overtime requirements in KRS 337.285 individuals who are employed by a third-party or agency other than the family or household using the services to provide in-home companionship services for a sick, convalescing or elderly individual.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update language to ensure compliance with KRS Chapter 13A, ensures effective guidance for the statutory provisions under KRS Chapter 337.275 and 337.285, and update exemptions for overtime requirements under KRS 337.285.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 337.295 authorizes the commissioner to promulgate administrative regulations under KRS 337.275 to 337.325, 337.345, and 337.385 to 337.405. This amendment updates the administrative regulation to match current language utilized by the department.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates language to clarify the guidance provided in the administrative regulation and provide employers with guidance on employees who are exempt from overtime pay requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all subject employers who employ employees in the Commonwealth subject to KRS Chapter 337, as well as, their employees.

(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 required by this amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection and guidance for employers on exemptions to overtime requirements pursuant to KRS 337.275 and 337.285.

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

(a) Initially: This administrative regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This administrative regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state 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: This administrative regulation, as amended, is not anticipated to generate any increase in fees or funding.

(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 subject employers and employees covered by KRS Chapter 337 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? Most state and local governmental entities are subject to KRS Chapter 337.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 337.295.

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

(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 the first year? There is no cost to this amendment.

(d) How much will it cost to administer this program for subsequent years? There is no cost to 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 explanations: This amendment does not impose any additional requirements or expenditures.

LABOR CABINET
Department of Workplace Standards
(Amendment)

803 KAR 1:080. Board, lodging, gratuities and other allowances.

RELATES TO: KRS 337.275, 337.285

STATUTORY AUTHORITY: KRS 337.295

NECESSITY, FUNCTION, AND CONFORMITY: The statutory definition for "wages" when used in the statutes[~~Act~~] includes any compensation due to an employee by reason of his or her employment, including salaries, commissions, vested vacation pay, overtime pay, severance or dismissal pay, earned bonuses, and any other similar advantages agreed upon by the employer and the employee or provided to employees as an established policy. The wages shall be payable in legal tender of the United States, [~~or~~] checks on banks, direct deposits, or payroll card accounts convertible into cash on demand at full face value, subject to [~~such~~] allowances made in the statutes[~~Act~~]. An employee may not be charged an activation fee and the payroll card account shall provide the employee with the ability, without charge, to make at least one (1) withdrawal per pay period for any amount up to and including the full account balance. KRS 337.295 authorizes the commissioner[~~executive director~~] to promulgate administrative regulations permitting allowances as part of the wage rates applicable under the statutes for board, lodging, gratuities, and other facilities. The function of this administrative regulation is to set forth what allowances may be credited toward the payment of wages as required by the statutes[~~Act~~].

Section 1. Board, Lodging, and Other Facilities. (1) An employer may be permitted to include as wages paid to an employee, as required by KRS 337.275 and 337.285, the reasonable cost of furnishing an employee with board, lodging, or other facilities if they[~~such~~] are customarily furnished by the[~~such~~]

employer to [~~his~~] employees. Reasonable cost shall not include a profit to the employer or to any affiliated person. This section does not prohibit payment of wages in facilities furnished either as additions to a stipulated wage or as items for which deductions from the stipulated wage will be made. The reasonable cost of board, lodging, or other facilities may be considered as part of the wage paid an employee only where customarily furnished to the employee. Not only shall[~~must~~] the employee receive the benefits of the facility for which the employee[~~he~~] is charged, but it is essential that the[~~his~~] acceptance of the facility be voluntary and uncoerced.

(2) Customarily furnished. The reasonable cost of board, lodging, or other facilities may be considered as part of the wage paid an employee only where customarily furnished to the employee. Where the[~~such~~] facilities are furnished to the employee, it shall[~~will~~] be considered a sufficient satisfaction of this requirement if the facilities are furnished regularly by the employer to [~~his~~] employees or if the same or similar facilities are customarily furnished by other employers engaged in the same or similar trade, business, or occupation in the same or similar communities.

(3) Other facilities.

(a) "Other facilities," as used in this administrative regulation, shall[~~must~~] be something like board or lodging. The following items are deemed to be within the meaning of the term: meals furnished at company restaurants or cafeterias or by hospitals, hotels, or restaurants to their employees; meals, dormitory rooms, and tuition furnished by a college to its student employees; housing furnished for dwelling purposes; general merchandise furnished at company stores and commissaries (including articles of food, clothing, and household effects), fuel, electricity, water, and gas furnished for the noncommercial personal use of the employee; transportation furnished employees between their house and work where the travel time does not constitute hours worked and the transportation is not an incident of and necessary to the employment.

(b) The cost of furnishing facilities which are primarily for the benefit or convenience of the employer shall[~~will~~] not be recognized as reasonable and shall[~~may~~] not therefore be included in computing wages. The following examples of facilities to be primarily for the benefit or convenience of the employer is meant as illustrative rather than exclusive: tools of the trade and other materials and services incidental to carrying on the employer's business; the cost of any construction by or for the employer; the cost of uniforms and of their laundering, where the nature of the business requires the employees to wear a uniform.

(4) Free and clear payment; kickbacks. Whether in cash or in facilities, "wages" shall not[~~cannot~~] be considered to have been paid by the employer and received by the employee unless they are paid finally and unconditionally or "free and clear." The wage requirements of the statutes[~~Act~~] are[~~will~~] not [~~be~~] met where the employee kicks back directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to the employee. This is true whether the kickback is made in cash or in other than cash. For example, if it is a requirement of the employer that the employee shall[~~must~~] provide a uniform which will be used in, or is specifically required for, the performance of the employer's particular work, there would be a violation of the statutes[~~Act~~] in any workweek when the cost of furnishing and maintaining the uniform by the employee cuts into the minimum or overtime wages required to be paid [~~him~~] under the statutes[~~Act~~].

(5) Non-overtime workweeks. When no overtime is worked by the employee, this administrative regulation shall[~~will~~] apply only to the applicable minimum wage for all hours worked. To illustrate, where an employee works forty (40) hours a week at a cash wage rate of at least the applicable minimum wage[~~one (1) dollar and sixty (60) cents an hour in a situation when that rate is the applicable minimum wage~~] and is paid that amount[~~sixty-four (64) dollars~~] in cash free and clear at the end of the workweek, and in addition is furnished facilities [~~valued at four (4) dollars~~], no consideration need be given to the question of whether the[~~such~~] facilities meet the requirements of this administrative regulation, since the employee has received in cash the applicable minimum wage for all hours worked. Similarly where an employee is employed at a rate in excess of the applicable minimum wage[~~of one (1) dollar and eighty (80) cents an hour~~] and during a particular workweek works forty (40) hours for which the employee receives at least minimum wage free and clear[~~he is paid sixty-four (64) dollars in cash~~], the employer having deducted [~~eight (8) dollars~~] from the employee's[~~his~~] wages for facilities furnished, whether the[~~such~~] deduction meets the requirements of this administrative regulation need not be considered, since the employee is still receiving, after the deduction has been made, a cash wage of at least the applicable minimum wage for each hour worked. Deductions for board, lodging, or other facilities may be made in non-overtime workweeks even if they reduce the cash wage below the applicable minimum wage, provided the prices charged do not exceed the reasonable cost of the[~~such~~] facilities. When the[~~such~~] items are furnished to the employee at a profit, the deductions from wages in weeks in which no overtime is worked are considered to be illegal only to the extent that the profit reduces the wage below the required minimum wage. Deductions for articles which do not constitute board, lodging, or other facilities may likewise be made in non-overtime workweeks if the employee receives the required minimum wage in cash free and clear; but to the extent that they reduce the wages of the employee in any [~~such~~] workweek below the minimum wage required by the statute, they are illegal.

(6) Overtime workweeks.

(a) KRS 337.285 requires that the employee receive compensation for overtime hours at a rate of not less than one and one-half (1 1/2) times the rate at which the employee[~~he~~] is employed. When overtime is worked by an employee who receives the whole or part of [~~his~~] wage in facilities and it becomes necessary to determine the portion of [~~his~~] wages represented by facilities, all of the[such] facilities shall[~~must~~] be measured by the requirements of this administrative regulation. Deductions may be made, however, on the same basis in an overtime workweek as in non-overtime workweeks, if their purpose and effect are not to evade the overtime requirements of KRS 337.285; provided, the amount deducted does not exceed the amount which could be deducted if the employee had only worked the maximum number of straight-time hours during the workweek. For example, in a situation where seven (7) dollars and twenty-five (25) cents[~~one (1) dollar and sixty (60) cents~~] is the applicable minimum wage, if an employee is employed at a rate of seven (7) dollars and thirty (30) cents[~~one (1) dollar and sixty-five (65) cents~~] an hour (five (5) cents in excess of the minimum wage) the maximum amount which may be deducted from the employee's[~~his~~] wages in a forty (40) hour workweek which are not facilities within the meaning of this administrative regulation, is forty (40) times five (5) cents or two (2) dollars. Deductions in excess of this amount for the[~~such~~] items are illegal in overtime workweeks as well as in non-overtime workweeks. There is no limit on the amount which may be deducted for board, lodging, or other facilities in overtime workweeks (as in workweeks when no overtime is worked), provided that these deductions are made only for the reasonable cost of the items furnished. When the[~~such~~] items are furnished at a profit, the amount of the profit (plus the full amount of any deductions for items which are not facilities) shall[~~may~~] not exceed two (2) dollars in the example heretofore used in this paragraph.

(b) Where deductions are made from the stipulated wage of an employee, the regular rate of pay is arrived at on the basis of the stipulated wage before any deductions have been made. Where board, lodging, or other facilities are customarily furnished as addition to a cash wage, the reasonable cost of the facilities to the employer shall[~~must~~] be considered as part of the employee's regular rate of pay. Thus, suppose an employee employed at a cash rate of seven (7) dollars and twenty-five (25) cents[~~two (2) dollars~~] an hour, whose maximum non-overtime workweek under KRS 337.285 is forty (40) hours, works forty-four (44) hours during a particular workweek. If, in addition, the employee [~~he~~] is furnished board, lodging, or other facilities valued at sixteen (16) dollars, but whose reasonable cost is eleven (11) dollars, the eleven (11) dollars shall[~~must~~] be added to the[~~his~~] cash straight-time pay of $319[~~eighty-eight (88) dollars~~] in determining the regular rate of pay on which [~~his~~] overtime compensation is to be calculated. The regular rate then becomes seven (7) dollars and

fifty (50) cents[~~two (2) dollars and twenty-five (25) cents~~] an hour. The employee is thus entitled to receive a total of $345[~~$103.50~~] for the week. In addition to the straight-time pay of $319[~~eighty-eight (88) dollars~~] in cash and eleven (11) dollars in facilities, extra compensation of fifteen (15) dollars[~~four (4) dollars and fifty (50) cents~~]in cash for the four (4) overtime hours shall[~~must~~], therefore, be paid by the employer.

Section 2. Payment Made to Person Other than Employee. (1) Amounts deducted for taxes. Taxes which are assessed against the employee and which are collected by the employer and forwarded to the appropriate governmental agency may be included as wages. This principle is applicable to the employee's share of Social Security, as well as other federal, state, or local taxes. No deduction shall[~~may~~] be made for any tax or share of a tax which the law requires to be borne by the employer.

(2) Payments to third persons pursuant to court order. Where an employer is legally obliged, as by order of a court of competent and appropriate jurisdiction, to pay a sum for the benefit or credit of the employee to a creditor of the employee, trustee, or other third party, under garnishment, wage attachment, trustee process, or bankruptcy proceeding, deduction from wages of the actual sum so paid is not prohibited; provided, that neither the employer nor any person acting in the employer's[~~his~~] behalf or interest derives any profit or benefit from the transaction.

(3) Payments to employee's assignee.

(a) Where an employer is directed by a voluntary assignment or order of an[~~his~~] employee to pay a sum for the benefit of the employee to a creditor, donee, or other third party, deductions from wages of the actual sum so paid is not prohibited, provided, that neither the employer nor any person acting in the employer's[~~his~~] behalf or interest, directly or indirectly, derives any profit or benefit from the transaction.

(b) No payment by the employer to a third party shall[~~will~~] be recognized as a valid payment of compensation required under the statutes[~~Act~~] where it appears that the[~~such~~] payment was part of a plan or arrangement to evade or circumvent the requirements of the statutes[~~Act~~]. For the protection of both employer and employee, it is suggested that full and adequate record of all assignments and orders be kept and preserved.

(c) Under the principles stated in paragraphs (a) and (b) of this subsection, employers shall[~~will~~] be permitted to treat as payments to employees for purposes of the statutes[~~Act~~] sums paid at the employees' direction to third persons for the following purposes: sums[~~Sums~~] paid, as authorized by the employee, for the purchase [~~in his behalf~~] of United States Savings Bonds; union dues paid pursuant to a collective bargaining agreement with bona fide representatives of the employees; employees' accounts with merchants independent of the employer; insurance premiums; voluntary contributions to churches and charitable, fraternal, athletic, and social organizations or societies from which the employer receives no profit or benefit directly or indirectly.

Section 3. Payment of Wages to Tipped Employees. (1) Conditions for taking tip credits in making wage payments. The wage credit permitted on account of tips under KRS 337.275(2) may be taken only with respect to wage payments made under the statutes[~~Act~~] to those employees whose occupations in the workweeks for which the[~~such~~] payments are made are those of "tipped employees" as defined in KRS 337.010(2)(d). To determine whether a tip credit may be taken in paying wages to a particular employee it is necessary to know what payments constitute tips, whether the employee receives more than thirty (30)[~~twenty (20)~~] dollars a month in [~~such~~] payments in the occupation in which the employee[~~he~~] is engaged, and whether in the[~~such~~] occupation the employee[~~he~~] receives these payments in that[~~such~~] amount customarily and regularly.

(2) General characteristics of tips. A tip is a sum presented by a customer as a gift or gratuity in recognition of some service performed [~~for him~~]. It is to be distinguished from payment of a charge made for the service. Whether a tip is to be given, and its amount, are matters determined solely by the customer, and who[~~he~~] has the right to determine who shall be the recipient of the[~~his~~] gratuity. In the absence of an agreement to the contrary between the recipient and a third party, a tip becomes the property of the person in recognition of whose service it is presented by the customer. Only tips actually received by an employee as money belonging to the employee[~~him~~] which [~~he~~] may be used [~~use~~] as the employee[~~he~~] chooses free of any control by the employer, may be counted in determining whether the employee[~~he~~] is a tipped employee within the meaning of the statutes[~~Act~~] and in applying the provisions of KRS 337.275(2) which govern wage credits for tips.

(3) Examples of amounts not considered as tips. A compulsory charge for service, such as fifteen (15)[~~ten (10)~~] percent of the amount of the bill, imposed on a customer by an employer's establishment, is not a tip and, even if distributed by the employer to [~~his~~] employees, cannot be counted as a tip received by an employee. Similarly, where negotiations between an employer and a customer for banquet facilities include amounts for distribution to employees, the amounts so distributed are not counted as tips received. Likewise, where the employment agreement is such that amounts presented by customers as tips belong to the employer and shall[~~must~~] be credited or turned over to the employer[~~him~~], the employee is in effect collecting for his or her employer additional income from the operations of the employer's establishment. Even though the[~~such~~] amounts are not collected by imposition of any compulsory charge on the customer, plainly the employee is not receiving tips within the meaning of the statutes[~~Act~~]. The amounts received from customers are the employer's property, not the employee's[~~his~~], and do not constitute tip income to the employee.

(4) More than thirty (30)[~~twenty (20)~~] dollars a month in tips. An employee who receives tips shall[~~must~~] receive more than thirty (30)[~~twenty (20)~~] dollars a month in the occupation in which the employee[~~he~~] is engaged. An employee engaged in an occupation in which the tips [~~he~~] received[~~receives~~] meet this minimum standard is a tipped employee for whom the wage credit provided by KRS 337.275(2) may be taken in computing the compensation due the employee[~~him~~] under the statutes[~~Act~~] for employment in that[~~such~~] occupation, whether the employee[~~he~~] is employed in it full time or part time. An employee employed full time or part time in an occupation in which the employee[~~he~~] does not receive more than thirty (30)[~~twenty (20)~~] dollars a month in tips customarily and regularly is not a tipped employee within the meaning of the statutes[~~Act~~] and shall[~~must~~] receive the full compensation required by the statutes[~~Act~~] in cash or allowable facilities without any credit for tips received.

(a) The definition of tipped employee does not require that the calendar month be used in determining whether more than thirty (30)[~~twenty (20)~~] dollars a month is customarily and regularly received as tips. Any appropriate recurring monthly period beginning on the same day of the calendar month may be used.

(b) An employee shall[~~must~~] [~~himself~~] customarily and regularly receive more than thirty (30)[~~twenty (20)~~] dollars a month in tips in order to qualify as a tipped employee. The fact that an employee[~~he~~] is part of a group which has a record of receiving more than thirty (30)[~~twenty (20)~~] dollars a month in tips shall[~~will~~] not qualify the employee[~~him~~].

(5) Receiving the minimum amount customarily and regularly. The employee shall[~~must~~] receive more than thirty (30)[~~twenty (20)~~] dollars a month in tips customarily and regularly to qualify as a tipped employee. If it is known that the employee[~~he~~] always receives more than the stipulated amount each month, as may be the case with many employees in occupations such as those of waiters, bellhops, and taxi cab drivers, the employee will qualify and the tip credit may be applied. On the other hand, an employee who only occasionally or sporadically receives tips totaling more than thirty (30)[~~twenty (20)~~] dollars a month, shall[~~will~~] not be deemed a tipped employee. The phrase "customarily and regularly" signifies a frequency which shall[~~must~~] be greater than occasional, but which may be less than constant. If an employee is in an occupation in which the employee[~~he~~] normally and recurrently receives more than thirty (30)[~~twenty (20)~~] dollars a month in tips, the employee[~~he~~] shall[~~will~~] be considered a tipped employee even though occasionally, because of sickness, vacation or the like, the employee[~~he~~] fails to receive more than thirty (30)[~~twenty (20)~~]

dollars in tips in a particular month.

(6) Initial and terminal months. An exception to the requirement that an employee, whether full time, part time, permanent or temporary, shall[~~will~~] qualify as a tipped employee only if the employee[~~he~~] customarily and regularly receives more than thirty (30)[~~twenty (20)~~] dollars a month in tips is made in the case of initial and terminal months of employment. In those[~~such~~] months the purpose of the provision for tipped employees would seem fulfilled if qualification as a tipped employee is based on ~~his~~ receipt of tips in the particular week or weeks of the[~~such~~] month at a rate in excess of thirty (30)[~~twenty (20)~~] dollars a month, where the employee has worked less than a month because they[~~he~~] started or terminated employment during the month.

(7) The tip wage credit. In determining compliance with the wage payment requirements of the statutes[~~Act~~], under the provisions of KRS 337.275(2) the amount paid to a tipped employee by an employer is deemed to be increased on account of tips by an amount equal to the formula set forth in statute provided that the employer satisfies all the requirements[~~which cannot exceed fifty (50) percent of the minimum wage applicable to such employee~~] in the workweek for which the wage payment is made. This credit is in addition to any credit for board, lodging, or other facilities which may be allowable under this administrative regulation. [~~The credit allowed on account of tips may be less than fifty (50) percent of the applicable minimum wage; it cannot be more.~~] The actual amount is left by the statute to determination by the employer on the basis of the employer's[~~his~~] information taken from his or her records concerning the tipping practices and receipts in the[~~his~~] establishment. In order for an employer to take the maximum credit allowed by this special provision, the tipped employee shall[~~must~~] receive the maximum in actual tips. If the employee is receiving less than the amount credited, the employer is required to pay the balance so that the employee receives at least the minimum wage with the combination of wages and tips. The tip credit shall[~~may~~] be taken only for hours worked by the employee in an occupation in which the employee[~~he~~] qualifies as a tipped employee. An employer shall not use any part of an employee's tips to pay the minimum wage to any employee; but may only apply credit toward the payment of the minimum wage to the employee who actually received the tip. Under employment agreements requiring tips to be turned over or credited to the employer to be treated [~~by him~~] as part of the employer's[~~his~~] gross receipts, the employer shall[~~must~~] pay the employee the full minimum hourly wage.

(8) Overtime payments. When overtime is worked by a tipped employee who is subject to the overtime pay provisions of KRS 337.285, the[~~his~~] regular rate of pay is determined by dividing the employee's[~~his~~] total remuneration for employment in any workweek by the total number of hours actually worked [~~by him~~] in that workweek for which the[~~such~~] compensation was paid. A tipped employee's regular rate of pay includes the amount of tip credit taken by the employer (not in excess of the formula set forth in statute[~~fifty (50) percent of the applicable minimum wage~~]), the reasonable cost of any facilities furnished the employee[~~him~~] by the employer, and the cash wages including commissions and bonuses paid by the employer. Any tips received by the employee in excess of the tip credit need not be included in the regular rate. The[~~Such~~] tips are not payments made by the employer to the employee as remuneration for employment.

(9) Tip pooling. The statute permits employees to enter into an agreement to divide tips among themselves. Where employees enter into this type of agreement, as where waiters give a portion of their tips to the bussers[~~busboys~~], both the amounts retained by the waiters and those given to the bussers[~~busboys~~] are considered tips of the individuals who retain them, in applying the provisions of KRS 337.275(2) and this administrative regulation. Where an employer requires [~~his~~] employees to pool tips, no credit shall[~~may~~] be taken and the employer shall[~~must~~] pay the employee the full minimum wage.

Section 4. Records. Where an employer uses the reasonable cost of furnishing an employee with board, lodging, or other facilities in meeting the requirements of KRS 337.275 and 337.285, it shall[~~will~~] be necessary to keep the following records, in addition to those required by KRS 337.320:

(1) The facility being provided by the employer to the employee; and

(2) The cost being charged for the[~~such~~] facility by the employer.

KIMBERLEE C. PERRY, Commissioner
LARRY L. ROBERTS, Secretary

APPROVED BY AGENCY: June 14, 2021

FILED WITH LRC: June 14, 2021 at 2:11 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2021 at 2:00 p.m. (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/83102207739?pwd=dUFjQzE0ZnJJdkpwME51ZWtQdUlydz09, password 265686 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 August 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: Anthony Russell, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-3534, fax (502) 564-5484, email anthony.russell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Anthony Russell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation clarifies what allowances may be credited toward the payment of wages as required in KRS 337.275 and 337.285.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify what allowances may be credited toward the payment of wages as required in the statutes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 337.295 authorizes the commissioner to promulgate administrative regulations permitting allowances as part of the wages rate applicable under the statutes for board, lodging, gratuities, and other facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance on what allowances may be credited toward payment of wages to ensure that employees receive proper wages.

(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: The amendment updates the administrative regulation to match the current language and examples that are utilized by the department, including updating dollar amounts in examples to more accurately reflect current minimum wage standards.

(b) The necessity of the amendment to this administrative regulation: This amendment updates language to ensure compliance with KRS Chapter 13A and ensures effective guidance for the statutory provisions under KRS 337.275 and 337.285.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 337.295 authorizes the commissioner to promulgate administrative regulations under KRS 337.275 to 337.325, 337.345, and 337.385 to 337.405. This amendment updates the administrative regulation to match current language utilized by the department.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates language to clarify the guidance provided in the administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all subject employers who employ employees in the Commonwealth subject to KRS Chapter 337, as well as, their employees.

(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 required by this amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection and guidance for what employers on wage allowances.

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

(a) Initially: This administrative regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This administrative regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state 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: This administrative regulation, as amended, is not anticipated to generate any increase in fees or funding.

(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 and employees covered by KRS Chapter 337 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? Most state and local governmental entities are subject to KRS Chapter 337.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 337.295.

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

(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 the first year? There is no cost to this amendment.

(d) How much will it cost to administer this program for subsequent years? There is no cost to 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 explanations: This amendment does not impose any additional requirements or expenditures.

LABOR CABINET
Department of Workplace Standards
(Amendment)

803 KAR 1:090. Workers with Disabilities[~~Handicapped~~] and Work Activities Centers'[~~sheltered workshop~~] employee's wages.

RELATES TO: KRS 337.275-337.325, 337.345 and 337.385-337.405

STATUTORY AUTHORITY: KRS 337.295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.295 authorizes the commissioner[~~executive director~~] to issue administrative regulations permitting workers with disabilities[~~handicapped workers~~] and work activities centers'[~~sheltered workshop~~] employees to be employed at less than the established minimum wage. KRS 337.010(2)(a)5 requires that the wages be set for a period of time fixed by the commissioner[~~executive director~~]. The function of this administrative regulation is to set certain standards to be used in obtaining these special rates.

Section 1. As used in this administrative regulation, unless the context requires otherwise:

(1) "Commissioner" is defined by KRS 337.010(1)(a)["~~Executive director" means Executive Director of Workplace Standards or any person authorized to act in his behalf, having jurisdiction over laws or administrative regulations governing wages and hours of employees working in this state~~];

(2) "Department" is defined in KRS 337.010(1)(b)["~~ Office" means Office of Workplace Standards~~];

(3) "Work Activities Centers" means centers planned and designed to provide therapeutic activities for workers with severe disabilities affecting their productive capacity. The purpose of work activities centers is carrying out a recognized program of rehabilitation for workers with disabilities and/or providing the individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature[~~(3) "Handicapped worker" means an individual whose earning or productive capacity is impaired by age or physical or mental deficiency or injury for the work he is to perform~~];

(4) "Worker with a Disability" means an individual whose earning or productive capacity is impaired by a physical or mental disability, including those relating to age or injury, for the work to be performed. Disabilities which may affect earning or productive capacity include blindness, mental illness, cerebral palsy, alcoholism, and drug addiction. The following taken by themselves, are not considered disabilities for the purposes of this Regulation: vocational, social, cultural, or educational disabilities; chronic unemployment; receipt of welfare benefits; nonattendance at school; juvenile delinquency; and, correctional parole or probation. Further, a disability which may affect earning or productive capacity for one type of work may not affect capacity for another[~~(4) "Sheltered workshop" means a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for handicapped workers, and/or providing such individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature~~].

Section 2. (1) No employer shall employ a [~~handicapped~~]

worker with a disability or work activities center[~~sheltered workshop~~] employee at less than the applicable minimum wage, unless the[~~such~~] employment has been authorized by a special certificate issued by the commissioner[~~executive director~~] or by the U.S. Department of Labor. The rate of pay and the period of time effective shall be fixed by the certificate.

(2) When the minimum wage provided by KRS 337.275 is less than or equal to the federal minimum wage the commissioner[~~executive director~~] will not issue certificates for persons whose employment is subject to the federal minimum wage provisions of the Fair Labor Standards Act of 1938, as amended (FLSA). For these[~~such~~] persons the employer shall request a certificate from the U.S. Department of Labor. Valid certificates issued by the U.S. Department of Labor, Wage Hour Division, which authorize rates of pay lower than the applicable Kentucky minimum wage, will be accepted as authority to pay [~~such~~] subminimum wage rates, provided that the information submitted in the applications is complete and accurate. If there is any reason to believe that the employment is, or may be in the future, subject to the FLSA minimum wage, the federal certificate shall be obtained and a state certificate will not be necessary.

(3) For workers with disabilities or work activities center employees[~~handicapped workers or sheltered workshop clients~~] not covered by the minimum wage provisions of the FLSA, certificates may be issued by the commissioner[~~executive director~~] if all of the requirements for federal certification are met. These requirements are published in Title 29, Part 525 of the Code of Federal Regulations. These regulations may be obtained from the U.S. Department of Labor Wage Hour Regional and Area Offices and Field Stations. The common use of the criteria and procedures outlined in this administrative regulation will serve to eliminate duplication and to standardize special minimum wage certification within the state. For state certification the commissioner[~~executive director~~] will generally exercise the authority and functions which the administrator has for the federal certificates.

(4) In the event an employer misuses a certificate in any way, the commissioner[~~executive director~~] reserves the right to revoke the[~~such~~] certificate and to refuse to issue another certificate in the future. If the certificate was issued by the U.S. Department of Labor, the commissioner[~~executive director~~] will revoke any authority for payment of less than the minimum wage provided by KRS 337.275.

(5) Application for Kentucky special minimum wage certificates for workers with disabilities and work activities center employees will be submitted on the application provided by the Division of Wages and Hours, Kentucky Department of Workplace Standards, Kentucky Labor Cabinet [~~handicapped and sheltered workshop employees will be submitted on Form ES-61 which is available from Division of Employment Standards and Mediation, Kentucky Office of Workplace Standards, Department of Labor~~], Frankfort, Kentucky 40601. In all cases the application will be accompanied by the completed federal special minimum wage certificate applications as appropriate under Title 29, Part 525 of the Code of Federal Regulations.

KIMBERLEE C. PERRY, Commissioner
LARRY L. ROBERTS, Secretary

APPROVED BY AGENCY: June 14, 2021

FILED WITH LRC: June 14, 2021 at 2:11 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2021 at 2:00 p.m. (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/83102207739?pwd=dUFjQzE0ZnJJdkpwME51ZWtQdUlydz09, password 265686 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 August 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: Anthony Russell, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-3534, fax (502) 564-5484, email anthony.russell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Anthony Russell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides standards used for obtaining special rates for workers with disabilities and work activities center employees.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the standard for obtaining special rates for workers with disabilities employed in work activities center pursuant to KRS 337.010(2)(a)5.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 337.295 authorizes the commissioner to promulgate administrative regulations under KRS 337.275 to 337.325, 337.345, and 337.385 to 337.405 and issue administrative regulations permitting workers with disabilities and work activities centers' employees to be employees at a rate less than minimum wage.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance for obtaining special rates for workers with disabilities employed in work activities center pursuant to KRS 337.010(2)(a)5.

(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: The amendment updates the administrative regulation to match the current language and definitions that are utilized by the department and ensures compliance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove outdated language, update definitions and ensure compliance with KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 337.295 authorizes the commissioner to promulgate administrative regulations under KRS 337.275 to 337.325, 337.345, and 337.385 to 337.405. This amendment updates the administrative regulation to match current language utilized by the department.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates language to clarify the standards provided in the administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all subject employers in the Commonwealth covered by KRS 337.

(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 required by this amendment.

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

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): Improved employee protection, limits on sub minimum wage for employees that allow an employee to ease back into the workforce.

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

(a) Initially: This administrative regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This administrative regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state 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: This administrative regulation, as amended, is not anticipated to generate any increase in fees or funding.

(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 337 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? Most state and local governmental entities are subject to KRS Chapter 337.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 337.295.

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

(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 the first year? There is no cost to this amendment.

(d) How much will it cost to administer this program for subsequent years? There is no cost to 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 explanations: This amendment does not impose any additional requirements or expenditures.

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health and Life Insurance and Managed Care
(Amendment)

806 KAR 17:240. Data reporting requirements.

RELATES TO: KRS 304.17A-320, 304.17A-330

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-330

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner [~~executive director~~] 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 304.17A-330 authorizes the commissioner [~~executive director~~] to prescribe the format for reporting the information required by KRS 304.17A-330. This administrative regulation establishes the data elements and the format for submitting annual reports to the Department [~~Office~~] of Insurance.

Section 1. Definitions. (1) "Association" is defined by [~~in~~] KRS 304.17A-005(1).

(2) "Covered person" is defined by [~~in~~] KRS 304.17A-500(3).

(3) "Electronic format" means an electronic copy of a Microsoft Excel Spreadsheet. [~~the use of any of the following mechanisms for the submission of data to the Office of Insurance:~~

~~(a) A three and one-half (3.5) inch diskette; or~~

~~(b) CD-ROM in a Microsoft Excel spreadsheet.~~]

(4) "Health benefit plan" means a health benefit plan as defined in KRS 304.17A-005(22) and issued within Kentucky to a Kentucky resident.

(5) "Insurance purchasing outlet" is defined by [~~in~~] KRS 304.17A-750(4).

(6) "Insurer" is defined by [~~in~~] KRS 304.17A-005(29) [~~304.17A-005(27)~~].

(7) "Market segment" means the portion of the market covering one (1) of the following:

(a) Individual;

(b) Small group;

(c) Large group;

(d) Group association;

(e) Individual association;

(f) Self-insured employer organized association; or

(g) Insurance purchasing outlet.

(8) "Medical service" means the service that was provided by a health care provider to a member of a health benefit plan.

(9) "Member" means a covered person.

(10) "Member month" means a period of time that represents each month that a member or subscriber, depending upon the data request, is enrolled in a health benefit plan.

(11) "Self-insured employer organized association" means an association that holds a certificate of filing pursuant to KRS 304.17A-320.

(12) "Subscriber" means the following: (a) In the individual market, the number of health benefit plan policyholders; or (b) In the small group, large group, individual association, group association, self-insured employer organized association, or insurance purchasing outlet market, the number of health benefit plan certificate holders.

(13) "Total unduplicated covered persons" means the total number of subscribers and their dependents covered by a health plan at any time during the reporting year.

Section 2. Data Reporting Requirements. (1) Beginning with the report due by July 31, 2004, and within the time frame prescribed by KRS 304.17A-330, an insurer authorized to write health insurance in this state, a self-insured employer organized association, and an insurance purchasing outlet shall submit the following reports regarding health benefit plans to the Department [~~Office~~] of Insurance:

(a) Annual Report 1 - Insurer Information Report;

(b) Annual Report 2 - Premium and Enrollment Report as Member Months;

(c) Annual Report 3 - Demographic Report as Member Months;

(d) Annual Report 4 - Billed Charge and Paid Claim Report;

(e) Annual Report 5 - Medical Service Cost Report by Market Segment;

(f) Annual Report 6 - Medical Service Cost Report by Product Type; [~~and~~]

(g) Annual Report 7 - Policy Discontinuance Reason Report;[~~.~~]

(h) Annual Report 8 - Mental Health Parity Report by Market Segment; and

(i) Annual Report 9 – Mental Health Parity Report by Product Type.

(2) An entity described in subsection (1) of this section with more than 500 total unduplicated covered persons shall submit all of the reports listed in subsection (1)(a) through (i)[~~(g)~~] of this section.

(3) An entity described in subsection (1) of this section with

500 or less total unduplicated covered persons shall submit only the report listed in subsection (1)(a) of this section.

(4) An insurer, a self-insured employer organized association, or an insurance purchasing outlet, who ceases operations in Kentucky shall submit the reports required by subsection (1) of this section to the Department [~~Office~~] of Insurance within 120 days after cessation.

(5) The reports required pursuant to subsection (1) of this section are contained in the "Data Reporting Manual, HIPMC-DR-1 (09/20) [~~HIPMC-DR-1 (06/03)~~]", and the reports shall:

(a) Be submitted in an electronic format; and

(b) Contain the prescribed data elements and information in the order prescribed by the Data Reporting Manual.

Section 3. Incorporated by Reference. (1) "Data Reporting Manual, HIPMC-DR-1, 09/20 [~~HIPMC-DR-1 (06/03)~~]" 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, 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 [~~office's~~] internet Web site at http://insurance.ky.gov/ppc [~~http://doi.ppr.ky.gov~~].

SHARON P. CLARK, Commissioner
KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: June 11, 2021

FILED WITH LRC: June 11, 2021 at 2:16 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on August 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 August 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: 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 This administrative regulation establishes the data elements and the format for submitting annual reports to the Department of Insurance.

(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 establishes a uniform method for submitting annual reports to the Department of Insurance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.17 A-330 authorizes the Commissioner to prescribe the format for reporting the information required by KRS 304.17 A-330. This administrative regulation prescribes that format.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a uniform method for submitting annual reports to the Department of Insurance. Uniformity in format will greatly assist the Department in fairly and efficiently evaluating the information that is provided.

(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 address the drafting and formatting requirements set forth in Chapter 13A. Other amendments include, updating “electronic format” definition and removing CD Rom as a sub mission option, update the “insurer” definition citation, update incorporated forms, as well as adding Annual Reports 8 and 9.

(b) The necessity of the amendment to this administrative regulation: The amendments made to this regulation are necessary to bring the regulation up to date by removing and editing any outdated definitions (i.e. CD Rom) as well as incorporating the new Annual Reports that may need to be filed.

(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. KRS 304.17A-330 requires that all insurers authorized to write health insurance in this state and employer organized associations that self-insure must submit an annual report to the Commissioner no later than July 31 of their insurance experience, this regulation lays out the details of how to do so.

(d) How the amendment will assist in the effective administration of the statutes: These amendments address the changes needing to be made in order for the regulation to properly lay out the data elements and format for proper submission of the required annual reports.

(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 and self-insured Employer Organized Associations.

(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: Follow the proper reporting procedures laid out in the administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities: The annual report will not be denied 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:

(9) TIERING: Is tiering applied? There is not tiering applied because this administrative regulation applies to all insurers authorized to write health insurance and all employer-organized associations that self-insure 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 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-330

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. There is no fiscal impact known to be associated with this 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, Life Insurance and Managed Care
(Amendment)

806 KAR 17:260. Conversion policy minimum benefits.

RELATES TO: KRS 304.17A, 304.18-114 [~~304.18-110~~], 304.18-120(2), 29 C.F.R 2590.715-2713(a), 29 C.F.R 2590.715-2713(b)

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.18-120(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes [~~provides that~~] the Commissioner [~~executive director~~] of Insurance to promulgate [~~may make 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 through KRS 304.99-154. KRS 304.18-120(2) requires the department [~~office~~] to promulgate administrative regulations to establish minimum benefits for a conversion policy issued pursuant to the conversion privilege contained in a group health policy. The purpose of this [~~This~~] administrative regulation is to establish [~~establishes~~] those requirements.

Section 1. Definitions. (1) "Conversion policy" means an individual health policy issued to an insured person pursuant to a conversion privilege contained in a group health policy upon termination of the insured person's coverage under the group policy.

(2) "FFS" means a fee-for-service product type.

(3) "Group policy" is defined by [~~in~~] KRS 304.18-110(1)(a). (4) "HMO" means a health maintenance organization product type.

(5) "POS" means a point-of-service product type.

(6) "PPO" means a preferred provider organization product type.

(7) "Preventive Health Service" means the service described by 29 C.F.R 2590.715-2713(a) and (b).

Section 2. Plan Cost Sharing and Minimum Benefits. (1) The out-of-pocket limit for covered expenses incurred during a plan year for a converted policy issued pursuant to a conversion privilege contained in a PPO, FFS, HMO or POS product shall be no more than:

(a) $7,000 [~~$6,000~~] for a single person; and

(b) $14,000 [~~$12,000~~] for a family.

[~~(2) The deductible and out-of-pocket limit for covered expenses incurred during a plan year for a converted policy issued pursuant to the conversion privilege contained in a group FFS or PPO product shall be no more than:~~

~~(a) $6,000 for a single person and an out-of-pocket limit of $6,000 after the deductible; and~~

~~(b) $12,000 for a family and an out-of-pocket limit of $12,000 after the deductible.~~

~~Section 3. Minimum Benefits. (1) A converted policy issued pursuant to the conversion privilege contained in a HMO or POS product shall include the following minimum benefits:~~

~~(a) In hospital care:~~

~~1. Inpatient hospital room and board benefits in a maximum copayment amount of $1,000 per admission; and~~

~~2. Coverage benefits in a maximum copayment amount of $1,000 per admission for transplants, including:~~

~~a. Kidney;~~

~~b. Cornea;~~

~~c. Bone marrow;~~

~~d. Heart;~~

~~e. Liver;~~

~~f. Lung;~~

~~g. Heart/lung; and~~

~~h. Pancreas.~~

~~(b) Outpatient care:~~

~~1. Ambulatory outpatient surgery benefits in a maximum copayment amount of $500 per visit;~~

~~2. Provider office visits benefits in a maximum copayment amount of thirty (30) dollars per visit; and~~

~~3. Diagnostic tests benefits in a maximum copayment amount of thirty (30) dollars per testing session.~~

~~(c) Emergency care:~~

~~1. Hospital emergency room benefits in a maximum copayment amount of $150 per visit; and~~

~~2. Ground ambulance benefits in a maximum copayment amount of seventy-five (75) dollars per use.~~

~~(d) Medicare hospice benefit.~~]

(2) A converted policy issued pursuant to the conversion privilege contained in a group HMO, POS, FFS or PPO product shall include the following minimum benefits:

(a) In hospital care:

1. Inpatient hospital room and board benefits in a maximum coinsurance amount of fifty (50) percent; and

2. Coverage benefits in a maximum coinsurance amount of fifty (50) percent for transplants, including:

a. Kidney;

b. Cornea;

c. Bone marrow;

d. Heart;

e. Liver;

f. Lung;

g. Heart/lung; and

h. Pancreas.

(b) Outpatient care:

1. Ambulatory outpatient surgery benefits in a maximum coinsurance amount of fifty (50) percent;

2. Provider office visits benefits in a maximum coinsurance amount of fifty (50) percent; and

3. Diagnostic tests and Laboratory benefits in a maximum coinsurance amount of fifty (50) percent;

(c) Emergency care:

1. Hospital emergency room benefits in a maximum coinsurance amount of fifty (50) percent; and

2. Ground ambulance benefits in a maximum coinsurance amount of fifty (50) percent.

(d) Medicare hospice benefits.

(e) Prescription drug benefits in a maximum coinsurance amount of fifty (50) percent.

(f) Maternity Benefits in a maximum coinsurance amount of fifty

(50) percent.

(g) Mental Health and Substance Abuse Benefits:

1. Inpatient Benefits in a maximum coinsurance amount of fifty (50) percent; and

2. Outpatient Benefits in a maximum coinsurance amount of fifty (50) percent.

(h) Rehabilitative and Habilitative Benefits in a maximum coinsurance amount of fifty (50) percent.

(i) Preventive Health Service shall be covered at 100 percent.

(j) Pediatric Benefits in a maximum coinsurance amount of fifty (50) percent.

SHARON P. CLARK, Commissioner
KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: June 9, 2021

FILED WITH LRC: June 11, 2021 at 2:16 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on August 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 August 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: 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 minimum benefit requirements for a conversion policy issued pursuant to the conversion privilege contained in a group health policy.

(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. KRS 304.18-120(2) requires the Commissioner to promulgate administrative regulations to establish minimum benefits for a conversion policy issued pursuant to the conversion privilege contained in a group health policy.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes minimum benefit requirements for a conversion policy issued pursuant to the conversion privilege contained in a group health policy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes minimum benefit requirements for a conversion policy issued pursuant to the conversion privilege contained in a group health policy

(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 increases the minimum standard amount for PPO, FFS, HMO or POS no more than $7,000 for a single individual and $14,000 for a family. The amendment also includes lab benefits in coinsurance plans and several new benefits under HMO, PPO, FFS and POS plans.

(b) The necessity of the amendment to this administrative regulation: KRS 304.18-120(2) requires the Commissioner to promulgate administrative regulations to establish minimum benefits for a conversion policy issued pursuant to the conversion privilege contained in a group health policy, the amendments adhere to the requirements set forth in this statute.

(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: KRS 304.18-120(2) requires the department to promulgate administrative regulations to establish minimum benefits for a conversion policy issued pursuant to the conversion privilege contained in a group health policy.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All insurers licensed to engage in insurance activities and issuing group health policies in the state of Kentucky.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: to the extent, insurers do not have a conversion product that already conforms to the regulation, the insurer will need to file a new product with the department or amend its existing product to conform to the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Commissioner can promulgate administrative regulations to establish minimum benefits for a conversion policy issued pursuant to the conversion privilege contained in a group health policy. This administrative regulation establishes those requirements.

(c) As a result of compliance, what benefits will accrue to the entities: To the extent insurers do not have a conversion product that already conforms to the regulation, the insurer will need to file a new product with the department or amend its existing product to conform to the regulation.

(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 insurers authorized to engage in insurance activities and issuing group health policies 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 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), 304.18-120(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. 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, Life Insurance and Managed Care
(Amendment)

806 KAR 17:270. Telehealth claim forms and records.

RELATES TO: KRS 304.17A-138

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-138(4)

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 as defined in KRS 304.1-010. KRS 304.17A-138(4) requires that the department [~~office~~] promulgate an administrative regulation in accordance with KRS Chapter 13A to designate the claim forms and records required to be maintained for telehealth claims.

Section 1. Definitions. (1) "ADA" means American Dental Association.

(2) "Electronic" or "electronically" is defined by KRS 304.17A-700(7).

(3) "HCFA" means Health Care Financing Administration.

(4) "Health benefit plan" is defined by KRS 304.17A-005(22).

(5) "Health care provider" or "provider" is defined by KRS 304.17A-005(23).

(6) "Health insurer" or "insurer" is defined by KRS 304.17A-005(29) [~~KRS 304.17A-005(27)~~].

(7) "Kentucky Uniform Billing Committee (KUBC)" is defined by KRS 304.17A-700(13).

(8) "National Uniform Billing Committee (NUBC)" is defined by KRS 304.17A-700(14).

(9) "Telehealth" is defined by KRS 311.550(17).

(10) "UB" means uniform billing.

Section 2. Application. This administrative regulation shall apply to health benefit plans delivered, issued, or renewed on or after July 15, 2001.

Section 3. Claim Forms. The following claim forms shall be used for reimbursement of telehealth consultations:

(1) A claim form for dentists shall consist of the ADA Dental Claim Form - J430 [~~ADA Form - J588~~] approved by the American Dental Association effective at the time the service was billed; and

(2) A claim form for all other health care providers shall consist of the HCFA - 1500 data set or its successor submitted on the designated paper or electronic format as adopted by the National Uniform Claims Committee effective at the time the service was billed.

Section 4. Retention of Records. A provider shall, upon request, provide a copy of the following to an insurer as support for a claim for reimbursement of a telehealth consultation:

(1) Written record that [~~which~~] substantiates the request by the referring provider for the telehealth consultation by the primary care provider; and

(2) Written record of the telehealth consultation.

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

(a) ADA Dental Claim Form - J430, 5/2019 [~~ADA Form - J588, "Dental Claim Form" (1999 version 2000)~~]; and

(b) Form HCFA - 1500, "Health Insurance Claim Form", 2/2012 [~~(12-90 Edition)~~].

(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 internet Web site at http://insurance.ky.gov/ppc.

SHARON P. CLARK, Commissioner
KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: June 9, 2021

FILED WITH LRC: June 11, 2021 at 2:18 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on August 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 August 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: 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 This administrative regulation designates the claim forms and records required to be maintained for telehealth claims.

(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. KRS 304.17A-138(4) requires that the Department promulgate an administrative regulation in accordance with KRS Chapter 13A to designate the claim forms and records required to be maintained for telehealth claims.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation designates the claim forms and records required to be maintained for telehealth claims pursuant to KRS 304.17A-138(4).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This

administrative regulation designates the claim forms and records required to be maintained for telehealth claims pursuant to KRS 304.17 A-138(4).

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation are technical in nature. Forms incorporated in this administrative regulation have been amended by the third parties, whom own the rights to these documents, and thus, the Department is incorporating the most recent editions of the reporting forms.

(b) The necessity of the amendment to this administrative regulation: The necessity of these amendments are to create efficiency and uniformity in drafting of all administrative regulations and to be sure the most relevant forms are incorporated for entities to report properly.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 13A sets forth the formatting and drafting requirements for administrative regulations. The amendments to this regulations abide by those requirements.

(d) How the amendment will assist in the effective administration of the statutes: KRS 304.17A-138(4) requires that the Department promulgate an administrative regulation in accordance with KRS Chapter 13A to designate the claim forms and records required to be maintained for telehealth claims. The amendments ensure the administrative regulation conform to the requirements set forth in KRS Chapter 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All insurers issuing health benefit plans in the state of Kentucky, all health care providers and dentists submitting telehealth claims to insurers issuing health benefit plans.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Regulated entities will be required to use the incorporated forms to report claims in regards to telehealth records.

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

(c) As a result of compliance, what benefits will accrue to the entities: The regulated entities will have properly recorded claims and meet the requirements set forth in this administrative regulation and the authorizing statutes.

(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? There is not tiering applied because this administrative regulation applies to all insurers issuing health benefit plans in the state of Kentucky, all health care providers, and dentist submitting telehealth records for reimbursement.

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-138(4)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. There is no fiscal impact known to be associated with this 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, Life Insurance and Managed Care
(Amendment)

806 KAR 17:280. Registration, utilization review, and internal appeal.

RELATES TO: KRS 217.211, 304.2-140, 304.17-412, 304.17A-600 -304.17A-619, 304.17A-623, 304.17C-010, 304.17C-030, 304.18-045, 304.32-147, 304.32-330, 304.38-225

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-609, 304.17A-613

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner [~~executive director~~] 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 304.17A-609 requires the department [~~office~~] to promulgate administrative regulations regarding utilization review and internal appeal. KRS 304.17A-613 requires the department [~~office~~] to promulgate administrative regulations to develop a process for the registration of insurers or private review agents. [~~EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as head of the department.~~] This administrative regulation establishes requirements for the registration of insurers or private review agents, and the utilization review process, including internal appeal of decisions.

Section 1. Definitions. (1) "Adverse determination" is defined by [~~in~~] KRS 304.17A-600(1).

(2) "Authorized person" is defined by [~~in~~] KRS 304.17A-600(2).

(3) "Board" means one (1) of the following governing bodies:

(a) The American Board of Medical Specialties;

(b) The American Osteopathic Association; or

(c) The American Board of Podiatric Surgery.

(4) "Coverage denial" is defined by [~~in~~] KRS 304.17A-617(1).

(5) "Department" means Department of Insurance.

(6) "Enrollee" is defined by [~~in~~] KRS 304.17C-010(2).

(7) "Insurer" is defined by [~~in~~] KRS 304.17A-600(8).

(8) "Health Care Provider" or "provider" is defined in KRS 304.17A-005(23) and includes pharmacy as permitted under KRS Chapter 315 and 806 KAR 17:580.

(9) [(~~8~~)] "Limited health service benefit plan" is defined by [~~in~~] KRS 304.17C-010(5).

(10) [(~~9~~)] "Nationally recognized accreditation organization" is defined by [~~in~~] KRS 304.17A-600(10).

(11) [(~~10~~)] "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).

(12) [(~~11~~)] "Policies and procedures" means the documentation which outlines and governs the steps and standards used to carry out functions of a utilization review program.

(13) [(~~12~~)] "Private review agent" is defined by [~~in~~] KRS 304.17A-600(11).[

~~(13) "Provider" is defined in KRS 304.17A-600(13).~~]

(14) "Registration" is defined by[~~in~~] KRS 304.17A-600(14)[(~~15~~)].

(15) "Utilization review" is defined by[~~in~~] KRS 304.17A-600(17)[(~~18~~)].

(16) "Utilization review plan" is defined by[~~in~~] KRS 304.17A-600(18)[(~~19~~)].

Section 2. Registration Required. (1) The department shall issue a registration to an applicant that has met the requirements of KRS 304.17A-600 through 304.17A-619 and KRS 304.17A-623 [~~304.17A-623~~], if applicable, and Sections 2 through 11 of this administrative regulation.

(2) An applicant seeking registration to provide or perform utilization review shall:

(a) Submit an application to the department as required by Section 4 of this administrative regulation; and

(b) Pay an application fee as required by Section 3 of this administrative regulation.

(3) An application shall be accompanied by the required documentation listed in Section 4 of this administrative regulation.

(4) If an insurer or private review agent desires a renewal of registration to perform utilization review, an application for renewal of registration shall be submitted to the department at least ninety (90) days prior to expiration of the current registration.

Section 3. Fees. (1) An application for registration shall be accompanied by a fee of $1,000.

(2) A submission of changes to utilization review policies or procedures to the department shall be accompanied by a fee of fifty (50) dollars.

(3) A fee as established in subsection (1) or (2) of this section shall be made payable to the Kentucky State Treasurer.

Section 4. Application Process. (1) An applicant shall complete and submit to the department an application, HIPMC-UR-1 and HIPMC-MD-1, [~~as incorporated by reference in 806 KAR 17:005~~], and documentation to support compliance with KRS 304.17A-600 through 304.17A-623, as applicable, including:

(a) A utilization review plan;

(b) The identification of criteria used for all services requiring utilization review [~~utilization review criteria, including criteria for review of inpatient and outpatient services~~];

(c) Types and qualifications of personnel, employed directly or under contract, performing utilization review in compliance with KRS 304.17A-607[~~(1)(a)~~], including names, addresses, and telephone numbers of the medical director and contact persons for questions regarding the filing of the application;

(d) A toll-free telephone number to contact the insurer, limited health service benefit plan, or private review agent, as required by KRS 304.17A-607(1)(e) and 304.17A-609(3);

(e) A copy of the policies and procedures required:

1. By KRS 304.17A-167 [~~By KRS 304.17A-609(4); and~~];

2. By KRS 304.17A-603 [~~To ensure availability to conduct utilization review, including the response time to return telephone calls if an answering machine is used, in accordance with KRS 304.17A-607(1)(f)~~];

3. By KRS 304.17A-607;

4. By KRS 304.17A-609(4); and

5. By KRS 304.17A-607(1)(f) and KRS 304.17A-607(1)(i);

(f) A copy of the policies and procedures by which:

1. A limited health service benefit plan provides a notice of review decision which complies with KRS 304.17A-607(1)(h), 304.17A-607(1)(i) and 304.17A-607(j) and includes:

a. Date of service or preservice request date [~~Date of the review decision; and~~];

b. Date of the review decision; and [~~Instructions for filing an internal appeal; or~~]

c. Instructions for filing an internal appeal; or

2. An insurer or private review agent provides a notice of review decision, which complies with KRS 304.17A-607(1)(h), 304.17A-607(1)(i), [~~and~~] 304.17A-607(1)(j) and 806 KAR 17:230, and includes:

a. Date of service or preservice request date [~~Date of the review decision~~];

b. Date of the review decision [~~Instructions for filing an internal appeal, including information concerning~~];

c. Instructions for filing an internal appeal, including information concerning:

(i) The availability of an expedited internal appeal and a concurrent expedited external review; [~~and~~]

(ii) For an adverse determination, the right to request that the appeal be conducted by a board eligible or certified physician pursuant to KRS 304.17A-617(2)(c); and

(iii) The insurer's contact information for conducting appeals including a telephone number and address; and

d.[~~c.~~] Information relating to the availability of:

(i) A review of a coverage denial by the department following completion of the internal appeal process; or

(ii) A review of an adverse determination by an independent review entity following completion of the internal appeal process, in accordance with KRS 304.17A-623;

(g) If a part of the utilization review process is delegated, a description of the:

1. Delegated function;

2. Entity to whom the function was delegated, including name, address, and telephone number; and

3. Monitoring mechanism used by the insurer or private review agent to assure compliance of the delegated entity with paragraph (f) of this subsection;

(h) A sample copy of an electronic or written notice of review decision, which compiles with
paragraph (f) of this subsection;

(i) A copy of the policies and procedures by which a covered person, authorized person, or provider may request an appeal of an adverse determination or coverage denial in accordance with KRS 304.17A-617, including:

1. The method by which an appeal may be initiated, including:

a. An oral request followed by a brief written request, or a written request for an expedited internal appeal;

b. A written request for a nonexpedited internal appeal; and

c. If applicable, the completion of a specific form, including a medical records release consent form with instructions for obtaining the required release form;

2. Time frames for:

a. Conducting a review of an initial decision; and

b. Issuing an internal appeal decision;

3. Procedures for coordination of expedited and nonexpedited appeals;

4. Qualifications of the person conducting internal appeal of the initial decision in accordance with KRS 304.17A-617(2)(c);

5. Information to be included in the internal appeal determination in accordance with KRS 304.17A-617(2)(e), including the:

a. Title and, if applicable, the license number, state of licensure, and certification of specialty or subspecialty of the person making the internal appeal determination;

b. Clear, detailed decision; and

c. Availability of an expedited external review of an adverse determination; and

6. A sample copy of the internal appeal determination in

compliance with paragraph(i)5 of this subsection; and

(j) A copy of the policies and procedures, which:

1. Address and ensure the confidentiality of medical information in accordance with KRS 304.17A-609(5), 806 KAR 3:210, [~~806 KAR 3:220,~~] and 806 KAR 3:230;

2. Comply with requirements of KRS 304.17A-615 if the insurer or private review agent fails to:

a. Provide a timely utilization review decision; or

b. Be accessible, as determined by verifiable documentation of a provider's attempts to contact the insurer or private review agent, including verification by:

(i) Electronic transmission records; or

(ii) Telephone company logs;

3. Comply with requirements of KRS 304.17A-619, regarding the submission of new clinical information prior to the initiation of the external review process;

4. Address and ensure consistent application of review criteria for all services requiring utilization review [~~inpatient and outpatient services in review decisions~~]; and

5. Comply with requirements of KRS 304.17A-607(1)(k), as applicable.

(2) Upon review of an application for registration, or submitted changes to utilization review policies and procedures in accordance with KRS 304.17A-607(3), the department shall:

(a) Inform the applicant if supplemental information is needed;

(b) Identify and request that supplemental information be submitted to the department within thirty (30) days;

(c) If requested information is not provided to the department within the timeline established in paragraph (b) of this subsection:

1. Deny the application for registration or proposed changes to utilization review policies and procedures; and

2. Not refund the application or filing fee; and

(d) Approve or deny registration or proposed changes to utilization review policies and procedures.

(3) In order to be registered to perform utilization review in Kentucky, an applicant which holds accreditation or certification in utilization review by a nationally recognized accreditation organization in accordance with KRS 304.17A-613(10) shall be required to submit with its completed application to the department:

(a) Evidence of current accreditation or certification in utilization review, including an expiration date; and

(b) Documentation to demonstrate compliance with requirements of KRS 304.17A-613(10).

Section 5. Denial or Revocation Hearing Procedure. Upon denial of an application for registration, or suspension or revocation of an existing registration, the department shall:

(1) Give written notice of its action; and

(2) Advise the applicant or registration holder that if dissatisfied, a hearing may be requested and filed in accordance with KRS 304.2-310.

Section 6. Complaints Relating to Utilization Review. (1) A written complaint regarding utilization review shall be reviewed by the department in accordance with KRS 304.17A-613(8).

(2) Upon receiving a copy of the complaint, an insurer or private review agent shall provide a response in accordance with KRS 304.17A-613(8)(a), including:

(a) Any information relating to the complaint; [~~and~~]

(b) All correspondence or communication related to the denial between any of the parties, including the insurer, the member, provider and private review agent [~~Corrective actions to address the complaint, if applicable, including a timeframe for each action~~]; and

(c) Corrective actions to address the complaint, if applicable, including a timeframe for each action.

(3) Within thirty (30) days of implementation of a corrective action, as identified in subsection (2) of this section, an insurer or private review agent shall notify the department in writing of the implementation of the corrective action.

(4) If an insurer or private review entity fails to comply with this section, the department may impose a penalty in accordance with KRS 304.2-140.

(5) The number, recurrence, and type of complaints, as identified in subsection (1) of this section, shall be considered by the department in reviewing an application for registration pursuant to KRS 304.17A-613(9).

Section 7. Internal Appeals for a Health Benefit Plan. In addition to the requirements of KRS 304.17A-617, and as part of an internal appeals process, an insurer or private review agent shall:

(1) Allow a covered person, authorized person, or provider acting on behalf of a covered person to request an internal appeal at least sixty (60) days following receipt of a denial letter;

(2) Provide written notification of an internal appeal determination decision as required by KRS 304.17A-617(2)(a), (b), and (e), which shall include the:

(a) Title and, if applicable, the license number, state of licensure and specialty or subspecialty certifications of the person performing the review;

(b) Elements required in a letter of denial in accordance with 806 KAR 17:230, Sections 4 and 5, if applicable;

(c) Position and telephone number of a contact person who may provide information relating to the internal appeal; [~~and~~]

(d) Date of service or preservice request date; and [~~Date on which the decision was rendered~~]

(e) Date on which the decision was rendered;

(3) Maintain written records of an internal appeal, including the:

(a) Reason for the internal appeal;

(b) Date that the internal appeal was received by the insurer or private review agent, including the date any necessary or required authorizations were received;

(c) Date of the internal appeal decision;

(d) Internal appeal decision; and

(e) Information required by Section 4(1)(i)5 of this administrative regulation; and

(4) Retain a record of an internal appeal decision for five (5) subsequent years in accordance with 806 KAR 2:070.

Section 8. Internal Appeals for a Limited Health Service Benefit Plan. (1) An insurer offering a limited health service benefit plan shall have an internal appeals process which shall:

(a) Be disclosed to an enrollee in accordance with KRS 304.17C-030(2)(g); and

(b) Include provisions, which:

1. Allow an enrollee, authorized person, or provider acting on behalf of the enrollee to request an internal appeal within at least sixty (60) days of receipt of a notice of adverse determination or coverage denial; and

2. Require the limited health service benefit plan to provide a written internal appeal determination within thirty (30) days following receipt of a request for an internal appeal.

(2) A notice of adverse determination or coverage denial shall include a disclosure of the availability of the internal appeals process.

Section 9. Reporting Requirements. By March 31 of each calendar year, an insurer or private review agent shall complete and submit to the department a HIPMC-UR-2, [~~as incorporated by reference in 806 KAR 17:005~~], for the previous calendar year.

Section 10. Maintenance of Records. An insurer or private review agent shall maintain documentation to assure compliance with KRS 304.17A-600 through 304.17A-619, 304.18-045, 304.32-147, 304.32-330, 304.38-225, and 304.47-050, including:

(1) Proof of the volume of reviews conducted per the number of review staff broken down by staff answering the phone;

(2) Information relating to the availability of physician consultation;

(3) Information which supports that based on call volume, the insurer or private review agent has sufficient staff to return calls in a timely manner;

(4) Proof of the volume of phone calls received on the toll-free phone number per the number of phone lines;

(5) Telephone call abandonment rate; and

(6) Proof of the response time of insurer or private review agent for returned phone calls to a provider if a message is taken.

Section 11. Cessation of Operations to Perform Utilization Review. (1) Upon a decision to cease utilization review operations in Kentucky, an insurer or private review agent shall submit the following to the department thirty (30) days or as soon as practicable prior to ceasing operations:

(a) Written notification of the cessation of operations, including the proposed date of cessation and the number of pending utilization review decisions with projected completion dates; and

(b) A written action plan for cessation of operations, which shall be subject to approval by the department prior to implementation.

(2) Annual reports required pursuant to Section 9 of this administrative regulation shall be submitted to the department within thirty (30) calendar days of ceasing operations.

Section 12. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) Form HIPMC-UR-1, "Utilization Review Registration Application", 09/2020 edition;

(b) Form HIPMC-UR-2, "Annual Utilization Review (UR) Report Form", 09/2020 edition; and

(c) Form HIPMC-MD-1, "Medical Director Report Form", 09/2020 edition.

(2) This material may be inspected, copied or obtained subject to applicable copyright law, at the Department of Insurance, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 pm. This material is also available on the department's Web site at http://insurance.ky.gov.

SHARON P. CLARK, Commissioner
KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: June 11, 2021

FILED WITH LRC: June 11, 2021 at 2:19 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on August 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 a.m. on August 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: 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 a process and requirements for the registration of insurers or private review agents, and utilization review process, including internal appeal decisions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 304.17A-065, KRS 304.17A-609, and KRS 304.17A-613 which requires the Commissioner to promulgate regulations regarding utilization review, internal appeal process for the registration of insurers or private review agents and includes limited health service benefit plans and national accreditation organizations in the registration, utilization review, and internal appeal process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1), authorizes that the Commissioner may promulgate administrative regulations to aid in effectuation of the Insurance Code. 304.17A-609, states that the department shall promulgate emergency administrative regulations regarding utilization review and internal appeal, including the specification of information required of insurers and private review agents. 304.17A-613, requires the department to establish the process for application review, fees and registration of insurers and private review agents.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will comply by setting forth the utilization review process, internal appeal, and registration process required by 304.17A-609 and 304.17A-613.

(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 incorporated new forms that were ordinally incorporated in 806 KAR 17:005, remove irrelevant statutory references, additions to include dates of services and pre-service requests, and decision dates to internal appeal process, as well as requiring written notification of decision to insurers and private review agents.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to incorporate the requirements of SB 54 of the 2019 session that added new timeframes as required in KRS 304.17A-167 and amended KRS 304.17A-600 through KRS 304.17A-607.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.17A-613 which requires the Commissioner to promulgate regulations regarding utilization review, internal appeal process for the registration of insurers or private review agents and includes limited health service benefit plans and national accreditation organizations in the registration, utilization review, and internal appeal process. These amendments help better address the registration, utilization review, and internal appeal process.

(d) How the amendment will assist in the effective administration of the statutes: These amendments ensure that registered utilization review entities are submitting policies and procedures that are in compliance with the statutes as amended

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This will effect consumers, insurers offering health benefit plans and offering limited health benefit plans 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 that follow under this regulation will need to utilize the newly incorporated forms to adhere to the processes set forth in this administrative regulations and relative statutes.

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

(c) As a result of compliance, what benefits will accrue to the entities: Entities will demonstrate compliance with the statutes as amended and therefore will not incur penalties for non-compliance with the statutes.

(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 health insurers offering health benefit plans or limited health service 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 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-609, 304.17A-613

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. There is no fiscal impact known to be associated with this 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, Life Insurance and Managed Care
(Amendment)

806 KAR 17:290. Independent External Review Program.

RELATES TO: KRS 304.2-100, 304.2-230, 304.2-310, 304.17A-600, 304.17A-621-304.17A-631[~~304.17A-700~~]

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-629

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) 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 as defined in KRS 304.1-010. KRS 304.17A-629 requires the department [~~office~~] to promulgate administrative regulations regarding the Independent External Review Program. [~~EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as head of the department.~~] The purpose of this[~~This~~] administrative regulation is to establish [~~establishes~~] the insurer requirements, procedures for the certification of independent review entities, and the process for initiating and conducting external review of utilization review decisions. This administrative regulation [~~It~~] also establishes the disclosure requirements of the external review process to be included in the health benefit plan issued at enrollment of a covered person.

Section 1. Definitions. (1) "Adverse determination" is defined by [~~in~~] KRS 304.17A-600(1).

(2) "Assign" or "assignment" means selection of an independent review entity by an insurer, and acceptance of a request to conduct an external review by an independent review entity.

(3) "Authorized person" is defined by [~~in~~] KRS 304.17A-600(2).

(4) "Commissioner" means Commissioner of Insurance as defined by KRS 304.1-050(1).

(5) "Coverage denial" is defined by [~~in~~] KRS 304.17A-617(1).

(6) "Covered person" is defined by [~~in~~] KRS 304.17A-600(4).

(7) "Department" means Department of Insurance as defined by KRS 304.1-050(2).

(8) "External review" is defined by KRS 304.17A-600(5).

(9) "Financial hardship" means the:

(a) Gross income of the covered person is below 200 percent of the federal poverty level based upon family size as shown by a federal income tax return for the previous year; or

(b) Covered person's participation in one (1) of the following programs:

1. National Prescription Drug Patient Assistance;

2. Kentucky Transitional Assistance Program (K-TAP);

3. Kentucky Medical Assistance Program; or

4. Unemployment Insurance.

(10) “Health Care Provider” or “Provider” is defined by KRS 304.17A-005(23).

(11) [(~~10~~)] "Independent review entity" is defined in KRS 304.17A-600(7).

(12) [(~~11~~)] "Insurer" is defined by [~~in~~] KRS 304.17A-600(8).[

~~(12) "Provider" is defined in KRS 304.17A-600(13).~~]

(13) "Reviewer" means an individual selected by the independent review entity to conduct an external review and make a recommended decision to the independent review entity.

Section 2. Requirements of an Insurer. (1) An insurer shall:

(a) Disclose to a covered person in a clear, concise, written format the following information concerning an external review:

1. At enrollment, the right to an external review in accordance with KRS 304.17A-505(1)(g);

2. The availability of an external review, including expedited external review, in the insurer's notice of an adverse determination in accordance with KRS 304.17A-623(1);

3. Instructions for initiating an external review in the internal appeal decision letter upholding an adverse determination, including:

a. Whether the appeal shall be in writing;

b. How to request and complete any [~~a~~] necessary forms [~~form~~], including a medical records release form or written authorization of representation;

c. Applicable time frames;

d. The position and telephone number of a contact person who can provide additional information about an external review; and

e. Additional documentation that may be necessary to initiate the external review; and

4. The right of a covered person to request an external review within sixty (60) days of receiving notice that, pursuant to KRS 304.17A-617(3), the insurer has elected to afford an opportunity for external review;

(b) Allow a covered person, authorized person, or provider acting on behalf of and with the consent of a covered person, to submit an oral request, followed by a brief written request, for an expedited external review;

(c) Provide the following information relating to an external review in the policy or certificate of coverage issued to a covered person and upon request:

1. The circumstances under which the following types of external review shall be provided:

a. Nonexpedited external review in accordance with KRS 304.17A-623(3), (4) and (6); and

b. Expedited external review in accordance with KRS 304.17A-623(10), (11) and (12);

2. The filing fee for requesting an external review in accordance with KRS 304.17A-623(5);

3. Notice that the cost of an external review by an independent review entity shall be paid by the insurer in accordance with KRS 304.17A-625(5);

4. The procedure for submitting:

a. An oral request followed up by a brief written request, or a written request for an expedited external review;

b. A written request for a nonexpedited external review; and

c. Any specific forms required by the insurer to initiate an external review, including a written authorization of personal representation or a consent to release medical records form;

5. The time frame for:

a. Submitting a request for external review in accordance with KRS 304.17A-623(4);

b. Rendering a decision by an independent review entity in accordance with KRS 304.17A-623(12) and (13); and

c. Implementation of a decision of the independent review entity in accordance with KRS
304.17A-625(11) through (13);

6. A statement relating to the confidential treatment of medical records and information relating to the external review; and

7. A statement of the availability of a complaint process through the department relating to:

a. A covered person's right to an external review in accordance with KRS 304.17A-623(8); and

b. The action of an independent review entity in accordance with KRS 304.17A-625(16);

(d) If an external review is requested by an authorized person or provider acting on behalf of a covered person, obtain the:

1. Written authorization of representation; and

2. Consent to release medical records to the independent review entity;

(e) Determine if an external review is warranted in accordance with KRS 304.17A-623(3)
and (10), and notify the person who requested the external review of its determination within the following time periods:

1. For expedited reviews, within twenty-four (24) hours of receipt of the request, pursuant to KRS 304.17A-623(11); or

2. For nonexpedited reviews, within five (5) business days of receipt of the request;

(f) Upon a determination that an expedited external review is warranted:

1. By telephone, request acceptance of assignment of the external review by an independent review entity, which was selected pursuant to KRS 304.17A-623(7) from a list of certified independent review entities maintained by the department at http://insurance.ky.gov; and

2. Notify the independent review entity by telephone that the following documents shall be forwarded to the independent review entity in accordance with KRS 304.17A-623(11):

a. The written consent of the covered person authorizing release of medical records as required by KRS 304.17A-623(4);

b. Information to be considered [~~taken into account~~] as required by KRS 304.17A-625(1)(a); and

c. A completed External Review Information Face Sheet, HIPMC-IRE-6[~~,incorporated by reference in 806 KAR 17:005~~];

(g) Upon a determination that a nonexpedited external review is warranted:

1. By telephone, request acceptance of assignment of the external review by an independent review entity which was selected pursuant to KRS 304.17A-623(7) from the list of certified independent review entities as identified in paragraph (f)1 of this subsection; and

2. Within three (3) business days of assignment, deliver to the independent review entity the documentation as identified in paragraph (f)2 of this subsection;

(h) Upon assignment of an external review, complete and send to the department an Assignment of Independent Review Entity Form, HIPMC-IRE-2[~~, incorporated by reference in 806 KAR 17:005~~], within one (1) business day via email to DOI.UtilizationReview@ky.gov;

(i)Upon receipt of a decision relating to external review from an independent review entity, implement the decision in accordance with KRS 304.17A-625(11) through (13) and provide the department with a reprocessed explanation of benefits or other payment documentation showing the implementation of the overturned decision;

(j) Upon receipt of an invoice relating to an external review, pay the independent review entity within thirty (30) days;

(k) Maintain a written record of each external review for a period of not less than five (5)
years pursuant to 806 KAR 2:070, Section 1; and

(l) Upon written notice of termination of an independent review entity pursuant to Section 3(19)(a) or (c) of this administrative regulation, reassign an external review in accordance with paragraphs (f) and (g) of this subsection.

(2)(a) If a request for external review is denied by an insurer, written notification shall be
provided by the insurer to the person requesting the external review, which shall include:

1. The date the request for external review was received by the insurer;

2. A statement relating to the nature of the request;

3. The rationale of the insurer for denying the request;

4. A statement relating to the availability of review by the department if a dispute arises regarding the right to external review;

5. The toll-free telephone number of the department; and

6. The name and telephone number of a contact person who shall provide information relating to the denial of the request.

(b) If requested by the department, the insurer shall provide:

1. A copy of the written notification described in paragraph (a) of this subsection; and

2. Information or documentation that the insurer relied upon to deny the request for external review.

Section 3. Requirements of an Independent Review Entity. An independent review entity shall:

(1) Accept a request for assignment unless:

(a) A conflict of interest exists;

(b) Confidentiality issues exist; or

(c) Due to circumstances beyond the control of the independent review entity, an appropriate reviewer becomes unavailable;

(2) Upon receipt of a request for assignment from an insurer:

(a) Determine if a condition of subsection (1)(a) through (c) of this section exists;

(b) Within twenty-four (24) hours of receipt of a request for assignment:

1. Immediately provide verbal notification, followed by written notification to the insurer and department of the rejection of an assignment if a condition of subsection (1)(a) through (c) of this section exists; or

2. Provide written notification to an insurer and the department via DOI.UtilizationReview@ky.gov of the acceptance of an assignment; and

(c) Maintain a written record of:

1. Whether the external review relates to an adverse determination or coverage denial, which requires resolution of a medical issue;

2. The specific question or issue, as identified by the independent review entity, to be resolved by the external review; and

3. Whether the external review is expedited or nonexpedited;

(3) For each external review, obtain and maintain a signed statement of a reviewer that the reviewer has no conflict of interest;

(4) Not limit the basis of an external review decision to the standards, criteria, and clinical rationale used by the insurer to make its decision pursuant to KRS 304.17A-625(1), (2), and (7);

(5) Have a reviewer with expertise in:

(a) Health insurance benefits and contracts, who shall serve as a reviewer with a healthcare professional reviewer, in an external review of a coverage denial which requires the resolution of a medical issue in accordance with KRS 304.17A-617(3)(d); and

(b) Health care, who shall:

1. Conduct an external review of a coverage denial which requires resolution of a medical issue and an adverse determination; and

2. Meet the following requirements:

a. Hold active licensure in a state of the United States;

b. Have recent experience or familiarity with current body of knowledge and applicable specialty or subspecialty practice;

c. Have at least five (5) years of experience in the specialty or subspecialty of the external review; and

d. Hold current board certification by:

(i) The American Board of Medical Specialties if the reviewer is a medical doctor;

(ii) The American Osteopathic Association if the reviewer is a doctor of osteopathic medicine;

(iii) The American Board of Podiatric Surgery if the reviewer is a doctor of podiatric medicine; or

(iv) Other recognized health professional board pursuant to KRS 304.17A-627;

(6) Establish criteria in accordance with KRS 304.17A-627 for:

(a) Selection of a qualified reviewer, including the initial verification and reverification every three (3) years of credentials of the reviewer;

(b) Ensuring that an appropriate:

1. Reviewer performs the external review; and

2. Number of reviewers are used for the external review; and

(c) Ensuring that at least one (1) reviewer qualified in each medical specialty and subspecialty is available for external review;

(d) Provide a listing of the reviewers to the department including reviewers name, date of licensure, license number and specialty, including any subspecialty in accordance with KRS 304.17A-627(5) and (6);

(7) Have a medical director or clinical director with professional postresidency experience in direct patient care who shall:

(a) Hold a current license to practice medicine in a state of the United States;

(b) Provide guidance for the medical aspects of the external review process; and

(c) Oversee the medical aspects of the:

1. Quality management program; and

2. Reviewer credentialing program;

(8) Establish and implement criteria for determination of the need for a time extension pursuant to KRS 304.17A-623(12) and (13);

(9) Provide written notification of a decision as required by KRS 304.17A-625(6), which shall include the:

(a) Title, professional license number, state of licensure and specialty or subspecialty certifications, if any, of the reviewer;

(b) Date the decision was rendered; and

(c) A statement that:

1. The decision shall be final and binding on the insurer; and

2. If dissatisfied with the decision, a comment, question, or complaint may be submitted in writing to the department;

(10) Within two (2) business days of rendering a decision, provide written notification of the decision to the:

(a) Covered person or authorized person, treating provider, and insurer; and

(b) Department by via email at DOI.UtilizationReview@ky.gov:

1. Copying the department on the written notification to the covered person; and

2. Completing an External Review Decision Notification Form, HIPMC-IRE-3[~~, incorporated by reference in 806 KAR 17:005~~];

(11) Establish written policies and procedures for maintenance and the confidential treatment of external review records in accordance with KRS 304.17A-623(9), 806 KAR 3:210, [~~806 KAR 3:220~~] and 806 KAR 3:230;

(12) Maintain a written record of an external review for a minimum of five (5) years in accordance with 806 KAR 2:070, which shall include, as applicable:

(a) All documentation relating to the external review pursuant to KRS 304.17A 625(1)(a);

(b) The independent review entity's decision regarding each issue identified in the external review request;

(c) The name, credentials, and specialty or subspecialty of the reviewer;

(d) Medical records and information considered during the review;

(e) References to any medical literature, research data, or national clinical criteria upon which the independent review entity's decision was based;

(f) A copy of the covered person's health benefit plan;

(g) A copy of the adverse determination or coverage denial, which requires resolution of a medical issue, and the internal appeal decision; and

(h) A copy of all correspondence and communication between the independent review entity, reviewer and any other person regarding the external review, including a copy of the final external review decision letter;

(13) Provide toll-free telephone access that:

(a) Operates at a minimum from 9 a.m. until 5 p.m. of each business day in each time zone if the services under review are in dispute; and

(b) Allows for:

1. Receiving after-hours requests for external review; and

2. Acting upon expedited external review requests in accordance with KRS 304.17A-623(12);

(14) If an external review function, or any portion of this function, is delegated or subcontracted to another person or organization, submit to the department:

(a) Policies and procedures relating to oversight activities to ensure compliance with requirements of an independent review entity as established in KRS 304.17A-623 and 304.17A-625, and this section; and

(b) A copy of the delegation or subcontract agreement;

(15) Establish and maintain a written quality assurance program in accordance KRS 304.17A-627, which shall be made available to the public upon request and shall include a written plan, which addresses:

(a) Scope and objectives;

(b) Program organization;

(c) Monitoring and oversight mechanisms; and

(d) Evaluation and organizational improvement of external review activities, including:

1. Objectives and approaches used in the monitoring and evaluation of external review activities, including the systematic evaluation of complaints for patterns and trends;

2. The implementation of an action plan to improve or correct an identified problem; and

3. The procedures to communicate the results of an action plan to its employees and reviewers, as applicable;

(16) Submit a copy of any change to information provided on the Application for Certification of an Independent Review Entity, HIPMC-IRE-1[~~, as incorporated by reference in 806 KAR 17:005~~], in writing to the department for approval. A change shall not become effective until approved by the commissioner;

(17) Submit a new application for certification if requested by the department following notification of a material change in the application information as required by KRS 304.17A-627(2);

(18) Establish a fee structure, to be available upon request, for each type or level of external review, including at a minimum, a fee for:

(a) A completed external review of:

1. A coverage denial, which requires resolution of a medical issue; and

2. An adverse determination; and

(b) An incomplete external review;

(19) Immediately terminate an external review and provide notice by telephone, followed by a written notification to the department and, if appropriate, the insurer requesting the external review if:

(a) A conflict of interest or confidentiality issue is discovered at any time during the external review process;

(b) A reversal of a coverage denial or adverse determination is received in writing from the insurer; or

(c) The independent review entity or a reviewer becomes unavailable for reasons beyond the control of the independent review entity, including acts of God, natural disasters, epidemics,

strikes or other labor disruptions, war, civil disturbances, riots, or complete or partial disruptions of facilities;

(20) If more than one (1) reviewer is utilized in making a decision:

(a) Render an overall decision based upon the majority decision of the reviewers; or

(b) If the reviewers are evenly split as to whether the recommended or requested health care service or treatment shall be covered, request an additional reviewer to make a binding majority decision;

(21) Implement a written policy and procedure for each aspect of an external review process, including:

(a) Processing of the request for assignment of an external review from an insurer;

(b) Receipt and maintenance of medical records and information from insurer;

(c) Ensuring access to appropriate qualified reviewers pursuant to subsection (6) of this section;

(d) Ensuring the credentialing, selection, and notification of a reviewer who performs an external review;

(e) Rendering a timely decision and issuing notification of the decision;

(f) Ongoing monitoring and evaluation of the performance of a reviewer;

(g) Monitoring and oversight of a delegated external review function, if any;

(h) Billing and collection of fees for external review, including:

1. Filing fee of the covered person; and

2. Cost of external review for the insurer;

(i) Collecting and reporting data;

(j) Termination of external review; and

(k) Response to a request for information relating to a complaint filed with the department; and

(22)(a) Conduct annually, a program for training reviewers, which:

1. Provides information relating to the requirements of the Kentucky Independent External Review Program; and

2. Describes the policies and procedures of the independent review entity, as applicable; and

(b) Provide a written record of the training to the department, upon request.

Section 4. Application Process for Certification to Perform External Reviews. (1) To perform an external review, an independent review entity shall be certified in accordance with requirements as established in KRS 304.17A-627, and this administrative regulation.

(2) To be certified to perform an external review, an independent review entity shall:

(a) Complete and submit to the department, an Application for Certification of an Independent Review Entity, HIPMC-IRE-1[~~, incorporated by reference in 806 KAR 17:005~~];

(b) Submit a fee with the application for certification as required by Section 5 of this administrative regulation; and

(c) Enclose with the application for certification, written documentation which supports compliance with the requirements of an independent review entity as established in KRS 304.17A-627 and Section 3 of this administrative regulation.

(3) In renewing a certification, an independent review entity shall submit an application for certification to the department at least ninety (90) days prior to expiration of the current certification.

Section 5. Fees. (1) Department fees.

(a) An application for certification as an independent review entity shall be submitted with $500.

(b) As identified in KRS 304.17A-627(2), a change in application information after certification shall be submitted with fifty (50) dollars.

(c) Fees submitted to the department shall be made payable to the Kentucky State Treasurer.

(2) Independent review entity fees.

(a)1. Except for a fee which meets the criteria established in HIPMC-IRE-5, Approval of an External Review Fee in excess of $800, the total fee charged for an external review shall not exceed $800; and

2. The fee proposed by the independent review entity in excess of $800 shall be submitted to the department for approval prior to billing the insurer with the justification defined in HIPMC-IRE-5, Approval of an External Review Fee.

(b) The twenty-five (25) dollar filing fee to be paid by the covered person shall:

1. Be billed by the independent review entity upon assignment; or

2. Be waived if it creates a financial hardship pursuant to KRS 304.17A-623(5).

Section 6. Department Review of Application for Certification or Change in Information Provided on the Application.

(1) Upon review of an application for certification or a change in information provided on the application, the department shall:

(a) Notify the applicant of any missing or necessary information;

(b) Identify and request submission of the information identified in paragraph (a) of this subsection within thirty (30) days;

(c) If requested information is not provided to the department within the time frame established in paragraph (b) of this subsection:

1. Disapprove the application for certification or the change of information provided on the application; and

2. Not refund the applicable fee submitted in accordance with Section 5(1) of this administrative regulation; and

(d) Approve or deny certification or a change to information provided on the application of an independent review entity within ninety (90) days of submission.

(2) An independent review entity certification shall expire on the second anniversary of the certification date unless the certification is renewed by the independent review entity, which submits a new application for certification in accordance with Section 4(2) of this administrative regulation.

Section 7. Denial, Decertification, or Suspension Hearing Procedure. Upon the denial of certification, decertification, or suspension of a certification, the department shall:

(1) Give written notice of its action; and

(2) Advise the applicant or certificate holder that a request for a hearing may be filed in accordance with KRS 304.2-310.

Section 8. Independent Review Entity Complaint Process. (1) A copy of the complaint filed pursuant to KRS 304.17A-625(16) and a letter from the department requesting a written response to the complaint shall be sent to the independent review entity.

(2) Within ten (10) business days of receipt of the letter from the department, the independent review entity shall submit a written response to the department, including the following:

(a) Information relating to the complaint;

(b) If applicable, corrective actions to address the complaint, including time frames for actions; and

(c) A mechanism to evaluate the corrective action, if applicable.

(3) Upon receipt of the written response of the independent review entity, the department shall:

(a) If applicable, take action pursuant to KRS 304.17A-625(16); and

(b) Notify the complainant of the department's findings and action taken, if any.

Section 9. Department Investigations. The commissioner may conduct an investigation of an independent review entity pursuant to KRS 304.2-100 and 304.2-230.

Section 10. Reporting Requirements. An independent review entity shall complete and submit to the department by March 31 of each year for the previous calendar year, the Annual Independent Review Entity Report Form, HIPMC-IRE-4[~~, incorporated by reference in 806 KAR 17:005~~].

Section 11. Cessation of Participation. (1) Upon a decision to terminate participation in the independent external review program as established in KRS 304.17A-621, an independent review entity shall:

(a) Immediately notify the department in writing of its decision to cease accepting new assignments; and

(b) Except for reasons beyond its control, submit the following to the department for approval at least thirty (30) days prior to termination:

1. Written notification of the termination, including:

a. Date of termination; and

b. Number of pending external reviews with corresponding assignment dates; and

2. A written action plan for terminating participation.

Section 12. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) Form HIPMC-IRE-1, "Application for Certification of an Independent Review Entity", 09/2020 edition;

(b) Form HIPMC-IRE-2, "Assignment of Independent Review Entity Form", 09/2020 edition;

(c) Form HIPMC-IRE-3, "External Review Decision Notification Form", 09/2020 edition;

(d) Form HIPMC-IRE-4, "Annual Independent Review Entity Report Form", 09/2020 edition;

(e) Form HIPMC-IRE-5, "Approval of Excess Review Fee", 09/2020 edition; and

(f) Form HIPMC-IRE-6, "External Review Information Face Sheet", 09/2020 edition.

2. This material may be inspected, copied or obtained subject to applicable copyright law, at the Department of Insurance, The Mayo-underwood Building, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 pm. This material is also available on the department's Web site at http://insurance.ky.gov.

SHARON P. CLARK, Commissioner
KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: June 9, 2021

FILED WITH LRC: June 11, 2021 at 2:20 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on August 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 August 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: 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 insurer requirements, procedures for the certification of independent review entities and the process for initiating and conducting external review of utilization review decisions. It also establishes disclosure requirements of the external review process to be included in the health benefit plan issued at enrollment of a covered person. This emergency administrative regulation amends an existing regulation.

(b) The necessity of this administrative regulation: KRS 304.17 A-629 requires the commissioner to promulgate administrative regulations regarding the independent external review program and to provide forms for external review.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1), authorizes that the Commissioner may promulgate administrative regulations to aid in effectuation of the Insurance Code. KRS 304.17 A-629 requires the Commissioner to promulgate administrative regulations regarding independent external review program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes insurer requirements, procedures for the certification of independent review entities, and the process for initiating and conducting external review of utilization review decisions. It also establishes disclosure requirements of the external review process to be included in the health benefit plan issued at enrollment of a covered person.

(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 includes incorporating forms that were once incorporate in 806 KAR 17:005, requirements for reviews to provide the DOI an explanation of reprocessed benefits or payment documenting showing the implementation of said decision of review, update the DOI's utilization review branch email address throughout the regulation, and require the independent review entity to provide the department a listing of reviewers in accordance with KRS 304.17A-627(5) and (6). The other amendments made to this regulation are to adhere to the drafting requirements set forth in Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to comply with KRS 304.17A-629, as well as KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 13A requires specific drafting requirements for administrative regulation, and these amendments adhere to those set forth. KRS 304.17A-629 requires the Commissioner to promulgate administrative regulations regarding independent external review program.

(d) How the amendment will assist in the effective administration of the statutes: The amendments concerning drafting requirements of Chapter 13A are to ensure readability and efficacy of administrative regulations. The amendments concerning KRS 304.17A-629 alter the regulation to better comply with internal changes within the Department and outside entities interested and effected by this administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This will affect consumers, insurers offering a health benefit plan in Kentucky, and the procedures to be followed by an independent review entity.

(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 that follow under this regulation will need to utilize the newly incorporated forms to adhere to the processes set forth in this administrative regulations and relative statutes.

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

(c) As a result of compliance, what benefits will accrue to the entities: A result of compliance the regulated entities will meet to statutory requirements of the external utilization review.

(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 health insurers offering 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 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-629

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. There is no fiscal impact known to be associated with this 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, Life Insurance and Managed Care
(Amendment)

806 KAR 17:370. Standardized health claim attachments.

RELATES TO: KRS 304.17A-005, 304.17A-607, 304.17A-700-304.17A-730, 304.17C-010, 304.17C-090, 304.39-010-304.39-340, [~~2008 Acts ch. 127, Part XII, secs 18-20~~], 42 C.F.R. 411.32, 441.203, 441.206, 441.207, 441.208, 441.250, 441.255, 441.256, 441.258

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-720(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner [~~executive director~~] 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 304.17A-720(1) requires the department to promulgate administrative regulations prescribing standardized health claim attachments to be used by insurers.[~~EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as head of the department.~~] This administrative regulation establishes requirements for standardized health claim attachments and minimum requirements for routinely requested medical information health claim attachments.

Section 1. Definitions. (1) "Clean claim" is defined by [~~in~~] KRS 304.17A-700(3). (2) "Health benefit plan" is defined by [~~in~~] KRS 304.17A-005(22).

(3) "Health care provider" or "provider" is defined by [~~in~~] KRS 304.17A-700(9)[~~, as amended by 2008 Ky Acts ch. 127, Part XII, sec. 18~~].

(4)"Health claim attachments" is defined by [~~in~~] KRS 304.17A-700(10).

(5) "Insurer" is defined by [~~in~~] KRS 304.17A-005(29) [~~304.17A-005(27)~~].

(6) "Limited health services benefit plan" is defined by KRS 304.17C-010(5).

(7) "Practitioner" means an individual licensed or certified to provide a health care service in Kentucky.

(8) "Reparation obligor" is defined by [~~in~~] KRS 304.39-020(13).

Section 2. Standardized Health Claim Attachments. If another payment source is identified by a provider, an insurer shall require the provider to include the following health claim attachments, as applicable, for a claim to qualify as a clean claim:

(1) An explanation of benefits statement or noncoverage notice from another payer;

(2) An electronic or paper-based Medicare remittance notice if the claim involved Medicare as a payer; and

(3) A record of all payments by a reparations obligor pursuant to KRS 304.39-010 to 304.39-340.

Section 3. Routinely-requested Health Claim Attachments. An insurer offering a health benefit plan or a limited health service benefit plan for dental only, may routinely request the following health claim attachments in accordance with KRS 304.17A-706(2), as applicable:

(1) A certification of medical necessity;

(2) A complete medical record, or part of a medical record, including:

(a) Discharge summary:

1. Patient identification, including name, age, gender, and medical record number;
2. Name of attending practitioner;
3. Dates of admission and discharge;
4. Final diagnosis;
5. Reason for the admission or visit;
6. Medical history;
7. Significant findings during length of stay or visit;
8. Procedures and treatments;
9. Patient condition at discharge;
10. Discharge medications; and
11. Discharge instructions;

(b) Emergency department report:

1. Patient identification, including name, age, gender, and medical record number;
2. Date of service;
3. Attending practitioner;
4. Chief complaint and symptoms;
5. History of present illness and physical exam;
6. Diagnostic test findings;
7. Clinical impression and diagnosis;
8. Treatment plan;
9. Discharge instructions; and
10. Practitioner orders;

(c) History and physical:

1. Patient identification, including name, age, gender, and medical record number;
2. Chief complaint;
3. Details of present illness;
4. Relevant past, social and family histories;

5. Inventory by body system;
6. Summary of psychological needs;
7. Report of relevant physical exam;
8. Statement relating to the conclusions or impressions drawn from the admission history and physical;
9. Statement relating to the course of action planned for this episode of care; and
10. Name of practitioner performing history and physical;
(d) Nurse's notes:
1. Patient identification, including name, age, gender, and medical record number;
2. Vital signs with graphics, if available;
3. Intake and output record, if applicable;
4. Medication administration records;
5. Date of nurse's notes;
6. Nurse assessment;
7. Nursing intervention;
8. Observation; and
9. Name of nurse;
(e) Operative report:
1. Patient identification, including name, age, gender, and medical record number;
2. Date of procedure;
3. Operating practitioner;
4. Pre- and post-operative diagnoses;
5. List of procedures performed;
6. Operative description including indications and findings;
7. Anesthesia used; and
8. Specimens collected;
(f) Progress notes:
1. Patient identification, including name, age, gender, and medical record number;
2. Discharge or treatment plan;
3. Practitioner orders;
4. Practitioner notes;
5. Attending practitioner name;
6. Results of tests and treatments;
7. Dates of notes; and
8. Chief complaint;
(g) Test results:
1. Patient identification, including name, age, gender, and medical record number;
2. Test findings, including date ordered and date competed; and
3. Ordering practitioner name;
(h) Practitioner orders or treatment plan, as applicable:
1. Patient identification, including name, age, gender, and medical record number;
2. Practitioner orders;
3. Ordering practitioner name; and
4. Order dates;
(i) Practitioner notes:
1. Patient identification, including name, age, gender, and medical record number;
2. Practitioner name;
3. Practitioner notes; and
4. Dates of notes;
(j) Consult notes and reports:
1. Patient identification, including name, age, gender, and medical record number;
2. Practitioner name;
3. Findings and recommendations including notes and reports; and
4. Dates of notes and reports;
(k) Anesthesia record:
1. Patient identification, including name, age, gender, and medical record number;
2. Administering practitioner name;
3. Start and stop anesthesia times;
4. Route of administration;
5. Dates;
6. Notes;
7. Patient vital signs; and
8. Drug administered;
(l) Therapy notes:
1. Patient identification, including name, age, gender, and medical record number;
2. Practitioner name;
3. Practitioner orders;
4. Treatment plan;
5. Number of treatments and dates;
6. Therapist's notes; and
7. Dates of notes;
(m) Office notes:
1. Patient identification, including name, age, gender, and medical record number;
2. Practitioner name;
3. Any notes generated for dates of service; and
4. Dates of notes;
(n) Dental records; and
(o) Pharmacy records;
(3) Certification and documentation as identified in 42 C.F.R. 441.203, 441.206, 441.207, 441.208, 441.250, 441.255, 441.256, and 441.258;
(4) Itemized bill; and
(5) Evidence of Medicare secondary payment pursuant to 42 C.F.R. 411.32.

SHARON P. CLARK, Commissioner
KERRY B. HARVEY, Secretary
APPROVED BY AGENCY: June 9, 2021
FILED WITH LRC: June 11, 2021 at 2:16 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on August 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 August 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: 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 standardized Health Claim Attachments that must be sent to an insurance company for a provider to receive payment.
(b) The necessity of this administrative regulation: This administrative regulation is necessary as KRS 304.17 A-720(1) requires that the department promulgate administrative regulations prescribing standardized health claim attachments to be used by insurers. This administrative regulation prescribes standardized health claim attachments and minimum requirements for routinely requested medical information health claim attachments
(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 as defined in KRS 3 04.1-010. KRS 3 04 .1 7 A-720(1) requires that the department promulgate administrative regulations prescribing standardized health claim attachments to be used by insurers. This

administrative regulation prescribes standardized health claim attachments and minimum requirements for routinely requested medical information health claim attachments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist establishing standardized health claim attachments and minimum requirements for routinely requested medical information.

(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 ensure the drafting requirements set forth in Chapter 13A are met.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to comply with KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 13A requires specific drafting requirements for administrative regulation, and these amendments adhere to those requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendments concerning drafting requirements of Chapter 13A are to ensure readability and efficacy of administrative regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all insurers offering health benefit plans and any provider requesting payment from the policyholders' insurer.

(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: Health Benefit Plans must follow the standards set forth in this administrative regulation regarding health claim attachment formatting.

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

(c) As a result of compliance, what benefits will accrue to the entities: This administrative regulation sets forth the standards for health claim attachments, so regulated entities must follow these standards to be in compliance with the regulation and avoid any penalties.

(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 fees are established in this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurers offering health benefit plans in the Commonwealth 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 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-720(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. There is no fiscal impact known to be associated with this 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, Life Insurance and Managed Care
(Amendment)

806 KAR 17:450. Insurance purchasing outlet requirements.

RELATES TO: KRS 304.2-310, 304.9-052, 304.17A-200, 304.17A-750-304.17A-770, 304.47-020

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-752(3), 304.17A-758(8), 304.17A-760(1)(i), 304.17A-762(3)(c), 304.17A-768(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner [~~Executive Director~~] of Insurance to promulgate [~~make~~] 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 304.17A-752(3) authorizes the commissioner [~~executive director~~] to promulgate administrative regulations necessary to administer KRS 304.17A-750 through 304.17A-770. KRS 304.17A-758(8) requires the commissioner [~~executive director~~] to promulgate regulations to establish fees for the initial registration and renewal of registration of an insurance purchasing outlet. KRS 304.17A-760(1)(i) requires the commissioner [~~executive director~~] to promulgate administrative regulations to establish a process for insurance purchasing outlets to prepare and file annual reports on the operations of the insurance purchasing outlet. KRS 304.17A-762(3)(c) requires the commissioner [~~executive director~~] promulgate regulations to establish disclosures that are required to be made by the insurance purchasing outlet to insurance purchasing outlet members when the member enrolls. KRS 304.17A-768(8) requires the commissioner [~~executive director~~] to promulgate administrative regulations to implement the provisions of that section involving vouchers. The purpose of this [~~This~~] administrative regulation is to establish [~~establishes~~] insurance purchasing outlet requirements, procedures for registering insurance purchasing outlets, and the voucher process.

Section 1. Definitions. (1) "Business entity" means an applicant for a certificate of registration to act as an insurance purchasing

outlet.

(2) "Commissioner" is defined by 304.1-050(1) [~~"Executive Director" of Insurance~~].

(3) "Department" is defined by KRS 304.1-050(2) [~~"Office" means Office of Insurance~~].

(4) "Eligible employee" is defined by [~~in~~] KRS 304.17A-750(1).

(5) "Employer" is defined by [~~in~~] KRS 304.17A-750(3).

(6) "Insurance purchasing outlet" is defined by [~~in~~] KRS 304.17A-750(4).

(7) "Insurance purchasing outlet member" or "member" is defined by [~~in~~] KRS 304.17A-750(5).

(8) "Voucher" is defined by [~~in~~] KRS 304.17A-750(7).

Section 2. Application for Certificate of Registration. (1) A business entity seeking issuance of or renewal of a certificate of registration shall submit to the department [~~office~~] the following:

(a) A completed Insurance Purchasing Outlet Application for Registration, HIPMC-IPO-1 (7/02);

(b) All the documentation and information required by KRS 304.17A-754(4); and

(c) A fee as required by Section 3 of this administrative regulation.

(2) Since KRS 304.4-010(2) requires all fees payable under the insurance code to be collected in advance, the period of time in which the commissioner [~~executive director~~] may act on an application for issuance of a certificate of registration, pursuant to KRS 304.17A-754(3), shall not commence, until the following are received by the department [~~office~~]:

(a) All the information required by KRS 304.17A-750 through 304.17A-768 and Sections 2 through 8 of this administrative regulation; and

(b) Appropriate fee pursuant to Section 3 of this administrative regulation.

(3) A business entity seeking to renew a certificate of registration to act as an insurance purchasing outlet shall file an application to renew a certificate of registration:

(a) Biennially in accordance with KRS 304.17A-758(6); and

(b) At least ninety (90) days prior to expiration of the certificate of registration.

(4) Upon receipt of an application for issuance or renewal of certificate of registration, the department [~~office~~] shall:

(a) Inform the applicant if supplemental information is or is not needed:

1. Applicant shall submit requested information within thirty (30) days; or

2. If requested information is not provided to the department [~~office~~] within thirty (30) days, the department [~~office~~] shall:

a. Deny the application for issuance or renewal of a certificate of registration to act as an insurance purchasing outlet; and

b. Not refund the application fee;

(b) Review the application and material required by KRS 304.17A-754(4) and Sections 2 through 8 of this administrative regulation; and

(c) Approve or deny issuance or renewal of the certificate of registration to act as an insurance purchasing outlet.

(5) Pursuant to KRS 304.17A-754(5), an insurance purchasing outlet shall submit to the department [~~office~~] a change to the original documentation or information that was submitted to the department [~~office~~] for issuance or renewal of a certificate of registration as follows:

(a) All updated documentation or information shall be submitted to the department [~~office~~] within thirty (30) days after the insurance purchasing outlet knew of the change; and

(b) A fee to submit updated information shall be paid in accordance with Section 3 of this administrative regulation.

Section 3. Fees. (1) An application for issuance of a certificate of registration to act as an insurance purchasing outlet shall be accompanied by a fee of $200 dollars to pay administrative and other costs associated with carrying out the provision of KRS 304.17A-750 through 304.17A-768.

(2) A submission to change the information filed by an insurance purchasing outlet, in accordance with KRS 304.17A-754(5), and Sections 2 through 8 of this administrative regulation, shall be accompanied by a fee of twenty-five (25) dollars to pay administrative and other costs associated with carrying out the provisions of KRS 304.17A-750 through 304.17A-768.

(3) An application to renew a certificate of registration as an insurance purchasing outlet, in accordance with KRS 304.17A-758(6), shall be accompanied by a fee of fifty (50) dollars to pay administrative and other costs associated with carrying out the provisions of KRS 304.17A-750 through 304.17A-768.

Section 4. Annual and Quarterly Financial Statements Required. In accordance with requirements and timeframes established in KRS 304.17A-758 and 304.17A-760, an insurance purchasing outlet shall:

(1) Annually, submit:

(a) In accordance with the timeframe established in KRS 304.17A-758(4), an annual financial statement, including an audited financial statement, in accordance with the HIPMC-IPO-3, 9/02 (9/02); and

(b) Within sixty (60) days after the end of the fiscal year of the insurance purchasing outlet, a report on operations in accordance with the HIPMC-IPO-2, 9/02 (9/02). The report shall include:

1. Membership enrollment in tabular form by:

a. Month;

b. Quarter; and

c. Year-to-date; and

2. Discussion and analysis of financial condition and results of operations.

(2) Quarterly, submit a financial statement, in accordance with the format established in HIPMC-IPO-4, 9/02 (9/02).

(3) An insurance purchasing outlet shall file its financial statements, as required by KRS 304.17A-758, in accordance with Financial Accounting Standards Board Statements.

Section 5. Advertising and Marketing Materials Required to be Filed. An insurance purchasing outlet shall file all advertising and marketing materials, of any nature, with the commissioner [~~executive director~~] for informational purposes:

(1) Materials submitted shall contain a form number on the lower left hand corner of every page of the filed document; and

(2) A filing fee of five (5) dollars for each form or marketing material shall be required to be submitted at the time of the filing.

Section 6. Disclosures Required. (1) In writing, and at the time of enrollment, an insurance purchasing outlet shall provide disclosures to its members as follows:

(a) Premium payment procedures;

(b) Voucher payment procedures;

(c) The insurance purchasing outlet's reinstatement policy for members terminated for nonpayment of premium; and

(d) As required by KRS 304.17A-762(3).

(2) In writing, the insurance purchasing outlet shall provide the following disclosures to an eligible person or eligible employee when an application for membership is submitted:

(a) The appeal rights for a person denied membership in the insurance purchasing outlet as required by KRS 304.17A-754(4)(c); and

(b) The enrollment procedures of the insurance purchasing outlet.

Section 7. Vouchers. (1) An insurance purchasing outlet shall:

(a) Accept all vouchers; and

(b) Submit the voucher to the insurance purchasing outlet member's employer for payment within five (5) business days of receipt of the voucher from the member.

(2) If the insurance purchasing outlet does not receive payment for the voucher from the member's employer within ten (10) business days of submission, the insurance purchasing outlet shall notify the member, within three (3) business days, by certified mail return receipt requested, that the member's employer failed to redeem the voucher within the required time. At the same time, the insurance purchasing outlet shall also notify the member that he may pay the premium amount directly to the insurance purchasing

outlet pursuant to KRS 304.17A-768(2).

(3) A voucher shall contain the following information:

(a) The name of the employer;

(b) The mailing address of the employer;

(c) The business telephone number of the employer;

(d) The tax identification number of the employer;

(e) The name of the employee;

(f) The employee's Social Security number;

(g) The dollar amount of the voucher;

(h) The dates during which the voucher is valid; and

(i) That the voucher is nonassignable and nontransferable as specifically stated in KRS 304.17A-768(1).

Section 8. Reinstatement Policy Required. (1) An insurance purchasing outlet shall have a reinstatement policy for an eligible employee and an eligible person who is terminated from the health benefit plan for nonpayment of premium.

(2) An eligible employee or an eligible person who has been terminated, pursuant to KRS 304.17A-245, shall be reinstated as a member of the insurance purchasing outlet if he meets the reinstatement requirements of the insurance purchasing outlet and the insurer.

(3) An insurance purchasing outlet shall not deny an eligible employee or an eligible person reinstatement based on any health status-related factor listed in KRS 304.17A-200 or consideration of medical loss ratio.

(4) If premium is not paid and the insurance purchasing outlet receives notification of termination for the member, pursuant to KRS 304.17A-245, the insurance purchasing outlet shall notify the member, within five (5) business days of receiving notification of termination from the insurer, that he is terminated. The insurance purchasing outlet shall notify the member of his termination by regular first class mail to the last known address of the member.

Section 9. Cessation of Operations of the Insurance Purchasing Outlet. (1) Upon a decision to cease operating as an insurance purchasing outlet, the insurance purchasing outlet shall:

(a) Immediately notify the department, in writing, its decision to cease accepting new members to the insurance purchasing outlet; and

(b) Submit the following to the department [~~office~~] ninety (90) days prior to ceasing operations:

1. Written notification of the cessation of operations, including the date of cessation and the number of current members of the insurance purchasing outlet; and

2. A written action plan for ceasing operations, which shall be approved by the department [~~office~~] and include:

a. Copies of letters that will be mailed to members and insurers notifying them of the decision to cease operating as an insurance purchasing outlet; and

b. The projected date for processing all voucher and premium payments.

(2) Upon receipt of a written notification as required in subsection (1) of this section, the department [~~office~~] shall review and act upon the action plan of the insurance purchasing outlet.

(3) Upon approval of an action plan to cease operations by the department [~~office~~], the insurance purchasing outlet shall send written notification, at least sixty (60) days in advance of the date that it will cease operations, to insurance purchasing outlet members and insurers issuing health benefit plans to its members.

(4) Upon being notified by the insurance purchasing outlet of its decision to cease operations, the insurer shall notify all members of the insurance purchasing outlet that the health benefit plan offered through the insurance purchasing outlet shall be terminated and that the member has the right to elect a conversion policy pursuant to KRS 304.17A-766.

Section 10. Hearing Process. (1) An insurance purchasing outlet may request a hearing pursuant to KRS 304.2-310(2)(b) if the commissioner [~~executive director~~]:

(a) Denies an application for a certificate of registration to act as an insurance purchasing outlet;

(b) Suspends or revokes a certificate of registration held by an insurance purchasing outlet; or

(c) Imposes a civil penalty against an insurance purchasing outlet.

(2) The commissioner may take administrative action against an insurance purchasing outlet for any violation of KRS 304.17A-750 through 304.17A-770, 304.47-020, and Sections 2 through 9 of this administrative regulation.

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

(a) "Insurance Purchasing Outlet Application for Registration," HIPMC-IPO-1, 7/02 [~~(7/02)~~];

(b) "Annual Report on Operations of Insurance Purchasing Outlet," HIPMC-IPO-2, 9/02 [~~(9/02)~~];

(c) "Annual Financial Statement of Insurance Purchasing Outlet," HIPMC-IPO-3, 9/02 [~~(9/02)~~]; and

(d) "Quarterly Financial Statement of Insurance Purchasing Outlet," HIPMC-IPO-4, 9/02 [~~(9/02)~~].

(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. The material is also available on the department Internet Web site at http://insurance.ky.gov/ppc [~~http://doi.ppr.ky.gov/kentucky/~~].

SHARON P. CLARK, Commissioner
KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: June 9, 2021

FILED WITH LRC: June 11, 2021 at 2:16 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on August 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 August 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: 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 procedures for the establishment of and operation of an insurance purchasing outlet.

(b) The necessity of this administrative regulation: KRS 304.17A-750 through KRS 304.1 7 A-770 requires and authorizes the commissioner to promulgate an administrative regulation to establish certain procedures for insurance purchasing outlets. The need to promulgate this administrative regulation is to ensure the proper establishment and operation of insurance purchasing outlets.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.17 A-750 through KRS 304.17 A-770 requires the commissioner to promulgate an administrative regulation to (I) establish fees for the initial registration and renewal registration of the insurance purchasing outlet, (2) establish the process for insurance purchasing outlets to submit annual reports on business operations, (3) establish disclosures that are required to be given, and (4) establish a voucher process.

(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 KRS 304.17 A-750 through KRS 304.17 A-770 by establishing a regulation to administer all provisions as required by that bill.

(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 ensure the drafting requirements set forth in Chapter 13A are met.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to comply with KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 13A requires specific drafting requirements for administrative regulation, and these amendments adhere to those requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendments concerning drafting requirements of Chapter 13A are to ensure readability and efficacy of administrative regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This will affect insurance purchasing outlets 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 must take to comply with this regulation or amendment: The amendments do not require any action be taken by the regulated entities. The administrative regulation does establish the procedures for the establishment of and operation of an insurance purchasing outlet.

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

(c) As a result of compliance, what benefits will accrue to the entities: Insurance purchasing outlets that comply with this administrative regulation will be lawfully established in the state of Kentucky.

(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: No

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes fees for processing the required information to be submitted by the insurance purchasing outlet.

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation applies to all business entities requesting a certificate of registration to operate an insurance purchasing outlet.

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-752(3), 304.17A-758(8), 304.17A-760(1)(i), 304.17A-762(3)(c), 304.17A-768(8)

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. There is no fiscal impact known to be associated with this 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, Life Insurance and Managed Care
(Amendment)

806 KAR 17:470. Data reporting to an employer-organized association health benefit plan.

RELATES TO: KRS 304.2-110(1), 304.17A-005, 304.17A-700(7), 304.17A-846(1), 45 C.F.R. 160, 45 C.F.R. 164

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-846

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner [~~executive director~~] 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 304.17A-846 requires the department [~~office~~] to promulgate an administrative regulation to implement its provisions and define the extent that health benefit plan information shall be provided to an employer-organized association. This administrative regulation establishes requirements for the provision of health benefit plan information to an employer-organized association by an insurer offering a health benefit plan.

Section 1. Definitions. (1) "Aggregate claims experience" means the total dollar amount paid to health care providers of medical and pharmacy services for persons covered under an employer-organized association health benefit plan.

(2) "Complete request" means a written request for employer-organized association health benefit plan information, including:

(a) A certification by a designated representative of the employer-organized association stating the:

1. Employer-organized association health benefit plan has adopted safeguards and standards for the treatment of health information pursuant to 45 C.F.R. 164.504(f); and

2. Information requested is the minimum amount necessary to accomplish the intended purpose of the use or disclosure pursuant to 45 C.F.R. 164.502(b) and 164.514(d); and

(b) Specific and sufficient details relating to the requested health benefit plan information.

(3) "Electronically" is defined by [~~in~~] KRS 304.17A-700(7).

(4) "Employer-organized association" is defined by KRS

304.17A-005(12).

(5) "Employer-organized association health benefit plan" means a health benefit plan issued to an employer-organized association or trust established by one (1) or more employer-organized associations.

(6) "Commissioner" is defined by 304.1-050(1). [~~"Executive director" means the Executive Director of the Office of Insurance.~~]

(7) "Health benefit plan" is defined by [~~in~~] KRS 304.17A-005(22).

(8) "HIPAA" means Health Insurance Portability and Accountability Act of 1996, Pub.L. 104-191.

(9) "Department" is defined by KRS 304.1-050(2)[~~"Office" means the Office of Insurance.~~]

Section 2. Requirements for Provision of Information. (1) Within five (5) business days of receipt of a written request for information relating to an employer-organized association health benefit plan, an insurer shall in writing:

(a) Acknowledge receipt of the request; and

(b) If the request fails to be a complete request, identify the items necessary to constitute a complete request in the acknowledgment of receipt letter.

(2) Pursuant to KRS 304.17A-846(1), an insurer shall provide an employer-organized association with its health benefit plan information, as requested:

(a) Including:

1. Total aggregate claims experience;

2. Total premiums paid by the employer-organized association;

3. Total number of persons covered under the employer-organized association health benefit plan, by coverage tier, as follows:

a. Family;

b. Individual;

c. Individual and spouse;

d. Individual and domestic partner; and

e. Parent plus; and

4. Information required under KRS 304.17A-846(1)(d); and

(b) Within thirty (30) calendar days of receipt of a complete request.

(3) An insurer may:

(a) Except if an employer-organized association specifies the method for the delivery of its health benefit plan information, provide the requested information in one (1) of the following formats:

1. Electronically, pursuant to the requirements for electronic transmission of information as established in 45 C.F.R. 160 and 164; or

2. Hard copy; and

(b) Request an extension of the timeframe for providing an employer-organized association with its health benefit plan information in whole or in part, if the insurer:

1. Provides evidence to the employer-organized association that a disruption in electricity and communication connections beyond its control has occurred; or

2. Establishes that an unusual circumstance exists that precludes the provision of health benefit plan information electronically or in hard copy format; and

3. Deny a complete request if:

a. A determination is made by the United States Department of Health and Human Services Office for Civil Rights that provision of health benefit plan information as requested by the employer-organized association is prohibited under HIPAA; and

b. A copy of the determination, as established under clause a of this subparagraph, is provided to the employer-organized association which submits a complete request.

Section 3. Preemption. This administrative regulation shall not:

(1) Preempt or supersede an existing Kentucky law relating to a medical record, health, or insurance information privacy; or

(2) Infringe upon the jurisdiction of the United States Department of Health and Human Services Office for Civil Rights in its:

(a) Enforcement of 45 C.F.R. 160 and 164; and

(b) Responding to a complaint relating to privacy of health information.

SHARON P. CLARK, Commissioner
KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: June 9, 2021

FILED WITH LRC: June 11, 2021 at 2:16 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on August 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 August 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: 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 requirements relating to an insurer's provision of health benefit plan information to an employer-organized association to the extent the release of this information is allowed under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 304.17 A-846, which requires the Commissioner of the Department of Insurance to implement its provisions and specify the health benefit plan information to be provided, including information to verify eligibility and participation of groups and detailed claims information to employer-organized associations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the Commissioner 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. KRS 304.17A-846 requires the Commissioner to promulgate administrative regulations to implement its provisions and specify the health benefit plan information to be provided by an insurer offering a health benefit plan to an employer-organized association.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist by establishing guidelines for the provision of health benefit plan information to an employer-organized association which may request information regarding its health benefit plans to the extent allowed under the Health Insurance Portability and Accountability Act (HIP AA) and as required under KRS 304.17 A-846.

(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 ensure the drafting requirements set forth in Chapter 13A are met.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to comply with KRS Chapter 13A.

(c) How the amendment conforms to the content of the

authorizing statutes: KRS Chapter 13A requires specific drafting requirements for administrative regulation, and these amendments adhere to those requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendments concerning drafting requirements of Chapter 13A are to ensure readability and efficacy of administrative regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Insurers offering health benefit plans 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 must take to comply with this regulation or amendment: The amendments do not require any action be taken by the regulated entities. The administrative regulation does establish the procedures for the establishment of and operation of an insurance purchasing outlet.

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

(c) As a result of compliance, what benefits will accrue to the entities: The implementation of this regulation reinforces standards and safeguards required under HIPPAA.

(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: No

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes fees for processing the required information to be submitted by the insurance purchasing outlet.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies equally to all insurers offering health benefit plans.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department as the implementer.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1), 304.17A-846

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. There is no fiscal impact known to be associated with this 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 46:050. Liability self-insurance group rate, underwriting and evidence of coverage filings

RELATES TO: KRS 304.1-050, 304.13-011, 304.13-051, KRS 304.14-120, 304.48-020(7), 304.48-180

STATUTORY AUTHORITY: KRS 304.48-180, 304.48-230

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.48-230 authorizes the commissioner to promulgate reasonable administrative regulations consistent [~~not inconsistent~~] with KRS 304 Subtitle 48 that the commissioner deems necessary for the proper administration of the subtitle. KRS 304.48-180 requires liability self-insurance groups to file rates, underwriting guidelines, evidence of coverage and any changes therein with the commissioner. This administrative regulation establishes the procedures for liability self-insurance groups to submit these filings.

Section 1. Definitions.

(1) "Commissioner" is defined by [~~in~~] KRS 304.1-050(1).

(2) "Liability self-insurance group" is defined by [~~in~~] KRS 304.48-020(7).

(3) "Rates and underwriting guidelines" means any rating manuals and underwriting rules for all coverage types including any manual or plan of rates, loss costs, risk classifications, rating schedule, minimum premium, policy fees, premium payment plans, rating rules, supplementary rating information or any other similar information needed to determine the applicable coverage rate or premium for a member.

(4) "Supplementary rating information" is defined by [~~in~~] KRS 304.13-011(2).

Section 2. General Filing Requirements.

(1) All filings shall be accompanied by a completed and signed Form LSIG F-1A P&C, "Face Sheet and Verification Form for Liability Self-Insurance Groups".

(2) All paper filings shall include one (1) full document set on 81/2" x 11" white paper with two (2) cover letters and a self-addressed stamped envelope.

(3) A filing may include any number of documents, filed together on a particular date. Rates and underwriting guidelines shall be filed separately from evidence of coverage forms.

(4)(a) A liability self-insurance group may submit a filing in an electronic format established by the National Association of Insurance Commissioners.

(b) An electronic filing shall be in lieu of a paper filing.

(5) The period of time in which the commissioner may affirmatively approve or disapprove the filing, as set forth in KRS 304.13-051, shall not begin until a complete filing and the filing fee in accordance with KRS 304.48-180, is received.

Section 3. Rate and Rule Filings.

(1) The rates and underwriting guidelines shall be filed not later than fifteen (15) days after the date of first use of the rates and underwriting guidelines, pursuant to KRS 304.13-051(1).

(2) A liability self-insurance group shall comply with the requirements of KRS 304.13-051(5).

(3) Form LSIG: S-1 P & C, "Filing Synopsis for Rates and or Rules" shall be filed with all rate and underwriting guideline filings. Separate forms shall be filed for each type of coverage.

(4)(a) Form LSIG: LC-1 P & C, "Calculation of Loss Cost Multiplier" shall be filed with all rate filings referencing loss costs formulated by any advisory organization. Separate forms shall be filed for each type of coverage.

(b) Form LSIG 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. Separate forms shall be filed for each type of coverage.

(5)(a) All rate or underwriting guideline filings utilizing an experience modification plan shall include the experience rating plan by type of coverage with the formula used for calculating the experience modification factor for that coverage. Each experience modification factor applied shall be made available to the member upon request.

(b) All rate or underwriting guideline filings containing schedule rating plans shall identify the characteristics of the risk not reflected in an experience modification factor.

(c) Any application of the schedule rating plan shall be based on evidence contained in the liability self-insurance group's file at the time it is applied. The schedule rating plan debit or credit factor applied shall be made available to the member upon request.

(d) If the reason for application of any schedule debit is corrected by the member to the satisfaction of the liability self-insurance group, the debit may be removed at the time evidence of the correction is received by the group.

Section 4. Coverage Form Filings.

(1) Form LSIG: S-2 P & C, "Filing Synopsis for Forms" and Form LSIG: F-2 P & C, "Forms Index" shall be filed with all evidence of coverage form filings.

(2) An evidence of coverage form shall not be used until it has been approved by the commissioner. If the rates pertaining to an evidence of coverage form are required to be filed with or approved by the commissioner pursuant to KRS 304.13-051, 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 an evidence of 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 an evidence of coverage form shall not, because of this change alone, require a new filing.

Section 5. Advisory Organization Filings.

(1) A liability self-insurance group that is a member, subscriber, or service purchaser of an advisory organization, statistical agent or forms provider may 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 liability self-insurance 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 liability self-insurance group chooses to adopt all of the current and future evidence of 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 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 liability self-insurance group previously notified the commissioner 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 not adopt certain evidence of 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 and shall pay the appropriate filing fee in accordance with KRS 304.48-180.

1. If a liability self-insurance group previously notified the commissioner 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 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, 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 liability self-insurance 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 indicating it is non- adopting.

Section 6. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form LSIG: F-1A P & C, "Face Sheet and Verification Form for Liability Self Insurance Groups," (7/2010).

(b) Form LSIG: F-2 P & C, "Forms Index," (7/2010).

(c) Form LSIG: S-1 P & C, "Filing Synopsis for Rates and or Rules," (7/2010).

(d) Form LSIG: S-2 P & C, "Filing Synopsis Form," (7/2010).

(e) Form LSIG: LC-2 P & C, "Expense Constant Supplement," (7/2010).

(f) Form LSIG: EMA P & C, "E-mod Affidavit," (7/2010).

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, from the Department of Insurance, The Mayo-Underwood Building, 500 Mero Street [~~215 West Main Street~~], Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) Forms may also be obtained on the Department of Insurance Internet Web site, http://insurance.ky.gov.

SHARON P. CLARK, Commissioner
KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: June 9, 2021

FILED WITH LRC: June 11, 2021 at 2:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on August 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 August 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: 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 prescribes the required forms to be used by liability self-insurance groups for rate, underwriting guidelines, and evidence of coverage form filings, and describes the process for submitting those filings.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of 10 RS SB 77, which requires liability self-insurance groups to file rates, underwriting guidelines, and evidence of coverage filings in accordance with KRS 304.13-051 and 304.14-120.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 304.48-230 authorizes the commissioner to promulgate reasonable administrative regulations not inconsistent with KRS 304 Subtitle 48 that the commissioner deems necessary for the proper administration of the subtitle. KRS 304.48-180 requires liability self-insurance groups to file rates, underwriting guidelines, evidence of coverage and any changes therein with the commissioner. This administrative regulation establishes the procedures for liability self-insurance groups to submit these filings.

(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 complete, comparable 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 and ensure the drafting requirements set forth in Chapter 13A are met.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to comply with 304.17B-023, as well as KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 13A requires specific drafting requirements for administrative regulation, and these amendments adhere to those requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendments concerning drafting requirements of Chapter 13A are to ensure readability and efficacy of administrative regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the five (5) liability self-insurance groups currently authorized to do business in Kentucky and an unknown number of future liability self-insurance groups that may apply to do business in Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, 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: Liability self-insurance groups will need to comply with the filing requirements outlined in this administrative regulation in order to be in compliance with KRS 304.48-180.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Liability self-insurance groups have previously filed forms with the Department. This administrative regulation provides clear guidelines for the submission of their filings. Therefore, the cost to comply with this administrative regulation should be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, liability self-insurance groups will be in compliance with KRS 304.48-180 and will have evidences of coverage, rates and underwriting rules appropriately reviewed by the Department of Insurance.

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

(a) Initially: There will be no cost to implement this regulation.

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

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: If any costs arise, the budget of the Kentucky Department of Insurance will be used for 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: there will be no increase in fees or funding necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all liability self-insurance groups.

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 304.48-180, 304.48-230

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. There is no fiscal impact known to be associated with this 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 Income Support
Division of Child Support Enforcement
(Amendment)

921 KAR 1:020. Child Support Enforcement Program: confidentiality, program administration contracts, and agreements.

RELATES TO: KRS Chapter 45A,[~~194A.050(1),~~] 205.175, 205.177, 205.710, 205.712, 205.730, 205.735, 205.7685, 205.772, 205.774, 205.776, [-]205.800, 205.990(1), (2), (4), [~~(5),~~] (6), 403.211, 405.430(9), (13), 406.035, 434.845, 45 C.F.R. 302.34, 303.21, 303.70(e)(3) [~~(d)(2)~~], 303.107, 304, 307.13, 26 U.S.C.

6103(a), (b), 7213(a)(2)[~~1~~], 31 U.S.C. 7502, 42 U.S.C. 651, 654(7), 666(a)(17), (c)(1)(D)[~~et seq.~~]

STATUTORY AUTHORITY: KRS 194A.050(1), 405.520, 42 U.S.C. 654(26)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 405.520 authorizes the cabinet to promulgate administrative regulations to implement the Child Support Enforcement [~~Recovery~~] Program. This administrative regulation establishes the procedures for safeguarding information and entering into program administration contracts and cooperative agreements.

Section 1. Definition. "CSEP" means the Child Support Enforcement Program.

Section 2. Safeguarding Information.

(1) Use or disclosure of information obtained exclusively for the [~~Child Support Enforcement Program (~~]CSEP[~~)~~] shall be restricted from release to the appropriate party or entity pursuant to applicable state and federal laws [~~pursuant to KRS 205.175, 205.730, 205.735, 205.7685 (2), 205.772(4), and 205.776, 45 C.F.R. 303.70(d)(2) and 302.34, 26 U.S.C. 6103(a), (b), 7213(a)(2), and 42 U.S.C. 654(26)~~].

(2) Unless an applicant for or recipient of child support services has given informed consent, information concerning the applicant or recipient of child support services shall only be released in accordance with KRS 205.177.

Section 3. Program Administration Contract.

(1) A program administration contract initiated by the cabinet with another government entity shall comply with KRS Chapter 45A and shall:

(a) Contain a clear description of specific duties, functions, and responsibilities of the parties in administration of the CSEP;

(b) Specify clear and definite terms and requirements of the contract;

(c) Specify financial reimbursement arrangements including:

1. Budget estimates;

2. Covered expenditures;

3. Methods of determining costs; and

4. Billing procedures for the child support agency;

(d) Specify record maintenance and format requirements;

(e) Contain reporting requirements;

(f) Contain the requirements for compliance with 31 U.S.C. 7502;

(g) Provide the beginning and end dates of the program administration contract, review or renewal provisions, and termination circumstances; and

(h) Provide audit criteria.

(2) If another government entity contracts with the cabinet, reimbursement for child support activities shall be provided when billing is submitted in accordance with procedures:

(a) Established by the cabinet; and

(b) Specified in the contract.

(3) The contracted government entity shall provide to the cabinet in a timely fashion statistical information concerning CSEP activities as prescribed by the cabinet and specified in the contract.

(4) If no contract is executed with a local law enforcement official, a referral for child support activities may be made to a local law enforcement official in accordance with the official's statutory obligations, but the official shall not be eligible for reimbursement as specified in subsection (2) of this section.

Section 4. An Agreement with a Financial Institution.

(1) The cabinet shall enter into an agreement with a financial institution pursuant to KRS 205.712(15)[~~(14)~~], 205.772, and 205.774 to conduct a financial data match.

(2)[~~(1)~~] The cabinet or its agent shall implement the data exchange and [~~. The cabinet or its agent~~] shall:

(a) Have access to identifying information for an obligated parent who owes an arrearage and who the cabinet has identified to a financial institution through a data match for the purpose of monitoring and auditing; and

(b) Have access to identifying information available to a financial institution if deemed necessary by the cabinet to provide service to a recipient of child support services.

(3)[~~(2)~~] The cabinet shall pay a financial institution a fee not to exceed $250 per fiscal year quarter, or the actual cost to the financial institution for operating the data match, whichever is less.

(4)[~~(3)~~] A financial institution shall:

(a) Exchange information by way of an automated data exchange system;

(b) Maintain security to assure that information received from the cabinet or its agent concerning a recipient of child support services shall:

1. Be maintained and safeguarded as confidential; and

2. Not be copied or given to any other entity without the written permission of the cabinet or the recipient of child support services; and

(c) Incur no liability for:

1. Disclosing a financial record to the cabinet for the establishment, modification, or enforcement of a child support obligation of the account holder;

2. Encumbering or surrendering an asset held by a financial institution in response to an order to withhold or order to deliver issued by the cabinet, or any other action taken by a financial institution in good faith; or

3. Providing a file to the cabinet or its authorized agent in accordance with an approved format as described by the Multistate Financial Institution Data Match Specifications Handbook [~~incorporated by reference in Section 5 of this administrative regulation~~].

(5)[~~(4)~~] If a financial data match occurs, a financial institution shall:

(a) Hold, encumber, or surrender an account to the cabinet upon receipt of an order to withhold or order to deliver;

(b) Address and send to the cabinet or its authorized agent as designated, notices, paperwork, [~~tapes~~] or other communication resulting from a financial institution data match program; and

(c) Submit data files to the cabinet or its authorized agent as designated.

(6)[~~(5)~~] The match of an account holder to a delinquent obligor record provided by the cabinet does not constitute a levy and an account shall not be held, encumbered, or surrendered to the cabinet without a financial institution having received an order to withhold or order to deliver from the cabinet.

(7)[~~(6)~~] The information provided to the cabinet on a quarterly basis by a financial institution shall be provided in the format prescribed by the Multistate Financial Institution Data Match Specifications Handbook[~~, incorporated by reference in Section 4 of this administrative regulation,~~] using either method one or method two.

(a) If a financial institution agrees to provide the information according to method one, the financial institution shall:

1. Submit by March 31, June 30, September 30, and December 31 of a calendar year, data files of open accounts to the cabinet, or the cabinet's authorized agent, for the data match; and

2. Report information required by the cabinet or the cabinet's authorized agent on any account maintained by a financial institution.

(b) If a financial institution agrees to provide the information according to method two, the financial institution shall:

1. Request the cabinet or its authorized agent to send the inquiry file to the financial institution[~~institution's~~] or its agent;

2. Match the inquiry file of obligors identified and provided by the cabinet, or by the cabinet's authorized agent, against open accounts maintained by a financial institution; and

3. Submit a report of matched accounts to the cabinet or its authorized agent within thirty (30) to forty-five (45) days of receipt of the inquiry file.

Section 5. Incorporation by Reference. (1) "Multistate Financial Institution Data Match Specifications Handbook", edition 12/2020 [~~edition 11/07~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Schenkel Lane,

Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at https://chfs.ky.gov/agencies/dcbs/Pages/default.aspx.

STEVEN P. VENO, Commissioner
ERIC C. FRIEDLANDER, Secretary
APPROVED BY AGENCY: May 20, 2021
FILED WITH LRC: May 20, 2021 at 8:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 23, 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 August 16, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 August 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, KY 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mary W. Sparrow or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines the Child Support Enforcement Program, establishes the requirements for safeguarding information, and defines the program administration contract, as well as an agreement with a financial institution.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to outline the requirements of safeguarding information, the program administration contract, and the agreement with a financial institution.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet is required to apply for federal funds per 42 U.S.C 651 and to establish the requirements for safeguarding per 42 U.S.C. 666, KRS 205.175 and 205.990.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist with outlining the safeguards, the program administration contract, and the agreement with a financial institution.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation provides updated citations and processes associated with safeguards, the program administration contract, and the agreement with a financial institution.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to update processes, the Material Incorporated by Reference, and to make technical changes in compliance with KRS Chapter 13A. 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 clarifying the criteria used by the cabinet in safeguarding information, outlining the program administration contract, and the agreement with a financial institution.

(d) How the amendment will assist in the effective administration of the statutes: The Material Incorporated by Reference has been replaced with an updated form, and the processes related to the agreement with a financial institution have been updated.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 120 child support enforcement attorneys. Currently, there are 203,713 noncustodial parents, 190,740 custodial parents, and 305,781 children active in the child support enforcement program. There are 241 financial institutions that participate in the financial institution data match 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: Each of the 120 child support enforcement attorneys has a program administration contract with the cabinet. There are no actions to be taken by the child support participants. The financial institutions currently participate in the financial institution data match, and no additional action is needed.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will not increase accrued benefits to regulated entities, but provides updated processes related to the agreement with a financial institution.

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

(a) Initially: The amendment to this administrative regulation will not require any initial costs to implement.

(b) On a continuing basis: The administrative regulation will not require any ongoing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding include state General Funds and federal funds under 42 U.S.C. 651.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities that elect to be regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 302.34, 303.21, 303.70(e)(3), 303.107, 304, 307.13, 26 U.S.C. 6103(a), (b), 7213(a)(2), 31 U.S.C. 7502, 42 U.S.C. 651, 654 (7), (26), 666.

2. State compliance standards. KRS Chapter 45A, 205.175, 205.177, 205.710, 205.712, 205.730, 205.735, 205.7685, 205.772, 205.774, 205.776, 205.800, 205.990(1), (2), (4), (6), 403.211, 405.430(9), (13), 406.035, 434.845

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with 42 U.S.C. 654(7) and (26), and 666(a)(17) and (c)(1)(D).

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 and the Department for Income Support, Child Support Enforcement Program, are 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.26 U.S.C. 6103(a), (b), 7213(a)(2), 31 U.S.C. 7502, 42 U.S.C. 651, 654 (7), (26), 666 (a)(17) and (c)(1)(D). 45 C.F.R. 302.34, 303.21, 303.70(e)(3), 303.107, 304, 307.13. KRS Chapter 45A, 205.175, 205.177, 205.710, 205.712, 205.730, 205.735, 205.7685, 205.772, 205.774, 205.776, 205.800, 205.990(1), (2), (4), (6), 403.211, 405.430(9), (13), 406.035, 434.845.

(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 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 in subsequent years.

(c) How much will it cost to administer this program for the first year? No new or additional costs are necessary to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? No new or additional costs are necessary to administer this program in any subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Income Support
Division of Child Support Enforcement
(Amendment)

921 KAR 1:390. Child Support Enforcement Program paternity establishment.

RELATES TO: KRS 186.570(2), 205.710, 205.712, 205.721, 205.730 [~~205.800~~], 213.036(5), 213.046(3), (4), (5), (9), (10), 213.071, 237.110(4)(g), 405.430, 406.011, 406.021, 406.025, 406.180, 45 C.F.R. 302.31, 302.33, 303.5, 304, 42 U.S.C. 651, 652, 653, 654, 666, 668[~~699b~~]

STATUTORY AUTHORITY: KRS 194A.050(1), 205.795, 405.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.795 authorizes the secretary to promulgate administrative regulations consistent with the purpose and intent of KRS 205.710 to 205.800. This administrative regulation establishes the requirements for the establishment of paternity for the Child Support Enforcement Program.

Section 1. Requirement for Paternity Establishment. The cabinet shall bring action, as specified in KRS 406.021(1) and (3) if:

(1) The child is born out of wedlock; and

(2) An assignment of rights to the cabinet is in effect or an individual not receiving public assistance applies for child support services including paternity establishment.

Section 2. Cabinet Action. (1) A case requiring paternity action shall be opened upon receipt of:

(a) A public assistance case referral; or

(b) A nonpublic assistance application, in accordance with KRS 205.721.

(2) The cabinet shall open a case pending determination of good cause.

(a) If good cause for failure to cooperate is determined, the child support case shall be closed.

(b) Good cause shall be established in accordance with the requirements of 921 KAR 2:006, Section 18(4) and (5).

(3) In a case referred to the cabinet in which paternity has not yet been established, the cabinet shall, within ninety (90) days of locating the alleged father or custodial parent:

(a) Obtain a voluntary acknowledgment of paternity as specified by KRS 213.036(5) and 213.046(3), (9);

(b) File for establishment of paternity;

(c) Complete service of process to establish paternity; or

(d) Document unsuccessful attempts to serve process.

(4) Paternity shall be established or the putative father excluded as a result of genetic tests or legal process within one (1) year of:

(a) Successful service of process; or

(b) The child reaching the age of six (6) months.

(5) The voluntary acknowledgment of paternity may be rescinded in accordance with KRS 213.071 [~~901 KAR 5:070~~].

(6) [~~The cabinet shall recover a reasonable fee for genetic tests from the administratively or judicially determined father pursuant to KRS 205.712(2)(h), utilizing the CS-77, Administrative Order for Genetic Testing.~~

~~(7)~~] The cabinet shall request denial, suspension, or revocation of a license or certification for failure to comply with a subpoena or warrant relating to paternity pursuant to KRS 186.570(2) and 237.110(4)(g).[

~~Section 3. Incorporation by Reference. (1) CS-77, "Administrative Order for Genetic Testing", edition 3/09, is incorporated by reference~~.

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

STEVEN P. VENO, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 19, 2021

FILED WITH LRC: May 20, 2021 at 8:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 23, 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 August 16, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no

notification of intent to attend the hearing is received by that date, the hearing may be 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 August 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; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mary W. Sparrow or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirement for paternity establishment and the actions taken by the cabinet to establish paternity for the child support enforcement program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to outline the requirements establishing paternity and the actions taken by the cabinet pursuant to 45 C.F.R. 302.31, 302.33, 303.5, and 42 U.S.C. 651, 652, 653, 654, and 668.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet is required to apply for federal funds per 42 U.S.C. 651, 652, 653, 654, and 668 to establish paternity.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist with outlining the requirement for paternity establishment and the actions taken by the cabinet.

(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 removes language that the cabinet shall recover a reasonable fee for genetic tests from the administratively or judicially determined father, using the Administrative Order for Genetic Testing, CS-77. This process is no longer in place.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to remove language that the cabinet shall recover a reasonable fee for genetic tests from the administratively or judicially determined father, using the Administrative Order for Genetic Testing, CS-77. 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 clarifying the requirement for paternity establishment and the actions taken by the cabinet to do so.

(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 removing outdated processes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently, there are 203,713 noncustodial parents, 190,740 custodial parents, and 305,781 children active in the child support enforcement 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: Participants in the child support program will not notice any change. Child support staff will update their process of establishing paternity.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will not increase accrued benefits to regulated entities but provides an updated process for determining paternity.

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

(a) Initially: The amendment to this administrative regulation will not require any initial costs to implement.

(b) On a continuing basis: The amendment to this administrative regulation will not require any ongoing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding include state General Funds and federal funds under 45 C.F.R. 304 and 42 U.S.C. 651.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities which elect to be regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 302.31, 302.33, 303.5, 42 U.S.C. 651, 652, 653, 654, 668.

2. State compliance standards. KRS 186.570(2), 205.710, 205.712, 205.721, 205.730, 205.800, 213.036(5), 213.046(3), (4), (5), (9), (10), 213.071, 237.110(4)(g), 405.430, 406.011, 406.021, 406.025, and 406.180.

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with 42 U.S.C. 654(4)(A), and 666(a)(5) and (c)(1)(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 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 and the Department for Income Support, Child Support Enforcement Program, are 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 186.570(2), 205.710, 205.712, 205.721, 205.730, 205.800, 213.036(5), 213.046(3), (4), (5), (9), (10), 213.071, 237.110(4)(g), 405.430, 406.011, 406.021, 406.025, 406.180, 45

C.F.R. 302.31, 302.33, 303.5, 42 U.S.C. 651, 652, 653, 654, 668.

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 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 any revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? No new or additional costs are necessary to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? No new or additional costs are necessary to administer this program in any subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS

Public comment periods on ordinary, non-emergency regulations are at least two months long. For other regulations with open comment periods, please also see last month's *Administrative Register of Kentucky*.

KENTUCKY INFRASTRUCTURE AUTHORITY
(New Administrative Regulation)

200 KAR 17:110. Guidelines for Kentucky Infrastructure Authority Drinking Water and Wastewater Grant Program.

RELATES TO: KRS 45.031, 151.601, 151.605, 224A.011, 224A.020, 224A.035, 224A.040, 224A.050 -224A.314

STATUTORY AUTHORITY: KRS 224A.040, 224A.070(1), 224A.113, 224A.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224A.040 authorizes the Kentucky Infrastructure Authority to make grants as funds are available, and KRS 224A.070(1) authorizes the Kentucky Infrastructure Authority to promulgate administrative regulations that shall define with specificity conditions precedent under which applications for loans or grants may be made and the order of priority upon which applications shall be acted upon. Senate Bill 36, 2021 Regular Session Acts of the General Assembly, Chapter 195, requires the Authority to promulgate administrative regulations to ensure that project approvals are based on rational criteria and include a project's readiness to proceed and the project's social, economic, and environmental benefits. This administrative regulation establishes procedures for the application for and provision of financial assistance to governmental agencies for the construction of infrastructure projects from funds available to the Kentucky Infrastructure Authority.

Section 1. Definitions.

(1) "Applicant" means a governmental agency that has submitted an application to the Authority for a grant from Authority funds.

(2) "Application" means the project information contained within the Water Resource Information System Project Profile and designated by an applicant as applying for a grant from the Drinking Water and Wastewater Grant Program funds.

(3) "Authority" means the Kentucky Infrastructure Authority, which is created by KRS Chapter 224A.

(4) "Conditional commitment letter" means a letter delivered to the applicant stating the Authority's commitment to provide a grant under specifications and subject to the satisfaction of certain conditions by the applicant.

(5) "Kentucky State Clearinghouse" means the project review mechanism, attached to the Department for Local Government, established in KRS 45.031.

(6) "Kentucky Uniform System of Accounting" means the elements of a basic accounting system established in KRS 224A.306, which is used by a water or wastewater system seeking or using funds of the Authority if an alternative accounting system has not been approved by the Authority.

(7) "Project" means an infrastructure project related to drinking water or wastewater.

(8) "Unserved" means a customer who does not have access to publicly available potable drinking water or a properly functioning wastewater system.

Section 2. Eligible Projects.

(1) Funds available to the Authority shall be used to fund Projects.

(2) Only water or wastewater projects addressing one (1) or more of the conditions established in paragraphs (a) through (h) of this subsection shall be eligible for funding:

(a) The proposed project shall provide drinking water services to unserved rural customers.

(b) The proposed project shall address provisions in a federal consent decree related to water or wastewater.

(c) The proposed project shall address the provisions of KRS 224A.300 - 224A.314.

(d) The proposed project shall address an emergency situation.

(e) The proposed project shall alleviate existing conditions that pose a serious and immediate threat to the health and welfare of the community.

(f) The proposed project shall promote social, economic, or environmental benefits; but with respect to industrial sites funds may only be awarded if the site has committed occupants.

(g) Funds are needed to complete a funding package previously awarded by the Authority.

(h) Funds are needed to cover cost overrun for a project previously awarded by the Authority.

(3) Project applications meeting the guidelines established in subsection (2) shall be funded based on the Project's:

(a) Readiness to proceed; and

(b) Receipt of a Project approval from a water management planning council as created in KRS 151.601.

Section 3. Applications.

(1) Each applicant shall submit an application to the Authority by requesting that the water service coordinator, as established in KRS 151.605, designate the project for funding. If a water service coordinator is not available, the request may be made directly to the Authority in writing and mailed.

(2) The Authority shall request additional information about the project or the applicant if needed to comply with local, state, or federal laws.

(3) Only a completed application, including all supporting documentation, shall be considered for financial assistance from the Drinking Water and Wastewater Grant Program.

Section 4. Project Priority. Eligible projects shall be funded subject to a project's readiness to proceed, the water management council's approval, and the availability of funds.

Section 5. Additional Conditions to Project Funding.

(1) A water supply and distribution system seeking funding for a Project shall agree, in writing, to adopt and utilize the Kentucky Uniform System of Accounting and to charge rates for services based on the actual cost of that service.

(2) Before funds shall be disbursed to an applicant whose Project has been approved for funding, the applicant shall demonstrate to the Authority that the project:

(a) Has been reviewed through the Kentucky State Clearinghouse process; and

(b) Is in compliance with applicable state and federal requirements.

Section 6. Terms of Financial Assistance.

(1) An application for funding shall be:

(a) Subject to financial viability review by Authority staff; and

(b) Referred to the Authority chair for final action.

(2) A project shall be funded if approved by the Authority chair and reviewed by the Legislative Research Commission's Capital Projects and Bond Oversight Committee.

(3) Upon approval of an application for funding of a project, the Authority shall issue a conditional commitment letter to the applicant establishing the requirements to be satisfied by the applicant prior to execution of an assistance agreement, including:

(a) Accounting standards or financial reporting conditions;

(b) Rate covenants;

(c) Other federal or state legal requirements relating to the project or the applicant;

(d) Engineering or technical requirements; and

(e) Receipt of additional funding commitments from other sources.

(4) Financial assistance by the Authority shall be made available only upon:

(a) Execution of an assistance agreement; and

(b) Satisfaction by the applicant of the conditions established in the conditional commitment letter.

(5) A grant amount may be adjusted by up to ten (10) percent from the principal amount approved without further action if:

(a) Requested by an applicant; and

(b) The staff of the Authority finds that:

1. The additional requested amount is needed for the project; and

2. Adequate funds are available.

(6) The Authority shall monitor the assistance agreements and require that financial reports be made available to the Authority by the applicant.

(7) The Authority may collect an administrative fee of one-half (1/2) of one (1) percent charged on the principal grant amount, as allowed by law. This fee shall be applied to the administrative processing servicing costs of the grants and necessary operating expenses of the program.

DENNIS KEENE, Chair

APPROVED BY AGENCY: June 1, 2021

FILED WITH LRC: June 2, 2021 at 9:22 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 27, 2021, at 10:00 a.m. at 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 22, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2021, at 11:59 a.m. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 12A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made upon request.

CONTACT PERSON: Bill Pauley, Staff Attorney, Department for Local Government, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, phone 502-330-6359, fax 502-227-8691, email Bill.Pauley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Bill Pauley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the application for and provision of financial assistance to governmental agencies for the construction of infrastructure projects from funds available to the Kentucky Infrastructure Authority through the Drinking Water and Wastewater Grant Program.

(b) The necessity of this administrative regulation: It is necessary in order to provide guidance to applicants for grants, and to ensure that the application, review and awarding of grants is in accordance with all applicable laws.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Regulation conforms to SB 36 which provides guidelines for the grants, by incorporating its guidelines and definitions throughout.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will assist in the effective administration of the statutes by providing applicants with a consistent procedure for providing the statutorily required information needed to administer the grant program. It will also aid the Kentucky Infrastructure Authority (KIA) in its administration of the program by creating a written process to analyze potential Water and Wastewater Infrastructure projects requesting grant funds.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This is a new regulation and will not change any existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All governmental agencies, including cities, and private sector entities seeking grant funds for the construction of Water and Wastewater Infrastructure in the Commonwealth will be affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As a result of this Regulation, those governmental agencies and private sector entities will be provided guidance as to how to apply for state grant funds. In order to comply with the Regulation, they will be required to provide documentation regarding their proposed construction or improvements required by legislation. This will require the submission of documents and may require advice from an accounting professional.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The expense for the administrative and financial expenses are estimated to be minimal and will only apply to those wishing to request funds.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits to successful applicants are immeasurable. Access to clean drinking water and the treatment of wastewater will greatly improve quality of life for Kentucky citizens and create a more suitable business environment for existing and potential job creators.

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

(a) Initially: The expense for the KIA initially will consist of creating new processes for analyzing grant applications. This may require new computer software and will certainly require the time of staff members.

(b) On a continuing basis: On a continuing basis, staff will continue to be utilized, and computer systems will need upgraded as needed.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of grant funding for this program is entirely federally funded.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: In order to implement this Regulation, some additional fees and funding may be necessary. This funding will be for the creation of software and use of staff resources. It remains to be seen what that amount may be.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees established by this regulation.

(9) TIERING: Is tiering applied? No tiering is applied. Pursuant to the relevant legislation, the funds will be appropriated to those projects based upon population, unserved rural customers, or local governmental agencies under consent decrees. In following that requirement, no tiering is necessary.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation has the potential to impact all level of state and local government, including cities, counties, and special purpose governmental agencies.

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

regulation. This regulation relates to providing grant money for the building of water and wastewater infrastructure. SB 36 requires the action taken by this administrative regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The effect to expenditures on state government include the administrative duties required by the Kentucky Infrastructure Authority. Those expenses should be minimal. The effect to revenues to local governments is indeterminable.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is difficult to estimate the amount of revenue this administrative regulation will generate for state and local government for the first year since construction times are unknown. However, jobs can be assumed to be created relating to the construction of water and wastewater infrastructure. Also, this regulation allows local governments to be given construction costs for approved infrastructure projects. State government will receive benefits from any taxes as a result of infrastructure construction.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? In subsequent years, the construction and repair of water and wastewater infrastructure has the potential to create an unknown number of employment and educational opportunities. Access to proper water and wastewater infrastructure is considered to be necessary for any business venture. The potential for revenue is indeterminable.

(c) How much will it cost to administer this program for the first year? The costs of this regulation for the first year will include the administrative expenses required in order to provide the necessary information to the Kentucky Infrastructure Authority.

(d) How much will it cost to administer this program for subsequent years? In subsequent years, the administrative costs will remain the same, but, since this is a voluntary program, those costs should be outweighed by the benefits.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. This program will have a positive fiscal impact on state and local governments by providing employment opportunities and should lower expenses for providing clean drinking water and wastewater systems. The social and environmental impacts due to enhanced sanitation should have a positive fiscal impact as well. The expenditures by local governments will be funded by the federal grant money which is the subject of this regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Board of Pharmacy
(New Administrative Regulation)

201 KAR 002:420. Administration of Vaccines.

RELATES TO: KRS 315.010, KRS 315.136, KRS 315.050

STATUTORY AUTHORITY: KRS 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations relating to pharmacists, pharmacist interns, and pharmacy technicians. This administrative regulation authorizes pharmacist interns, and pharmacy technicians to administer vaccinations pursuant to requirements. This regulation does not change the authorization for pharmacist to administer vaccinations pursuant to KRS 315.010(22).

Section 1. Definitions.

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

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

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

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

Section 2. Pharmacist Requirements. A pharmacist may administer a vaccine to an individual pursuant to the Advisory Committee on Immunization Practices (ACIP) standard immunization schedule in accordance with KRS 315.010(22).

Section 3. Pharmacist Intern Requirements. A pharmacist intern under the general supervision of a pharmacist may administer a vaccine to an individual if the pharmacist intern:

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

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

Section 4. Pharmacy Technician Requirements. A pharmacy technician may administer a vaccine under the general supervision of a pharmacist to an individual if the pharmacy technician:

(1) Completes a minimum of two (2) hours of immunization-related continuing education accredited by the Accreditation Council for Pharmacy Education (ACPE) per each state registration period;

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

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

LARRY HADLEY, Executive Director

APPROVED BY AGENCY: June 8, 2021

FILED WITH LRC: June 9, 2021 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 31, 2021 at 9:00 a.m. Eastern Time at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 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: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Larry Hadley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes that pharmacists, pharmacist interns, and pharmacy technicians may administer vaccinations pursuant to specific requirements.

(b) The necessity of this administrative regulation: KRS 315.191(1)(a) authorizes the Board of Pharmacy to promulgate administrative regulations and control all matters relating to pharmacists, pharmacist interns, and pharmacy technicians. This administrative regulation establishes that pharmacists, pharmacist interns, and pharmacy technicians may administer

vaccinations pursuant to specific requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations necessary to regulate and control all matters relating to pharmacists, pharmacist interns, and pharmacy technicians. This new administrative regulation establishes that pharmacists, pharmacist interns, and pharmacy technicians may administer vaccinations pursuant to specific requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation, authorized by KRS 315.191(1)(a), identifies the appropriate curriculum, training, and certification required to administer vaccinations.

(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 government affected by this administrative regulation: The board anticipates pharmacies, pharmacists, pharmacist interns, and pharmacy technicians will be impacted by this regulation, but this regulation does not force any licensee or registrant to administer vaccinations, it simply authorizes the practice pursuant to specific requirements for those interested in administering vaccinations.

(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: Pharmacists, pharmacist interns, and pharmacy technicians will have to familiarize themselves with new administrative regulation. The entities identified will have to complete the required curriculum, training, and certification in accordance with new administrative regulation if they seek to administer vaccinations. The board will assist in educating pharmacies, pharmacists, pharmacist interns, and pharmacy technicians of this new administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This new regulation will provide pharmacist interns and pharmacy technicians the ability to administer vaccinations by completing the required curriculum, training, and certification identified.

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

(a) Initially: No costs will be incurred.

(b) On a continuing basis: No costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding to enforce the regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all pharmacists, pharmacist interns, and pharmacy technicians who wish to administer vaccinations.

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? Pharmacists, pharmacist interns, and pharmacy technicians will be affected minimally by this new regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.191(1)(a).

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

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

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

(c) How much will it cost to administer this program for the first year? No costs are required to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No costs are required to administer this program for subsequent years.

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

Revenues (+/-): 0

Expenditures (+-): 0

Other Explanation:

BOARDS AND COMMISSIONS
Board of Nursing
(Repealer)

201 KAR 20:471. Repeal of 201 KAR 20:470.

RELATES TO: KRS 314.137

STATUTORY AUTHORITY: KRS 314.131(1), 314.137

NECESSITY, FUNCTION AND CONFORMITY: KRS 314.137 requires the board to promulgate administrative regulations to regulate dialysis technicians. This administrative regulation repeals 201 KAR 20:470 in conjunction with the promulgation of four new regulation covering the same subject matter as 201 KAR 20:470; namely, 201 KAR 20:472, 201 KAR 20:474, 201 KAR 20:476, and 201 KAR 20:478.

Section 1. 201 KAR 20:470, Dialysis technician credentialing requirements and training program standards, is hereby repealed.

JESSICA WILSON, President

APPROVED BY AGENCY: April 15, 2021

FILED WITH LRC: May 18, 2021 at 1:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, August 23, 2021 at 10:00 a.m. (EDT) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed

administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m., EDT) Tuesday, August 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: Morgan Ransdell, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3339, email Morgan.Ransdell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Morgan Ransdell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation repeals 201 KAR 20:470, in conjunction with the promulgation of 201 KAR 20:472, 201 KAR 20:474, 201 KAR 20:476, and 201 KAR 20:478.

(b) The necessity of this administrative regulation: The repeal of 201 KAR 20:470 is necessary in conjunction with the promulgation for four new regulations that address the same subjects as 201 KAR 20:470.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute, KRS 314.137, allows for the promulgation of regulations on the establishment of: (1) education requirements for credentialing as a dialysis technician ("DT"); (2) standards for DT training programs; (3) credentialing requirements for DTs; (4) provisions for discipline of DTs; (5) fees for DTs, including initial credentialing, renewal of credentials, reinstatement of credentials; and (6) further necessary regulations related to DTs. The repeal of 201 KAR 20:470, in conjunction with the promulgation of four new regulations on the same subjects, is consistent with the authorizing statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of 201 KAR 20:470, in conjunction with the promulgation of four new regulations that address the same subjects, complies with KRS 13A.221 by addressing separate topics related to DTs in four separate administrative 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 changes at issue arise from the promulgation of 201 KAR 20:472, 201 KAR 20:474, 201 KAR 20:476, and 201 KAR 20:478. The changes implemented through each of the four new regulations are separately addressed in the regulatory impact analysis provided with 201 KAR 20:472, 201 KAR 20:474, 201 KAR 20:476, and 201 KAR 20:478.

(b) The necessity of the amendment to this administrative regulation: It is necessary to repeal 201 KAR 20:470, in light of the promulgation of four new regulations on the same subjects. The necessity of the changes implemented through promulgation of 201 KAR 20:472, 201 KAR 20:474, 201 KAR 20:476, and 201 KAR 20:478, are set forth in the regulatory impact analysis provided with those regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The repeal of 201 KAR 20:470, in conjunction with the promulgation of four new regulations that address the same subjects, complies with KRS 13A.221 by addressing separate topics related to dialysis technicians in four separate administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: The repeal of 201 KAR 20:470 and the simultaneous promulgation of 201 KAR 20:472, 201 KAR 20:474, 201 KAR 20:476, and 201 KAR 20:478, will assist in the effective administration of KRS 314.021, KRS 314.131(1) and KRS 314.137(2) by establishing appropriate standards for DTs and DT training programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of April 8, 2021, there were 712 dialysis technicians with a current and active Kentucky DT credential. There are currently seven DT training programs that are located and licensed in Kentucky. All of these credential holders and training programs will be affected by the repeal of 201 KAR 20:470, and the promulgation of 201 KAR 20:472, 201 KAR 20:474, 201 KAR 20:476, and 201 KAR 20:478.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The repeal of 201 KAR 20:470 will not necessitate any actions by regulated persons or entities described above. DTs will begin renewing their credential annually pursuant to the adoption of an annual renewal cycle in 201 KAR 20:476. DT training programs, and renal dialysis organizations in Kentucky will need to evaluate their policies and programmatic activities in light of 201 KAR 20:472 and 201 KAR 20:474.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The repeal of 201 KAR 20:470 will not result in any cost for the regulated persons or entities. The costs associated with 201 KAR 20:472, 201 KAR 20:474, 201 KAR 20:476, and 201 KAR 20:478 are addressed in the regulatory impact analysis provided with those regulations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The repeal of 201 KAR 20:470 will not impose compliance obligations upon the regulated persons or entities. Compliance with 201 KAR 20:472, 201 KAR 20:474, 201 KAR 20:476, and 201 KAR 20:478 will allow for the lawful provision of dialysis care and the ongoing training of dialysis technician trainees.

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

(a) Initially: There is no cost associated with the repeal of 201 KAR 20:470.

(b) On a continuing basis: There is no cost associated with the repeal of 201 KAR 20:470.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no cost associated with the repeal of 201 KAR 20:470.

(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 cost associated with the repeal of 201 KAR 20:470.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The repeal of 201 KAR 20:470, in conjunction with the promulgation of 201 KAR 20:472 and 201 KAR 20:474, will increase fees for dialysis technician training programs as follows: initial approval application fee, currently $950, will be increased to $2,000; renewal application fee, currently $800, will be increased to $1,000; and reinstatement application fee, currently $950, will be increased to $1,000. Individual DTs currently pay $70 for a two-year renewal; however, 201 KAR 20:476 reduces the renewal cycle to a one-year cycle. In light of this change, the renewal application fee has been reduced to $35; therefore, the annual cost for a renewing DT remains unchanged at $35/year.

(9) TIERING: Is tiering applied? Tiering was not applied to the repeal of 201 KAR 20:470.

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 Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131 and KRS 314.137.

(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 repeal of 201 KAR 20:470 will not measurably alter the expenditures or revenues of the Kentucky Board of Nursing. In FY2020, KBN revenues from receipts associated with the DT program were $15,106. For FY2021, revenues from receipts associated with the program are $7,973 to date. The bulk of these receipts are attributable to DT renewal fees. These fees are not consistent year to year, in light of the two-year DT renewal cycle.

(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 repeal of 201 KAR 20:470 will not measurably alter the expenditures or revenues of the Kentucky Board of Nursing.

(c) How much will it cost to administer this program for the first year? The agency expended $26,446.02 for the DT program in FY2020. The FY2021 budget for the DT program is $26,600, and $25,331.69 has been expended associated with the DT program to date in the current fiscal year. Board staff anticipates a similar level of expenditure in FY2022.

(d) How much will it cost to administer this program for subsequent years? Board staff anticipates that DT program expenditures will rise from a baseline cost of $26,600 in future years, as personnel costs rise; however, the precise impact of possible personnel cost increases have not been determined.

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: The repeal of 201 KAR 20:470 will not measurably alter the expenditures or revenues of the Kentucky Board of Nursing.

BOARDS AND COMMISSIONS
Board of Nursing
(New Administrative Regulation)

201 KAR 20:472. Initial approval for dialysis technician training programs.

RELATES TO: KRS 314.035, 314.131(1), 314.137

STATUTORY AUTHORITY: KRS 314.131(1), 314.137

NECESSITY, FUNCTION AND CONFORMITY: KRS 314.137 requires the board to promulgate administrative regulations to regulate dialysis technicians. This administrative regulation establishes the requirements for dialysis technician training programs.

Section 1. (1) A training program that prepares an individual to become a credentialed dialysis technician shall be approved by the board of nursing.

(2)(a) A dialysis technician training program that seeks to be approved by the board shall file an Application for Dialysis Technician Training Program Approval and pay a fee of $2,000; and

(b) The dialysis technician training program shall include with its application:

1. A copy of the approval of certification for the dialysis technician training program's governing organization to operate a renal dialysis center from the Centers for Medicare and Medicaid Services (CMS); and

2. The most recent site visit or survey report a statement of deficiencies and plan of correction, if applicable.

Section 2. A training program that prepares an individual to become a dialysis technician which is located in this state shall meet the standards established by this administrative regulation. A training program that is located out of state shall not be subject to the approval process specified in this administrative regulation. However, an applicant who has completed an out of state training program may apply for a dialysis technician credential pursuant to 201 KAR 20:476, Section 1(1)(b).

Section 3. Renal Dialysis Organization. (1)(a) An organization which is licensed to operate a renal dialysis center pursuant to 902 KAR 20:018 shall assume full legal responsibility for the overall conduct of the dialysis technician training program.

(b) The organization shall appoint a program administrator who shall be administratively responsible for the oversight of the dialysis technician training program on a twelve (12) month basis.

(c) The organization shall submit to the board in writing the name of the registered nurse who has been designated to assume the administrative duties for the program, the date the person will assume the duties of program administrator, and a copy of his or her curriculum vitae.

(d) The board shall be notified in writing of a change, vacancy, or pending vacancy, in the position of the program administrator within thirty (30) days of the dialysis technician training program's awareness of the change, vacancy, or pending vacancy.

(2) The organization shall develop and implement a plan of organization and administration that clearly establishes the lines of authority, accountability, and responsibility for each dialysis technician training program location.

(3) A system of official records and reports essential to the operation of the dialysis technician training program shall be maintained according to institutional policy. Provisions shall be made for the security and protection of records against loss and unauthorized distribution or use. The system of records shall include:

(a) A policy that all records shall be maintained for at least five (5) years;

(b) Provider name, dates of program offerings and sites of the training program;

(c) Admission materials, grades received, and clinical performance records;

(d) Trainee roster that includes name, date of birth, social security number, and program completion date;

(e) Faculty records including:

1. Validation of current licensures or credentials; and

2. Performance evaluation for faculty employed more than one (1) year.

(f) Systematic plan of evaluation;

(g) Graduates of the dialysis technician training program; and

(h) Administrative records and reports from accrediting agencies.

Section 4. Program Administrator and Assistant Program Administrator. (1) The program administrator shall have the following qualifications:

(a) 1. A minimum of a master's degree from an accredited college or university;

2. A program administrator who currently does not hold a master's degree from an accredited college or university shall be required to obtain the degree within five (5) years of the effective date of this administrative regulation. The program administrator shall provide documentation that shows active and steady progression towards the degree;

3. The board may waive this requirement upon a showing that the proposed program administrator is otherwise qualified.

(b) A minimum of the equivalent of one (1) year of full time teaching experience;

(c) At least two (2) years of experience in the care of a patient with end stage renal disease or who receives dialysis care;

(d) Demonstrated experience or preparation in education that includes teaching adults, adult learning theory teaching methods, curriculum development, and curriculum evaluation. A program administrator without previous program administrator experience shall have a mentor assigned by the renal dialysis center and an educational development plan implemented. The assigned mentor shall have documented experience in program administration;

(e) An active and unencumbered Kentucky registered nurse

license, temporary work permit or multistate privilege; and

(f) Current knowledge of requirements pertaining to the dialysis technician training program and credential as established in 201 KAR 20:472, 474, 476, and 478.

(2) A dialysis technician training program may have an assistant program administrator at each location. An assistant program administrator shall have the following qualifications:

(a) A minimum of a baccalaureate degree in nursing;

(b) A minimum of the equivalent of one (1) year of full time teaching experience;

(c) At least two (2) years of experience in the care of a patient with end stage renal disease or who receives dialysis care;

(d) Demonstrated experience or preparation in education that includes teaching adults, adult learning theory teaching methods, curriculum development, and curriculum evaluation. A program administrator without previous program administrator experience shall have a mentor assigned by the renal dialysis center and an educational development plan implemented. The assigned mentor shall have documented experience in program administration;

(e) An active and unencumbered Kentucky registered nurse license, temporary work permit or multistate privilege; and

(f) Current knowledge of requirements pertaining to the dialysis technician training program and credential as established in 201 KAR 20:472, 474, 476, and 478.

Section 5. Faculty. (1) The faculty shall be adequate in number to implement the curriculum as determined by program outcomes, course objectives, the level of the student, and the educational technology utilized.

(2) The faculty shall be approved by the program administrator and shall include didactic and clinical faculty.

(3) The name, title and credential identifying the education and professional qualifications of each didactic and clinical faculty shall be provided to the board within thirty (30) days of hire. With each change in faculty, whether a new hire or a termination or retirement, an updated list of current faculty shall be provided to the board.

(4) Didactic faculty.

(a) Didactic faculty shall have a minimum of a baccalaureate degree from an accredited college or university. A faculty member who currently does not hold a baccalaureate degree from an accredited college or university shall be required to obtain the degree within five (5) years of the effective date of this administrative regulation. The program administrator shall provide documentation that shows active and steady progression towards the degree.

(b) Didactic faculty shall consist of multidisciplinary members with expertise in the subject matter.

(c) Didactic faculty who hold a credential other than as a registered nurse shall document a minimum of two (2) years full time or equivalent experience in their profession or discipline.

(d) Didactic faculty shall document preparation in educational activities in the area of teaching and learning principles for adult education, including curriculum development and implementation. The preparation shall be acquired through planned faculty in-service learning activities, continuing education offerings, or academic courses.

(e) Didactic faculty hired without prior teaching experience shall have a mentor assigned and an educational development plan implemented.

(5) Clinical faculty and preceptors.

(a) Clinical faculty or a preceptor shall hold a current, unencumbered Kentucky nursing license, temporary work permit, or multistate privilege or a current, unencumbered Kentucky dialysis technician credential.

(b) Clinical faculty or a preceptor shall have evidence of clinical competencies in end stage renal disease and dialysis care.

(c) A preceptor who is a dialysis technician shall hold certification by one of the following dialysis technician certification organizations: the Board of Nephrology Examiners Nursing Technology (BONENT), the Nephrology Nursing Certification Commission (NNCC), or the National Association of Nephrology Technicians/Technologists (NANT).

(6) There shall be documentation that the clinical faculty have been oriented to the course, program outcomes, student learning objectives, evaluation methods used by the faculty, and documented role expectations.

Section 6. Standards for Training. (1) Philosophy, mission, and outcomes.

(a) The philosophy, mission, and outcomes of the training program shall be clearly defined in writing by the faculty and shall be consistent with those of the Renal Dialysis Center.

(b) The program outcomes shall be consistent with those required by the Centers for Medicare and Medicaid Services and the dialysis technician certification organizations listed in paragraph (2)(b) of this section.

(c) The program shall conduct an evaluation to validate that identified program outcomes have been achieved and provide evidence of improvement based on an analysis of those results.

(d) The training program shall include a minimum of 200 hours of didactic course work and 200 hours of direct patient contact. The didactic course work and direct patient contact shall be at least ten (10) weeks. The training program shall maintain a log of clinical hours for each student. It shall also include an internship of at least 160 hours. The internship shall begin after successful completion of the final examination. The internship shall be under the supervision of a registered nurse and shall include a preceptor.

(2) The curricula of the program shall minimally include the following topics:

(a) The legal and ethical aspects of practice including:

1. The history of dialysis;

2. The state and federal regulations governing dialysis including 201 KAR 20:478, 902 KAR 20:018, 907 KAR 1:400, and 42 C.F.R. 494.140;

3. The resources available for pursuing personal and career development;

4. The principles and legal aspects of documentation, communication and patient rights;

5. The roles of the dialysis technician and other multidisciplinary team members;

6. The principles related to patient safety; and

7. The role of the board of nursing.

(b) Anatomy and physiology applicable to renal function including:

1. Renal anatomy;

2. Organs of the urinary system and components of the nephron; and

3. Functions of the normal kidney.

(c) Diseases of the kidney including:

1. Causes and complications of acute renal failure; and

2. Causes and complications of chronic renal failure.

(d) The psychosocial and physical needs of the end stage renal disease (ESRD) patient and family including:

1. The impact on family and social systems;

2. Coping mechanisms utilized;

3. Rehabilitative needs;

4. Community resources available;

5. All aspects of renal diet and fluid restrictions; and

6. Educational needs of patients receiving dialysis including the role of the technician and resources available.

(e) The principles of pharmacology as related to ESRD including:

1. Commonly used medications and their side effects;

2. The principles of medication administration;

3. The indications, dosage, action, and adverse effects of heparin, local anesthetics, and normal saline; and

4. The accurate administration of heparin, local anesthetics and normal saline.

(f) Aseptic techniques and established infection control practices including:

1. Dialysis precautions as issued by the United States Centers for Disease Control; and

2. Proper hand washing technique.

(g) Principles of dialysis and dialysis treatment including:

1. Definitions and terminology;

2. Principles of osmosis, diffusion, ultrafiltration and fluid dynamic;

3. The structure and function of various types of circulatory access sites and devices;

4. The indications, advantages, disadvantages, and complications of internal arteriovenous (A/V) fistulas and A/V grafts, and central venous access devices;

5. The various types of dialyzers;

6. The benefits, risks and precautions associated with dialyzer reuse;

7. The purpose and concept of water treatment;

8. Knowledge and ability to manage and operate dialysis equipment;

9. Knowledge and ability to appropriately monitor and collect data throughout the course of treatment;

10. The etiology, signs and symptoms, prevention, intervention and treatment, and options for the most common complications;

11. The knowledge and ability to safely initiate and discontinue treatment; and

12. Routine laboratory tests, values and collection techniques.

(h) Other treatment modalities for ESRD including:

1. Renal transplantation; and

2. Home dialysis options.

(3) Implementation of the curriculum.

(a) There shall be a written plan, including supporting rationale, which describes the organization and development of the curriculum.

(b) The curriculum plan shall reflect the philosophy, mission, and outcomes of the program and shall prepare the student to meet the qualifications for certification as established by the Board of Nephrology Examiners Nursing Technology (BONENT), the Nephrology Nursing Certification Commission (NNCC), or the National Association of Nephrology Technicians/Technologists (NANT).

(c) The dialysis technician training program shall have written measurable program outcomes that reflect the role of the dialysis technician graduate upon completion of the program.

(d) The dialysis technician training program shall be logical and sequential, and shall demonstrate an increase in difficulty and complexity as the student progresses through the program.

(e) A course syllabus shall be developed to include outcomes, planned instruction, learning activities, and method of evaluation.

(f) The teaching methods and activities of both instructor and learner shall be specified. The activities shall be congruent with stated objectives and content shall reflect adult learning principles.

(g) A copy of the course syllabus shall be on file in the dialysis technician training program office and shall be available to the board upon request.

(h) Any proposed substantive changes to the dialysis technician training program syllabus shall be submitted to the board in writing at least two (2) months prior to implementation and shall not be implemented without approval from the board. A substantive change is any change in the philosophy, mission, or outcomes that results in a reorganization or reconceptualization of the entire curriculum.

(i) Training may be offered through distance learning technologies. Training offered through the use of distance learning technologies shall be comparable to the training offered in a campus based program.

(4) The curriculum shall require that the student hold a current Basic Life Support (BLS) certificate.

Section 7. Students in Dialysis Technician Training Programs. (1) Preadmission requirements shall be stated and published in all publications utilized by the dialysis technician training program including recruitment materials.

(a) Program information communicated by the program shall be accurate, complete, consistent, and publicly available.

(b) Participation shall be made available for students in the development, implementation, and evaluation of the program.

(2) Written dialysis technician training program student policies shall be accurate, clear, and consistently applied.

(3) Upon admission to the training program, each student shall be advised in electronic or written format of policies pertaining to:

(a) Prerequisites for admission, readmission or dismissal;

(b) Evaluation methods that include the grading system;

(c) Any fees or expenses associated with the training program and refund policies;

(d) Health requirements and other standards as required by the renal dialysis center;

(e) Student responsibilities;

(f) A plan for emergency care while in the clinical setting; and

(g) Program completion requirements.

(4) A student enrolled in a training program is exempt from the credentialing requirement while enrolled. The student shall use the title dialysis technician (DT) trainee.

Section 8. Program Completion Requirements. (1) Requirements for successful completion of the dialysis technician training program shall be clearly specified.

(2) The requirements shall provide evidence of clinical competency through the use of evaluation methods and tools that measure the progression of the student's cognitive, affective, and psychomotor achievement of clinical outcomes based on published rubrics and sound rationale;

(3) Students shall have sufficient opportunities in simulated or clinical settings to develop psychomotor skills essential for safe, effective practice.

(4) A final examination shall be administered only during the final forty (40) hours of the first 400 hours of the training program.

(a) The final examination shall be mapped to program outcomes and blueprinted to the examination content of one (1) of the certification organizations as listed in Section 6 (2)(b) of this administrative regulation.

(b) Following successful completion of the final examination, the student may begin the internship.

(5) The individual who successfully completes the training program, including the internship, shall receive a certificate of completion that documents the following:

(a) Name of individual;

(b) Title of training program, date of completion, and location;

(c) Provider's name;

(d) The program code number issued by the board: and

(e) Name and signature of the program administrator or the assistant program administrator.

(6) The program shall submit the List of Dialysis Technician Training Program Graduates within three (3) working days of the program completion date.

Section 9. Incorporation by Reference. (1) The following materials are incorporated by reference:

(a) "Application for Dialysis Technician Training Program Approval", 4/2021; and

(b) "List of Dialysis Technician Training Program Graduates", 4/2021.

(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 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.

JESSICA WILSON, President

APPROVED BY AGENCY: April 15, 2021

FILED WITH LRC: May 18, 2021 at 1:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, August 23, 2021 at 10:00 a.m. (EDT) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not

be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m., EDT) Tuesday, August 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: Morgan Ransdell, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3339, email Morgan.Ransdell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Morgan Ransdell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for dialysis technician ("DT") training programs.

(b) The necessity of this administrative regulation: This regulation is necessary pursuant to KRS 314.137(2).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the content of KRS 314.137(2) by establishing standards for DT training programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in the effective administration of KRS 314.021, as amended effective June 30, 2021, and KRS 314.137(2), by establishing standards for DT training programs.

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

(a) How the amendment will change this existing administrative regulation: The fee increases set forth in this amendment are addressed below. This regulation: heightens the qualification requirements for a DT training program administrator and for faculty; creates an assistant program director and preceptor roles, and sets minimum qualifications for the roles; assigns responsibility for the overall conduct of a DT training program to a renal dialysis organization licensed pursuant to 902 KAR 20:018; requires the submission to the Board of Centers for Medicaid Services (CMS) reports, surveys and correction plans; specifies an "in state" requirement as a prerequisite for approval, but clarifies that graduates of out-of-state DT training programs may obtain the credential in Kentucky pursuant to 201 KAR 20:476 Section 1(1)(b); specifies that the two hundred hour clinical component last a minimum of ten weeks and involve direct patient contact; sets new DT training program curriculum requirements including principles of dialysis, psychosocial and physical needs of end stage renal disease patients, related principles of pharmacology, and infection control; requires Board approval for substantive syllabus and curriculum changes; allows for didactic education to be accomplished via distance learning technologies; requires publication of pre-admission requirements; requires students to be certified in basic life support; defines the internship phase of DT training, which replaces the "DT applicant" phase and designation; modifies program completion requirements; and modifies the format of the material incorporated by reference within the regulation (DT training program application and list of DT training program graduates).

(b) The necessity of the amendment to this administrative regulation: The regulation is necessary for the oversight of the practices and training of dialysis technicians, as required by KRS 314.021 (amendment effective June 30, 2021), and KRS 314.137(2).

(c) How the amendment conforms to the content of the authorizing statutes: The regulation conforms to the content of the authorizing statutes, KRS 314.131(1) and KRS 314.137(2), by establishing appropriate standards for DT training programs in order to protect and safeguard the health and safety of the citizens of the Commonwealth of Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: The regulation will assist in the effective administration of KRS 314.021, KRS 314.131(1) and KRS 314.137(2), by establishing standards for DT training programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of April 8, 2021, there were 712 dialysis technicians with a current and active Kentucky DT credential. There are currently seven DT training programs that are located and licensed in Kentucky. The Kentucky Board of Nursing, the seven Kentucky DT training programs in the Commonwealth, and all renal dialysis organizations that provide dialysis services within the Commonwealth will all be affected by the repeal of 201 KAR 20:470 and the promulgation of 201 KAR 20:472. The two largest renal dialysis organizations in Kentucky are Davita, Inc., and Fresenius Medical Care North America. Students who are not currently certified in basic life support will be required to undergo training, and certain program administrators, faculty and preceptors who do not satisfy new minimum qualification requirements will have five years in which to meet the new requirements. Board staff is unaware of the number or identity of new renal dialysis organizations that will seek initial approval status following the effective date of 201 KAR 20:472.

(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: Each existing DT training program and renal dialysis organization in Kentucky will need to evaluate their programmatic requirements and standards in light of 201 KAR 20:472, as the standards for program approval are also relevant to the evaluation of existing programs pursuant to 201 KAR 20:472 Section 2 and 201 KAR 20:474 Section 2(1). Any new DT training programs and renal dialysis organizations that seek to open in the Commonwealth will be guided by 201 KAR 20:472, and must meet the requirements set forth in the regulation. DT students who are not currently certified in basic life support will need to obtain such certification. Individual program administrators, faculty, and preceptors will require additional education within five years of the effective date of the regulation, if they do not currently satisfy new minimum qualification requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): New DT training programs seeking approval status will have a $2000 application fee, which is an increase from the current $950 fee. The existing fee is not adequate to cover the staff cost associated with the provision of staff guidance to the DT training program, and the review of the program's application and associated submissions, which requires approximately 30 hours of work, on average. The hourly salary inclusive of all benefits of the KBN employee who conducts program review is $69.98.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with 201 KAR 20:472 allows DT training programs to operate lawfully and avoid closure. Compliance with educational requirements allows DT program administrators, faculty and preceptors to perform those roles. Compliance with the basic life support certification requirement will allows students to remain enrolled in DT training programs.

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

(a) Initially: Implementation of 201 KAR 20:472 will result in a larger commitment of staff work hours in the review of materials submitted by renal dialysis organizations who seek to open a new program, and in collaboration with existing programs that seek guidance with regard to 201 KAR 20:472; however, it is impossible to calculate the precise cost of the additional demands upon staff that are anticipated. Agency costs associated with implementation of 201 KAR 20:472 are further addressed below in Section 3(c) of the Fiscal Note on State or Local Government.

(b) On a continuing basis: Following implementation of 201 KAR 20:472 by all existing DT training programs in the Commonwealth, additional agency cost associated with 201 KAR 20:472 will be attributable entirely to the work hours associated with coordination with new renal dialysis organizations, and

associated document review. Agency costs associated with the continued enforcement 201 KAR 20:472 of are further addressed below in Section 3(d) of the Fiscal Note on State or Local Government.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees paid by DTs and DT training programs are the primary source of funding for implementation of 201 KAR 20:472.

(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 increase in the initial application fee, from $950 to $2,000, is implemented to address an existing inequity, as the review of a renal dialysis organization application pursuant to 201 KAR 20:472, and associated submissions, requires approximately 30 hours of work, on average. The hourly salary, inclusive of all benefits, of the KBN employee who conducts program review is $69.98. The existing fee of $950 for new DT training programs was determined immediately following passage of HB 184 in 2001, which is when the Kentucky Board of Nursing was first assigned regulatory authority over DTs and DT training programs. In the twenty years since, the fee has remained static, while personnel costs have increased.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: New DT training programs seeking approval status will have an application fee of $2,000, which is an increase from the current $950 fee.

(9) TIERING: Is tiering applied? Tiering was not applied to 201 KAR 20:472, as the regulation treats all renal dialysis organizations similarly.

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 Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131 and KRS 314.137.

(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? In FY2020, KBN revenues from receipts associated with the DT program were $15,106. For FY2021, revenues from receipts associated with the program are $7,973 to date. The precise amount of anticipated FY2022 DT program receipts is not known, but is expected to be approximately $15,000. The bulk of DT program receipts are attributable to DT renewal fees. These receipts are not consistent year to year, in light of the two-year DT renewal cycle. The fee increase for renal dialysis organizations seeking initial program approval will not have a significant impact on agency receipts, as there are only seven DT training programs in Kentucky currently, and the Board does not anticipate a significant number of new program applications.

(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? As the agency is not anticipating a significant number of new DT training program applications, the fee increase specified in 201 KAR 20:472 will not have a substantial impact on revenues.

(c) How much will it cost to administer this program for the first year? The agency expended $26,446.02 for the DT program in FY2020. The FY2021 budget for the DT program is $26,600, and $25,331.69 has been expended associated with the DT program to date in the current fiscal year. Board staff anticipates a similar level of expenditure in FY2022.

(d) How much will it cost to administer this program for subsequent years? Board staff anticipates that DT program expenditures will rise from a baseline cost of $26,600 in future years, as personnel costs rise; however, the precise impact of possible personnel cost increases have not been determined.

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: In light of the small number of new DT training program applications that are anticipated in future years, there being only seven active programs in the state at this time, the anticipated fiscal impact of the fee increase specified in 201 KAR 20:472 is small, amounting to $1,050 for each such application.

BOARDS AND COMMISSIONS
Board of Nursing
(New Administrative Regulation)

201 KAR 20:474. Continuing approval and periodic evaluation of dialysis technician training programs.

RELATES TO: KRS 314.035, 314.131(1), 314.137

STATUTORY AUTHORITY: KRS 314.131(1), 314.137

NECESSITY, FUNCTION AND CONFORMITY: KRS 314.137 requires the board to promulgate administrative regulations to regulate dialysis technicians. This administrative regulation establishes the requirements for continued approval of dialysis technician training programs.

Section 1. Renal Dialysis Center Survey and Certification. (1) The board shall retain jurisdiction over Dialysis Technician Training Programs and may conduct site visits or other investigations into any allegation that may constitute a violation of 201 KAR 20:472 or 201 KAR 20:474. The board may conduct a site visit at any time, and may also conduct site visits when the Centers for Medicaid and Medicare Services (CMS) conducts a survey or site visit of the Renal Dialysis Center utilized by the Dialysis Technician Training Program.

(2) A Dialysis Technician Training Program shall notify the board regarding CMS site visits:

(a) Within thirty (30) days following the site visit that it has occurred; and

(b) Within ninety (90) days following the close of the site visit the Program shall forward all correspondence and reports from CMS concerning the site visit, any statement of deficiencies, subsequent plan of correction, and the continued approval certification.

Section 2. Dialysis Technician Training Program Evaluation. (1) To verify continued compliance with 201 KAR 20:472, the program shall submit progress reports or periodic supplemental reports, completed questionnaires, surveys, and other related documents as requested by the board.

(2) A dialysis technician training program shall perform a systematic review of the training program that results in continuing improvement. This process shall result in an evaluation report that is submitted to the board on an annual basis.

(3) Data collection for the evaluation report shall be on-going and shall reflect aggregate analysis and trending.

(4) The evaluation report shall include specific responsibilities for data collection methods, individuals or groups responsible, frequency of data collection, indicators of achievement, findings, and outcomes for evaluating the following aspects of the dialysis technician training program:

(a) Organization and administration of the dialysis technician training program;

(b) Curriculum;

(c) Teaching and learning methods including distance education;

(d) Faculty evaluation;

(e) Student achievement of program outcomes;

(f) Student completion rates;

(g) Student certification achievement rates; and

(h) Clinical resources.

(5) If a dialysis technician training program utilizes distance education for didactic instruction, it shall evaluate and assess the educational effectiveness of its distance education program to ensure that the distance education is substantially comparable to face to face education.

(6) The evaluation report shall provide evidence that the outcomes of the evaluation process are used to improve the quality and strength of the dialysis technician training program.

Section 3. Voluntary Closure of a Dialysis Technician Training Program.

(1) A dialysis technician training program that intends to close shall submit written notification to the board at least six (6) months prior to the planned closing date.

(2) The Dialysis Technician Training Program may choose one (1) of the following procedures for closing:

(a) The Dialysis Technician Training Program shall continue to operate until the last class enrolled has completed training.

1. The program shall continue to meet the standards until all students enrolled have completed the program.

2. The official closing of the program shall be the date on the certificate of the last graduate.

3. The dialysis technician training program shall notify the board in writing of the official closing date.

(b) The dialysis technician training program shall close the program following the transfer of students to other approved dialysis technician training programs.

1. The program shall continue to meet the standards until all students have transferred.

2. The names of students who have transferred to approved programs and the date of the last student transfer shall be submitted to the board by the Renal Dialysis Center.

3. The date of the last student transfer shall be the official closing date of the program.

(3) Custody of records.

(a) The Dialysis Technician Training Program that continues to operate shall retain responsibility for the records of the students and graduates. The board shall be advised of the arrangement made to safeguard the records.

(b) The Dialysis Technician Training Program that ceases to exist shall transfer training logs and certificates of completion of each student and graduate to a third party vendor approved by the Council for Postsecondary Education for safekeeping.

Section 4. Continued Approval of a Dialysis Technician Training Program.

(1) To receive continued approval, a dialysis technician training program shall:

(a) File a completed Application for Dialysis Technician Training Program Approval;

(b) Submit an annual program evaluation summary report as required by Section 2(2) of this administrative regulation;

(c) Submit a list of current faculty including the name, title, and credential identifying the educational and professional qualifications of each instructor; and

(d) Pay a fee of $1000.

(2)(a) The material required to be submitted by paragraph (1) of this section shall be submitted at least ninety (90) days prior to the end of the current approval period.

(b) If any of the material required to be submitted pursuant to paragraph (1) of this section is submitted less than ninety (90) days but more than thirty (30) days prior to the end of the current approval period, an additional fee of $300 shall be charged. Nonpayment of this fee shall result in denial of the application for continued approval.

(c) If material required to be submitted pursuant to paragraph (1) of this section is submitted less than thirty (30) days prior to the end of the current approval period, the material shall not be accepted. The program shall lapse at the end of the current approval period and the renewal fee shall be forfeited.

(3) Continued approval shall be based on compliance with the standards established in 201 KAR 20:472 and this administrative regulation.

(4) Continued approval shall be granted for a two (2) year period.

(5) If a program fails to seek renewal of its approval status thirty (30) days prior to the end of the current approval period, the approval shall lapse at the end of the current approval period.

Section 5. Reinstatement of Dialysis Technician Training Programs.

(1) A program with lapsed approval shall cease all training activity until provided with written notice of the reinstatement of approval.

(2) A dialysis training program that has closed or that has a lapsed or withdrawn approval status may seek to reinstate approval as follows:

(a) File a completed Application for Dialysis Technician Training Program Approval;

(b) If applicable, file evidence of compliance with the requirements of any order issued by the board in accordance with Section 8 of this administrative regulation; and

(c) Pay a fee of $1000.

Section 6. Site Visits. (1) A representative of the board may conduct a site visit at any time.

(2) The following situations may be cause for a site visit to determine if the standards of 201 KAR 20:472 and 201 KAR 20:474 are being met:

(a) Change of status by CMS or an accrediting body recognized by CMS;

(b) Providing false or misleading information to students or the public concerning the dialysis technician training program;

(c) A written complaint received from faculty, students, or the general public relating to a violation of 201 KAR 20:472 or 201 KAR 20:474;

(d) A change in physical facilities;

(e) Information received by the board that may indicate a violation of 201 KAR 20:472 or 201 KAR 20:474; and

(f) Failure to submit reports as required by 201 KAR 20:472 or 201 KAR 20:474.

Section 7. Action Following Site Visit. (1)(a) Following a site visit and prior to board consideration, a draft of the site visit report shall be made available to the program administrator for review and correction of factual data.

(b) The program administrator shall be available during the discussion of the report at the board committee to provide clarification.

(c) If the site visit results in a finding of non-compliance with 201 KAR 20:472 or 201 KAR 20:474 by the dialysis technician training program, a letter shall be sent to the program administrator regarding any requirements to be met.

(d) The board shall notify the dialysis technician training program of the time frame within which it shall meet the requirements. The board shall verify that the requirements have been met.

(2)(a) If the dialysis technician training program is unable to meet the requirements in the time set by the board, it may request additional time. The board, in its discretion, may grant or deny this request based on the rationale for the request.

(b) If the board denies the request for additional time, it shall begin the process established in Section 8 of this administrative regulation.

Section 8. Withdrawal of Approval. (1) In the event that the standards are not being met, the board shall send notice to the program administrator of the affected dialysis technician training program of its intent to withdraw approval. The notice shall be sent return receipt requested.

(2) When making this determination, the board shall consider the following factors:

(a) The number and severity of the deficiencies;

(b) The length of time in which the deficiencies have existed; and

(c) Any exigent circumstances.

(3) Within thirty (30) days of receipt of the notice, the program administrator of the affected program may request an administrative hearing pursuant to KRS Chapter 13B. If an administrative hearing is not requested, program approval shall be withdrawn and the dialysis technician training program shall be closed. A closed program shall comply with section 3 of this administrative regulation.

(4)(a) If a program of nursing requests an administrative hearing, that hearing shall be held within sixty (60) days of the request.

(b) The hearing shall be held before a hearing officer designated by the board pursuant to KRS Chapter 13B.

(c) If the order of the board is adverse to the dialysis technician training program, the board may impose the following costs:

1. The cost of the stenographic services;
2. The cost of any expert witness, including travel;
3. Travel for other witnesses;
4. Document reproduction costs; and
5. The cost of the hearing officer which shall be $400 per day.

(5)(a) The dialysis technician training program that has been closed shall assist a currently enrolled student to transfer to an approved dialysis technician training program.

(b) A dialysis technician training program that fails to assist students as required in this subsection shall be ineligible for reinstatement for at least one (1) year.

JESSICA WILSON, President

APPROVED BY AGENCY: April 15, 2021

FILED WITH LRC: May 18, 2021 at 1:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, August 23, 2021 at 10:00 a.m. (EDT) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m., EDT) Tuesday, August 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: Morgan Ransdell, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3339, email Morgan.Ransdell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Morgan Ransdell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for continued approval of dialysis technician ("DT") training programs.

(b) The necessity of this administrative regulation: This regulation is necessary pursuant to KRS 314.137(2).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the content of KRS 314.137(2) by establishing standards for DT training programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in the effective administration of KRS 314.021, as amended effective June 30, 2021, and KRS 314.137(2), by establishing standards for DT training programs.

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

(a) How the amendment will change this existing administrative regulation: The fee increases set forth in this amendment are addressed below. This amendment: expands site visit authorization, including the option of agency participation during site visit conducted by the CMS to evaluate DT training program compliance with 201 KAR 20:472 and 201 KAR 20:474; identifies specific criteria for DT training program annual reports, including student completion and certification rates; requires six month notice of voluntary closure, and provides a teach out option or an option under which current trainees transfer to other programs; requires applications and supporting documents seeking to continue approval status to be submitted more than 30 days prior to the expiration of approval status, and imposing a $300 fine when such materials are submitted less than 90 days prior to the expiration of approval status; increases the fee applicable to an active program's application for continued approval status from $800 to $1,000; states that lapsed programs must cease all training activity; increases the fee required when a lapsed program applies for reinstatement of approval status from $950 to $1,000; clarifies the circumstances under which a site visit may occur, and provides for the recovery of hearing costs in cases where a hearing disposition under KRS Chapter 13B is adverse to the DT training program.

(b) The necessity of the amendment to this administrative regulation: The regulation is necessary for the oversight of the practices and training of dialysis technicians, as required by KRS 314.021 (amendment effective June 30, 2021), and KRS 314.137(2).

(c) How the amendment conforms to the content of the authorizing statutes: The regulation conforms to the content of the authorizing statutes, KRS 314.131(1) and KRS 314.137(2), by establishing appropriate standards for DT training programs in order to protect and safeguard the health and safety of the citizens of the Commonwealth of Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: The regulation will assist in the effective administration of KRS 314.021 and KRS 314.137(2), by establishing standards for DT training programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of April 8, 2021, there were 712 dialysis technicians with a current and active Kentucky DT credential. There are currently seven DT training programs that are located and licensed in Kentucky. The Kentucky Board of Nursing, the seven Kentucky DT training programs in the Commonwealth, and all renal dialysis organizations that provide dialysis services within the Commonwealth will all be affected by the repeal of 201 KAR 20:470 and the promulgation of 201 KAR 20:474. The two largest renal dialysis organizations in Kentucky are Davita, Inc., and Fresenius Medical Care North America.

(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: Each existing DT training program and renal dialysis organization in Kentucky will need to evaluate their programmatic requirements and standards in light of 201 KAR 20:472 and 201 KAR 20:474, as the standards for program approval are also relevant to the evaluation of existing programs pursuant to 201 KAR 20:472 Section 2 and 201 KAR 20:474 Section 2(1). DT training program annual reports will be required to address eight specific factors, including student completion and certification rates; and programs seeking voluntary closure will be required to provide notification to the board 6 months prior to closure, rather than 30 days prior to closure as specified in 201 KAR 20:470.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee required when an active program applies for continued approval status has been increased by $200, from $800

to $1,000, and the fee required when a lapsed program applies for reinstatement of approval status has been increased by $50, from $950 to $1,000. The existing fees are not adequate to cover the staff cost associated with the provision of staff guidance to DT training programs, and the review of the program's application and associated submissions, which requires 15-20 hours of work, on average, when a DT program that previously held approval status seeks continued approval status or reinstatement. The hourly salary inclusive of all benefits of the KBN employee who conducts program review is $69.98.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with 201 KAR 20:474 allows DT training programs to operate lawfully and avoid closure.

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

(a) Initially: Implementation of 201 KAR 20:474 will result in a larger commitment of staff work hours, primarily due to the anticipated need for collaboration with existing programs that seek guidance with regard to expanded annual reporting requirements; however, it is impossible to calculate the precise cost of the additional demands upon staff that are anticipated. Agency costs associated with implementation of 201 KAR 20:474 are further addressed below in Section 3(c) of the Fiscal Note on State or Local Government.

(b) On a continuing basis: Following implementation of 201 KAR 20:474, the agency cost associated with 201 KAR 20:474 will be attributable entirely to the work hours associated with coordination with previously approved DT training programs, associated document review, and any resulting enforcement activity. Agency costs associated with the continued enforcement 201 KAR 20:474 of are further addressed below in Section 3(d) of the Fiscal Note on State or Local Government.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees paid by DTs and DT training programs are the primary source of funding for implementation of 201 KAR 20:474.

(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 fee required when an active program applies for continued approval status has been increased by $200, from $800 to $1,000, and the fee required when a lapsed program applies for reinstatement of approval status has been increased by $50, from $950 to $1,000. These increases are implemented to address an existing inequity, as the review of a DT training program that previously held approval status, including communication with the program and review of all submissions, requires 15-20 hours of work, on average. The hourly salary, inclusive of all benefits, of the KBN employee who conducts program review is $69.98. The existing fees of $800 for active DT training programs seeking continued approval status, and $950 reinstatement fee, were determined immediately following passage of HB 184 in 2001, which is when the Kentucky Board of Nursing was first assigned regulatory authority over DTs and DT training programs. In the twenty years since, the fee has remained static, while personnel costs have increased.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The fee required when an active program applies for continued approval status has been increased by $200, from $800 to $1,000, and the fee required when a lapsed program applies for reinstatement of approval status has been increased by $50, from $950 to $1,000.

(9) TIERING: Is tiering applied? Tiering was not applied to 201 KAR 20:474, as the regulation treats all DT training programs similarly.

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 Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131 and KRS 314.137.

(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? In FY2020, KBN revenues from receipts associated with the DT program were $15,106. For FY2021, revenues from receipts associated with the program are $7,973 to date. The precise amount of anticipated FY2022 DT program receipts is not known, but is expected to be approximately $15,000. The bulk of DT program receipts are attributable to DT renewal fees. These receipts are not consistent year to year, in light of the two-year DT renewal cycle. The fee increase for renal dialysis organizations seeking continued or reinstated program approval will not have a significant impact on agency receipts, as there are only seven DT training programs in Kentucky currently, and the Board does not anticipate a significant number of new program applications.

(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? As there are only seven DT training programs that currently hold approval status, and as the agency is not anticipating a significant number of new DT training program applications, the fee increases specified in 201 KAR 20:474 will not have a substantial impact on revenues.

(c) How much will it cost to administer this program for the first year? The agency expended $26,446.02 for the DT program in FY2020. The FY2021 budget for the DT program is $26,600, and $25,331.69 has been expended associated with the DT program to date in the current fiscal year. Board staff anticipates a similar level of expenditure in FY2022.

(d) How much will it cost to administer this program for subsequent years? Board staff anticipates that DT program expenditures will rise from a baseline cost of $26,600 in future years, as personnel costs rise; however, the precise impact of possible personnel cost increases have not been determined.

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: As there are only seven DT training programs that currently hold approval status, and as the agency is not anticipating a significant number of new DT training program applications, the anticipated fiscal impact of the fee increases specified in 201 KAR 20:474 is small, amounting to $200 for each application for continued approval status, and $50 for each reinstatement application.

BOARDS AND COMMISSIONS
Board of Nursing
(New Administrative Regulation)

201 KAR 20:476. Dialysis technician credentialing requirements for initial credentialing, renewal, and reinstatement.

RELATES TO: KRS 314.035, 314.103, 314.131(1), 314.137

STATUTORY AUTHORITY: KRS 314.131(1), 314.137

NECESSITY, FUNCTION AND CONFORMITY: KRS 314.137 requires the board to promulgate administrative regulations to regulate dialysis technicians. This administrative regulation establishes the requirements for credentialing dialysis technicians, initially, by renewal, and by reinstatement.

Section 1. Requirements for Initial Dialysis Technician Credential. (1) An individual who wants to be credentialed as a

dialysis technician (DT) in order to engage in dialysis care shall:

(a) File with the board the Application for Dialysis Technician Credential;

(b) Pay the fee established in Section 4 of this administrative regulation;

(c) Have completed a board approved DT training program;

(d) Submit the Checklist for Dialysis Technician Competency Validation; and

(e) Submit a criminal record check pursuant to subsection (3) of this section and meet the requirements of that subsection.

(2)(a) In addition to the requirements of subsection (1)(a), (b), (d), and (e) of this section, an applicant who has completed an out of state DT training program that is not approved by the board and who does not hold certification from one of the certification organizations listed in subsection (4)(b) of this section shall submit to the board the training program's curriculum and evidence of completion of the training program.

1. The board or its designee shall evaluate the applicant's training program to determine its comparability with the standards as established in 201 KAR 20:472.

2. The board or its designee shall advise an applicant if the training program is not comparable and specify what additional components shall be completed to meet the requirements of 201 KAR 20:472, Section 6.

(b) In addition to the requirements of subsection (1)(a), (b), (d), and (e) of this section, an applicant who has completed an out of state DT training program that is not approved by the board and who holds certification from one of the certification organizations listed in subsection (4), paragraph (b) of this section shall complete an educational module that covers the information contained in 201 KAR 20:472, Section 6(2)(a)2.

(3)(a) The criminal record check shall have been completed within six (6) months of the date of the application by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) using the FBI Applicant Fingerprint Card. The applicant shall pay any fee required by the KSP and the FBI.

(b) The applicant shall provide to the board a certified or attested copy of the court record of any misdemeanor or felony conviction in any jurisdiction, except for traffic-related misdemeanors (other than DUI) or misdemeanors that are older than five (5) years. The applicant shall provide to the board a letter of explanation that addresses each conviction.

(c) A felony or misdemeanor conviction shall be reviewed by the board to determine if the application shall be processed with no further action. If further action is deemed necessary, the application shall not be processed unless the applicant has entered into an agreed order with the board. If the parties are unable to agree on terms and conditions for an agreed order, an administrative hearing shall be held.

(4)(a) After the applicant has met the requirements of subsection (1)(a), (b), (c), (d), and (e) of this section, the board shall issue a provisional credential to the applicant. The applicant shall be referred to as a DT Applicant. The DT Applicant shall practice dialysis care under the supervision of a registered nurse.

(b) The provisional credential shall expire eighteen (18) months from the date the application is received by the board. During that time, the applicant shall obtain certification from one of the following certification organizations:

1. The Board of Nephrology Examiners Nursing Technology (BONENT);

2. The Nephrology Nursing Certification Commission (NNCC); or

3. The National Association of Nephrology Technicians/Technologists (NANT).

(c) If the applicant fails to obtain certification as set forth above, the application shall lapse. The applicant may reapply by completing the training program again and meeting the requirements of subsection (1)(a), (b), (c), (d), and (e) of this section. However, a provisional credential shall not be issued.

(5) The DT Applicant shall only practice dialysis care as a DT Applicant until:

(a) The credential is issued;

(b) The application is denied by the board; or

(c) The application lapses.

(6)(a) Upon approval of the Application for Dialysis Technician Credential pursuant to subsection (1) of this section and the applicant's successful certification pursuant to subsection (4) of this section, the board shall issue the DT credential.

(b) If the credential is issued prior to May 1, it shall expire on October 31 of the current credentialing period as defined in 201 KAR 20:085, Section 2.

(c) If the credential is issued on or after May 1, it shall expire on October 31 of the succeeding credentialing period as defined in 201 KAR 20:085, Section 2.

(d) After the issuance of the initial DT credential, the credentialing period shall be as defined in 201 KAR 20:085, Section 2.

Section 2. Renewal. (1) To be eligible for renewal of the credential, the DT shall submit prior to the expiration date of the credential:

(a) The Application for Renewal of the Dialysis Technician Credential;

(b) The fee established in Section 4 of this administrative regulation; and

(c) Evidence of current certification by one of the organizations listed in Section 1(4)(b) of this administrative regulation.

(2) If the application form is submitted on line, it shall be received by the board prior to midnight on the last day of the credentialing period.

(3) If a paper application is submitted, it shall be received no later than the last day of the credentialing period. If the application is not received by the board until after the last day of the credentialing period, the application shall have been postmarked at least seven (7) days prior to the last day of the credentialing period.

(4) All information needed to determine that an applicant meets the requirements for renewal of credential shall be received by the board no later than the last day of the credentialing period. If the information is not received by the board until after the last day of the credentialing period, in order to be considered by the board for the current renewal, the information shall have been postmarked at least seven (7) days prior to the last day of the credentialing period.

(5) Failure to comply with these requirements shall result in the credential lapsing. A person whose credential has lapsed shall comply with Section 3 of this administrative regulation to reinstate the credential.

Section 3. Reinstatement. (1) If the DT credential has lapsed for less than twelve (12) months, an individual may reinstate the credential as follows:

(a) Submit the Application for Dialysis Technician Credential;

(b) Provide evidence of certification from a DT certification organization listed in Section 1(4)(b) of this administrative regulation;

(c) Pay the fee established in Section 4 of this administrative regulation; and

(d) Provide a criminal record check by the Department of the Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) and comply with the requirements of subsection (2) of this section.

(2)(a) The criminal record check shall have been completed within six (6) months of the date of the application by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) using the FBI Applicant Fingerprint Card. The applicant shall pay any fee required by the KSP and the FBI.

(b) The applicant shall provide to the board a certified or attested copy of the court record of any misdemeanor or felony conviction in any jurisdiction, except for traffic-related misdemeanors (other than DUI) or misdemeanors that are older than five (5) years. The applicant shall provide to the board a letter of explanation that addresses each conviction.

(c) A felony or misdemeanor conviction shall be reviewed by

the board to determine if the application shall be processed with no further action. If further action is deemed necessary, the application shall not be processed unless the applicant has entered into an agreed order with the board. If the parties are unable to agree on terms and conditions for an agreed order, an administrative hearing shall be held.

(3) If the DT credential has lapsed for more than twelve (12) months, an individual may reinstate the credential by one of the following methods.

(a) If the DT has not worked as a DT in another state, the individual shall:

1. Complete a DT training program approved by the board;

2. After completion of the training program, submit an Application for Dialysis Technician Credential;

3. The supervising registered nurse shall complete and submit the Checklist for Dialysis Technician Competency Validation to the board;

4. Pay the fee established by Section 4 of this administrative regulation;

5. Provide a criminal record check by the KSP and the FBI and comply with subsection (2) of this section; and

6. Provide evidence of certification from a DT certification organization listed in Section 1(4)(b) of this administrative regulation.

(b) If the DT has worked as a DT in another state, the individual shall:

1. Submit an Application for Dialysis Technician Credential;

2. Submit verification of working as a DT in another state;

3. Pay the fee established by Section 4 of this administrative regulation;

4. Provide a criminal record check by the KSP and the FBI and comply with subsection (2) of this section; and

5. Provide evidence of certification from a DT certification organization listed in Section 1(4)(b) of this administrative regulation.

(4) An application for Dialysis Technician Credential submitted for reinstatement shall be valid for one (1) year from the date of receipt by the board.

(5) Upon approval of the application, the credential shall be reinstated.

Section 4. Fees. (1) The application fee for the initial credential shall be seventy (70) dollars.

(2) The credential renewal fee shall be thirty-five (35) dollars.

(3) The credential reinstatement fee shall be $100.

(4) A fee of ten (10) dollars shall be charged for issuing a duplicate of the credential.

(5) A check submitted to the board for payment of a fee that is returned by the bank for nonpayment shall be assessed a return check fee of thirty-five (35) dollars.

(6) A fee of ten (10) dollars shall be charged for written verification of a dialysis technician credential. If submitted in list format, a fee of ten (10) dollars for the first name shall be assessed and a fee of one (1) dollar shall be assessed for each additional name.

(7) A fee of twenty-five (25) dollars shall be charged for a name change and the issuance of a new credential.

(8) All fees shall be nonrefundable.

Section 5. Material Incorporated by Reference. (1) The following materials are incorporated by reference:

(a) “Application for Dialysis Technician Credential”, 4/2021;

(b) “Application for Renewal of Dialysis Technician Credential”, 4/2021; and

(c) “Checklist for Dialysis Technician Competency Validation”, 4/2021.

(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.

JESSICA WILSON, President

APPROVED BY AGENCY: April 15, 2021

FILED WITH LRC: May 18, 2021 at 1:07 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, August 23, 2021 at 10:00 a.m. (EDT) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m., EDT) Tuesday, August 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: Morgan Ransdell, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3339, email Morgan.Ransdell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Morgan Ransdell

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 314.137 requires the board to promulgate administrative regulations to regulate dialysis technicians. This administrative regulation establishes the requirements for credentialing dialysis technicians, initially, by renewal, and by reinstatement.

(b) The necessity of this administrative regulation: This regulation is necessary pursuant to KRS 314.137.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the content of KRS 314.137 by establishing requirements for credentialing dialysis technicians, initially, by renewal, and by reinstatement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in the effective administration of KRS 314.021, as amended effective June 30, 2021, and KRS 314.137, by establishing requirements for credentialing dialysis technicians, initially, by renewal, and by reinstatement.

(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 regulation will change the DT renewal cycle from two years to one year. In light of this change, the fee required in conjunction with a renewal application has been halved, resulting in no net renewal fee change. This regulation, in conjunction with 201 KAR 20:472, eliminates the DT Trainee role designation, and replaces it with an 18-month period of provisional licensure. During this period, all provisionally licensed DTs will be required to obtain certification from the Board of Nephrology Examiners Nursing Technology (BONENT), the Nephrology Nursing Certification Commission (NNCC), or the National Association of Nephrology Technicians/Technologists (NANT). The application for DT initial licensure and reinstatement has been edited and reformatted, as has the application for DT renewal.

(b) The necessity of the amendment to this administrative regulation: The regulation is necessary for the oversight and credentialing of dialysis technicians, as required by KRS 314.021 (amendment effective June 30, 2021), and KRS 314.137.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation conforms to the content of the authorizing statutes, KRS 314.131(1) and KRS 314.137, by establishing appropriate standards for DT credentialing, in order to protect and safeguard the health and safety of the citizens of the Commonwealth of Kentucky.

(d) How the amendment will assist in the effective administration

of the statutes: The regulation will assist in the effective administration of KRS 314.021 and KRS 314.137, by establishing standards for DT credentialing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of April 8, 2021, there were 712 dialysis technicians with a current and active Kentucky DT credential. There are currently seven DT training programs that are located and approved in Kentucky. The Kentucky Board of Nursing, the seven Kentucky DT training programs in the Commonwealth, and all renal dialysis organizations that provide dialysis services within the Commonwealth will all be affected by the repeal of 201 KAR 20:470 and the promulgation of 201 KAR 20:476.

(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: Each existing DT training program and renal dialysis organization in Kentucky will need to evaluate their programmatic requirements and standards in light of 201 KAR 20:472, 201 KAR 20:474, and 201 KAR 20:476. DT training is on-the-job training, and employers are necessarily involved in administering training program requirements and overseeing the progression of the trainees from the DT Trainee role designation through provisional licensure, full initial licensure, and renewal of licensure. Employers of DTs will move to validating the credentials of their DT employees on an annual basis in late October and early November of each year, which will simplify oversight of DT renewal, as compared to the oversight required when the renewal cycle was a two-year period, and when DTs renewed their licenses throughout the calendar year, rather than during a fixed renewal period.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The regulation adds a requirement that all DTs obtain certification from the Board of Nephrology Examiners Nursing Technology (BONENT), the Nephrology Nursing Certification Commission (NNCC), or the National Association of Nephrology Technicians/Technologists (NANT), and any resultant cost will be borne by the provisionally licensed DT or their employer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with 201 KAR 20:476 allows DT trainees to obtain full credential status and to lawfully maintain employment in the DT role.

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

(a) Initially: The agency expended $26,446.02 for the DT program in FY2020. The FY2021 budget for the DT program is $26,600, and $25,331.69 has been expended associated with the DT program to date in the current fiscal year. Board staff anticipates a similar level of expenditure in FY2022, with no additional costs specifically related to the implementation of 201 KAR 20:476.

(b) On a continuing basis: Board staff anticipates that DT program expenditures will rise from a baseline cost of $26,600 in future years, as personnel costs rise; however, the precise impact of possible personnel cost increases have not been determined. No ongoing costs are anticipated specifically with regard to implementation of 201 KAR 20:476.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees paid by DTs and DT training programs are the primary source of funding for implementation of 201 KAR 20:476.

(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 halves the fee required of renewing DTs, in light of the reduction of the renewal cycle from two years to one year, resulting in no net fee increase for renewing DTs. No DT fee increases are anticipated in the foreseeable future.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Reinstating DTs will notice a minor indirect fee increase, as the credential issued upon reinstatement will be valid for one year rather than two. This adjustment is warranted in light of increased personnel costs, as the reinstatement fee has only risen by ten dollars since the passage of HB 184 in 2001, which is when the Kentucky Board of Nursing was first assigned regulatory authority over DTs and DT training programs.

(9) TIERING: Is tiering applied? Tiering was not applied to 201 KAR 20:476, as the regulation treats all DT applicants similarly.

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 Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131 and KRS 314.137.

(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 agency expended $26,446.02 for the DT program in FY2020. The FY2021 budget for the DT program is $26,600, and $25,331.69 has been expended associated with the DT program to date in the current fiscal year. Board staff anticipates a similar level of expenditure in FY2022, with no additional costs specifically related to the implementation of 201 KAR 20:476.

(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? Board staff anticipates that DT program expenditures will rise from a baseline cost of $26,600 in future years, as personnel costs rise; however, the precise impact of possible personnel cost increases have not been determined. No ongoing costs are anticipated specifically with regard to implementation of 201 KAR 20:476.

(c) How much will it cost to administer this program for the first year? The agency expended $26,446.02 for the DT program in FY2020. The FY2021 budget for the DT program is $26,600, and $25,331.69 has been expended associated with the DT program to date in the current fiscal year. Board staff anticipates a similar level of expenditure in FY2022.

(d) How much will it cost to administer this program for subsequent years? Board staff anticipates that DT program expenditures will rise from a baseline cost of $26,600 in future years, as personnel costs rise; however, the precise impact of possible personnel cost increases have not been determined.

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: No significant changes in agency revenues or expenditures are anticipated specifically with regard to the promulgation and implementation of 201 KAR 20:476.

BOARDS AND COMMISSIONS
Board of Nursing
(New Administrative Regulation)

201 KAR 20:478. Dialysis technician scope of practice, discipline, and miscellaneous requirements.

RELATES TO: KRS 314.021, 314.035, 314.089, 314.091, 314.103, 314.137, 314.991

STATUTORY AUTHORITY: KRS 314.131(1), 314.137

NECESSITY, FUNCTION AND CONFORMITY: KRS 314.137 requires the board to promulgate administrative regulations to regulate dialysis technicians. This administrative regulation

establishes the scope of practice and disciplinary procedures for dialysis technicians.

Section 1. Scope of Practice. (1) The scope of practice of a dialysis technician shall include the following and shall be performed under the direct, on-site supervision of a registered nurse, an advanced practice registered nurse, a physician, or a physician's assistant:

(a) Preparation and cannulation of peripheral access sites (arterial-venous fistulas and arterial-venous grafts);

(b) Initiating, delivering, or discontinuing dialysis care;

(c) Administration of the following medications only:

1. Heparin 1:1000 units or less concentration either to prime the pump, initiate treatment, or for administration throughout the treatment, in an amount prescribed by a physician, physician's assistant, or advanced practice registered nurse. The dialysis technician shall not administer heparin in concentrations greater than 1:1000 units;

2. Normal saline via the dialysis machine to correct dialysis-induced hypotension based on the facility's medical protocol. Amounts beyond that established in the facility's medical protocol shall not be administered without direction from a registered nurse or a physician; and

3. Intradermal lidocaine, in an amount prescribed by a physician, physician's assistant, or advanced practice registered nurse;

(d) Assistance to the registered nurse in data collection;

(e) Obtaining a blood specimen via a dialysis line or a peripheral access site;

(f) Responding to complications that arise in conjunction with dialysis care; and

(g) Performance of other acts as delegated by the registered nurse pursuant to 201 KAR 20:400.

(2) The scope of practice of a dialysis technician shall not include:

(a) Dialysis care for a patient whose condition is determined by the registered nurse to be critical, fluctuating, unstable, or unpredictable;

(b) The connection and disconnection of patients from, and the site care and catheter port preparation of, percutaneously or surgically inserted central venous catheters; and

(c) The administration of blood and blood products.

Section 2. Discipline of a Dialysis Technician. (1) The board shall have the authority to discipline a dialysis technician (DT) or a dialysis technician applicant (DTA) for:

(a) Failure to safely and competently perform the duties of a DT or DTA as established in this administrative regulation;

(b) Practicing beyond the scope of practice as established in this administrative regulation;

(c) Conviction of any felony, or a misdemeanor involving drugs, alcohol, fraud, deceit, falsification of records, a breach of trust, physical harm or endangerment to others, or dishonesty under the laws of any state or of the United States. The record of conviction or a copy thereof, certified by the clerk of the court or by the judge who presided over the conviction, shall be conclusive evidence;

(d) Obtaining or attempting to obtain a credential by fraud or deceit;

(e) Abusing controlled substances, prescription medications, or alcohol;

(f) Use, or impairment as a consequence of use, of alcohol or drugs while on duty as a dialysis technician, dialysis technician trainee, or dialysis technician applicant;

(g) Possession or use of a Schedule I controlled substance;

(h) Personal misuse or misappropriation for use of others of any drug placed in the custody of the DT or DTA for administration;

(i) Falsifying or in a negligent manner making incorrect entries or failing to make essential entries on essential records;

(j) Having a dialysis technician credential disciplined by another jurisdiction on grounds sufficient to cause a credential to be disciplined in this Commonwealth;

(k) Practicing without filing an Application for Dialysis Technician Credential or without holding a dialysis technician credential;

(l) Abuse of a patient;

(m) Theft of facility or patient property;

(n) Having disciplinary action on a professional or business license;

(o) Violating any lawful order or directive previously entered by the board;

(p) Violating any applicable requirement of KRS Chapter 314 or 201 KAR Chapter 20;

(q) Having been listed on the nurse aide abuse registry with a substantiated finding of abuse, neglect, or misappropriation of property; or

(r) Having violated the confidentiality of information or knowledge concerning any patient, except as authorized or required by law.

(2) The discipline may include the following:

(a) Immediate temporary suspension of the credential, following the procedure established in KRS 314.089;

(b) Reprimand of the credential;

(c) Probation of the credential for a specified period of time, with or without limitations and conditions;

(d) Suspension of the credential for a specified period of time;

(e) Permanent revocation of the credential; or

(f) Denying the Application for Dialysis Technician Credential.

(3) The board shall follow the procedures established in and have the authority established in KRS 314.091, 201 KAR 20:161, and 201 KAR 20:162 for management and resolution of complaints filed against a dialysis technician.

(4) In addition to the provisions of subsection (3) of this section, the board may impose a civil penalty of up to $10,000.

Section 3. Miscellaneous Requirements. (1) Any person credentialed by the board as a dialysis technician shall maintain a current mailing address and email address with the board and immediately notify the board in writing of a change of mailing address or email address.

(2)(a) Holding a credential shall constitute consent by the dialysis technician to service of notices or orders of the board. Notices and orders shall be sent to the mailing address on file with the board.

(b) Any notice or order of the board mailed or delivered to the mailing address on file with the board shall constitute valid service of the notice or order.

(3) Any dialysis technician credentialed by the board shall, within ninety (90) days of entry of the final judgment, notify the board in writing of any misdemeanor or felony conviction in this or any other jurisdiction.

(4) Any dialysis technician credentialed by the board shall, within ninety (90) days of entry of a sanction specified in this subsection, notify the board in writing if any professional or business license that is issued to the person by any agency of the commonwealth or any other jurisdiction:

(a) Is surrendered or terminated under threat of disciplinary action;

(b) Is refused, limited, suspended, or revoked; or

(c) If renewal is denied.

(5) If the board has reasonable cause to believe that any DT or DTA is unable to practice with reasonable skill and safety or has abused alcohol or drugs, it shall require the person to submit to a substance use disorder evaluation or a mental or physical examination by a board approved practitioner.

(a) Holding a credential shall constitute:

1. Consent by the dialysis technician to a substance use disorder evaluation, mental examination, or physical examination if directed in writing by the board. The direction to submit to an evaluation or examination shall contain the basis for the board's concern that the technician is unable to practice safely and effectively; and

2. Waiver of objections to the admissibility of the examining practitioner's testimony or examination reports on the grounds of privileged communication.

(b) The dialysis technician shall bear the cost of substance use disorder evaluation, mental examination, or physical examination

ordered by the board.

(c) Upon failure of the dialysis technician to submit to a substance use disorder evaluation, mental examination, or physical examination ordered by the board, unless due to circumstances beyond the person's control, the board shall initiate an action for immediate temporary suspension pursuant to KRS 314.089 or deny an application until the person submits to the required examination.

(d) If a substance use disorder evaluation, mental examination, or physical examination pursuant to this subsection results in a finding that indicates that the dialysis technician is unable to practice with reasonable skill and safety or has abused alcohol or drugs, the dialysis technician shall be subject to disciplinary procedures as established in this administrative regulation.

(6) Due process procedures, including appeal, pertaining to this administrative regulation shall be conducted in accordance with KRS Chapter 13B.

JESSICA WILSON, President

APPROVED BY AGENCY: April 15, 2021

FILED WITH LRC: May 18, 2021 at 1:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, August 23, 2021 at 10:00 a.m. (EDT) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m., EDT) Tuesday, August 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: Morgan Ransdell, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3339, email Morgan.Ransdell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Morgan Ransdell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the scope of practice and disciplinary procedures for dialysis technicians (DTs).

(b) The necessity of this administrative regulation: This regulation is necessary pursuant to KRS 314.137.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the content of KRS 314.137 by regulating scope of practice, discipline, and miscellaneous requirements applicable to DTs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in the effective administration of KRS 314.021, as amended effective June 30, 2021, and KRS 314.137, by regulating scope of practice, discipline, and miscellaneous requirements applicable to DTs.

(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 regulation requires that DT notify the board of a current email address, but does not otherwise substantively alter DT scope of practice or disciplinary procedures.

(b) The necessity of the amendment to this administrative regulation: The repeal of 201 KAR 20:470, in conjunction with the promulgation of four new regulations that address the same subjects, complies with KRS 13A.221 by addressing separate topics related to DTs in four separate administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation conforms to the content of the authorizing statutes, KRS 314.131(1) and KRS 314.137, by establishing appropriate standards for DT credentialing, in order to protect and safeguard the health and safety of the citizens of the Commonwealth of Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: The regulation will assist in the effective administration of KRS 314.021 and KRS 314.137, by establishing standards for DT credentialing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of April 8, 2021, there were 712 dialysis technicians with a current and active Kentucky DT credential. The Kentucky Board of Nursing and all current and future DT credential holders will all be affected by the repeal of 201 KAR 20:470 and the promulgation of 201 KAR 20:478, as DTs will now be required to provide and maintain a current email address.

(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: DTs will now be required to provide and maintain a current email address.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will result from the promulgation of 201 KAR 20:478.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with 201 KAR 20:478 allows DT trainees to lawfully maintain employment in the DT role and exercise their due process rights in disciplinary proceedings.

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

(a) Initially: The agency expended $26,446.02 for the DT program in FY2020. The FY2021 budget for the DT program is $26,600, and $25,331.69 has been expended associated with the DT program to date in the current fiscal year. Board staff anticipates a similar level of expenditure in FY2022, with no additional costs specifically related to the implementation of 201 KAR 20:478.

(b) On a continuing basis: Board staff anticipates that DT program expenditures will rise from a baseline cost of $26,600 in future years, as personnel costs rise; however, the precise impact of possible personnel cost increases have not been determined. No ongoing costs are anticipated specifically with regard to implementation of 201 KAR 20:478.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees paid by DTs and DT training programs are the primary source of funding for implementation of 201 KAR 20:478.

(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 DT fee increases are anticipated in the foreseeable future as a consequence of implementation of 201 KAR 20:478.

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

(9) TIERING: Is tiering applied? Tiering was not applied to 201 KAR 20:478, as the regulation treats all DTs similarly.

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 Nursing.

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

regulation. KRS 314.131 and KRS 314.137.

(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 agency expended $26,446.02 for the DT program in FY2020. The FY2021 budget for the DT program is $26,600, and $25,331.69 has been expended associated with the DT program to date in the current fiscal year. Board staff anticipates a similar level of expenditure in FY2022, with no additional costs specifically related to the implementation of 201 KAR 20:478.

(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? Board staff anticipates that DT program expenditures will rise from a baseline cost of $26,600 in future years, as personnel costs rise; however, the precise impact of possible personnel cost increases have not been determined. No ongoing costs are anticipated specifically with regard to implementation of 201 KAR 20:478.

(c) How much will it cost to administer this program for the first year? The agency expended $26,446.02 for the DT program in FY2020. The FY2021 budget for the DT program is $26,600, and $25,331.69 has been expended associated with the DT program to date in the current fiscal year. Board staff anticipates a similar level of expenditure in FY2022.

(d) How much will it cost to administer this program for subsequent years? Board staff anticipates that DT program expenditures will rise from a baseline cost of $26,600 in future years, as personnel costs rise; however, the precise impact of possible personnel cost increases have not been determined.

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: No significant changes in agency revenues or expenditures are anticipated specifically with regard to the promulgation and implementation of 201 KAR 20:478.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Board of Education
Department of Education
(New Administrative Regulation)

702 KAR 7:150. Home or hospital instruction.

RELATES TO: KRS 160.290, 202A.011, 314.011

STATUTORY AUTHORITY: KRS 158.033, 156.070, 156.160, 159.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.033 requires the Kentucky Board of Education to promulgate administrative regulations establishing the components of home or hospital instruction. KRS 156.070 requires the Kentucky Board of Education to establish policy or act on all matters relating to the administrative responsibility of the Department of Education. KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. KRS 159.030 provides exemptions from compulsory attendance for students whose physical or mental condition prevents or renders inadvisable attendance at school or application to study. This administrative regulation establishes minimum requirements for home or hospital instruction programs.

Section 1. General Provisions.

(1) A local board of education shall establish home or hospital instructional programs for students pursuant to KRS 158.033 and the criteria contained in this administrative regulation.

(2) A local board of education shall establish a local board policy setting forth parameters for the operation of home or hospital instructional programs.

(3) A student referred for home or hospital instruction and not in attendance at school shall not be counted for attendance purposes prior to the date recommended by an eligible health care provider on an approved application or for students with disabilities, the date determined by the Admissions and Release Committee (ARC) as defined in 707 KAR 1:002.

(4) Home or hospital instruction shall be used only for a student for whom there is an expectation of an inability to attend regular school for more than five (5) consecutive school days.

(5) For students with disabilities, the ARC shall be responsible for placement decisions regarding home or hospital instruction in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. secs. 1400 et. seq and 707 KAR 1:350.

(6) The ARC chairperson shall provide written notice of eligibility and documentation to the local Director of Pupil Personnel (DPP) for purposes of program enrollment using the Notice of Home or Hospital Instruction Placement by Admissions and Release Committee (ARC) Form.

Section 2. Home or Hospital Review Committee.

(1) A local board of education shall establish a Home or Hospital Review Committee (Review Committee). The Review Committee shall accept and review applications to determine student eligibility for home or hospital services.

(2) The Review Committee shall consist of a local director of pupil personnel, a home or hospital teacher, a home or hospital instructional program director, medical or mental health personnel, and may consist of other professionals relevant to the application being reviewed.

(3) The condition of pregnancy shall not be considered a physical or health impairment in and of itself, and the nature and extent of any complication shall be delineated prior to consideration of home or hospital instruction for this condition.

(4) Eligibility for home or hospital instruction shall cease, for students placed by the Review Committee, if the student works, plays sports or participates in extracurricular activities.

Section 3. Placement for Students on Home or Hospital Instruction.

(1) Pursuant to its authority established in KRS 160.290, a local board of education shall implement referral and placement procedures in accordance with local board policy for students with temporary conditions, including fractures, surgical recuperation, or other physical, health, or mental conditions.

(2) A student with a recurring condition, which results in periods in which the need for home or hospital instruction is intermittent and the student is able to attend school for short periods, may be exited and reentered on home or hospital instruction, and the following shall apply:

(a) Initial approval by the Review Committee shall be required;

(b) The Review Committee shall review the need for an alternative schedule of services based on verification by the professional statement in the application for home or hospital instruction of the need for intermittent services;

(c) If a health professional who completed the initial application for a student to be served on home or hospital determines the student needs additional time for services, the health professional shall submit a written statement, either mailed or faxed, to the Director of Pupil Personnel, requesting additional time up to two (2) weeks for services and provide a brief explanation for the extension;

(d) The Review Committee shall meet to review this extension and either approve or deny the request for an extension, prior to provision of any extended services;

(e) The Review Committee shall review intermittent placement at least every six (6) months, and at that time a statement from a second professional, shall be required by the Review Committee for continued program eligibility; and

(f) The parent or guardian shall notify the principal or Director of Pupil Personnel prior to the need for school reentry or to exit to

home or hospital instruction.

Section 4. Home or Hospital Instruction Operation.

(1) Instructional sessions shall be delivered by a certified teacher. Instructional sessions may be delivered in person, electronically, or telephonically. If the instruction is other than in person, the district shall ensure the instruction is meaningful and require the certified teacher to directly contact the student during instructional sessions.

(2) When a home or hospital instruction teacher is physically present in the home or hospital, a parent, guardian, medical professional, assigned hospital staff member or an adult authorized by the parent or guardian shall be present in the home or hospital room during the time of instruction.

(3) A home or hospital instruction teacher shall complete a visitation and planning schedule on a weekly basis. This schedule shall include specific times for instruction, travel, planning and conferences. A copy of this schedule shall be on file in the central office.

(4) Attendance records and services descriptions shall be maintained and summarized on an annual basis on the Home/Hospital Program Form for submission to the department at the end of each school year.

(5) The school's records of daily attendance and the teacher's monthly attendance reports shall be maintained and summarized on a monthly basis as to home and hospital instruction.

(6) Pursuant to its authority established in KRS 160.290, a local board of education shall develop timelines for determination of continuing student eligibility for home or hospital instruction. The Review Committee shall schedule a review of continued student eligibility for home or hospital instruction at any time based on changes in the student's condition.

(7) A teacher serving students on home instruction shall not exceed a caseload of twelve (12) students. A teacher serving students on hospital instruction shall not exceed a caseload of fifteen (15) students. For a teacher serving a combination of home and hospital students, the caseload maximum shall be determined by the setting in which the majority of his students are served.

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

(a) "Application for Home or Hospital Instruction", June 2021; and

(b) “Notice of Home or Hospital Instruction Placement by Admissions and Release Committee (ARC) Form”, June 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, Office of Finance and Operations, 300 Sower Building, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.

JASON GLASS, Commissioner
LU YOUNG, Chair

APPROVED BY AGENCY: June 14, 2021

FILED WITH LRC: June 14, 2021 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on August 30, 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 August 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 G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does:
This administrative regulation establishes the components of home or hospital instruction as required by KRS 158.033(5).

(b) The necessity of this administrative regulation: KRS 157.270 was repealed and reenacted with changes as KRS 158.033 during the 2020 Session of the General Assembly. It is therefore necessary to change and relocate the regulation within the Kentucky Department of Education’s (KDE) range of regulations through repeal and replacement. This regulation replaces and updates 704 KAR 7:120, the former home or hospital regulation, consistent with KRS 158.033.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 158.033 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations to establish the components of home or hospital instruction. This regulation sets forth the components of home or hospital instruction.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation establishes the requirements for school districts to operate home and hospital educational programs.

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

(a) How the amendment will change this existing administrative regulation: 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 statues: N/A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local school districts.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts currently provide home or hospital instructional programs for students. KRS 157.270 was repealed and reenacted with changes as KRS 158.033 during the 2020 Session of the General Assembly. This regulation replaces and updates 704 KAR 7:120, the former home or hospital regulation, consistent with KRS 158.033.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no new costs to local school districts.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): KRS 157.270 was repealed and reenacted with changes as KRS 158.033 during the 2020 Session of the General Assembly. This regulation replaces and updates 704 KAR 7:120, the former home or hospital regulation, consistent with KRS 158.033.

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

(a) Initially: There are no additional costs associated with this administrative regulation. Total cost of implementation is dependent on the number of students enrolled in home or hospital instruction.

(b) On a continuing basis: There are no additional costs associated with this administrative regulation. Total ongoing cost of implementation is dependent on the number of students enrolled in home or hospital instruction.

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

School district general funds. School districts receive additional state support for home or hospital students.

(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 are necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No direct or indirect fees are associated with the administrative regulation.

(9) TIERING: Is tiering applied? No tiering is applied. The regulation is applicable to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.033.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The regulation will not likely have an impact on expenditures or revenues. School districts currently provide home or hospital instructional programs for students. KRS 157.270 was repealed and reenacted with changes as KRS 158.033 during the 2020 Session of the General Assembly. This regulation replaces and updates 704 KAR 7:120, the former home or hospital regulation, consistent with KRS 158.033.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The regulation will not likely have an impact on expenditures or revenues. School districts currently provide home or hospital instructional programs for students. KRS 157.270 was repealed and reenacted with changes as KRS 158.033 during the 2020 Session of the General Assembly. This regulation replaces and updates 704 KAR 7:120, the former home or hospital regulation, consistent with KRS 158.033.

(c) How much will it cost to administer this program for the first year? There are no new costs to school districts anticipated with this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no new costs to school districts anticipated with this 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: School districts receive additional state funding for home or hospital program students. The regulation permits districts to provide educational services to students through electronic and telephonic means where appropriate. This may reduce district expenditures.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Board of Education
Department of Education
(Repealer)

704 KAR 7:121. Repeal of 704 KAR 7:120.

RELATES TO: KRS 159.030, 160.290

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.220, 158.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 requires the Kentucky Board of Education to establish policy or act on all matters relating to the administrative responsibility of the Department of Education. KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. KRS 157.220 requires the Kentucky Board of Education to promulgate administrative regulations for the proper administration of KRS 157.200 to 157.280 concerning special educational programs. KRS 159.030 provides exemptions from compulsory attendance for students whose physical or mental condition prevents or renders inadvisable attendance at school. KRS 158.030 requires the Kentucky Board of Education to promulgate administrative regulations to establish the components of home or hospital instruction. This administrative regulation repeals the minimum requirements for home/hospital instruction programs. This repeal is necessary to change and relocate the regulation within the Kentucky Department of Education's range of regulations as a result of KRS 157.270 being repealed and reenacted with changes as KRS 158.033.

Section 1. 704 KAR 7:120, Home/hospital instruction, is hereby repealed.

JASON E. GLASS, Commissioner
LU YOUNG, Chairperson

APPROVED BY AGENCY: June 11, 2021

FILED WITH LRC: June 11, 2021 at 9:49 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on August 30, 2021, at 10:00 a.m. in the State Board Room, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2021.

CONTACT PERSON: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 704 KAR 7:120.

(b) The necessity of this administrative regulation: KRS 157.270 was repealed and reenacted with changes as KRS 158.033 during the 2020 Session of the General Assembly. It is therefore necessary to change and relocate the regulation within the Kentucky Department of Education's (KDE) range of regulations through repeal and replacement. The new home and hospital regulation is being simultaneously promulgated as 702 KAR 7:150.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 158.033 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations to establish the components of home or hospital instruction.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of 704 KAR 7:120 will allow the promulgation of a new home and hospital regulation that complies with KRS 158.033.

(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 repeal of KRS 704 KAR 7:120.

(b) The necessity of the amendment to this administrative regulation: KRS 157.270 was repealed and reenacted with changes as KRS 158.033 during the 2020 Session of the General Assembly. It is therefore necessary to change and relocate the regulation within the Kentucky Department of Education's (KDE) range of regulations through repeal and replacement. The new home and hospital regulation is being simultaneously promulgated as 702 KAR 7:150.

(c) How the amendment conforms to the content of the authorizing statutes: This is a repeal of KRS 704 KAR 7:120. A new regulation, 702 KAR 7:150, is being simultaneously promulgated to comply with the newly enacted KRS 158.033.

(d) How the amendment will assist in the effective administration of the statues: This is a repeal of KRS 704 KAR 7:120.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local school districts.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This is a repeal of KRS 704 KAR 7:120. No 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 cost to local school districts.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This is a repeal of KRS 704 KAR 7:120.

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

(a) Initially: There are no costs associated with the repeal of this administrative regulation.

(b) On a continuing basis: There are no costs associated with the repeal of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This is a repeal of KRS 704 KAR 7:120.

(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 are necessary to repeal this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No direct or indirect fees are associated with the repeal of this administrative regulation.

(9) TIERING: Is tiering applied? No tiering is applied. This is a repealer.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: Todd G. Allen

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 school districts.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This is a repeal of KRS 704 KAR 7:120.

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 is a repeal of KRS 704 KAR 7:120. 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? This is a repeal of KRS 704 KAR 7:120. No revenue will be generated.

(c) How much will it cost to administer this program for the first year? This is a repeal of KRS 704 KAR 7:120. There are no costs associated with the repeal.

(d) How much will it cost to administer this program for subsequent years? This is a repeal of KRS 704 KAR 7:120. There are no costs associated with the repeal.

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:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(New Administrative Regulation)

921 KAR 3:027. Technical requirements.

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

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 requires the cabinet to administer a Supplemental Nutrition Assistance Program (SNAP) within the state. 7 C.F.R. Parts 272 and 273 establish requirements for the cabinet to participate in the SNAP. In addition, 7 U.S.C. 2014 establishes that an otherwise-qualified immigrant who is blind or receiving a disability benefit, who has lived in the United States for at least five (5) years, or who is under eighteen (18) years of age shall be eligible to participate in SNAP regardless of the date he or she entered the United States. This administrative regulation establishes the technical eligibility requirements used by the cabinet in the administration of SNAP. Pursuant to Section 702(e) of Pub. L. 116-260, the Consolidated Appropriations Act of 2021, SNAP eligibility was temporarily expanded for qualifying students.

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

(2) "Qualified immigrant" has the same meaning as "qualified alien", as defined by 7 C.F.R. 273.4.

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

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

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

(1) Residency. A household:

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

(b) May apply for benefits in any county in accordance with 921

KAR 3:030, Section 3.

(2) Identity.

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

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

(3) Citizenship and immigration status.

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

1. Citizen of the United States;

2. U.S. noncitizen national; or

3. Qualified immigrant who is lawfully residing in Kentucky.

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

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

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

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

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

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

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

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

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

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

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

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

1. 7 C.F.R. 273.5(a);

2. 45 C.F.R. 261.2; or

3. 19 U.S.C. 2296;

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

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

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

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

1. Eligible to participate in a state or federally financed work study program during the regular school year; or

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

(6) Social Security number (SSN).

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

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

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

(8) Work requirement.

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

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

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

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

a. 7 C.F.R. 273.5(a); or

b. 19 U.S.C. 2296;

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

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

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

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

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

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

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

5. Pregnant.

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

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

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

(d) Subsequent eligibility.

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

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

(e) Loss of employment or training.

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

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

(f) If the individual does not meet all other technical and financial eligibility criteria pursuant to 7 U.S.C. 2011, nothing in this section shall make an individual eligible for SNAP benefits.

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

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

(11) Child support arrears.

(a) In accordance with 7 C.F.R. 273.11(q) to disqualify a noncustodial parent for refusing to cooperate, a noncustodial

parent of a child under the age of eighteen (18) shall not be eligible to participate in SNAP if the individual is delinquent in payment of court-ordered support as determined by the Department for Income Support, Child Support Enforcement, unless the individual:

1. Is enrolled in a drug treatment program;

2. Is participating in a state or federally funded employment training program;

3. Meets good cause for nonpayment. Good cause shall include temporary situations resulting from illness, job change, or pendency of unemployment benefits;

4. Is a member of a household containing a child under the age of eighteen (18);

5. Is a member of a household containing an individual who is pregnant or three (3) months post-partum; or

6. Is:

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

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

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

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

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

(a) At the time of initial application for SNAP; and

(b) Every twelve (12) months following the initial application.

(2) Work registration shall be completed by the:

(a) Member required to register; or

(b) Person making application for the household.

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

(a) Ineligible immigrant; or

(b) Individual disqualified for:

1. Refusing to provide or apply for a Social Security number; or

2. An intentional program violation.

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

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

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

(a) Respond to a cabinet request for additional information regarding employment status or availability for work;

(b) In accordance with 7 C.F.R. 273.7(a)(1)(vi), accept a bona fide offer of suitable employment pursuant to 7 C.F.R. 273.7(h), at a wage not lower than the state or federal minimum wage; or

(c) In accordance with 7 C.F.R. 273.7(a)(1)(ii), participate in the E&T Program if assigned by the cabinet.

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

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

(a) Work requirements for each nonexempt household member;

(b) Rights and responsibilities of the work-registered household members; and

(c) Consequences of failing to comply.

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

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

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

1. Quit a job; or

2. Reduced the household member's work effort.

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

(a) Illness of the individual;

(b) Illness of another household member requiring the presence of the individual;

(c) A household emergency;

(d) Unavailability of transportation; or

(e) Lack of adequate care for a child who is six (6) to twelve (12) years of age for whom the individual is responsible.

(3) Good cause for leaving employment shall be granted if:

(a) A circumstance established in subsection (2) of this section exists;

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

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

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

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

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

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

(a) Date the individual complies; or

(b) Lapse of the following time periods:

1. Two (2) months for the first violation;

2. Four (4) months for the second violation; or

3. Six (6) months for the third or a subsequent violation.

(3) Ineligibility shall continue until the ineligible member:

(a) Becomes exempt from the work registration; or

(b)1. Serves the disqualification period established in subsection (2)(b) of this section; and

2. Complies with the work registration requirements.

(4) A disqualified household member who joins a new household shall:

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

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

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

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

(a) Quits a job:

1. Of thirty (30) hours or more per week; and

2. With weekly earnings at least equal to the federal minimum wage times thirty (30) hours; or

(b) Reduces the individual's work effort:

1. To less than thirty (30) hours per week; and

2. So that after the reduction, weekly earnings are less than the federal minimum wage times thirty (30) hours.

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

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

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

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

(c) Serving the minimum period of disqualification imposed

pursuant to Section 6(2)(b) of this administrative regulation.

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

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

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

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

APPROVED BY AGENCY: June 8, 2021

FILED WITH LRC: June 11, 2021 at 2:28 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 23, 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 August 16, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 August 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 sets forth the technical requirements to receive Supplemental Nutrition Assistance Program (SNAP), which is assistance for low-income households in purchasing eligible food products.

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

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of technical requirements for SNAP eligibility.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing technical requirements for SNAP.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation, promulgated as a result of Senate Bill 65 (Regular Session 2021, Acts ch. 165). Although 921 KAR 3:025&E was amended and passed at the Administrative Regulation Review Subcommittee in April 2021, with all issues resolved and general consensus on the administrative regulation, Senate Bill 65 causes the administrative regulation to be, “null, void, and unenforceable as of the effective date of this Act”, which will be June 29, 2021. Because 7 C.F.R. 271.4 requires the cabinet to administer a Supplemental Nutrition Assistance Program (SNAP), because this administrative regulation contains the requirements for SNAP eligibility, and because the state of Kentucky must remain in compliance with federal rules over this program, the Department for Community Based Services must move these eligibility requirements into a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Although issues concerning 921 KAR 3:025 have been resolved, Senate Bill 65 (Regular Session 2021, Acts ch. 165) causes the administrative regulation to be null and void on June 29, 2021, forcing the department to move these federally-required eligibility provisions into a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation that will assist in the effective administration of the statutes governing SNAP by complying with federal and state law around program eligibility.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing technical and eligibility requirements for SNAP.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of April 2021, there were 292,743 low-income households in Kentucky receiving SNAP assistance in purchasing eligible food products. These households have been deemed as meeting the program eligibility requirements contained in this administrative regulation. There are over 4,000 Kentucky retailers participating in SNAP that receive over $700 million in SNAP federal funds annually.

(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 households mentioned in question (3) must meet the eligibility requirements contained in this administrative regulation to receive program assistance in purchasing food. There are no new requirements contained in this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to the households deemed eligible to receive program assistance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Households that comply with the technical requirements and meet the eligibility requirements contained in this administrative regulation will receive assistance in purchasing eligible food products from participating retailers.

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

(a) Initially: SNAP benefits are 100% federally funded by the U.S. Department of Agriculture. Program administrative costs are funded 50% federal and 50% state and have been appropriated in the enacted budget. There are no new costs associated with this administrative regulation.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100% federally funded by the U.S. Department of Agriculture. There are over 4,000 Kentucky retailers participating in SNAP that receive over $700 million in SNAP federal funds annually.

(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 and no new costs associated with 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? SNAP assistance in purchasing food is only available to low-income households meeting the eligibility and technical requirements contained in this administrative regulation. Tiering is not applied as the eligibility requirements are the same for all program applicants.

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. The U.S. Department of Agriculture requires states implement SNAP, but permit some flexibility in program requirements, consistent with state laws.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The U.S. Department of Agriculture requires states implement SNAP, but permit some flexibility in program requirements, consistent with state laws.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services administers this program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 7 C.F.R. 271.4, 272, 273, Pub. L. 116-260, KRS 194A.050(1), 205.2005.

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, but Kentucky retailers in communities throughout Kentucky receive over $700 million in SNAP federal funds annually.

(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, but Kentucky retailers receive over $700 million in SNAP federal funds annually.

(c) How much will it cost to administer this program for the first year? SNAP benefits are 100% federally funded by the U.S. Department of Agriculture. Program administrative costs are funded 50% federal and 50% state and have been appropriated in the enacted budget. There are no new costs associated with this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? SNAP benefits are 100% federally funded by the U.S. Department of Agriculture. Program administrative costs are funded 50% federal and 50% state and have been appropriated in the enacted budget. There are no new costs associated with this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of June 8, 2021

Call to Order and Roll Call

The June meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, June 8, 2021 at 1 p.m. In Room 149 of the Capitol Annex. Representative Hale, Co-Chair, called the meeting to order, the roll call was taken. The minutes from the May 2021 meeting were approved.

Present were:

Members: Senator Stephen West, Co-Chair; Representative David Hale, Co-Chair; Senators Julie Raque Adams and Senator Kerr; Representatives Randy Bridges and Deanna Frazier.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Carrie Nichols, and Christy Young.

Guests: Richard Dobson, Bethany Rice, Department of Revenue; Eden Davis, Larry Hadley, Board of Pharmacy; Kelly Jenkins, Jeffrey Prather, Board of Nursing; Tim Cesario, Kevin Winstead, Board of Alcohol and Drug Counselors; Tony Hatton, Division of Waste Management; David Atha, Matthew Cole, Mary Cook, Virginia Day, Tiffany Duvall, Jon Johnson, Tom McDaniel, Larisa Plecha, Tristan Truesdell, John Smoot, Jason Siwula, Transportation Cabinet; Waqas Ahmed, Jamie Eads, Marc Guilfoil, Dr. Bruce Howard, Chad Thompson, Jennifer Wolsing, Kentucky Horse Racing Commission; Carrie Banahan, Edith Slone, Cabinet for Health and Family Services; Julie Brooks, Wes Duke, Paula Goff, Department for Public Health.

The Administrative Regulation Review Subcommittee met on Tuesday, June 8, 2021, and submits this report:

The subcommittee determined that the following administrative regulation was deficient pursuant to KRS 13A.030(2)(a):

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Communicable Diseases

902 KAR 2:211E. Covering the face in response to declared national or state public health emergency. Julie Brooks, regulation coordinator, and Wes Duke, general counsel, represented the department.

In response to questions by Co-Chair West, Mr. Duke stated that the proposed agency amendments were to bring this administrative regulation, which was filed pursuant to the Executive Order in place prior to May 13, 2021, into compliance with the Governor's May 13, 2021 Executive Order, which was consistent with Centers for Disease Control revisions to face covering requirements for members of the public who were vaccinated. The May 13, 2021 Executive Order would expire June 11, 2021, and the department expected action on this emergency administrative regulation on that date. The department expected future provisions to include face coverings for certain vulnerable populations, such as those in health care settings and long-term care facilities. The new measures should be consistent with statements by the Governor. Ms. Brooks stated that commenters during the public comment period expressed concerns regarding the lawful-ness of this administrative regulation, actions by the department, a Centers for Disease Control study that commenters interpreted as demonstrating that face coverings were not effective, and religious conflicts. At the time that the department was developing the Statement of Consideration in response to the public comments, KRS Chapter 13A did not authorize amendments to emergency administrative regulations. Since that time, Senate Bill 2 from the 2021 Regular Session of the General Assembly has become effective, which now allowed the department to pro-pose the agency amendments being considered by the subcommittee at this meeting. The pro-posed agency amendments did not revise provisions in response to any of the public comments received during the public comment period.

Co-Chair West stated that the current situation seemed to conflict with the Governor's statements that Kentucky would return to 100 percent capacity for all venues and events and the face covering measures would be lifted, including for the unvaccinated, with the exception of certain vulnerable populations. Mr. Duke stated that he expected this administrative regulation to be withdrawn on June 11, 2021.

In response to questions by Representative Frazier, Mr. Duke stated that the department requested to defer consideration of this emergency administrative regulation from this subcommittee meeting because the department expected to withdraw this administrative regulation on June 11, 2021. Co-Chair West stated that the subcommittee denied the department's request for deferral because it was important for the public to have information regarding the status of this administrative regulation in order for business and liability planning. Mr. Duke stated that this emergency administrative regulation did not reference KRS Chapter 13B; however, that was the due process system the department had been using for appeals pertaining to violations of this administrative regulation. Public Health Departments had the ability to cite businesses for failure to comply with the requirements of this administrative regulation. Approximately 320 violations had been issued to businesses. Most were first offenses that did not involve a fine. The first priority was to educate businesses, work with businesses on remedial measures, and assist businesses with compliance. Total fines that had been issued were under $1,700 statewide for the duration of the requirements.

In response to a question by Senator Raque Adams, Mr. Duke stated that the proposed agency amendments were possible because Senate Bill 2 from the 2021 Regular Session of the General Assembly authorized emergency administrative regulations to be amended. Before Sen-ate Bill 2, an emergency administrative regulation had to be withdrawn and refiled in order to make changes.

In response to questions by Co-Chair West, Mr. Duke stated that this administrative regulation might be clearer if it directly referenced KRS Chapter 13B for appeals provisions. Public Health Departments had authority in regular operations to utilize KRS Chapter 13B for hearings. Barring something unforeseen, the department planned to withdraw this administrative regulation June 11, 2021. In Mr. Duke's opinion, if a business asked a patron about vaccination status, that would probably not be a violation of HIPAA law; however, other laws such as the Americans with Disabilities Act, might be relevant. A business asking an employee about vaccination status was a different situation and different laws might be applicable. There was guidance available on this subject from the US Department of Labor. After June 11, 2021, the penalty of a business being closed for failure to comply would no longer apply. The department was unable to agree to withdraw this administrative regulation at this subcommittee meeting.

Co-Chair West stated that the administration had not built up a level of trust with the legislature. The legislature had, through legislation, made its intent regarding this topic clear during the 2021 Regular Session of the General Assembly. As the pandemic continued to abate, some of these administrative regulations seemed to be less about public health and more about control. It was dangerous for the government to use its power to influence very important individual, private medical decisions. Being allowed

to go without a face covering established an incentive for vaccination if face coverings continued to be required for the unvaccinated. Some had made the conscious medical decision to remain unvaccinated because of the experimental nature of this vaccine. Remaining unvaccinated should be an individual, private medical decision.

A motion was made and seconded to approve the following amendments: to update provisions in compliance with the Executive Orders currently in place, including: (1) an exemption for a person who has received the final dose of a COVID-19 vaccine at least fourteen (14) days prior; (2) to delete outdated requirements; and (3) to add the current face covering provisions for un-vaccinated individuals, which included public transportation, school, health care, long-term care, correctional, or homeless shelter settings; and those who are immunocompromised, those who are exhibiting symptoms of COVID-19, or those who have tested positive for COVID-19 in the prior ten (10) days. Without objection, and with agreement of the agency, the amendments were approved.

Co-Chair West made a motion, seconded by Representative Bridges, to find this emergency administrative regulation deficient. A roll call vote was conducted and, with six (6) votes to find this emergency administrative regulation deficient, this emergency administrative regulation, as amended by the agency amendment, was found deficient.

Compiler's Note: Pursuant to KRS 13A.335(3)(a), a new Section 6 was added to this administrative regulation to reflect the finding of deficiency.

Administrative Regulations Reviewed by this Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Sales and Use Tax; Service and Professional Occupations

103 KAR 26:131. Landscaping Services. Richard Dobson, executive director, and Bethany Rice, counsel, represented the department.

In response to a question by Co-Chair Hale, Mr. Dobson stated that this administrative regulation was being amended in response to statutory changes after consultation with stakeholders.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, and 7 through 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:040. Registration of pharmacist interns. Eden Davis, general counsel, and Larry Hadley, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 3, 5, 6, and 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 2:171. Computerized recordkeeping.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 2:205. Pharmacist-in-charge.

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 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 2:390. Requirements for third-party logistics providers.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 1 to add definitions for "board", "illegitimate product", and "third-party logistics provider." Without objection, and with agreement of the agency, the amendments were approved.

Board of Nursing

201 KAR 20:506. Nurse licensure compact. Kelly Jenkins, executive director, and Jeffrey Prather, general counsel, represented the board.

Board of Alcohol and Drug Counselors

201 KAR 35:010E. Definitions for 201 KAR Chapter 035. Tim Cesario, chair, and Kevin Win-stead, commissioner, represented the board.

In response to questions by Co-Chair Hale, Mr. Winstead stated that these administrative regulations were filed both as emergency administrative regulations and as ordinary administrative regulations. Senate Bills 191 and 166 from 2021 Regular Session of the General Assembly created four (4) new credential categories that became effective March 1, 2021; therefore, the board needed emergency administrative regulations that would take effect immediately upon filing. Additionally, these administrative regulations were filed as emergency administrative regulations to protect public safety, welfare, and health, because there was a shortage of counselors. Co-Chair Hale thanked the board for addressing the complex problems related to alcohol and drug abuse in Kentucky.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to delete references to "certified alcohol and drug counselor degreed" to comply with statutory authority; and (2) to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 35:020E. Fees.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to delete references to "certified alcohol and drug counselor degreed" to comply with statutory authority; and (2) to revise material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 35:025E. Examinations.

201 KAR 35:040E. Continuing education requirements.

201 KAR 35:050E. Curriculum of study.

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.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Waste Management: Hazardous Waste

401 KAR 39:060. General Requirements. Tony Hatton, commissioner, represented the division.

In response to a question by Co-Chair West, Mr. Hatton stated that chemical munitions stored at Bluegrass Army Depot included about two (2) percent of the nation's stockpile of mustard nerve agents. These nerve agents were categorized as "hazardous

wastes" under Kentucky law, but not under federal law. The US Army had specific requirements for the treatment, storage, and disposal of these nerve agents. Neutralization was required to be 99.999 percent effective, and secondary hazardous wastes were sometimes generated as part of the neutralization process. The US Army was moving away from neutralization because of the risk of exposure to hazardous wastes by personnel. Static detonation was now being used in lieu of neutralization, creating waste streams that were not envisioned when neutralization was used. The administrative regulation simplified the process of dealing with these wastes. The goal was to have most of these wastes addressed by 2023.

In response to a question by Co-Chair Hale, Mr. Hatton stated that, barring unforeseen circumstances, most of these wastes would be addressed by 2023.

Representative Frazier stated that Madison County was very appreciative of the work that the division did in dealing with these wastes and protecting citizens in the process.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Motor Carriers

601 KAR 1:005. Safety administrative regulation. Mary Cook, assistant director; Tiffany Duvall, budget specialist; Jon Johnson, assistant general counsel; Tom McDaniel, assistant director; Larisa Plecha, staff attorney; Jason Siwula, assistant state highway engineer; and Tristan Trues-dell, captain, Kentucky State Police; represented the department.

Administration

601 KAR 2:231. Repeal of 601 KAR 002:030.

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

Horse Racing Commission: General

810 KAR 2:001E. Definitions for 810 KAR Chapter 002. Waqas Ahmed, pari-mutuel wagering director; Jamie Eads, deputy executive director; Marc Guilfoil, executive director; Dr. Bruce Howard, equine medical director; Chad Thompson, deputy general counsel; and Jennifer Wolsing, general counsel, represented the commission.

In response to questions by Co-Chair Hale, Ms. Wolsing stated that the public hearing on the pari-mutuel wagering administrative regulations in this package was canceled as statutorily authorized because no one expressed interest in attending; however, written comments were received from The Family Foundation. The commission filed a Statement of Consideration in response to those written comments. The pari-mutuel wagering administrative regulations were the only ones in this package that were filed as emergency administrative regulations. The emergency basis was due to several factors. Senate Bill 120 from the 2021 Regular Session of the General Assembly enacted several changes to pari-mutuel wagering, primarily related to historical horse racing. If statutory and regulatory provisions conflicted, the commission would be unable to regulate live or historical horse racing in Kentucky. Additionally, revisions were needed to prevent these administrative regulations from sunsetting after certification and reorganization. State revenue and potentially jobs could be lost.

Co-Chair Hale requested to be recorded as voting in opposition to the pari-mutuel wagering administrative regulations in this package because the commission's reasons for filing these on an emergency basis was unsatisfactory.

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.

810 KAR 5:080. Kentucky Proud Series.

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 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Pari-Mutuel Wagering

810 KAR 6:001E. Definitions for 810 KAR Chapter 006.

810 KAR 6:010E. Exotic wagering.

Pari-Mutuel Wagering

810 KAR 6:030E. Pari-Mutuel wagering.

Medication Guidelines

810 KAR 8:010. Medication; testing procedures; prohibited practices.

A motion was made and seconded to approve the following amendments: to amend Sections 10, 13, and 20 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 8:020. Drug, medication, and substance classification schedule.

810 KAR 8:025. Drug, medication, and substance withdrawal guidelines.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 1(4) to add administration specifications for clenbuterol in accordance with 810 KAR 8:010. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 8:030. Disciplinary measures and penalties.

A motion was made and seconded to approve the following amendment: to amend Section 4 to insert an existing provision that had been inadvertently omitted. Without objection, and with agreement of the agency, the amendment was approved.

810 KAR 8:040. Out-of-competition testing.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and the NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2, 6, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Harness Racing

811 KAR 1:251E. Repeal of 811 KAR 001:250.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Data and Analytics: Kentucky Health Benefit Exchange

900 KAR 10:111. Definitions for 900 KAR Chapter 010. Carrie Banahan, deputy secretary; Melea Rivera, assistant director; Kelli Rodman, executive director, Office of Legal Services; Edith Sloan, director; and David Varry, staff assistant represented the exchange.

In response to questions by Co-Chair West, Ms. Banahan stated that the statutory authority for the exchange was established in KRS 194A.099. Funding came from the Kentucky Access Assessment, an existing fund source that consisted of a one (1) percent assessment on the premiums for large employer groups, small employer groups, association plans, and individual market plans. The previous Executive Branch administration opted to use the federal exchange in lieu of the state exchange. The exchange was unaware of anything in a budget bill that prohibited Kentucky from returning to a state-based exchange. The exchange anticipated a cost of $2 million, which would be funded through the

Kentucky Access Assessment, to restart the state-based exchange. The federal exchange included a user fee of approximately three (3) percent. Plan year 2019 cost approximately $15.2 million for Kentucky users of the federal exchange, which was in addition to the existing Kentucky Access Assessment. The state-based system would not include the user fee; therefore, reverting to the state-based system was expected to save Kentucky users of the exchange $15 to $20 million.

900 KAR 10:115. Exchange participation requirements and certification of qualified health plans and qualified stand-alone dental plans.

Kentucky Health Benefit Exchange

900 KAR 10:120. KHBE eligibility and enrollment in a qualified health plan, SHOP, and SHOP formal resolution process.

In response to a question by Co-Chair West, Mr. Varry stated that the proposed agency amendment authorized, rather than required notification of an employee's eligibility for an advanced payments of premium tax credit. This change was consistent with federal guidelines.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs, and Section 1, 2, 4, 6, 7, 9, 11, 13, 15, and 17 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 2 to provide that an employer may be notified of an employee's eligibility for an advanced payments of premium tax credit in accordance with 45 C.F.R 155.310(h). Without objection, and with agreement of the agency, the amendments were approved.

900 KAR 10:125. KHBE Consumer Assistance Program, kynector certification, and individual agent participation with the KHBE.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 3, 6, and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

900 KAR 10:130. Appeals of eligibility for KHBE participation and insurance affordability programs.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, 5, 6, 8 through 10, and 12 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Maternal and Child Health

902 KAR 4:150. Enhanced HANDS services in response to declared national or state public health emergency. Julie Brooks, regulation coordinator, and Paula Goff, branch manager, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky Early Intervention System

902 KAR 30:210. Enhanced early intervention services in response to declared national or state public health emergency. Julie Brooks, regulation coordinator, and Paula Goff, branch manager, represented the department.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred or removed from the June 8, 2021, subcommittee agenda:

BOARDS AND COMMISSIONS: Board of Examiners of Psychology

201 KAR 26:115. Definition of psychological testing.

201 KAR 26:121. Scope of practice and dual licensure.

201 KAR 26:125. Health service provider designation.

201 KAR 26:130. Grievances and administrative complaints.

201 KAR 26:155. Licensed psychologist: application procedures and temporary license.

201 KAR 26:171. Requirements for clinical supervision.

201 KAR 26:180. Requirements for granting licensures as a psychologist by reciprocity.

201 KAR 26:185. Requirements for granting licensure as a psychologist to an applicant li-censed in another state.

201 KAR 26:190. Requirements for supervised professional experience.

201 KAR 26:200. Education requirements.

201 KAR 26:230. Examination and applications.

201 KAR 26:250. Employment of a psychological associate, a temporarily licensed psycho-logical associate, or a temporarily licensed psychologist.

201 KAR 26:280. Licensed psychological associate: application procedures and temporary license.

201 KAR 26:290. Licensed psychological practitioner: application procedures.

201 KAR 26:301. Repeal of 201 KAR 026:300.

201 KAR 26:310. Telehealth and telepsychology.

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 35:010. Definitions for 201 KAR Chapter 035.

201 KAR 35:020. Fees.

201 KAR 35:025. Examinations.

201 KAR 35:040. Continuing education requirements.

201 KAR 35:050. Curriculum of study.

201 KAR 35:055. Temporary registration or certification.

201 KAR 35:070. Supervision experience.

201 KAR 35:075. Substitution for work experience for an applicant for certification as an alcohol and drug counselor.

201 KAR 35:080. Voluntary inactive and retired status.

LABOR CABINET: Department of Workers' Claims

803 KAR 25:015. Issuance of citations and procedure in

workers' compensation enforcement hearings.

803 KAR 25:021. Individual self-insurers.

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.

803 KAR 25:190. Utilization review – Medical Bill Audit – Medical Director – Appeal of Utilization Review Decisions.

803 KAR 25:220. Guaranty funds.

PUBLIC PROTECTION CABINET: 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 2:001. Definitions for 810 KAR Chapter 002.

Licensing
810 KAR 3:001. Definitions for 810 KAR Chapter 003.

Flat and Steeplechase Racing
810 KAR 4:001. Definitions for 810 KAR Chapter 004.

Standardbred Racing
810 KAR 5:001. Definitions for 810 KAR Chapter 005.

Pari-Mutuel Wagering
810 KAR 6:001. Definitions for 810 KAR Chapter 006.

810 KAR 6:010. Exotic wagering.

810 KAR 6:020. Calculation of payouts and distribution of pools.

810 KAR 6:030. Pari-Mutuel wagering.

CABINET FOR HEALTH AND FAMILY SERVICES: 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 Behavioral Health, Developmental and Intellectual Disabilities: Sub-stance Abuse
908 KAR 1:390. Voluntary Employer Substance Use Program (VESUP).

Department for Community Based Services: Child Welfare
922 KAR 1:490. Background checks for foster and adoptive parents and relative and fictive kin caregivers.

The subcommittee adjourned at 11:35 a.m. The next meeting of this subcommittee is tentatively scheduled for July 8, 2021, at 3 p.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(10), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENERGY
Meeting of June 3, 2021

The Interim Joint Committee on Natural Resources and Energy met on June 3, 2021, and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on April 7, 2021 and May 5, 2021, pursuant to KRS 13A.290(6):

April 7, 2021
301 KAR 2:221
301 KAR 2:221E
401 KAR 60:005
401 KAR 63:002
807 KAR 5:056

May 5, 2021
401 KAR 61:036

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(8) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 3, 2021, meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT
Meeting of June 15, 2021

The Interim Joint Committee on Local Government met on June 15, 2021 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on April 7, 2021, pursuant to KRS 13A.290(6):

815 KAR 020:150

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(8) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 15, 2021 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON HEALTH, WELFARE, AND FAMILY SERVICES
Meeting of June 16, 2021

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health, Welfare, and Family Services for its meeting of June 16, 2021, having been referred to the Committee on April 7, 2021, May 5, 2021 and June 2, 2021, pursuant to KRS 13A.290(6):

April 7, 2021
201 KAR 002:410 E
201 KAR 022:170
201 KAR 023:070
201 KAR 045:130
900 KAR 011:011
902 KAR 010:010
902 KAR 010:110
902 KAR 010:131
902 KAR 010:140
902 KAR 010:150
902 KAR 010:160
902 KAR 010:170
902 KAR 020:160
902 KAR 020:160 E
902 KAR 020:440
902 KAR 020:440 E
902 KAR 045:160
902 KAR 045:190
907 KAR 015:070
907 KAR 015:070 E
907 KAR 015:080
907 KAR 015:080 E
908 KAR 002:270
921 KAR 003:010
921 KAR 003:045
922 KAR 002:120
922 KAR 002:230
922 KAR 002:240
922 KAR 002:250

May 5, 2021
201 KAR 023:150

June 2, 2021
201 KAR 002:380
201 KAR 008:505 E
201 KAR 020:065
201 KAR 020:370
201 KAR 020:411
201 KAR 020:660
900 KAR 006:030
900 KAR 006:055
900 KAR 006:060
900 KAR 006:065
900 KAR 006:080
900 KAR 006:090
900 KAR 006:095
900 KAR 006:100
900 KAR 006:105
900 KAR 006:110
900 KAR 006:115
902 KAR 004:150 E
902 KAR 030:210 E
902 KAR 095:040
907 KAR 007:020
922 KAR 001:490 E
922 KAR 001:540
922 KAR 001:580

The following administrative regulation was approved as amended at the Committee meeting pursuant to KRS 13A.320:

902 KAR 045:190

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 28, 2020 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Unless otherwise noted, information contained in these indexes relates only to administrative regulations printed in this, the 48th year of the *Administrative Register of Kentucky*, from July 2021 through June 2022.

Locator Index - Effective Dates **A - 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 "46 Ky.R." or "47 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 **A - 9**

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 **A - 11**

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this *Register* year.

Technical Amendment Index **A - 12**

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 **A- 13**

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 48. 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 46 Ky.R. or 47 Ky.R., please visit our online *Administrative Registers of Kentucky*.

SYMBOL KEY:

* Statement of Consideration not filed by deadline
** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
*** Withdrawn before being printed in Register
IJC Interim Joint Committee
(r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS

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

Regulation Number	Ky.R. Page No.		Effective Date
101 KAR 002:095E	47 Ky.R.	172	1-29-2021
As Amended		2534	5-11-2021
200 KAR 002:006E	47 Ky.R.	1730	1-29-2021
201 KAR 002:410E	47 Ky.R.	1343	11-23-2020
As Amended		1871	2-22-2021
200 KAR 008:505E	47 Ky.R.	1735	1-27-2021
200 KAR 017:110E	48 Ky.R.	5	6-2-2021
201 KAR 035:010E	47 Ky.R.	1872	3-5-2021
Am Comments		2536	5-13-2021
As Amended	48 Ky.R.	15	6-8-2021
201 KAR 035:020E	47 Ky.R.	1874	3-5-2021
Am Comments		2538	5-13-2021
As Amended	48 Ky.R.	16	6-8-2021
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
Replaced		1937	6-3-2021
501 KAR 006:080E	47 Ky.R.	1186	11-2-2020
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
787 KAR 001:360E	47 Ky.R.	2527	5-4-2021
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
810 KAR 002:001E	47 Ky.R.	1900	2-25-2021
810 KAR 003:001E	47 Ky.R.	1903	2-25-2021
810 KAR 004:001E	47 Ky.R.	1905	2-25-2021
810 KAR 005:001E	47 Ky.R.	1908	2-25-2021
810 KAR 006:001E	47 Ky.R.	1912	2-25-2021
810 KAR 006:010E	47 Ky.R.	1916	2-25-2021
810 KAR 006:030E	47 Ky.R.	1919	2-25-2021
811 KAR 001:251E(r)	47 Ky.R.	1923	2-25-2021
902 KAR 002:211E	47 Ky.R.	1533	1-5-2021
Am Comments		2558	4-28-2021
As Amended	48 Ky.R.	18	6-8-2021
Withdrawn			6-11-2021
902 KAR 002:221E	48 Ky.R	7	6-4-2021
902 KAR 004:150E	47 Ky.R.	1925	3-5-2021
902 KAR 020:160E	47 Ky.R.	897	10-13-2020
902 KAR 020:440E	47 Ky.R.	908	10-13-2020
902 KAR 030:210E	47 Ky.R.	1926	3-5-2021
907 KAR 015:070E	47 Ky.R.	915	10-13-2020
907 KAR 015:080E	47 Ky.R.	922	10-13-2020
921 KAR 003:025E			
Resubmitted	47 Ky.R.	1535	1-15-2021
As Amended		2342	4-13-2021
921 KAR 003:026	48 Ky.R.	9	6-11-2021
921 KAR 003:027E	48 Ky.R.	10	6-11-2021
922 KAR 001:490E			
Resubmitted	47 Ky.R.	1737	2-8-2021
Am Comments		2344	4-12-2021
As Amended		2560	5-11-2021
922 KAR 002:415E	47 Ky.R.	1928	3-15-2021
As Amended		2523	4-13-2021

ORDINARY ADMINISTRATIVE REGULATIONS

Regulation Number	Ky.R. Page No.		Effective Date
013 KAR 001:020			
Amended	47 Ky.R.	1797	
As Amended		2565	
013 KAR 004:010			
Amended	47 Ky.R.	1805	
As Amended		2572	
016 KAR 003:060			
Amended	47 Ky.R.	2614	
016 KAR 005:020			
Amended	47 Ky.R.	2616	
016 KAR 009:090			
Amended	47 Ky.R.	2619	
031 KAR 003:010			
Amended	47 Ky.R.	2621	
101 KAR 002:095			
Amended	47 Ky.R.	1807	
As Amended		2573	
103 KAR 001:160	47 Ky.R.	1710	
As Amended		2356	
103 KAR 026:100			
Amended	47 Ky.R.	1610	
As Amended		2357	
103 KAR 026:131	47 Ky.R.	1857	
As Amended	48 Ky.R.	20	
105 KAR 001:270			
Amended	47 Ky.R.	2623	
200 KAR 002:006			
Amended	47 Ky.R.	1811	
200KAR 017:100	48 Ky.R.	215	
201 KAR 001:100			
Amended	47 Ky.R.	1816	
As Amended		2575	
201 KAR 002:040			
Amended	47 Ky.R.	2029	

Regulation Number	46 Ky.R. Page No.		Effective Date
As Amended	48 Ky.R.	22	
201 KAR 002:061			
Amended	47 Ky.R.	2421	
201 KAR 002:171	47 Ky.R.	2179	
As Amended	48 Ky.R.	23	
201 KAR 002:205			
Amended	47 Ky.R.	2031	
As Amended	48 Ky.R.	23	
201 KAR 002:270			
Amended	48 Ky.R.	100	
201 KAR 002:360			
Amended	48 Ky.R.	101	
201 KAR 002:380			
Amended	47 Ky.R.	1422	
Am Comments		2404	
As Amended		2577	6-16-2021
201 KAR 002:390			
Amended	47 Ky.R.	2032	
As Amended	48 Ky.R.	24	
201 KAR 002:420	48 Ky.R.	217	
201 KAR 008:520			
Amended	48 Ky.R.	103	
201 KAR 009:270			
Amended	47 Ky.R.	2424	
201 KAR 009:290	47 Ky.R.	2495	
201 KAR 020:065			
Amended	47 Ky.R.	1819	
As Amended		2578	6-16-2021
201 KAR 020:370			
Amended	47 Ky.R.	1823	
As Amended		2581	6-16-2021
201 KAR 020:411			
Amended	47 Ky.R.	1824	
As Amended		2582	6-16-2021
201 KAR 020:471	48 Ky.R.	218	
201 KAR 020:472	48 Ky.R.	220	
201 KAR 020:474	48 Ky.R.	224	
201 KAR 020:476	48 Ky.R.	227	
201 KAR 020:478	48 Ky.R.	230	
201 KAR 020:506			
Amended	47 Ky.R.	2036	
201 KAR 020:660			
Amended	47 Ky.R.	1827	
As Amended		2584	6-16-2021
201 KAR 021:035			
Amended	48 Ky.R.	105	
201 KAR 021:054			
Amended	48 Ky.R.	106	
201 KAR 021:070			
Amended	48 Ky.R.	108	
201 KAR 021:090			
Amended	48 Ky.R.	109	
201 KAR 021:100			
Amended	48 Ky.R.	110	
201 KAR 022:170			
Amended	47 Ky.R.	1424	6-16-2021
201 KAR 023:070			
Amended	47 Ky.R.	1247	
Am Comments		1744	
As Amended		1933	6-16-2021
201 KAR 023:150	47 Ky.R.	1503	
Am Comments		2012	
As Amended		2357	6-16-2021
201 KAR 026:115			
Amended	47 Ky.R.	2037	
201 KAR 026:121			
Amended	47 Ky.R.	2039	
201 KAR 026:125			
Amended	47 Ky.R.	2041	
201 KAR 026:130			
Amended	47 Ky.R.	2042	
201 KAR 026:155			
Amended	47 Ky.R.	2046	
201 KAR 026:171			
Amended	47 Ky.R.	2048	
201 KAR 026:180			
Amended	47 Ky.R.	2052	
201 KAR 026:185			
Amended	47 Ky.R.	2054	
201 KAR 026:190			
Amended	47 Ky.R.	2056	
201 KAR 026:200			
Amended	47 Ky.R.	2058	
201 KAR 026:230			
Amended	47 Ky.R.	2060	
201 KAR 026:250			
Amended	47 Ky.R.	2063	
201 KAR 026:280			
Amended	47 Ky.R.	2065	
201 KAR 026:290			
Amended	47 Ky.R.	2067	
201 KAR 026:301(r)	47 Ky.R.	2180	
Withdrawn			6-22-2021
201 KAR 026:310			
Amended	47 Ky.R.	2069	
201 KAR 030:040			
Amended	47 Ky.R.	1425	
As Amended		1936	
201 KAR 030:190			
Amended	47 Ky.R.	1428	
201 KAR 032:030			
Amended	47 Ky.R.	1611	
Am Comments		2608	
201 KAR 032:035			
Amended	47 Ky.R.	1614	
201 KAR 032:060			
Amended	47 Ky.R.	1616	
Am Comments		2610	
201 KAR 034:070	47 Ky.R.	2497	
201 KAR 035:010			
Amended	47 Ky.R.	2071	
Am Comments	48 Ky.R.	62	
201 KAR 035:020			
Amended	47 Ky.R.	2073	
Am Comments	48 Ky.R.	64	
201 KAR 035:025			
Amended	47 Ky.R.	2077	
Am Comments	48 Ky.R.	68	
201 KAR 035:040			
Amended	47 Ky.R.	2078	
Am Comments	48 Ky.R.	69	
201 KAR 035:050			
Amended	47 Ky.R.	2082	
Am Comments	48 Ky.R.	73	
201 KAR 035:055			
Amended	47 Ky.R.	2084	
201 KAR 035:070			
Amended	47 Ky.R.	2086	
Am Comments	48 Ky.R.	76	
201 KAR 035:075			
Amended	47 Ky.R.	2091	
Am Comments	48 Ky.R.	80	
201 KAR 035:080			
Amended	47 Ky.R.	2092	
Am Comments	48 Ky.R.	81	
201 KAR 045:130			
Amended	47 Ky.R.	1251	6-16-2021
202 KAR 007:201			
Amended	47 Ky.R.	2428	
202 KAR 007:301			

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Amended	47 Ky.R.	2433	
202 KAR 007:330			
Amended	47 Ky.R.	2439	
202 KAR 007:401			
Amended	47 Ky.R.	2445	
202 KAR 007:540			
Amended	47 Ky.R.	2453	
202 KAR 007:601			
Amended	47 Ky.R.	2455	
301 KAR 001:012			
Amended	48 Ky.R.	112	
301 KAR 001:016			
Amended	48 Ky.R.	113	
301 KAR 001:018			
Amended	48 Ky.R.	117	
301 KAR 001:019			
Amended	48 Ky.R.	119	
301 KAR 001:031			
Amended	48 Ky.R.	120	
301 KAR 001:050			
Amended	48 Ky.R.	122	
301 KAR 001:082			
Amended	48 Ky.R.	123	
301 KAR 001:120			
Amended	48 Ky.R.	124	
301 KAR 001:125			
Amended	48 Ky.R.	125	
301 KAR 001:140			
Amended	48 Ky.R.	128	
301 KAR 001:152			
Amended	48 Ky.R.	130	
301 KAR 001:201			
Amended	47 Ky.R.	2627	
301 KAR 001:210			
Amended	48 Ky.R.	132	
301 KAR 001:400			
Amended	47 Ky.R.	2468	
301 KAR 002:015			
Amended	48 Ky.R.	133	
301 KAR 002:041			
Amended	48 Ky.R.	135	
301 KAR 002:050			
Amended	48 Ky.R.	138	
301 KAR 002:084			
Amended	48 Ky.R.	139	
301 KAR 002:111			
Amended	48 Ky.R.	140	
301 KAR 002:132			
Amended	47 Ky.R.	2632	
301 KAR 002:221			
Amended	47 Ky.R.	1253	
As Amended		1937	6-3-2021
301 KAR 002:228			
Amended	47 Ky.R.	2469	
301 KAR 002:230			
Amended	48 Ky.R.	142	
301 KAR 002:251			
Amended	47 Ky.R.	2637	
301 KAR 002:260			
Amended	48 Ky.R.	144	
301 KAR 002:300			
Amended	47 Ky.R.	2640	
302 KAR 004:010	47 Ky.R.	1505	
As Amended		1938	
302 KAR 022:150			
Amended	47 Ky.R.	1435	
As Amended		1940	
302 KAR 079:011	47 Ky.R,	1314	
Am Comments		2014	
As Amended		2360	
302 KAR 079:012	47 Ky.R.	1321	
Am Comments		2022	
As Amended		2367	
401 KAR 039:060			
Amended	47 Ky.R.	2095	
401 KAR 060:005			
Amended	47 Ky.R.	1443	
As Amended		1947	6-3-2021
401 KAR 061:036			
Amended	47 Ky.R.	1447	
Am Comments		2024	6-3-2021
401 KAR 063:002			
Amended	47 Ky.R.	1449	
As Amended		1950	6-3-2021
501 KAR 006:070			
Amended	47 Ky.R.	1620	
As Amended		2368	
501 KAR 006:080			
Amended	47 Ky.R.	1255	
Am Comment		1748	
601 KAR 001:005			
Amended	47 Ky.R.	2101	
601 KAR 001:113			
Amended	47 Ky.R.	1256	
As Amended		1954	
601 KAR 002:231	47 Ky.R.	475	
601 KAR 002:233	47 Ky.R.	2499	
601 KAR 023:030	47 Ky.R.	1324	
As Amended		1957	
605 KAR 001:030			
Amended	47 Ky.R.	2643	
605 KAR 001:035	47 Ky.R.	2765	
605 KAR 001:130			
Amended	47 Ky.R.	2646	
605 KAR 001:215	47 Ky.R.	2766	
701 KAR 005:081	47 Ky.R.	2505	
701 KAR 005:100			
Amended	47 Ky.R.	2471	
702 KAR 003:060			
Amended	47 Ky.R.	2474	
702 KAR 005:080			
Amended	47 Ky.R.	1454	
As Amended		1957	
702 KAR 007:150	48 Ky.R.	233	
703 KAR 005:070			
Amended	47 Ky.R.	2476	
703 KAR 005:225			
Amended	47 Ky.R.	2478	
703 KAR 005:240			
Amended	47 Ky.R.	2480	
703 KAR 005:270			
Amended	47 Ky.R.	1829	
Am Comments	48 Ky.R.	83	
703 KAR 005:280			
Amended	47 Ky.R.	1458	
Am Comments		2405	
704 KAR 007:121	48 Ky.R.	235	
704 KAR 008:110	47 Ky.R.	1508	
As Amended		1960	
707 KAR 001:340			
Amended	47 Ky.R.	2648	
787 KAR 001:360	47 Ky.R.	2768	
803 KAR 001:005			
Amended	48 Ky.R.	145	
803 KAR 001:025			
Amended	48 Ky.R.	149	
803 KAR 001:060			
Amended	48 Ky.R.	154	
803 KAR 001:063			
Amended	48 Ky.R.	160	

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803 KAR 001:065		
Amended	48 Ky.R. 161	
803 KAR 001:066		
Amended	48 Ky.R. 164	
803 KAR 001:070		
Amended	48 Ky.R. 166	
803 KAR 001:075		
Amended	48 Ky.R. 178	
803 KAR 001:080		
Amended	48 Ky.R. 180	
803 KAR 001:090		
Amended	48 Ky.R. 184	
803 KAR 002:010		
Amended	47 Ky.R. 1261	
As Amended	1960	
803 KAR 002:011	47 Ky.R. 2769	
803 KAR 002:019		
Amended	47 Ky.R. 1622	
As Amended	2369	
803 KAR 002:021		
Amended	47 Ky.R. 1465	
803 KAR 002:041	47 Ky.R. 2770	
803 KAR 002:050		
Amended	47 Ky.R. 1467	
As Amended	2370	
803 KAR 002:060		
Amended	47 Ky.R. 2655	
803 KAR 002:062		
Amended	47 Ky.R. 2658	
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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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337.345	803 KAR 001:005
337.385-337.405	803 KAR 001:005
337.420-337.433	803 KAR 001:025
403.211	921 KAR 001:020
405.430	921 KAR 001:020
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406.011	921 KAR 001:390
406.021	921 KAR 001:390
406.025	921 KAR 001:390
406.035	921 KAR 001:020
406.180	921 KAR 001:390
411.32	806 KAR 017:370
434.757	301 KAR 001:018
434.845	921 KAR 001:020
441.203	806 KAR 017:370
441.206	806 KAR 017:370
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441.258	806 KAR 017:370
7 C.F.R.	921 KAR 003:026E
	921 KAR 003:027E
	921 KAR 003:027
29 C.F.R.	806 KAR 017:260
45 C.F.R.	806 KAR 017:470
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7 U.S.C.	921 KAR 003:026E
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	921 KAR 003:027
26 U.S.C.	921 KAR 001:020
31 U.S.C.	921 KAR 001:020
42 U.S.C.	806 KAR 017:370
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	921 KAR 001:390
45 U.S.C.	803 KAR 001:063

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
201 KAR 002:030	6/23/2021	To be amended, filing deadline 12-23-2022
902 KAR 030:001	6/15/2021	Remain in Effect As Is
902 KAR 030:110	6/15/2021	Remain in Effect As Is
902 KAR 030:120	6/15/2021	Remain in Effect As Is
902 KAR 030:130	6/15/2021	Remain in Effect As Is
902 KAR 030:150	6/15/2021	Remain in Effect As Is
902 KAR 030:160	6/15/2021	Remain in Effect As Is
902 KAR 030:180	6/15/2021	Remain in Effect As Is
902 KAR 030:200	6/15/2021	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 48th 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

None

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