



# ADMINISTRATIVE REGISTER OF KENTUCKY

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

### MEETING NOTICES

The **Administrative Regulation Review Subcommittee** is tentatively scheduled to meet on August 10, 2021, at 1:00 p.m. in room 149 Capitol Annex.

**ARRS Tentative Agenda - 249** [Online agenda updated as needed](#)

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

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

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

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



**Administrative Regulation Review Subcommittee**  
**TENTATIVE Meeting Agenda**  
**Tuesday, August 10, 2021 at 1 p.m.**  
**Annex Room 149**



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

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET**

**Education Professional Standards Board**

**Administrative Certificates**

016 KAR 003:060. School counselor, provisional and standard certificates, all grades.

**Educator Preparation**

016 KAR 005:020. Standards for admission to educator preparation.

**Alternative Routes to Certification**

016 KAR 009:090. University based alternative certification program for teachers of world languages.

**STATE BOARD OF ELECTIONS**

**Statewide Voter Registration**

031 KAR 003:010. Current address of Kentucky registered voters and distribution of voter registration lists.

**FINANCE AND ADMINISTRATION CABINET**

**Kentucky Retirement Systems**

**General Rules**

105 KAR 001:270. Federal tax withholding or direct rollover of funds for eligible distributions.

**Kentucky Infrastructure Authority**

200 KAR 017:110E. Guidelines for Kentucky Infrastructure Authority Drinking Water and Wastewater Grant Program. (Filed with Ordinary)

**BOARDS AND COMMISSIONS**

**Board of Medical Licensure**

201 KAR 009:290. Interpretation and Application of KRS 311.901(1) and KRS 311.903(4). (Not Amended After Comments)

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM**

**Board of Emergency Medical Services**

202 KAR 007:201. Emergency Medical Responders. (Amended After Comments)

202 KAR 007:301. Emergency Medical Technician. (Amended After Comments)

202 KAR 007:330. Advanced Emergency Medical Technician. (Amended After Comments)

202 KAR 007:401. Paramedics. (Amended After Comments)

202 KAR 007:540. Emergency Medical Services data collection, management, and compliance. (Amended After Comments)

202 KAR 007:601. Training, education, and continuing education. (Amended After Comments)

**TOURISM, ARTS AND HERITAGE CABINET**

**Department of Fish and Wildlife Resources**

**Fish**

301 KAR 001:201. Taking of fish by traditional fishing methods.

**Game**

301 KAR 002:132. Elk hunting seasons, permits, zones, and requirements.

301 KAR 002:251. Hunting and trapping seasons and limits for furbearers.

301 KAR 002:300. Black bear seasons and requirements.

**TRANSPORTATION CABINET**

**Department of Vehicle Regulation**

**Administration**

601 KAR 002:233. Kentucky Ignition Interlock Program; participants and device providers. (Filed with Emergency) (Amended After Comments)

**Motor Vehicle Commission**

605 KAR 001:030. Applications.

605 KAR 001:035. Facilities requirements.

605 KAR 001:130. Procedures.

605 KAR 001:215. Licensing fees. (Filed with Emergency)

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET**

**Board of Education**

**Office of Chief State School Officer**

701 KAR 005:100. School-based decision making guidelines. (Deferred from July)

**Exceptional and Handicapped Programs**

707 KAR 001:340. Procedural safeguards and state complaint procedures.

**LABOR CABINET**

**Office of Unemployment Insurance**

787 KAR 001: 360. Overpayment waivers. (Filed with Emergency)

**Department of Workplace Standards**

**Occupational Safety and Health**

803 KAR 002:011. Repeal of 803 KAR 002:018.

803 KAR 002:041. Repeal of 803 KAR 002:040.

803 KAR 002:060. Employer responsibility to post notice.

803 KAR 002:062. Employer responsibility when employee is exposed to toxic substances or harmful physical agents.

803 KAR 002:070. Inspections.

803 KAR 002:110. Employer and employee representatives.

803 KAR 002:122. Abatement.

803 KAR 002:125. Posting of citation.

803 KAR 002:127. Failure to correct violation.

803 KAR 002:130. Informal conference.

803 KAR 002:140. Contest of citation.

803 KAR 002:170. Variance and interim order.

803 KAR 002:181. Recordkeeping and reporting occupational injuries and illnesses. (Filed with Emergency)

803 KAR 002:220. Refusal to work when dangerous condition exist.

803 KAR 002:230. Pay during inspection activity.

803 KAR 002:250. Discrimination.

803 KAR 002:306. Occupational health and environmental control.

803 KAR 002:308. Personal protective equipment.

803 KAR 002:310. Medical services and first aid.

803 KAR 002:325. General industry standards.

803 KAR 002:423. Stairways and ladders.

803 KAR 002:435. Supply lines in excess of 600 volts.

803 KAR 002:440. Cranes and derricks in construction.

**Department of Workers' Claims**

803 KAR 025:021. Individual self-insurers. (Not Amended After Comments)

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

803 KAR 025:165. Electronic data interchange vendor approval.

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)

803 KAR 025:190. Utilization review – Medical Bill Audit – Medical Director – Appeal of Utilization Review Decisions. (Amended After Comments)

803 KAR 025:220. Guaranty funds. (Not Amended After Comments)

**PUBLIC PROTECTION CABINET**

**Department of Insurance**

**Fees and taxes**

806 KAR 004:010. Fees of the Department of Insurance.

**Trade Practices and Frauds**

806 KAR 012:095. Unfair claims settlement practices for property and casualty insurance.

**Rates and Rating Organizations**

806 KAR 013:150. Property and casualty rate and rule filings.

**Life Insurance and Annuity Contracts**

806 KAR 015:090. Notice of rights as an owner of a life insurance policy.

**Health Insurance Contracts**

806 KAR 017:070. Filing procedures for health insurance rates.

806 KAR 017:085. Minimum standards for short-term nursing home insurance policies.

806 KAR 017:100. Certificate of filing for provider-sponsored networks.

806 KAR 017:150. Health benefit plan rate filing requirements.

806 KAR 017:230. Requirements regarding medical director's signature on health care benefit denials.

806 KAR 017:511. Repeal of 806 KAR 017:005, 806 KAR 017:095, 806 KAR 017:170, 806 KAR 017:180, and 806 KAR 017:510.

806 KAR 017:580. Definition of health care provider.

## VOLUME 48, NUMBER 2– AUGUST 1, 2021

### **Workers' Compensation Self-Insured Groups**

806 KAR 052:030. Workers' compensation self-insured group rate, rule and for filings.

### **ENERGY AND ENVIRONMENT CABINET**

#### **Public Service Commission**

##### **Utilities**

807 KAR 005:015. Access and attachments to utility poles and facilities.

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

#### **Department for Public Health**

##### **Communicable Diseases**

902 KAR 002:221E. Repeal of 902 KAR 002:220.

#### **Department for Medicaid Services**

##### **Payments and Services**

907 KAR 003:005. Coverage of physicians' services. (Not Amended After Comments) (Deferred from July)

907 KAR 003:010. Reimbursement for physicians' services. (Amended After Comments) (Deferred from July)

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

##### **Substance Abuse**

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

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

##### **Supplemental Nutrition Assistance Program**

921 KAR 003:026E. Repeal of 921 KAR 003:025.

921 KAR 003:027E. Technical requirements.

921 KAR 003:060. Administrative disqualification hearings and penalties.

##### **Child Welfare**

922 KAR 001:300. Standards for child-caring facilities.

922 KAR 001:380. Standards for emergency shelter child-caring facilities.

922 KAR 001:390. Standards for residential child-caring facilities.

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

#### **BOARDS AND COMMISSIONS**

##### **Board of Medical Licensure**

201 KAR 009:270. Professional standards for prescribing, dispensing, or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone. (Comments Received; SOC ext. due 08-13-2021)

##### **Board of Licensure for Professional Art Therapists**

201 KAR 034:070. Inactive status. (Comments Received; SOC ext. due 08-13-2021)

#### **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 Medicaid Services**

##### **Payments and Services**

907 KAR 003:060. Ambulance provider assessment program. (Comments Received; SOC ext. due 08-13-2021)

*\*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  
16 KAR 2:220 E

This emergency administrative regulation is being promulgated in order to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. During the 2021 legislative session, the General Assembly passed House Bill 163 and the Governor signed it into law on April 5, 2021. This legislation, which is slated to become effective on June 29, 2021, amends KRS 161.030 to create an emeritus certificate and gives the Education Professional Standards Board (EPSB) the authority to promulgate administrative regulations establishing the requirements to receive an emeritus certificate. As there are only eighty-five (85) days between the Governor signing this bill into law and its effective date, the ordinary administrative regulation process would not allow the EPSB time to promulgate an ordinary administrative regulation to be effective when the statutory change goes into effect. Therefore, the emergency regulation is necessary to establish the requirements for retired educators to receive an emeritus certificate when the statutory amendment goes into effect. This emergency administrative regulation will be replaced by an ordinary administrative regulation because the emeritus certificate is expected to remain in statute. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor  
JACQUELINE COLEMAN, Secretary

EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Education Professional Standards Board  
(New Emergency Administrative Regulation)

16 KAR 2:220E. Emeritus certificate.

EFFECTIVE: June 25, 2021

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.020, 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board (EPSB) to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030(10) creates an emeritus certificate and authorizes the EPSB to promulgate administrative regulations setting forth the requirements for that certificate. This administrative regulation establishes the requirements for the emeritus certificate.

Section 1. Issuance. (1) A candidate shall be eligible for issuance of the emeritus certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and submission of the following:

(a) Documentation from a state department of education or state agency indicating that the applicant is a retired teacher;

(b) Twenty-five (25) dollars paid through electronic payment on the EPSB's Web site; and

(c) Proof of:

1. A Kentucky teaching or administrative certificate that was valid at the time of the applicant's retirement; or

2. An out-of-state teaching or administrative certificate that was valid at the time of the applicant's retirement and aligns with the requirements for issuance of a corresponding Kentucky certificate as outlined in 16 KAR Chapter 2 or 3.

(2) The emeritus certificate shall note the areas of certification that the applicant held at retirement.

(3) Applicants for the emeritus certificate shall not be subject to the recency requirements in 16 KAR 4:080.

Section 2. Validity. (1) The emeritus certificate shall be issued for a ten-year (10) period.

(2) The certificate shall be valid for substitute teaching and employment in the noted certification area as allowed by KRS 161.605 and the administrative regulations of the Kentucky Teachers' Retirement System.

Section 3. Renewal. (1) A candidate shall be eligible for one renewal of the emeritus certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and submission of the following:

(a) Twenty-five (25) dollars paid through electronic payment on the EPSB's Web site; and

(b) If the emeritus certificate notes administrative certification, documentation of:

1. Qualifying employment; or

2. Forty-two (42) hours of approved training selected from programs approved for the Kentucky Effective Instructional Leadership Training Program; or

(c) If the emeritus certificate notes teacher certification, documentation of:

1. Qualifying employment; or

2. Sixty-four (64) hours of professional development that meets the requirements of KRS 156.095.

(2) Qualifying employment shall be thirty (30) days of employment per academic year for a minimum of two (2) academic years at:

(a) A public school or a regionally or nationally accredited nonpublic school in a certified position;

(b) The Kentucky Department of Education, or other state or federal educational agency with oversight for elementary and secondary education; or

(c) A regionally or nationally accredited institution of higher education in the area of educator preparation or the academic subject area for which the educator holds certification.

(3) The renewal requirements shall be completed by September 1 of the year of expiration of the certificate.

LISA RUDZINSKI, Board Chair

APPROVED BY AGENCY: June 24, 2021

FILED WITH LRC: June 25, 2021 at 11:01 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, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 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 Allen, Interim General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

## VOLUME 48, NUMBER 2– AUGUST 1, 2021

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for the emeritus certificate.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the standards for the emeritus certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public-school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030(10) requires the EPSB to set the requirements for the emeritus certificate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the requirements for application, issuance and renewal of the emeritus certificate.

(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:

(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: 173 Kentucky school districts and retired educators seeking emeritus certification.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Retired educators seeking emeritus certification will have to apply with the Education Professional Standards Board and provide the required documentation and fee. School districts will not have to take any action to comply.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The applicant for the emeritus certificate will have to pay a fee of twenty-five (\$25) dollars. Certification fees are typically set in 16 KAR 4:040, and the cost of a five-year professional certificate is eighty-five (\$85) dollars. However, in recognition of the fact that these educators are retired, the Education Professional Standards Board is charging a reduced fee of twenty-five (\$25) dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Retired educators will be issued an emeritus certificate. This could result in more retired educators maintaining certification to substitute or accept employment in the public schools as allowed by the Kentucky Teachers' Retirement System.

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

(a) Initially: The initial cost to implement this regulation will be the creation of the new certificate and certificate code in the system, training for staff on the standards and requirements for this new certificate, and the time and resources for processing the applications and issuing the emeritus certificate. This is a new certificate, and it is unknown how many applications will be received; however, it is expected that this will be offset by the certification fees collected.

(b) On a continuing basis: The continuing cost to implement this regulation will be the staff time and resources for processing

applications. This is a new certificate, and it is unknown how many applications will be received; however, it is expected that this will be offset by the certification fees collected.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Though certification fees are typically established by 16 KAR 4:040, in recognition of the applicants' status as retired educators this administrative regulation establishes a reduced fee for the emeritus certificate of twenty-five (\$25) dollars.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board and public-school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, KRS 161.028, KRS 161.030.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Each applicant for the emeritus certificate will have to pay a twenty-five (\$25) dollar fee for issuance. This is a new certificate, so it is unknown how many applications will be received. Certification fees are a part of the Education Professional Standards Board's restricted funds, that in accordance with KRS 161.028 (1)(q) can be used towards the costs of issuance, reissuance, and renewal of certificates, and the costs associated with disciplinary action against a certificate holder.

(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? Each applicant for the emeritus certificate will have to pay a twenty-five (\$25) dollar fee for issuance. Certification fees are a part of the Education Professional Standards Board's restricted funds, that in accordance with KRS 161.028 (1)(q) can be used towards the costs of issuance, reissuance, and renewal of certificates, and the costs associated with disciplinary action against a certificate holder. This is a new certificate and it is unknown how many applications will be received. Each certificate will be valid for ten-years, so applicants will not reapply annually.

(c) How much will it cost to administer this program for the first year? For the first year, cost will be the creation of the new certificate and certificate code in the system, training for staff on the standards and requirements for this new certificate, and the time and resources for processing the applications and issuing the emeritus certificate. As this is a new certificate, we are unable to determine the number of applications that will be received. It is expected that the increased restricted fund from the certification fees collected for these applications will offset the costs.

(d) How much will it cost to administer this program for subsequent years? For subsequent years, the cost will be the staff time and resources for processing the applications and issuing the emeritus certificates. This will vary depending on the number of applications and certificates, and as this is a new certificate, we are unable to determine that number. However, it is expected that the increased restricted funds from the certification fees collected for these applications will offset the costs.

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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: At this time, it is unknown how many retired educators will seek an emeritus certificate. Some retired educators do not wish to maintain certification upon retirement. Currently, if an educator wishes to keep their certificate current after retirement they can apply for renewal of the full certificate, which carries an eighty-five (\$85) dollar fee or they can apply for a five-year substitute certificate for fifteen (\$15) dollars. The emeritus certificate will have the same rights as the full certificate, for a ten-year period for a reduced fee of twenty-five (\$25) dollars. The certification fees collected for these applications will offset the costs of issuance.

### STATEMENT OF EMERGENCY 16 KAR 2:230E

This emergency administrative regulation is being promulgated in order to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. During the 2021 legislative session, the General Assembly passed House Bill 163 and the Governor signed it into law on April 5, 2021. This legislation, which is slated to become effective on June 29, 2021, amends KRS 161.030 to create an exception certificate and gives the Education Professional Standards Board (EPSB) the authority to promulgate administrative regulations establishing the requirements to receive an exception certificate. As there are only eighty-five (85) days between the Governor signing this bill into law and its effective date, the ordinary administrative regulation process would not allow the EPSB time to promulgate an ordinary administrative regulation to be effective when the statutory change goes into effect. Therefore, the emergency regulation is necessary to establish the requirements for educators to receive an exception certificate when the statutory amendment goes into effect. This emergency administrative regulation will be replaced by an ordinary administrative regulation because the exception certificate is expected to remain in statute. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor

JACQUELINE COLEMAN, Secretary

### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Education Professional Standards Board (New Emergency Administrative Regulation)

#### 16 KAR 2:230E. Exception certificate.

EFFECTIVE: June 25, 2021

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.020, 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board (EPSB) to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030(10) creates an exception certificate and authorizes the EPSB to promulgate administrative regulations setting forth the requirements for that certificate. This administrative regulation establishes the requirements for the exception certificate.

Section 1. (1) A candidate shall be eligible for issuance of the one-time exception certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and submission of the following documentation:

(a) Rank I or Rank II status obtained prior to the expiration of the applicant's certificate; and

(b) Three years of verified classroom teaching experience at a regionally- or nationally accredited nonpublic school.

(2) The exception certificate shall reissue any expired certification that the applicant previously held, other than a

certificate that expired for failure to complete the preparation program.

(3) Reissued teaching certificates shall be subject to the renewal requirements established in 16 KAR 4:060.

(4) Reissued administrative certificates shall be subject to the renewal requirements established in 16 KAR Chapter 3.

LISA RUDZINSKI, Board Chair

APPROVED BY AGENCY: June 24, 2021

FILED WITH LRC: June 25, 2021 at 11:01 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on August 22, 2021, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 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 Allen, Interim General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for the one-time exception certificate.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the standards for the application and issuance for the one-time exception certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public-school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030(10) requires the EPSB to set the requirements for the one-time exception certificate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the requirements for application and issuance of the one-time exception certificate.

(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:

(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: 173 Kentucky school districts and Rank I/II educators with an expired certificate who were unable to meet the requirements for renewal or reissuance.

(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

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question (3) will have to take to comply with this administrative regulation or amendment: Applicants for the one-time exception certificate will have to complete an application and provide the required documentation. School districts will not have to take any action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no fee established by the Education Professional Standards Board in this regulation. 16 KAR 4:040 sets the certification fees and applicants will have to pay the established fee that corresponds to the certificate. There is no cost for school districts.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will be issued a one-time exception certificate that reissues their previously expired certificates. School districts will have access to a larger pool of certified candidates.

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

(a) Initially: The initial cost to implement this regulation will be the creation of the new certificate and certificate code in the system, training for staff on the standards and requirements for this new certificate, and the time and resources for processing the applications and issuing the exception certificate. This is a new certificate, and it is unknown how many applications will be received; however, it is expected that this will be offset by the certification fees collected.

(b) On a continuing basis: The continuing cost to implement this regulation will be the staff time and resources for processing applications. This is a new certificate, and it is unknown how many applications will be received; however, applicants will only be entitled to one issuance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Certification fees collected pursuant to 16 KAR 4:040.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Certification fees are established by 16 KAR 4:040. No additional fees are established by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board and public-school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, KRS 161.028, KRS 161.030.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Each applicant for the certificate will have to pay the certification fee established in 16 KAR 4:040. This is a new certificate, so it is unknown how many applications will be received. Certification fees are a part of the Education Professional Standards Board's restricted funds, that in accordance with KRS 161.028 (1)(q) can be used towards the costs of issuance, reissuance, and renewal of certificates, and the costs associated with disciplinary action against a certificate holder.

(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? Each applicant for the certificate will have to pay the certification fee

established in 16 KAR 4:040. This is a new certificate, so it is unknown how many applications will be received. Certification fees are a part of the Education Professional Standards Board's restricted funds, that in accordance with KRS 161.028 (1)(q) can be used towards the costs of issuance, reissuance, and renewal of certificates, and the costs associated with disciplinary action against a certificate holder.

(c) How much will it cost to administer this program for the first year? For the first year, cost will be the creation of the new certificate and certificate code in the system, training for staff on the standards and requirements for this new certificate, and the time and resources for processing the applications and issuing the one-time exception certificate. As this is a new certificate, we are unable to determine the number of applications that will be received. It is expected that the increased restricted fund from the certification fees collected for these applications will offset the costs.

(d) How much will it cost to administer this program for subsequent years? For subsequent years, the cost will be the staff time and resources for processing the applications and issuing the one-time exception certificates. This will vary depending on the number of applications and certificates, and as this is a new certificate, we are unable to determine that number. However, it is expected that the increased restricted funds from the certification fees collected for these applications will offset the costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: At this time, it is unknown how many educators will seek a one-time exception certificate. Applicants will be required to pay the certification fee established in 16 KAR 4:040. The certification fees collected for these applications will offset the costs of issuance.

### STATEMENT OF EMERGENCY 31 KAR 4:195E

This emergency administrative regulation is necessary following the General Assembly's passage of House Bill 574 in the 2021 regular legislative session, enacted in Kentucky Acts Chapter 197, effective June 29, 2021. The Kentucky Constitution requires free and fair elections; Chapter 197 mandates that the State Board of Elections promulgate certain new administrative regulations to help ensure that this requirement is met. Though there are no regularly scheduled elections in 2021, a special election could be required at any time after the effective date of June 29, 2021. This administrative regulation is being filed on an emergency basis pursuant to KRS 13A.190(1)(a)(3) in order to guarantee that should a special election become necessary after June 29, 2021, the new administrative regulations required by Chapter 197 are in place. This emergency administrative regulation is temporary in nature and will be replaced by an ordinary administrative regulation as the regulations required under Chapter 197 will be statutorily required in perpetuity, absent any further action from the General Assembly. The companion ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor  
JARED DEARING, Director

### STATE BOARD OF ELECTIONS (New Emergency Administrative Regulation)

**31 KAR 4:195E. Consolidation of precincts and precinct election officers.**

EFFECTIVE: June 23, 2021

RELATES TO: KRS 117.066

STATUTORY AUTHORITY: KRS 117.015(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to

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promulgate administrative regulations necessary to properly carry out its duties. KRS 117.066(3) requires the State Board of Elections to promulgate administrative regulations to provide for a form on which a county board of elections may petition the State Board of Elections to allow for the consolidation of precincts and the consolidation of precinct election officers at any voting location where voters of more than one (1) precinct vote. This administrative regulation establishes that form.

Section 1. A county board of elections shall petition the State Board of Elections to allow the consolidation of precincts and the consolidation of precinct election officers at any voting location where voters of more than one (1) precinct vote, by filing with the State Board of Elections, the "Petition to Consolidate Precincts and Precinct Election Officers" Form SBE 74 no later than ninety (90) days before a primary or general election, or ten (10) days after a proclamation is issued under KRS 118.710 or 118.720, or a writ of election is issued under KRS 118.730. The State Board of Elections shall reserve the right to request, at any time, from any county, a resubmission of any petition to consolidate precincts and precinct election officers.

Section 2. Incorporated by Reference. (1) Petition to Consolidate Precincts and Precinct Election Officers, Form SBE 74, 06/2021, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JARED DEARING, Executive Director

APPROVED BY AGENCY: June 23, 2021

FILED WITH LRC: June 23, 2021 at 10:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this temporary emergency administrative regulation shall be held on August 31, 2021, at 10:00 a.m. ET, at the Office of the State Board of Elections. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 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: Taylor Brown, 140 Walnut Street, Frankfort, Kentucky 40601, Phone: (502) 782-9499, Email: TaylorA.Brown@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the form used by county board of elections to petition the State Board of Elections to allow the consolidation of precincts and the consolidation of precinct officers at any voting location where voters of more than one (1) precinct vote, as required by KRS 117.066(3).

(b) The necessity of this administrative regulation: This administrative regulation is necessary given that Kentucky Acts Chapter 197 requires the State Board to promulgate new administrative regulations under KRS 117.066

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the mandates of KRS 117.066(3),

as amended by Kentucky Acts Chapter 197.

(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:

(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:

This is a new administrative regulation.

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

This administrative regulation will affect all county boards of election that wish to consolidate precincts and precinct election officers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. To comply with this administrative regulation, a county board of elections will need to complete and submit a form to the State Board of Elections.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will cost only the amount necessary to print a standard form and transmit it to the State Board through conventional means.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit county boards of election by standardizing the procedure by which precincts and precinct election officers are consolidated.

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

(a) Initially: The cost of the implementation of this administrative regulation for the State Board of Elections will be minimal as it will require only the creation of the new Form SBE 74.

(b) On a continuing basis: The only continuing cost will be the price associated with printing any copies of the Form SBE 74 that are necessary.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections' administrative budget will be used in the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Implementation of this administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

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

(9) TIERING: Is tiering applied? Tiering is not used in this administrative regulation, as a desired result of the promulgation of this administrative regulation is uniform procedures for the administration of elections throughout all of the counties in the Commonwealth.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? At the state level, the State Board of Elections will be impacted by this administrative regulation. At the local level, all local boards of elections will be impacted by this administrative regulation.

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(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS117.066(3), as amended by Kentucky Acts Chapter 197, requires and authorizes the actions 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.

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

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

(c) How much will it cost to administer this program for the first year? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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

#### 31 KAR 4:200E

This emergency administrative regulation is necessary following the General Assembly's passage of House Bill 574 in the 2021 regular legislative session, enacted in Kentucky Acts Chapter 197, effective June 29, 2021. The Kentucky Constitution requires free and fair elections; Chapter 197 mandates that the State Board of Elections promulgate certain new administrative regulations to help ensure that this requirement is met. Though there are no regularly scheduled elections in 2021, a special election could be required at any time after the effective date of June 29, 2021. This administrative regulation is being filed on an emergency basis pursuant to KRS 13A.190(1)(a)(3) in order to guarantee that should a special election become necessary after June 29, 2021, the new administrative regulations required by Chapter 197 are in place. This emergency administrative regulation is temporary in nature and will be replaced by an ordinary administrative regulation as the regulations required under Chapter 197 will be statutorily required in perpetuity, absent any further action from the General Assembly. The companion ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor

JARED DEARING, Director

### STATE BOARD OF ELECTIONS (New Emergency Administrative Regulation)

**31 KAR 4:200E. Chain of custody for records during an election contest.**

EFFECTIVE: June 23, 2021

RELATES TO: KRS 120.205, 120.215

STATUTORY AUTHORITY: KRS 117.015(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry

out its duties. KRS 120.205 and KRS 120.215 require the State Board of Elections to promulgate administrative regulations to provide for a form on which documents any individuals transporting all voting equipment, ballots, boxes, precinct rosters, and other voting records related to an election contest involving an election of a Governor and Lieutenant Governor or a member of the General Assembly. This administrative regulation establishes that form.

Section 1. In the event that a board is established under KRS 120.205 or KRS 120.215 to try a contested election of a Governor and Lieutenant Governor or a member of the General Assembly, the possession of all voting equipment, ballots, boxes, precinct rosters, and any other voting records sent for by the board shall not transfer unless documented in writing on Form SBE 75, "Election Contest Chain-of-Custody."

Section 2. Incorporated by Reference. (1) Election Contest Chain-of-Custody, Form SBE 75, 06/2021, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JARED DEARING, Executive Director

APPROVED BY AGENCY: June 23, 2021

FILED WITH LRC: June 23, 2021 at 10:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this temporary emergency administrative regulation shall be held on August 31, 2021, at 10:00 a.m. ET, at the Office of the State Board of Elections. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 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: Taylor Brown, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the form which documents any individuals transporting all voting equipment, ballots, boxes, precinct rosters, and other voting records related to an election contest involving an election of a Governor and Lieutenant Governor or a member of the General Assembly, as required by KRS 120.205 and KRS 120.215.

(b) The necessity of this administrative regulation: This administrative regulation is necessary given that Kentucky Acts Chapter 197 requires the State Board to promulgate new administrative regulations under KRS 120.205 and KRS 120.215.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the mandates of KRS 120.205 and KRS 120.215, as amended by Kentucky Acts Chapter 197.

(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:

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(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:

This is a new administrative regulation.

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

This administrative regulation will affect those involved in the administration of an election contest involving an election of a Governor and Lieutenant Governor or a member of the General Assembly

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. To comply with this administrative regulation, those transporting election materials will need to document themselves on a standardized form anytime the materials are transferred.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will cost only the amount necessary to print a standardized form through conventional means.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit those involved in administering an election contest by providing the complete history of the movement of any related election materials.

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

(a) Initially: The cost of the implementation of this administrative regulation for the State Board of Elections will be minimal as it will require only the creation of the new Form SBE 75.

(b) On a continuing basis: The only continuing cost will be the price associated with printing any copies of the Form SBE 75 that are necessary.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections' administrative budget will be used in the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Implementation of this administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

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

(9) TIERING: Is tiering applied? Tiering is not used in this administrative regulation, as a desired result of the promulgation of this administrative regulation is uniform procedures for the administration of elections throughout all of the counties in the Commonwealth.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The State Board of Elections and the General Assembly will be impacted by this administrative regulation, as well as any law enforcement agency requested to transport the election materials required for the contest.

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

regulation. KRS 120.205 and KRS 120.215, as amended by Kentucky Acts Chapter 197, require and authorize the actions 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.

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

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

(c) How much will it cost to administer this program for the first year? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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

#### 31 KAR 5:025E

This emergency administrative regulation is necessary following the General Assembly's passage of House Bill 574 in the 2021 regular legislative session, enacted in Kentucky Acts Chapter 197, effective June 29, 2021. The Kentucky Constitution requires free and fair elections; Chapter 197 mandates that the State Board of Elections promulgate certain new administrative regulations to help ensure that this requirement is met. Though there are no regularly scheduled elections in 2021, a special election could be required at any time after the effective date of June 29, 2021. This administrative regulation is being filed on an emergency basis pursuant to KRS 13A.190(1)(a)(3) in order to guarantee that should a special election become necessary after June 29, 2021, the new administrative regulations required by Chapter 197 are in place. This emergency administrative regulation is temporary in nature and will be replaced by an ordinary administrative regulation as the regulations required under Chapter 197 will be statutorily required in perpetuity, absent any further action from the General Assembly. The companion ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor

JARED DEARING, Director

### STATE BOARD OF ELECTIONS

#### (New Emergency Administrative Regulation)

#### 31 KAR 5:025E. Ballot standards and election security.

EFFECTIVE: June 23, 2021

RELATES TO: KRS 117.001, 117.085, 117.086, 117.087, 117.145, 117.225, 117.228

STATUTORY AUTHORITY: KRS 117.015(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. Several Kentucky Revised Statutes require the State Board of Elections to promulgate administrative regulations that

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provide for measures that establish standards for the ballots used during elections, as well as, measures that ensure that votes cast during an election are done so in a free, fair, and secure manner. This administrative regulation provides for those measures.

Section 1. In addition to the requirements for printed ballots outlined in KRS 117.145, ballots caused to be printed by the county clerk of each county shall meet quality and size standards specific to the voting systems certified by both the State Board of Elections and the United States Election Assistance Commission.

Section 2. The outer envelope of all mail-in absentee ballots shall bear a barcode or other label that is unique to the individual voter and capable of being read by an electronic optical scanner. The unique barcode or label for each mail-in absentee ballot outer envelope shall be issued by the State Board of Elections.

Section 3. Upon the time of certification of each candidate and each question to be voted upon, all printed paper ballots shall be secured by the county clerk of each county, under lock and key, in an area under the direct control of the county clerk and approved by the county board of elections. The possession of all printed ballots shall be accounted for on SBE Form 76, "Ballot Accountability Statement." Upon the need for paper ballots to be printed at a county clerk's office, an accounting of the printed ballots shall be made on either the SBE Form 76, "Ballot Accountability Statement" or by the printing equipment. Upon the transfer of ballots from the area under the direct control of the county clerk to a polling location, the transfer shall be noted on the SBE Form 76, "Ballot Accountability Statement." Beginning with the casting of ballots during the period described in KRS 117.085(2), each voted ballot shall remain in a locked and sealed receptacle, until the conclusion of the period described in KRS 117.295(1). At the conclusion of each day of voting, an accounting of the number of all voted, unvoted, and spoiled ballots shall be recorded on the SBE Form 76, "Ballot Accountability Statement." All ballots and election materials not secured in an area under the direct control of the county clerk after the close of polls shall be secured on location by the county sheriff, in coordination with the county board of elections, from the time described in KRS 117.085(2) until the conclusion of voting on the day of an election. As mail-in absentee ballots are received by county clerks, they shall have their unique barcode or label scanned. Upon each mail-in absentee ballot being processed, the unique barcode or label shall be scanned again. If a mail-in absentee ballot is found to be without the need for a signature cure, or a mail-in absentee ballot has been returned along with a completed SBE Form 77, "Missing or Discrepant Mail-in Absentee Signature," the ballot shall be recorded into an optical scanner, to be deposited in a locked and sealed receptacle for the period described in KRS 117.295(1). Any completed SBE Form 76, "Ballot Accountability Statement" shall be turned over to the Commonwealth's Attorney along with any other materials required under KRS 117.365.

Section 4. Any voter who is disabled may request a mail-in absentee ballot via an online accessible ballot portal which shall conform to web accessible design standards as set forth by the W3C Web Accessibility Initiative.

Section 5. Upon receipt of a valid mail-in ballot request, through the online request portal or other valid request method, the request of the voter shall be noted in the Voter Registration System, and reflected in the electronic pollbooks used by precinct election officers. Should a voter noted to have requested a mail-in absentee ballot appear at a polling location in order to vote in-person, the precinct election officer shall communicate with the county clerk, who shall make a determination as to whether the requested mail-in absentee ballot has been completed and returned as a cast ballot by the voter. If the mail-in absentee ballot is found to have been completed and returned as a cast ballot, the voter shall not be permitted to cast an in-person vote. If the mail-in absentee ballot is found not to have been completed and returned as a cast ballot and the ballot has been returned to the county clerk

no later than seven (7) days prior to the date of the election as required by KRS 117.085(11), the county clerk shall immediately cancel the issued ballot in the Voter Registration System and allow the voter to cast an in-person ballot after the voter completes Form SBE 32, "Oath of Voter," copies of which shall be forwarded to the Commonwealth's Attorney.

Section 6. A voter, or an individual identified by KRS 117.0861(1), may deliver a mail-in absentee ballot to the office of the county clerk in the county where the voter is registered, or to a secure drop-off location if one is maintained by the county clerk in the county where the voter is registered, rather than mailing the ballot via the United States Postal Service. Any county choosing to use a receptacle for ballot drop-off other than a drop-box provided by the State Board of Elections, must formally seek the State Board of Elections' approval of the receptacle before any ballot shall be allowed to be deposited inside. Any county choosing to utilize a drop-off receptacle, including those provided by the State Board of Elections, shall inform the State Board of Elections of the number of receptacles being used, the type of each receptacle being used, and the location of each drop-off location. Any receptacle located outside a County Clerk's Office shall be placed in a well-lit, easily accessible location, be bolted down, and be under video surveillance at all times. Any drop-box located inside, shall be under direct supervision of the staff of the county clerk at all times that it is accessible to the public. All drop-boxes used for the receipt of ballots shall be clearly marked as for use by voters in the election, so as to differentiate the drop-box from any other that may be in use in the area. Any other non-elections related drop-box in use by a county clerk for any other official business shall clearly indicate that the other drop-box is not for the return of election material. Each county clerk utilizing one or more ballot drop-off receptacle shall empty each receptacle at least once each business day of the county clerk's office, and secure the absentee ballots therein in a manner consistent with KRS 117.086(7); however, county clerks shall empty receptacles more frequently than daily, as needed, so as to reasonably accommodate the volume of voter-delivered absentee ballots.

Section 7. After the receipt of a mail-in absentee ballot by the county clerk and the examination of the signatures located on the outer envelope and the detachable flap, as well as, the voter's signature of record, if a signature match cannot be made, the county board of elections, central counting board, or the county clerk shall make a reasonable effort to contact the voter, which shall, at minimum, include the mailing of Form SBE 77, "Missing or Discrepant Mail-in Absentee Signature," to provide notice to the voter that they may cure their signature before the closing of the polls on the day of the election. Upon the county board of elections, central counting board, or the county clerk noting the need for a signature cure, the ballot shall be noted in the Voter Registration System, which shall prompt the facilitation of the printing of the SBE 77. The State Board of Elections shall facilitate the printing of the SBE 77 on behalf of the counties with a state-approved vendor, the cost of which shall be borne by the county required to contact the voter.

Section 8. A voter unable to provide proof of identification as required under KRS 117.225, and as defined under KRS 117.001, shall meet the requirements of KRS 117.228(1)(c) by executing SBE Form 71, "Voter Affirmation Form." A voter personally known to an election officer may cast a ballot in accordance with KRS 117.228(4) upon the election officer executing SBE Form 72, "Election Officer Affirmation Form." Both the SBE 71 and SBE 72 shall be forwarded to the Commonwealth's Attorney following the election.

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

- (a) "Oath of Voter," SBE Form 32, 06/2021;
- (b) "Ballot Accountability Statement," Form SBE 76, 06/2021;
- (c) "Missing or Discrepant Mail-in Absentee Signature," Form SBE 77, 06/2021;



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(d) “Voter Affirmation Form,” Form SBE 71, 06/2021;

(e) “Election Officer Affirmation Form” Form 72, 06/2021;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JARED DEARING, Executive Director

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this temporary emergency administrative regulation shall be held on August 31, 2021, at 10:00 a.m. ET, at the Office of the State Board of Elections. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 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:** Taylor Brown, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for the ballots used during elections, as well as, measures that ensure that votes cast during an election are done so in a free, fair, and secure manner.

(b) The necessity of this administrative regulation: This administrative regulation is necessary given that Kentucky Acts Chapter 197 requires the State Board to promulgate new administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the mandates of several of the Kentucky Revised Statutes amended by Kentucky Acts Chapter 197.

(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:

(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: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect voters of the Commonwealth, county clerks, and the State Board of Elections.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. To comply with this administrative regulation, voters may need to complete a form or follow absentee ballot delivery instructions, while county clerks and the State Board

of Elections will need to take steps to ensure the security of their elections.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will have minimal costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit all in ensuring that all elections conducted in the Commonwealth are done so in a free, fair, and secure manner.

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

(a) Initially: The cost of the implementation of this administrative regulation for the State Board of Elections will be minimal as it will require only the creation of the new Forms incorporated by reference.

(b) On a continuing basis: The only continuing cost will be the price associated with printing any copies of the SBE Forms that are necessary.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections’ administrative budget will be used in the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Implementation of this administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

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

(9) TIERING: Is tiering applied? Tiering is not used in this administrative regulation, as a desired result of the promulgation of this administrative regulation is uniform procedures for the administration of elections throughout all of the counties in the Commonwealth.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The State Board of Elections and the Commonwealth’s county clerks 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 117.001, 117.015, 117.085, 117.086, 117.087, 117.145, 117.225, 117.228, as amended by Kentucky Acts Chapter 197, require and authorize the actions 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.

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

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

(c) How much will it cost to administer this program for the first year? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this

administrative regulation amendment will cost no more to administer than is currently expended.

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  
40 KAR 1:040E**

During its 2021 regular session, the General Assembly passed House Bill 312, which amended provisions of the Kentucky Open Records Act. See 2021 Ky. Law CH. 160. House Bill 312 will become effective on June 29, 2021. See OAG 21-02. Effective June 29, 2021, House Bill 312 amends KRS 61.826 to require the Attorney General to publish a statewide standardized form that may be used to request to inspect public records under the Kentucky Open Records Act. KRS 61.826(4) (effective June 29, 2021). The statute further requires the Attorney General to promulgate an administrative regulation to incorporate by reference the standardized form. Effective June 29, 2021, every public agency subject to the Act must accept a request to inspect public records that has been submitted by a Kentucky resident using this form. In addition, each public agency must display the form in a prominent location accessible to the public, including on its website. This emergency regulation is necessary to meet a deadline for the promulgation of an administrative regulation that is established by state statute KRS 13A.190(1)(a)3. Because House Bill 312 is effective June 29, 2021, this emergency regulation will ensure that on that date, each public agency subject to the Act may comply with the amended provisions of KRS 61.826 and that the public may submit requests to inspect public records using the standardized form beginning on that date. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDREW BESHEAR, Governor

DANIEL CAMERON, Attorney General

**DEPARTMENT OF LAW  
Civil Division  
Office of Civil and Environmental Law  
Open Records and Meetings Division  
(New Emergency Administrative Regulation)**

**40 KAR 1:040E. Standardized Open Records Request Form.**

EFFECTIVE: June 28, 2021

RELATES TO: KRS 61.876(4)

STATUTORY AUTHORITY: KRS 61.876(4)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to comply with KRS 61.876(4), which requires the Attorney General to promulgate by regulation a standardized form that may be used to request to inspect public records under the Kentucky Open Records Act.

Section 1. Incorporation by Reference. (1) "Standardized Open Records Request Form", OAG-1, June 2021, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. The material incorporated by reference is also available on the Attorney General's Website at [https://ag.ky.gov/Documents/2021\\_Standardized\\_Open\\_Records\\_Request\\_Form\\_V3.pdf](https://ag.ky.gov/Documents/2021_Standardized_Open_Records_Request_Form_V3.pdf).

DANIEL CAMERON, Attorney General

APPROVED BY AGENCY: June 23, 2021

FILED WITH LRC: June 28, 2021 at 11:07 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this emergency administrative regulation shall be held at 10:00 a.m. on August 22, 2021 at Capital Complex East, Conference Room A, 1024 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on 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: Marc Manley, Division Director, Open Records and Meetings Division, Office of Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5478, email Marc.Manley@ky.gov.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

(1) Provide a brief summary of:

(a) What this administrative regulation does: Pursuant to House Bill 312 § 3(4), this administrative regulation creates and incorporates by reference a standardized form that may be used to request public records from a public agency under the Kentucky Open Records Act.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because, under House Bill 312 § 3(4), the General Assembly has required the Attorney General to promulgate reference a standardized form that may be used to request public records from a public agency under the Kentucky Open Records Act.

(c) How this administrative regulation conforms to the content of the authorizing statutes: House Bill 312 § 3(4) requires the Attorney General to promulgate this administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist public agencies across the Commonwealth because every public agency must accept a request to inspect public records that is submitted on this form. In addition, under House Bill 312 § 3(2), each public agency must display the form in a prominent location accessible to the public, including on its Website. This administrative regulation will ensure that each public agency can meet that statutory requirement.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Every "public agency," as the term is defined in KRS 61.870(1), is affected by this administrative regulation. Specifically, each public agency must accept a request to inspect public records that is submitted using the standardized form that is incorporated by reference by this administrative regulation.

(4) Provide an analysis of how the entities identified in the previous question will be impacted by either the implementation of

this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Although no regulated entity must take any specific actions to comply with this administrative regulation, House Bill 312, effective June 29, 2021, requires that each public agency subject to the Act "shall accept" any request submitted using the standardized form that is incorporated by reference.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: It is neither intended nor anticipated that any public agency will incur any cost as a result of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: A public agency can be assured that any request to inspect records that is submitted on this form is a request that meets the basic requirements of the Open Records Act.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: Not applicable.

(a) Initially: Not applicable.

(b) On a continuing basis: Not applicable.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

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

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

(9) TIERING: Is tiering applied? Explain why or why not. Because House Bill 312 requires that the Attorney General develop one standardized form that the public may use to submit open records requests, no tiering is required.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All public agencies subject to the Kentucky Open Records Act 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 61.876(4), as amended by House Bill 312, requires and authorizes the action taken by the administrative regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? Not applicable.

(d) How much will it cost to administer this program for subsequent years? Not applicable.

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

Revenues (+/-): Not applicable.

Expenditures (+/-): Not applicable.

Other Explanation: Not applicable.

#### STATEMENT OF EMERGENCY 200 KAR 3:020E

This emergency administrative regulation is necessary to allow visitors to state facilities and grounds the ability to wear department-provided face coverings to prevent or mitigate the spread of communicable disease. This emergency administrative regulation is also necessary to implement certain safety measures and protocols to allow citizens to be able to return to and visit the New State Capitol beginning on July 1, 2021 without an appointment being required. At the request of the Kentucky State Police, this emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)1, to meet an imminent threat to public health, safety, and welfare by providing for mitigation against the spread of the COVID-19 virus and by providing safety measures and protocols to protect the health, safety, and welfare of citizens at the New State Capitol and other state offices and buildings. An ordinary administrative regulation is not sufficient because the COVID-19 virus may mutate and spread, the form of new strains or variants, after the state of emergency has lifted in the Commonwealth, and the New State Capitol will be open to visitors without the requirement of an appointment beginning on July 1, 2021. Delaying the effective date of the ordinary regulation may leave a multi-month period after expiration of the state of emergency where the wearing of face-coverings to prevent or mitigate the spread of communicable disease is barred by 200 KAR 3:020, and where certain safety measures and protocols would not be implemented to protect the health, safety, and welfare of citizens visiting the New State Capitol and other state offices and buildings without an appointment beginning on July 1, 2021. Enacting an emergency regulation would avoid this unnecessary risk. 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

HOLLY M. JOHNSON, Secretary

#### FINANCE AND ADMINISTRATION CABINET Department for Facilities and Support Services (Emergency Amendment)

#### 200 KAR 3:020E. Use of State-Owned Facilities and Grounds.

EFFECTIVE: July 1, 2021

RELATES TO: KRS 42.019, 42.425, 56.010, 56.463

STATUTORY AUTHORITY: KRS 42.019(1), 42.425(1)(c), 56.010, 56.463(8)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes uniform rules for the governance of state facilities and grounds. While all state facilities and grounds are owned by the people of the Commonwealth at large, it is sometimes detrimental to the effective carrying-out of the people's business for persons, or groups of persons, to disregard reasonable conditions established for use of state facilities and state grounds. The purpose of this administrative regulation is to balance the interests of the citizens of the commonwealth at large with the interests of individual citizens, or groups of citizens, to use state facilities and grounds in a reasonable fashion in order to redress their grievances and coordinate various uses of public buildings and Grounds, to preserve Historic Properties, to ensure the health and safety of the public and state employees while on state property, and to protect the public from unnecessary financial losses. KRS 42.019(1) requires the Division of Historic Properties to oversee the management and preservation of state-owned historic properties. KRS 42.425(1)(c) entrusts the Department for

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Facilities and Support Services with primary responsibility for developing and implementing policies applicable to all state agencies to ensure effective planning for and efficient operation of state office buildings. KRS 56.010 requires the Finance and Administration Cabinet to institute civil proceedings in the name of the Commonwealth for any trespass or injury to state property under its control. KRS 56.463(8) requires the Finance and Administration Cabinet to promulgate administrative regulations as may be necessary to govern the acquisition, control, and disposition of the commonwealth's real property.

Section 1. Definitions. (1) "Agency" means a "budget unit," as defined by KRS 48.010(9).

(2) "Applicant" means a visitor who has submitted an Application to Use State Facilities and Grounds.

(3) "Application" means the Application to Use State Facilities and Grounds form created and maintained by the Division of Historic Properties that allows individuals, organizations, and entities to request the ability to conduct an event at historic properties.

(4) "Cabinet" means the Finance and Administration Cabinet.

(5) "Commissioner" means the Commissioner of the Department for Facilities and Support Services.

(6) "Deadly Weapon" is defined by KRS 500.080(4).

(7) "Demonstration activity" means any gathering of twelve (12) or more visitors demonstrating, parading, picketing, speech making, holding vigils, sit-ins, or rallies, or conducting other activities for the purpose of demonstrating approval or disapproval of governmental policies or practices (or the lack thereof), expressing a view on public issues, or bringing into public notice any issue or other matter.

(8) "Department" means the Department for Facilities and Support Services.

(9) "Division" means the Division of Historic Properties, established by KRS 42.425(1)(d)4.

(10) "Event" means any demonstration activity, performance, ceremony, presentation, meeting, or rally held in a state facility or on state grounds.

(11) "Firearm" is defined by KRS 237.060(2).

(12) "Handgun" is defined by KRS 527.010(5).

(13) "Historic properties" means state-owned historic properties under the management and preservation authority of the Division of Historic Properties, pursuant to KRS 42.019.

(14) "Livestock" is defined by KRS 257.010(11).

(15) "Long Gun" means any firearm that is not a handgun, including but not limited to:

(a) Rifles.

(b) Carbines, and

(c) Shotguns.

(16) "Normal business hours" means:

(a) The hours in which a facility is declared or posted as open and accessible to individuals other than employees or agents of the commonwealth; and

(b) Any time period during which a facility hosts a legislative session, public meeting, or court session.

(17) "Organization" means any group or association of individuals joined together to accomplish shared goals or to advance shared interests or values, inclusive of its employees, agents, invitees, or guests.

(18) "Public meeting" means a "meeting," as defined by KRS 61.805(1).

(19) "Rally" means a gathering of twelve (12) or more visitors for the purpose of actively promoting a cause.

(20) "Solicit" and "solicitation" are defined by KRS 367.650(4).

(21) "Spontaneous event" means an event where twelve (12) or more visitors gather to exercise their First Amendment rights in facilities and on grounds open to the general public in response to a triggering event that has occurred within the preceding calendar week, or is currently occurring. Regularly scheduled events, or events that are advertised by any means seven (7) or more calendar days prior to the starting date of the event are presumptively not "spontaneous events."

(22) "State facilities" or "facilities" means any buildings owned or managed by the Finance and Administration Cabinet pursuant to KRS 56.463.

(23) "State grounds" or "grounds" means any lands owned or managed by the Finance and Administration Cabinet pursuant to KRS 56.463.

(24) "Tenant" means an individual or organization, except for an agency that is:

(a) Occupying land or property rented from the commonwealth; and

(b) Limited to the specific state facility or state grounds where the land or property is located.

(25) "Tenant agency" means an agency that is:

(a) Assigned commonwealth land or property; and

(b) Limited to the specific state facilities or state grounds assigned for agency use.

(26) "Triggering event" means a previously unknown or unpredicted event where, because of its unknown or unpredicted nature, a group of visitors could not reasonably be expected to submit an application seven (7) days in advance.

(27) "Visitor" means:

(a) Any person, organization, or entity present at a State Facility or on State Grounds that is not a tenant agency, nor employed or contracted to perform work there on behalf of the commonwealth;

(b) A person or organization employed or contracted to perform work on behalf of the commonwealth if present at a state facility or on state grounds for reasons other than performing work on behalf of the commonwealth; and

(c) Persons present at state facilities or state grounds by virtue of an approved application.

Section 2. Request to Use State Facilities or Grounds. (1) Each visitor seeking to hold an event at a state facility or on state grounds shall submit a completed "Application to Use State Facilities and Grounds" to the division at least seven (7) calendar days prior to the anticipated date of the event.

(a) Applications shall not be submitted, and an event shall not be scheduled, more than 365 calendar days prior to the date of an event.

(b) An applicant may only make one (1) application for one (1) event at a time.

(c) Applications shall be reviewed and approved on a first come, first served basis, except that state sponsored activities shall be given priority over applications received by the division on the same date as a request by an agency regarding a state-sponsored event.

(d) The division shall deny an application if:

1. The application is incomplete;

2. The proposed event requests space allocated for a state sponsored activity, a previously scheduled event, the normal operation of state business, or a legislative session;

3. The proposed event poses a safety or security risk;

4. Applicant has made material misrepresentations regarding the nature or scope of an event or solicitation, inclusive of misrepresentations contained in prior applications; or

5. Applicant has failed to pay costs or damages due for a prior event.

(e) If an application is approved, the division shall issue a written approval specifying:

1. The property or portion of property for which approval is granted;

2. The date and time period for which approval is granted;

3. Any fee or costs to be paid for use of state property or equipment;

4. The amount of any advance deposit required; [and]

5. Whether proof of liability insurance shall be required for the requested use; [-] and

6. Any applicable restrictions.

(f) If an application is denied, the division shall issue a written denial specifying:

1. The Section 2(1)(d) provision the denial is based upon;

2. If the application is incomplete, a description of the missing

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information;

3. If the applicant has made prior misrepresentations, a description of the misrepresentation; and

4. If the applicant has failed to pay costs or damages for a prior event, a description of the costs or damages and the amount remaining due.

(g) Any written approval to use Commonwealth facilities is non-transferable and the purpose, time, place, or other conditions specified for use shall not be changed without the written consent of the division.

(h) Except as provided by paragraph (j) of this subsection, the division may revoke prior approval to hold an event at a historic property if the property is requested for a state sponsored activity. If the division revokes prior approval for an applicant to use a historic property, it shall either:

1. Provide a refund of any fee paid for the use of the state property, or

2. Provide alternate dates that the facility is available for use.

(i) The division may relocate a previously approved event at a historic property as established in the Rules for Use of State Facilities and Grounds.

(j) The division shall not reschedule or relocate a previously approved event at a historic property less than three (3) days prior to the scheduled event date except as established in the Rules for Use of State Facilities and Grounds.

(2) Except for spontaneous events, visitors who make use of a state facility or state grounds without written approval:

(a) May be charged a fee equal to the amount normally charged for approved uses, if applicable; and

(b) May be removed from a state facility or state grounds if their use interferes with a use approved by the division, or with a state sponsored activity.

(3) Each visitor seeking to hold an event at a state facility or on state grounds, other than a demonstration activity, shall submit a completed Rental Application and Lease Agreement.

(4) An agency may adapt the Rental Application and Lease Agreement for its own use as follows:

(a) Inserting the Rental Application and Lease Agreement onto agency-specific letterhead;

(b) Altering the Rental Application and Lease Agreement to reflect contact information for the agency; and

(c) Inserting the following information regarding the areas assigned to agency use available to rent:

1. Identification of available areas;
2. Capacity of available areas;
3. Whether food or drink may be consumed in available areas;
4. Equipment available to rent; and
5. Hours when available areas may be rented.

(5) An agency that adapts the Rental Application and Lease Agreement for its own use shall enter into a written agreement with the commissioner addressing:

(a) Which facilities and grounds are covered by the Rental Application and Lease Agreement;

(b) The agency responsible for processing Rental Application and Lease Agreement submissions; and

(c) Disposition of fees collected.

Section 3. Conditions Governing Use of State Facilities and Grounds. (1) General conditions governing all state facilities and grounds to which visitors, applicants, and other persons visiting under application agree to abide.

(a) Visitors shall comply with the Rules for Use of State Facilities and Grounds.

(b) Visitors shall agree to be, and are, responsible for any vandalism, damage, breakage, loss, or other destruction caused by that individual, organization, or entity. In regards to historic properties, costs may include costs for the services of specialists in relevant historical restoration skills.

(c) An agency agrees to reimburse, and shall reimburse, the department for any damage caused to state facilities assigned to its use.

(d) This administrative regulation is not intended to waive or preclude recovery by an agency from visitors for damages caused

by them.

(e) Visitors shall indemnify and hold harmless the Commonwealth of Kentucky, its departments, agents, employees, and contractors from and against any and all suits, damages, claims, or liabilities due to personal injury or death; damage to or loss of property; or for any other injury or damage arising out of or resulting from the use of state facilities or grounds, except as provided by in KRS Chapter 49.

(f) Visitors shall not dig, excavate, or use metal detectors.

(g) Visitors shall not post or affix signs, announcements, or other documents on any exterior or interior wall, ceiling, floor, door, window, or other surface not specifically designated for that purpose.

(h) Visitors shall promptly remove items or materials owned or used by them after an exhibit, event, or visitation. Failure to do so may result in the department billing the individual, organization, or entity with the costs of disposal, inclusive of use of staff time, which the individual, organization, or entity agrees to be responsible for as a condition of using the state facility or grounds.

(i) Smoking shall not be permitted in state facilities or on state grounds.

(j) Visitors shall not wear masks or hoods that conceal the identity of the wearer, except for:

1. Religious[religious] dress of a generally recognized religion,

2. Minor[or minor] children celebrating Halloween, and[-]

3. Department-provided face coverings, worn to prevent or mitigate the spread of communicable disease.

(k) Public use of state facilities by visitors shall not interfere with the conduct of normal public business, including any legislative session, court proceedings, or any other public business.

(l) Use of state facilities and state grounds by visitors shall conform to any applicable limits or requirements contained in the Kentucky Building Code, 815 KAR 7:120[-]; the Kentucky Standards of Safety contained in 815 KAR 10:060[-]; orders of the State Fire Marshal[ ], [and] local fire codes, inclusive of any applicable occupancy limits[-]; and the provisions of this administrative regulation or the materials incorporated herein.

(m) Visitors shall not congregate in, or otherwise obstruct, passageways or office entrance areas in a manner that would impair the normal conduct of state business or the safe evacuation of people in the event of a fire or similar emergency.

(n) Use or parking of a motorized vehicle on lawns, sidewalks, or terraces shall be restricted to emergency, maintenance, construction, development, delivery, or authorized building access purposes as determined by the department.

(o) The operation of aircraft, other than at designated landing areas, shall be prohibited.

(p) The mass release of birds, butterflies, or other living creatures shall be prohibited.

(q) Livestock shall be prohibited, except at facilities designated for livestock-related purposes, unless express written approval is granted by the division.

(r)[(q)] In addition to any use limitations imposed by this administrative regulation, within areas assigned to its use, an agency may impose such additional use restrictions as are necessary and proper to ensure:

1. Efficient operation and conduct of state business;
2. The safety of state employees and visitors;
3. The security of public assets and data; and
4. Restrictions necessary to conform to requirements of state and federal law.

(s)[(r)] The following items shall be prohibited, unless owned or controlled by the state:

1. Hot-air balloons and similar lighter-than-air objects and aircraft;
2. Powered aircraft, including drones and remotely-operated aircraft;
3. Remotely controlled toys and vehicles;
4. Rockets and similar missiles; and
5. Fireworks and other explosive items.

(t)[(s)] The following items shall not be permitted in any state facility, unless the items are owned or controlled by the state:

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1. Any equipment, apparatus, or machinery that fails to conform with local fire codes;

2. Skateboards, roller skates, rollerblades, bicycles, mopeds, motor bicycles, motorcycles, and hoverboards; exclusive of mobility devices used by a disabled individual; and

3. Any personal property that interferes with any electrical or mechanical system in a state facility.

(u) Individuals openly carrying a deadly weapon may be ordered to leave state facilities and grounds when brandishing a firearm or other deadly weapon in an unsafe manner, including but not limited to:

1. Pointing the muzzle of a firearm at another individual.

2. Failing to keep the safety of a firearm in the "on" position while carrying a firearm.

3. Failing to keep their finger outside of the trigger guard of a firearm, or

4. Threatening another person with a firearm or other deadly weapon; and

5. Failing to fully comply with the provisions of Section 3(1)(w), the other provisions of Administrative Regulation or the lawful direction of facility security personnel.

(v) Individuals ordered to leave state facilities and grounds pursuant to Section 3(1)(u) may be subject to criminal prosecution if they refuse to leave state facilities and grounds or comply with the lawful direction of facility security personnel.

(w) Individuals authorized to enter a state facility with one or more firearms shall:

1. Securely maintain handguns in a holster with two or more retention security features;

2. Securely maintain long guns behind the back using a strap slung over the shoulder, muzzle pointing up, in a manner to prevent muzzle rocking rearward during movement;

3. Be in possession of no more ammunition than can be loaded into the firearm at one time; and

4. Possess no more than one magazine, whether attached or detached from the firearm.

(x)(†) The terms of this administrative regulation shall not apply to:

1. Tourism, Arts, and Heritage Cabinet administered facilities and properties;

2. Tenants of state facilities;

3. Inmates and other incarcerated persons; or

4. Other individuals in the care, custody, or control of the state.

(2) Operating hours and access requirements.

(a) The commissioner, in consultation with agencies using each facility, shall establish normal business hours to designate when state facilities and grounds are open for public access. The commissioner may delegate authority to set normal business hours for all state facilities and grounds or for specific state facilities and grounds.

(b) Normal business hours of operation shall be posted at public entrances of state facilities and prominently posted on state grounds.

(c) Public entrances, operating hours, and scope of access may be changed due to maintenance, emergency, disaster, safety threats, and similar concerns as determined by the commissioner.

(d) For purposes of public security and safety, all packages, backpacks, purses, bags, briefcases, or other similar items brought into a state facility shall be subject to search.

(e) A visitor shall not enter or remain on state facilities or grounds after normal business hours of operation without express approval, except state employees, contract workers for the state, or members of the public who are:

1. Meeting with an agency or legislator in regard to a public matter;

2. Attending a scheduled public meeting; or

3. Escorted by a state employee for the purpose of conducting state business.

(f) Visitors present at a state facility or on state grounds may be given up to thirty (30) minutes after normal business hours have ended to vacate the state facility or state grounds before being subject to immediate removal.

(g) If an agency allows individuals to remain in a state facility

after normal business hours, it may be found to be jointly liable for damage caused by unescorted visitors.

(h) Visitors shall not camp or remain overnight in state facilities or on state grounds.

(i) As a condition to their use of, or presence on, state facilities and grounds, applicant and visitors agree that state and local law enforcement officers may physically remove them from state facilities and grounds if they remain longer than thirty (30) minutes after normal business hours have ended and waive any claim against the law enforcement officers and the commonwealth unless undue force is used resulting in serious physical injury as defined by KRS 500.080(15).

(3) Commercial activity.

(a) The following commercial activity shall be prohibited in state facilities or on state grounds:

1. Selling, displaying, or vending commercial products;

2. Solicitation; and

3. Advertising.

(b) The restrictions in paragraph (a) of this subsection regarding commercial activity shall not apply to:

1. State agencies;

2. State-affiliated or approved charitable fund-raising campaigns;

3. Individuals or organizations who have contracted with the state to conduct commercial activity at state facilities or on state grounds;

4. Nominal employee activity, if it otherwise conforms with applicable employee ethics restrictions and does not interfere with state business; and

5. Notice boards specifically set aside for public posting.

(4) Administration of usage conditions.

(a) In addition to any civil or criminal penalties provided for under Kentucky law, visitors who violate the restrictions contained in this administrative regulation, agree to be, and shall be subject to immediate removal from state grounds and facilities as follows:

1. If a violation concerns damage to state facilities or grounds, or disruption of state business, the commissioner or agency head of the affected agency may request removal by officers of the Kentucky State Police, contract security staff, or other state or local law enforcement officers; or

2. If a violation concerns a safety concern or threat, removal may be done at the request of the commissioner or agency head of the affected agency, or upon exercise of independent discretion of the Kentucky State Police, contract security staff assigned to the state facility or grounds, or other state and local law enforcement offices.

(b) The commissioner, agency head of a tenant agency, officers of the Kentucky State Police, contract security staff, or other state or local law enforcement officers may place limitations on total number of participants, the area in which an event may be conducted, and/or may direct the clearing of an area or separation of groups, in order to ensure compliance with applicable health and safety standards, [tø] maintain public order, [and-tø] or ensure that normal public business may be conducted.

(c) This administrative regulation shall not:

1. Prohibit the regular conduct of agency operations in a state facility or on state grounds after normal business hours regarding state facilities or grounds assigned to the agency's use; or

2. Limit the ability of an agency to make full and unencumbered use of state facilities or grounds assigned to them, subject to any specific conditions placed upon their use by the department.

Section 4. Additional Conditions Regarding Access and Use for Historic Properties. (1) Visitors to historic properties shall comply with the additional restrictions regarding the use of the capitol grounds and state historic properties included in the Rules for Use of State Facilities and Grounds.

(2) A visitor seeking to hold an event at a historic property shall comply with the requirements in the Areas Available for Governmental and Business-Oriented Events and Rental Use form.

(3) A visitor seeking to hold an event at the capitol shall also submit the Capitol Event Information Form to the division.

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(4) The Department of Parks and Kentucky Horse Park may advise and consult the division in regard to any restrictions or use guidelines relating to state shrines or museums.

Section 5. Enforcement. (1) Authority to initiate civil proceedings in the name of the Commonwealth for any trespass or injury to state property under the cabinet's control shall be vested with the cabinet's Office of General Counsel.

(2) The cabinet's Office of General Counsel may delegate authority to initiate civil proceedings to counsel for an agency affected by a trespass or injury to state property, to another agency, or to outside counsel.

(3) Nothing in this regulation is intended to waive or restrict in any way any normal criminal or civil remedies available under law that relates to improper trespass on, or misuse of, state facilities; obstruction of governmental operations~~[disruption of public business]~~; nuisance; or any other legal remedy otherwise available to the Commonwealth or its subdivisions.

(4) Nothing in this regulation is intended to limit, waive, or otherwise alter the authority the rules for the operation and parking of motor vehicles on state grounds, as enumerated in 200 KAR 3:010.

### Section 6. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application to Use State Facilities and Grounds", June 2021~~[2019]~~;

(b) "Rental Application and Lease Agreement", June 2019;

(c) "Rules for Use of State Facilities and Grounds", June 2021~~[2019]~~; and

(d) "Areas Available for Governmental and Business-Oriented Events and Rental Use", June 2021~~[2019]~~; ~~and~~

~~(e) "Capitol Event Information Form", June 2019.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Finance and Administration Cabinet, Office of General Counsel, Capital Annex Room 392, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

SAM RUTH, Commissioner

HOLLY M. JOHNSON, Secretary

APPROVED BY AGENCY: June 30, 2021

FILED WITH LRC: July 1, 2021 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 24, 2021 at 10:00 a.m. at Kentucky Finance and Administration Cabinet Office of General Counsel, 702 Capital Ave., Suite 392, Frankfort, Kentucky 40601. 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 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.

CONTACT PERSON: Cary B. Bishop, Assistant General Counsel, Office of General Counsel, 702 Capital Ave., Suite 392, Frankfort, Kentucky 40601, phone (502) 564-8627, fax (502) 564-9875. email cary.bishop@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cary Bishop

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes uniform rules for the governance of state Facilities and Grounds.

(b) The necessity of this administrative regulation: Sets

standards to ensure safety and security of state Facilities and Grounds, as well as staff and visitors. Provides uniform guidelines for visitors to prevent damage to state properties, as well as to ensure for the efficient operation of state business.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Finance and Administration Cabinet and its subdivisions are authorized by KRS 42.019, KRS 42.425, KRS 56.463, and KRS 56.010 to ensure the preservation and efficient operation of state Facilities, as well as to seek redress for damage to state property. This regulation establishes uniform standards for the use of state-owned properties by the public, in furtherance of those goals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear notice to agencies and visitors, of any standards and rules which exist in regard to the use of state Facilities and Grounds.

(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 visitors to state facilities to wear department-provided face coverings. Additionally, the amendment prohibits livestock from state facilities and grounds not designated for livestock purposes, enumerates safety standards regarding deadly weapons openly carried at state facilities or on state grounds, and adds clarifying definitions and language to the existing regulation

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to address the prohibition against face coverings worn by visitors contained in the existing regulation, potential damage to state facilities and grounds by livestock brought to facilities and grounds not intended for livestock purposes, safety standards regarding openly carried deadly weapons, and to clarify portions of the existing regulation that are ambiguous.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is consistent with the authority provided in KRS 42.019(1), 42.425(1)(c), 56.010, 56.463(8).

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates provisions to assist with the efficient operation of state facilities, consistent with the KRS 42.425 responsibilities of the Department for Facilities and Support Services. The amendment also details uniform standards which apply to state facilities and grounds, as required by KRS 56.463(8), and provides guidance regarding instances when the Finance and Administration Cabinet may institute civil proceedings pursuant to KRS 56.010.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Regulation offers clarity to state agencies and visitors to state properties regarding standards for use of Commonwealth Facilities and Grounds.

(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 Department for Facilities and Support Services will work with agencies to provide face-coverings for visitors who wish to wear them in state facilities. Visitors to state facilities must comply with safety standards regarding openly carried deadly weapons, as well as prohibition against the presence of livestock at state facilities and grounds not designated for livestock purposes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs should be limited to the cost to the Department of Facilities and Support Services providing face coverings to visitors.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Agencies and the Department for Facilities and Support Services will be provided clarity regarding standards and rules which allow for the public right of access to state Facilities and Grounds while preserving the ability to conduct regular public business, ensuring the safety of staff and visitors, and avoiding damage to state properties.

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

(a) Initially: Less than \$20,000 per year for purchase of face coverings.

(b) On a continuing basis: Less than \$20,000 per year for purchase of face coverings.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or adjusted by the amendment.

(9) TIERING: Is tiering applied? Tiering is not applied. All state agencies follow identical requirements regarding the setting of normal business hours and their authority to establish an application process for public use of Facilities assigned to them. Similarly, visitors to state Facilities and Grounds are uniformly subject to the conditions set forth in this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The regulation impacts all state Facilities and Grounds owned or managed by the Finance and Administration Cabinet pursuant to KRS 56.463. Agencies occupying these state properties must observe the requirements of the regulation. State or local government agencies not occupying state Facilities and Grounds owned or managed by the Finance and Administration Cabinet will not be affected.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 42.019, KRS 42.425, KRS 56.463, and KRS 56.010.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There is no estimated effect on the expenses or revenues of any state or local agency from this administrative regulation. The amendment does not require any new labor-intensive administrative tasks, which may require additional staff, it merely clarifies standards to be applied regarding public use of state Facilities and Grounds.

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

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

(c) How much will it cost to administer this program for the first year? Less than \$20,000 per year for purchase of face coverings.

(d) How much will it cost to administer this program for subsequent years? Less than \$20,000 per year for purchase of face coverings.

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

Revenues (+/-): \$0

Expenditures (+/-): Less than \$20,000 per year for purchase of face coverings. Exacts expenditures will vary based upon fluctuations in the number of visitors to state facilities and grounds, as well as supply and fluctuations in the cost of face coverings.

Other Explanation:

STATEMENT OF EMERGENCY  
201 KAR 15:030E

During its 2021 regular session, the General Assembly passed House Bill 220 (attached), an amendment to KRS 316.030 to allow the Board of Embalmers and Funeral Directors to establish fees through the promulgation of administrative regulations and amend KRS 316.030 to remove outdated language and processes. HB 220 was signed by the Governor on March 15, 2021. This emergency regulation is required to ensure the agency is able to be fiscally sound. HB 220 goes into effect June 29, 2021. The renewal period of individuals and establishments for the Kentucky Board of Embalmers and Funeral Directors is July 1 through 31st. This emergency regulation will be replaced by an ordinary regulation and will be submitted at the same time. The ordinary regulation is identical to the emergency.

ANDY BESHEAR, Governor  
CHRISTI K. MOFFETT, Executive Director

BOARDS AND COMMISSIONS  
Board of Embalmers and Funeral Directors  
(Emergency Amendment)

201 KAR 15:030E. Fees.

RELATES TO: KRS 316.125(2)(a), 316.130(2), (4), (5), 316.132, 316.140(2)

STATUTORY AUTHORITY: KRS 316.125(2)(a), 316.130(2), (4), (5), 316.132, 316.140(2), 316.210(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.125(2)(a), 316.130(2), (4), and (5), 316.132, 316.140(2), and 316.210(1) require the board to set out in administrative regulations certain fees. This administrative regulation establishes these fees.

Section 1. (1) The funeral establishment license fee shall be \$500[\$200].

(2) The renewal fee for a funeral establishment license shall be based on call volumes as follows:

(a) Zero (0) to ninety-nine (99) calls: \$450;

(b) 100 to 299 calls: \$550;

(c) 300 to 499 calls: \$650; or

(d) 500 or more calls: \$750.

(e) The late fee for a funeral establishment license renewal shall be double the applicable call volume renewal fee in Section 1 (1-4) of this administrative regulation [\$200].

Section 2. Individual License Fees.

(1) [The] Embalmer's license renewal fee shall be \$100.

(2) [Section 3. The] Funeral director's license renewal fee shall be \$100.

(3) [Section 4. The late fee for a funeral establishment license renewal shall be \$200.

Section 5. The late fee for an embalmer's license renewal or a funeral director's license renewal shall be double their renewal fee established in subsections (a) and (b) of this section[\$100].

Section 3. [6.] The fee for an annual courtesy card shall be \$100 dollars.

Section 4. Apprenticeship Fees.

(1) The registration fee for an embalmer apprenticeship shall be \$100.

(b) The registration fee for a funeral directors apprenticeship shall be \$100.

(c) The reinstatement fee for an apprenticeship shall be fifty dollars (\$50) per license.

(d) [7. The fee for processing an application for a continuing education program shall be \$150 per program; for programs included in a conference or convention setting, the total fee shall not exceed \$600.



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Section 8. (1) A processing fee of twenty-five (25) dollars shall apply to all document actions not covered by other fees established by KRS Chapter 316 or this administrative regulation such as national exam score requests, out-of-state verifications, official name change requests, paper submissions of any documents or applications that are available to submit electronically, and revisions to wall licensure.

(2) A fee of sixty (60) dollars shall be assessed for any payment made to the Board pursuant to KRS Chapter 316 or these administrative regulations, where the check, draft, money order, or other financial instrument is returned by the payor's bank or financial institution for insufficient funds, or cannot otherwise be deposited into the board's account.

Section 9.] The registration fee for Level II funeral director registration shall be fifty (50) dollars.

(e) [Section 10.] The registration fee for Level II embalmer registration shall be fifty (50) dollars.

(f) The licensure exam fee shall be \$100 per license.

Section 5. Surface Transportation Fees.

(1) The surface transportation license fee is \$150.

(2) The surface transportation renewal fee is \$150.

(3) The surface transportation course and examination fee is seventy-five dollars (\$75).

Section 6. The inspection fees for establishments will be:

(1) A routine (only once per eighteen (18) months) or requested inspection will be \$100.

(2) A re-inspection within a period of three (3) months following a routine inspection, due to a deficiency found by the Inspector of the Board of Embalmers and Funeral Directors of the Commonwealth of Kentucky on a routine inspection, shall be assess a fee of \$200.

(3) If an establishment fails three (3) consecutive inspections with a period of six (6) months, any subsequent inspections required to determine if the failures have been cured shall require payment of \$200 for each subsequent inspection.

Section 7. The fee for processing an application for a continuing education program shall be \$150 per program; for programs included in a conference or convention setting, the total fee shall not exceed \$600.

Section 8. Processing and NSF.

(1) A processing fee of twenty-five (25) dollars shall apply to all document actions not covered by other fees established by KRS Chapter 316 or this administrative regulation such as national exam score requests, out-of-state verifications, official name change requests, paper submissions of any documents or applications that are available to submit electronically, and revisions to wall licensure.

(2) A fee of sixty (60) dollars shall be assessed for any payment made to the Board pursuant to KRS Chapter 316 or these administrative regulations, where the check, draft, money order, or other financial instrument is returned by the payor's bank or financial institution for insufficient funds, or cannot otherwise be deposited into the board's account.

Section 9.[Section 11.] All fees assessed under this administrative regulation shall be nonrefundable.

CHRISTI K. MOFFETT, Executive Director

APPROVED BY AGENCY: June 29, 2021

FILED WITH LRC: June 30, 2021 at 12:56 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., via ZOOM. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of this hearing will not be made unless a written request for a transcript is made. If

you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 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: Christi Moffett, Executive Director of Kentucky Board of Embalmers and Funeral Directors, 9114 Leesgate Road, Suite 4, Louisville, Kentucky 40222, phone 502.426.4589 fax 502.426.4117; email christik.moffett@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christi Moffett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation brings all fees into one regulation.

(b) The necessity of this administrative regulation: HB220 removed fees from statutes placing them in administrative regulations. The bill goes into effect 6/29/21. Our renewals start 7/1/21.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation brings all the fees into one regulation for easy access.

(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: All the fees will be located in one regulation

(b) The necessity of the amendment to this administrative regulation: HB220 removed fees from statutes placing them in administrative regulations. The bill goes into effect 6/29/21. Board renewals start 7/1/21.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation brings all the fees into one regulation since HB220 removed them; it will also provide easy access for end users.

(d) How the amendment will assist in the effective administration of the statutes: This brings all the fees related to funeral services under one regulation for ease of access for end users. In recent years KBEFD has run a deficit averaging \$100k seeking the state's assistance to complete the fiscal year. It is the Board's desire to be fiscally responsible and independent.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently five hundred eleven (511) funeral related establishments in Kentucky. They would all be affected by the rate increase. The last establishment increase was in 1996. We have tiered the increase based on case counts. Potential apprentice applicants would also be impacted. The Board averages five (5) apprentices per month.

(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:

(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: Pay renewal or fee as defined

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

Apprentices will pay \$75 per license

Establishments will pay the following based on their volume (case count)

Case Counts	Fee
99+	\$ 450
100-299	\$ 550
300-499	\$ 650
500+	\$ 750

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be legally licensed for a period of one year for establishments. Apprentice applications will

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be processed and presented to the board for consideration.

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

- (a) Initially: No additional cost
- (b) On a continuing basis: No additional cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? No special or additional funding will be required for implementation or enforcement.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: These fees are not increasing; just being moved to a single regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation gathers all the fees into one regulation. There is a fee increase for establishments based on case counts.

(9) TIERING: Is tiering applied? Yes,

Case Count	%	KBEFD # Est	Fees
99+	54%	275	\$ 450
100-299	40%	204	\$ 550
300-499	4%	20	\$ 650
500+	2%	10	\$ 750

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

- Funeral Directors, Embalmers
- Funeral Establishments and Embalming Services
- Funeral Apprentices

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

- 201 KAR 15:030
- KRS 316.030(4)(g)
- KRS 316.030(5)(f)
- KRS 316.125(2)(a)
- 201 KAR 15:040 Section 1(1)
- 201 KAR 15:040 Section 3(3)
- 201 KAR 15:040 Section 4(1)
- 201 KAR 15:050 Section 4(5)
- 201 KAR 15:110 Section 5(5)b
- 201 KAR 15:110 Section 5(5)c
- 201 KAR 15:110 Section 5(5)d
- 201 KAR 15:110 Section 5(5)e
- 201 KAR 15:125 Section 1(2)(b)
- 201 KAR 15:125 Section 2(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. None

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

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

(c) How much will it cost to administer this program for the first year? No additional cost to the agency

(d) How much will it cost to administer this program for subsequent years? 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 (+/-):

PROPOSED

Case Calls	KBEFD Facilities	Fee	Income
99+	275	\$ 450	\$ 123,750

100-299	204	\$ 550	\$ 112,200
300-499	20	\$ 650	\$ 13,000
500+	10	\$ 750	\$ 7,500
			\$ 256,450

EXISTING

Existing	KBEFD Facilities	Fee	Income
Flat Fee	510	\$ 200	\$ 102,000

Expenditures: None

Other Explanations: None

STATEMENT OF EMERGENCY  
201 KAR 15:040E

During its 2021 regular session, the General Assembly passed House Bill 220 (attached), an amendment to KRS 316.030 to allow the Board of Embalmers and Funeral Directors to establish fees through the promulgation of administrative regulations and amend KRS 316.030 to remove outdated language and processes. HB 220 was signed by the Governor on March 15, 2021. This emergency regulation is required to ensure the agency is able to be fiscally sound. HB 220 goes into effect June 29, 2021. The renewal period of individuals and establishments for the Kentucky Board of Embalmers and Funeral Directors is July 1 through 31st. This emergency regulation will be replaced by an ordinary regulation and will be submitted at the same time. The ordinary regulation is identical to the emergency.

ANDY BESHEAR, Governor  
CHRISTI K. MOFFETT, Executive Director

BOARDS AND COMMISSIONS  
Board of Embalmers and Funeral Directors  
(Emergency Amendment)

201 KAR 15:040. Examination.

EFFECTIVE: June 30, 2021

RELATES TO: KRS 316.030 4(h), 5(g)

STATUTORY AUTHORITY: KRS 316.030, 316.210(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.030 (4)(h) and (5)(g) require an applicant for an embalmer's license or a funeral director's license to pass an examination prepared or approved by the board. This administrative regulation establishes the administration, content, and evaluation of examinations by the board.

Section 1. Exam Administration. (1) ~~[The board shall administer]~~ Examinations for funeral director and embalmer licenses will be held at [the regular meetings of the board.] intervals predefine on a published calendar.

(2) An applicant seeking to take an examination administered by the board shall submit the fee ~~[required by KRS 316.030(4)(g) or (5)(f)]~~ as defined in KRS 316.030 to the board at least forty-five (45) days before the desired examination.

(a) The examination fee shall include a license in good standing for the remainder of the fiscal year if the applicant is successful in the examination.

(b) An applicant shall be entitled to only one (1) examination for each fee paid.

(3) One (1) or more members of the board shall administer the ~~[written]~~ oral examination for a license issued by the board.

(4) An applicant may seek a reasonable accommodation in the manner for which an examination by the board is given.

(a) Accommodations will be considered by the board on the same basis as reasonable accommodations that may be available under the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.

(b) An applicant who takes an examination with a reasonable accommodation must still perform the essential functions of taking the examination and meet the normal performance requirements for passage.

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(5) At the discretion of the board, examinations may be held at other times, if necessary.

Section 2. Content of Examination. (1) The examination for an embalmer's license shall include the following subjects:

- (a) Embalming;
- (b) Anatomy;
- (c) Microbiology;
- (d) Pathology;
- (e) Chemistry;
- (f) Restorative art;
- (g) Mortuary administration and law;
- (h) Accounting;
- (i) Sociology;
- (j) Psychology; and
- (k) Requirements of KRS Chapter 316 and the administrative regulations promulgated pursuant to KRS Chapter 316.

(2) The examination for a funeral director's license shall include the following subjects:

- (a) Mortuary administration;
- (b) Ethics;
- (c) Accounting;
- (d) Sociology;
- (e) Business law;
- (f) Primary psychology;
- (g) Transportation rules;
- (h) Hygiene, sanitation, and disinfection; and
- (i) Requirements of KRS Chapter 316 and the administrative regulations promulgated pursuant to KRS Chapter 316.

(3) All written questions for the embalmer's and funeral director's examinations are the property of the board and applicants shall return the questions to the board with their answers.

Section 3. Evaluation. A score of seventy-five (75) percent on ~~any~~ a board authorized examination ~~administered by the board~~ shall constitute a passing grade.

Section 4. Alternative to Written Examination by the Board. An applicant who has successfully completed the examination prepared and administered by the Conference of Funeral Service Examining Boards may request exemption from the written embalmer examination. The applicant shall successfully complete an oral examination administered by one (1) or more members of the board in lieu of the written embalmer examination.

CHRISTI K. MOFFETT, Executive Director

APPROVED BY AGENCY: June 29, 2021

FILED WITH LRC: June 30, 2021 at 12:56 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., via ZOOM. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of this hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 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: Christi Moffett, Executive Director of Kentucky Board of Embalmers and Funeral Directors, 9114 Leesgate Road, Suite 4, Louisville, Kentucky 40222, phone 502.426.4589 fax 502.426.4117; email christik.moffett@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christi Moffett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation

moves all fees into one regulation

(b) The necessity of this administrative regulation: HB220 removed fees from statutes placing them in administrative regulations. The bill goes into effect 6/29/21. Board renewals start 7/1/21.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation brings all the fees into one regulation for easy access.

(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: All the fees will be located in one regulation.

(b) The necessity of the amendment to this administrative regulation: HB220 removed fees from statutes placing them in administrative regulations. The bill goes into effect 6/29/21. Board renewals start 7/1/21.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Moving all the fees into one regulation will make it easier for readers.

(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:

(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: Pay renewal or fee as defined

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

Apprentices will pay \$75 per license

Establishments will pay the following based on their volume (case count)

Case Counts	Fee
99+	\$ 450
100-299	\$ 550
300-499	\$ 650
500+	\$ 750

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be legally licensed for a period of one year for establishments. Apprentice applications will be processed and presented to the board for consideration.

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

(a) Initially: No additional cost

(b) On a continuing basis: No additional cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? No special or additional funding will be required for implementation or enforcement.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: These fees are not increasing; just being moved to a single regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation gathers all the fees into one regulation. There is a fee increase for establishments based on case counts.

(9) TIERING: Is tiering applied? Yes,

Case Count	%	KBEFD # Est	Fees
99+	54%	275	\$ 450
100-299	40%	204	\$ 550
300-499	4%	20	\$ 650
500+	2%	10	\$ 750

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**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

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

- Funeral Directors, Embalmers
- Funeral Establishments and Embalming Services
- Funeral Apprentices

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

- 201 KAR 15:030
- KRS 316.030(4)(g)
- KRS 316.030(5)(f)
- KRS 316.125(2)(a)
- 201 KAR 15:040 Section 1(1)
- 201 KAR 15:040 Section 3(3)
- 201 KAR 15:040 Section 4(1)
- 201 KAR 15:050 Section 4(5)
- 201 KAR 15:110 Section 5(5)b.
- 201 KAR 15:110 Section 5(5)c.
- 201 KAR 15:110 Section 5(5)d.
- 201 KAR 15:110 Section 5(5)e.
- 201 KAR 15:125 Section 1(2)(b)
- 201 KAR 15:125 Section 2(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.  
None

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

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

(c) How much will it cost to administer this program for the first year? No additional cost to the agency

(d) How much will it cost to administer this program for subsequent years? 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 (+/-):

**PROPOSED**

Case Calls	# KBEFD Facilities	Fee	Income
99+	275	\$ 450	\$ 123,750
100-299	204	\$ 550	\$ 112,200
300-499	20	\$ 650	\$ 13,000
500+	10	\$ 750	\$ 7,500
	510		\$ 256,450

**EXISTING**

Existing	KBEFD Facilities	Fee	Income
Flat Fee	510	\$ 200	\$ 102,000

Expenditures: None

Other Explanations: None

**STATEMENT OF EMERGENCY REGULATION  
201 KAR15:050E**

During its 2021 regular session, the General Assembly passed House Bill 220 (attached), an amendment to KRS 316.030 to allow the Board of Embalmers and Funeral Directors to establish fees through the promulgation of administrative regulations and amend KRS 316.030 to remove outdated language and processes. HB 220 was signed by the Governor on March 15, 2021. This emergency regulation is required to ensure the agency is able to be fiscally sound. HB 220 goes into effect June 29, 2021. The renewal period of individuals and establishments for the Kentucky

Board of Embalmers and Funeral Directors is July 1 through 31st. This emergency regulation will be replaced by an ordinary regulation and will be submitted at the same time. The ordinary regulation is identical to the emergency.

ANDY BESHEAR, Governor  
CHRISTI K. MOFFETT, Executive Director

**BOARDS AND COMMISSIONS  
Board of Embalmers and Funeral Directors  
(Emergency Amendment)**

**201 KAR 15:050E. Apprenticeship and supervision requirements.**

EFFECTIVE: June 30, 2021  
RELATES TO: KRS 316.030

STATUTORY AUTHORITY: KRS 316.210(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.210(1) authorizes the Kentucky Board of Embalmers and Funeral Directors to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 316. KRS 316.030(4)(e) and (5)(d) require an applicant for an embalmer's license or a funeral director's license to serve an apprenticeship under the supervision of a Kentucky-licensed embalmer or funeral director. KRS 316.030(9) requires an applicant to file sworn statements semiannually during the apprenticeship. This administrative regulation establishes the requirements for apprentices and their supervisors, the time for filing the sworn statements, and the additional information required in the sworn statements.

Section 1. Apprenticeship Application. (1) Prior to beginning an apprenticeship, an applicant shall:

- (a) File an Apprenticeship Application Form with the board that includes the sworn statement required by KRS 316.030(7)(c);
- (b) Pay the registration fee established in KRS 316.030(7)(b);
- (c) Submit a current photograph;
- (d) Submit a copy of the applicant's high school transcript or diploma, or high school equivalency diploma;
- (e) Submit an official copy of any college transcripts;
- (f) Submit an official copy of National Board scores, if available; and
- (g) Submit an official copy of a current (less than ninety (90) days prior to the application) criminal justice information system (CJIS) report obtained from the Federal Bureau of Investigation (FBI); and
- (h) Appear before the board with the supervisor at the time and place identified by the board.

(2) The apprenticeship shall begin the day the applicant and supervisor meet with the board.

Section 2. Supervisor Responsibilities. (1) An apprenticeship shall be served under the board-approved supervisor identified on the Apprenticeship Registration Form as the supervisor of record.

(2) Apprenticeships for both embalming and for funeral directing may be served concurrently under:

- (a) A single individual acting as the supervisor of record who holds both a funeral director's license and an embalmer's license; or
- (b) Two (2) individual licensees acting as the supervisor of record who together hold both a funeral director's license and an embalmer's license.

(3) Licensed embalmers and licensed funeral directors who seek approval from the board as a supervisor of record shall:

- (a) Embalm or direct funerals at, and be employed by, the establishment where the apprentice is registered or at another funeral establishment if approved by the board;
  - (b) Appear before the board for approval with the apprentice; and
  - (c) Be responsible for ensuring that the apprentice complies with KRS Chapter 316 and 201 KAR Chapter 15.
- (4) The board may withdraw approval of a supervisor based

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upon:

(a) Evidence of the inability to supervise an apprentice properly; or

(b) A violation of KRS Chapter 316 or 201 KAR Chapter 15.

(5) Apprentices may receive supervision by licensees other than the supervisor of record.

(a) Registered embalmer apprentices may be supervised by other licensed embalmers designated by the supervisor of record.

(b) Registered apprentice funeral directors may be supervised by other licensed funeral directors designated by the supervisor of record.

(c) Supervisors of record that designate other licensees to provide supervision for an apprentice shall remain responsible for the actions of the apprentice and for the quality of the designated supervision.

(d) The apprentice shall prepare an Apprentice Travel Form and maintain it with the apprentice calendar.

(6) The supervisor shall instruct an apprentice and ensure that an apprentice receives experience in all aspects of funeral directing or embalming, as applicable to the individual's apprenticeship.

(a) The instruction shall include:

1. The laws relating to the profession, including KRS Chapter 316 and 201 KAR Chapter 15; and

2. The theory and application of funeral directing or embalming.

(b) The training and work assignments for apprentice embalmers shall cover the following service items:

1. Initial call details;

2. Removals;

3. Embalming;

4. Restorative art treatment;

5. Posing body and features;

6. Bathing and cosmetizing of bodies;

7. Dressing and casketing of bodies;

8. Recordkeeping;

9. Purchasing of necessary supplies;

10. Preparation of autopsied bodies;

11. Care and maintenance of equipment and embalming room;

and

12. Professional responsibility.

(c) The training and work assignments for apprentice funeral directors shall cover the following service items:

1. Initial call details;

2. Removals;

3. Counseling of families on the types of services and merchandise available;

4. Arrangements of funeral services and merchandise;

5. Preparing death certificates and documents;

6. Preparing applications for certain death benefits, such as Social Security, Veterans Administration, insurance companies, and lodges;

7. Preparing newspaper notices;

8. Conducting visitations or memorial services;

9. Directing funerals and graveside services;

10. Follow-up service to the family after the funeral service has been completed;

11. Recordkeeping;

12. Purchasing of necessary supplies;

13. Caring for equipment and premises; and

14. Professional responsibility.

Section 3. Supervision of Apprentices. (1) Supervision of embalmer apprentices.

(a) For the first twenty-five (25) cases with which an embalmer apprentice assists and throughout the first six (6) months of training, the supervisor or the supervisor's designee shall be present with the apprentice and provide direct supervision of all of the apprentice's embalming activities.

(b) After the apprentice has completed both twenty-five (25) cases and six (6) months of the apprenticeship, the apprentice may perform embalming services if the supervisor or the supervisor's designee is available for consultation and supervision, in

accordance with KRS 316.010(14).

(c) The supervisor shall notify the board in writing on the Level II Apprentice Registration Form that the apprentice has completed the required twenty-five (25) cases before allowing the apprentice to embalm without direct supervision. The embalmer Level II registration fee required by 201 KAR 15:030 shall be submitted with the Level II Apprentice Registration Form. The Level II apprenticeship shall commence upon receipt of a Level II apprentice card issued by the board. The supervisor or the supervisor's designee shall continue to supervise the apprentice, in accordance with KRS 316.010(14) and 316.030(4)(e), for the duration of the apprenticeship.

(d) A Level II apprenticeship may continue for a period of up to three (3) years while the apprentice completes the apprenticeship requirements and takes the licensure examination.

(e) An apprentice should take the first examination for licensure within sixty (60) days of completion of all other apprenticeship requirements.

(f) For any apprenticeship violation of the rules of the apprenticeship, or other rules applicable to the professions of embalming or funeral directing, the board may extend the period of apprenticeship as part of disciplinary action.

(g) The board may grant extensions of any apprenticeship upon application for an extension by an apprentice and demonstration by the apprentice of good cause or extenuating circumstances upon which an extension should be granted.

(2) Supervision of funeral director apprentices.

(a) For the first twenty-five (25) cases with which a funeral director apprentice assists and throughout the first six (6) months of training, the supervisor or the supervisor's designee shall provide direct supervision during all of an apprentice's funeral directing activities.

(b) After the apprentice has completed both twenty-five (25) cases and six (6) months of the apprenticeship, the apprentice may perform funeral directing services if the supervisor or the supervisor's designee is available for consultation and supervision, in accordance with KRS 316.010(14).

(c) The supervisor shall notify the board in writing on the Level II Apprentice Registration Form that the apprentice has completed the required twenty-five (25) cases before allowing the apprentice to practice funeral directing without direct supervision. The funeral director Level II registration fee required by 201 KAR 15:030 shall be submitted with the Level II Apprentice Registration Form. The Level II apprenticeship shall commence upon receipt of a Level II apprentice card issued by the board. The supervisor or the supervisor's designee shall continue to supervise the apprentice, in accordance with KRS 316.010(14) and 316.030(4)(f), for the duration of the apprenticeship.

(d) A Level II apprenticeship may continue for a period of up to three (3) years while the apprentice completes the apprenticeship requirements and takes the licensure examination.

(e) An apprentice should take the first examination for licensure within sixty (60) days of completion of all other apprenticeship requirements.

(f) For any apprenticeship violation of the rules of the apprenticeship, or other rules applicable to the professions of embalming or funeral directing, the board may extend the period of apprenticeship as part of disciplinary action.

(g) The board may grant extensions of any apprenticeship upon application for an extension by an apprentice and demonstration by the apprentice of good cause or extenuating circumstances upon which an extension should be granted.

(3) Removals.

(a) The supervisor or the supervisor's designee shall be present and provide direct supervision during the removal of bodies for the first six (6) months of the apprenticeship and the first twenty-five (25) removals assisted in by the apprentice.

(b) After an apprentice has served six (6) months of apprenticeship and assisted with twenty-five (25) removals, an apprentice may make removals without the direct supervision of the supervisor or the supervisor's designee if the supervisor has determined that the apprentice is competent to perform removals without direct supervision.

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(c) The supervisor shall notify the board in writing on the Level II Apprenticeship Registration Form that the apprentice has completed the required twenty-five (25) removals and that the supervisor's approval has been given for the apprentice to make removals without direct supervision before the apprentice may begin making these removals.

(d) No individual who obtains or holds a permit from this board to transport dead human bodies may use transport removals performed under that permit to accumulate the number of removals required to complete an apprenticeship. All apprenticeship removals shall be performed within the requirements of the apprenticeship and supervision. Hours accumulated performing removals under a Transport Permit shall not count toward an apprentice's weekly work hours requirement.

### (4) Calendar.

(a) The apprentice shall maintain a calendar at the registered location of the apprenticeship of the apprentice's work schedule documenting the forty (40) regular hours per week that he or she has worked. The calendar shall be reviewed and signed on a daily basis by the supervisor to indicate that the supervisor has reviewed and approved the apprentice's work. The calendar shall be available for inspection by the state inspector during any inspection of the establishment. The calendar shall be maintained by an apprentice until such time as the apprentice passes required examinations and becomes licensed.

(b) The calendar shall identify:

1. The daily work schedule of the apprentice, including beginning and ending times; and

2. The days on which the apprentice does not work.

(5) An apprentice may work at the funeral establishment more hours per week than required by subsection (4) of this section. An apprentice may also attend mortuary school classes or complete mortuary school coursework while serving an apprenticeship, but shall nonetheless still work the required forty (40) hour week under the apprenticeship.

(6) If an apprentice's supervisor of record is replaced during the apprenticeship period, a Change of Supervisor form shall be completed and submitted within thirty (30) days following the change.

### Section 4. Terminating and Reestablishing an Apprenticeship.

(1) Within five (5) days of the termination of an apprenticeship, the supervisor of record and the apprentice shall notify the board in writing of the termination, including the date on which the apprenticeship ceased.

(2) An apprentice funeral director or embalmer whose apprenticeship is terminated at the establishment originally identified to the board shall, within thirty (30) days of being employed by another funeral director or embalmer:

(a) Notify the board in writing of the change in employment and apprenticeship by completing and submitting a Change of Supervisor form;

(b) Identify the name, street address, and license number of the funeral director or embalmer under which the apprentice is continuing the apprenticeship; and

(c) Complete a new registration as set out in Section 2 of this administrative regulation that is signed by the licensed funeral director or embalmer who is to be the apprentice's new supervisor of record.

(3) An apprentice funeral director or embalmer who is unable to perform the duties of the apprenticeship for a period of two (2) weeks or more because of:

(a) The birth of a child and to care for the newborn child within one year of birth;

(b) The placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;

(c) To care for the employee's spouse, child, or parent who has a serious health condition;

(d) A serious health condition that makes the employee unable to perform the essential functions of his or her job; or

(e) Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member

on covered active duty shall immediately notify the board of:

1. The date on which the apprentice became unable to perform the duties; and

2. The date on which the apprenticeship will be recommenced, not to exceed six (6) months following the commencement of the leave from apprenticeship.

(4) An apprenticeship shall not end later than the administration of the second examination for which the apprentice is eligible.

(5) At any time an apprenticeship ceases, or becomes inactive under these administrative regulations, an apprentice does not lose credit for the time served in an apprenticeship. Any such apprentice whose apprenticeship has ceased or become inactive may be reinstated to apprenticeship by notice to the board including the name of the apprentice's supervisor upon his or her return to active apprenticeship, the establishment at which the apprentice is employed, and payment of a processing fee [~~of fifty (50) dollars~~] as promulgated in 201 KAR 15:030. The reinstated apprentice shall be responsible for compliance with all other apprenticeship requirements from the date of reinstatement forward.

Section 5. Sworn Statements. (1) An apprentice shall file the Apprenticeship Sworn Statement required by KRS 316.030(7) on or before May 1 and November 1 of each year relating to the six (6) month period ending with the preceding middle of April or middle of October, respectively.

(2) The Apprenticeship Sworn Statement shall include:

(a) The names and dates of funerals in which the apprentice for a funeral director's license assisted in managing during each six (6) month period;

(b) The names and dates of embalming cases in which the apprentice for an embalmer's license assisted during each six (6) month period; and

(c) The names of the service items set forth in Section 3(6) of this administrative regulation specifically identified for each case in which the apprentice assisted during each six (6) month period.

(3) With the initial sworn statement, an apprentice shall file a report written by the applicant summarizing the requirements of KRS Chapter 316 and 201 KAR Chapter 15.

(4) With subsequent sworn statements, an apprentice shall file a report written by the applicant on an article or a book related to embalming or funeral directing read by the applicant during the six (6) month period. It shall contain a reference that includes the author, title, month and year of publication, and page numbers.

(5) The reports required by subsections (3) and (4) of this section shall be two (2) pages at a minimum and typed.

(6) An apprentice in mortuary school shall be exempt from the book report requirements of subsections (3) through (5) of this section if the apprentice submits the number of hours he or she is enrolled on the Apprenticeship Sworn Statements.

(7)(a) The supervisor of record shall sign the sworn statements and certify that the apprentice has completed the cases and service items identified in the statement.

(b) If the apprentice has received supervision from a supervisor's designee, the supervisor of record shall still be responsible for:

1. The activities of the apprentice;

2. Signing the sworn statement; and

3. The certification of completion of cases and service items identified in the statement.

(8) Before the activities of the apprentice can count toward the requirements of KRS 316.030(4)(f) or (5)(e), the case shall include the following service items:

(a) For an embalming case, the apprentice shall have participated in the service items listed in Section 4(6)(b)3 through 7 of this administrative regulation; and

(b) For a funeral directing case, the apprentice shall have participated in the service items listed in Section 4(6)(c)3 through 9 of this administrative regulation.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

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- (a) "Apprenticeship Application", 9/ 2019;
- (b) "Change of Apprentice Supervisor", 9/2019;
- (c) "Apprenticeship Sworn Statement", 9/2019;
- (d) "Level II Apprentice Application", 9/2019; and
- (e) "Apprentice Travel Form", 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Embalmers and Funeral Directors, 9114 Leesgate Rd, Ste 4, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

CHRISTI K. MOFFETT, Executive Director

APPROVED BY AGENCY: June 29, 2021

FILED WITH LRC: June 30, 2021 at 12:56 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., via ZOOM. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of this hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 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:** Christi Moffett, Executive Director of Kentucky Board of Embalmers and Funeral Directors, 9114 Leesgate Road, Suite 4, Louisville, Kentucky 40222, phone 502.426.4589 fax 502.426.4117; email christik.moffett@ky.gov.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Christi Moffett

(1) Provide a brief summary of:

(a) This regulation moves all fees into one regulation

(b) The necessity of this administrative regulation: HB220 removed fees from statutes placing them in administrative regulations. The bill goes into effect 6/29/21. Board renewals start 7/1/21.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation brings all the fees into one regulation for easy access.

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

(a) How the amendment will change this existing administrative regulation: All the fees will be located in one regulation

(b) The necessity of the amendment to this administrative regulation: HB220 removed fees from statutes placing them in administrative regulations. The bill goes into effect 6/29/21. Board renewals start 7/1/21.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation removes the fees and places them all in one fee regulation for ease of use. This regulation will increase application fees from thirty (30) dollars to seventy five (75) dollars per application type (embalmer or funeral director).

(d) How the amendment will assist in the effective administration of the statutes: Ease of use having all fees in one regulation

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Board averages five (5) new apprentice applications per month. This regulation will increase application fees from thirty (30) dollars to seventy five (75) dollars per application type (embalmer or funeral director). This expense can be paid by the individual or the funeral establishment. In addition, moving all the fees into one regulation will make it easier for readers.

(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:

(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: Pay renewal or fee as defined

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

Apprentices will pay \$75 per license

Establishments will pay the following based on their volume (case count)

Case Counts	Fee
99+	\$ 450
100-299	\$ 550
300-499	\$ 650
500+	\$ 750

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be legally licensed for a period of one year for establishments. Apprentice applications will be processed and presented to the board for consideration.

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

(a) Initially: No additional cost

(b) On a continuing basis: No additional cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? No special or additional funding will be required for implementation or enforcement.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: These fees are not increasing; just being moved to a single regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation gathers all the fees into one regulation. There is a fee increase for establishments based on case counts.

(9) TIERING: Is tiering applied? Yes,

Case Count	%	KBEFD # Est	Fees
99+	54%	275	\$ 450
100-299	40%	204	\$ 550
300-499	4%	20	\$ 650
500+	2%	10	\$ 750

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

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

- Funeral Directors, Embalmers
- Funeral Establishments and Embalming Services
- Funeral Apprentices

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

- 201 KAR 15:030
- KRS 316.030(4)(g)
- KRS 316.030(5)(f)
- KRS 316.125(2)(a)
- 201 KAR 15:040 Section 1(1)
- 201 KAR 15:040 Section 3(3)
- 201 KAR 15:040 Section 4(1)
- 201 KAR 15:050 Section 4(5)
- 201 KAR 15:110 Section 5(5)b
- 201 KAR 15:110 Section 5(5)c
- 201 KAR 15:110 Section 5(5)d
- 201 KAR 15:110 Section 5(5)e
- 201 KAR 15:125 Section 1(2)(b)
- 201 KAR 15:125 Section 2(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

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the first full year the administrative regulation is to be in effect.  
None

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

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

(c) How much will it cost to administer this program for the first year? No additional cost to the agency

(d) How much will it cost to administer this program for subsequent years? 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 (+/-):

**PROPOSED**

Case Calls	KBEFD Facilities	Fee	Income
99+	275	\$ 450	\$ 123,750
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			\$ 256,450

**EXISTING**

Existing	KBEFD Facilities	Fee	Income
Flat Fee	510	\$ 200	\$ 102,000

Expenditures: None

Other Explanations: None

**STATEMENT OF EMERGENCY REGULATION  
201 KAR 15:110E**

During its 2021 regular session, the General Assembly passed House Bill 220 (attached), an amendment to KRS 316.030 to allow the Board of Embalmers and Funeral Directors to establish fees through the promulgation of administrative regulations and amend KRS 316.110 to remove outdated language and processes. HB 220 was signed by the Governor on March 15, 2021. This emergency regulation removes fees from this regulation and centralizes all fees in one regulation. HB 220 goes into effect June 29, 2021. The renewal period of individuals and establishments for the Kentucky Board of Embalmers and Funeral Directors is July 1 though 31st. This emergency regulation will be replaced by an ordinary regulation and will be submitted at the same time. The ordinary regulation is identical to the emergency.

ANDY BESHEAR, Governor  
CHRISTI K. MOFFETT, Executive Director

**BOARDS AND COMMISSIONS  
Board of Embalmers and Funeral Directors  
(Emergency Amendment)**

**201 KAR 15:110E. Funeral establishment criteria.**

EFFECTIVE: June 30, 2021

RELATES TO: KRS 316.010, 316.030, 316.125, 316.127, 316.130, 316.260, 16 C.F.R. 453.2(b)(2)-(5), 29 U.S.C. 651

STATUTORY AUTHORITY: KRS 316.125(1), 316.210(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.125(1) prohibits operating a full-service funeral establishment, a visitation and ceremonial funeral service establishment, or an embalming service establishment without first obtaining the applicable license from the board. KRS 316.210(1) authorizes the board to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 316. This administrative regulation establishes the minimum requirements for the licensing and operation of a funeral establishment.

Section 1. General Requirements. (1) The interior and exterior of the establishment shall be kept free and clean of litter, dirt, debris, and clutter or other objects or conditions that present a potential or actual hazard to the health, safety, or welfare of the public and the funeral establishment's employees.

(2) Only the following persons shall be permitted in a preparation room during the course of embalming a dead human body:

(a) Employees of the establishment where the human body is being embalmed;

(b) Registered apprentices;

(c) Members of the family of the deceased;

(d) Authorized representatives of the deceased; or

(e) Any other individual otherwise allowed by law.

(3) An establishment shall maintain the following documents, if applicable:

(a) Board approved embalming reports that include:

1. The name of each body embalmed;

2. The date of death;

3. The date and time that the embalming took place;

4. The name and signature of the embalmer; and

5. The embalmer's license number;

(b) Proper documentation of the authorization to embalm; and

(c) Accurate and current copies of:

1. The casket price list;

2. The outer burial container price list;

3. The general price list; and

4. The statement required by the Federal Trade Commission in 16 C.F.R. 453.2(b)(2) through (5), as maintained in the general practice of the establishment.

(4) An establishment shall maintain embalming reports and documentation of authorization to embalm for a minimum of three (3) years.

(5) Establishments located in any public office building, strip mall, public storage, mini-storage, mini-warehouse, multiunit storage complex, or similar facility used by the general public for the storage of goods shall be ineligible for a license.

(6) The building in which an establishment is located, and any sidewalks and parking areas provided adjacent to the establishment, shall be in conformity with the requirements of the applicable federal, state and local statutes, administrative regulations, ordinances, and zoning provisions relating to publicly-accessible buildings and establishments.

(7) An establishment shall display a sign that:

(a) Identifies the name of the establishment; and

(b) Is in a location visible from an adjacent public road.

(8) An establishment shall have adequate rest room facilities for members of the public if public funeral services or visitation or ceremonial services will be conducted in the establishment.

Section 2. Visitation and Ceremonial Funeral Service Establishment. An establishment that provides visitation and ceremonial funeral services shall have:

(1) A viewing area or chapel that shall be at least 400 square feet in size; and

(2) The applicable equipment necessary for conducting and arranging funeral services, including:

(a) Tables or desks and chairs for arrangement conferences;

(b) Seating for the viewing room;

(c) Casket bier;

(d) Register book stand;

(e) Officiant stand;

(f) Flower display stands; and

(g) Organ, piano, music-producing equipment, or any suitable combination of these items.

Section 3. Embalming Service Establishment. (1) An establishment that provides embalming services shall:

(a) Have facilities and a preparation room that comply with the requirements of the Occupational Safety and Health Act, 29 U.S.C. 651;

(b) Have at least one (1) approved embalming table and all professional instruments necessary for embalming and the



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preparation of dead human bodies; and

(c) Ensure that a preparation room shall not be used as a storage area other than for supplies pertaining to the embalming and preparation of dead human bodies.

(2) Human remains shall not be prepared for disposition except by a licensed embalmer or a Level 2 apprentice, in accordance with KRS 316.030, in a preparation room that meets the requirements of this administrative regulation.

(3) All windows and doors shall be constructed or screened to prevent persons from looking into the preparation room.

(4) Each preparation room entrance shall be lockable, shall be locked when not in use, and shall display a sign indicating private or restricted entry.

(5) Licensed embalmers may perform removals and transport dead bodies.

Section 4. Full Service Funeral Establishments. A full service funeral establishment shall have:

(1) An area available to the public devoted to the display of funeral merchandise. Caskets or casket sections may be viewed by sample, computer, catalog, or other display that corresponds to the current general price list for the funeral establishment; and

(2) A separate room or office for arranging funerals. This room may be used to satisfy the requirements of subsection (1) of this section.

Section 5. Inspections. (1) Each establishment shall be subject to inspection at the convenience of the board inspector.

(a) An establishment that is sited on more than one (1) parcel of real estate shall be required to notify the inspector of the location and identity of the separate parcels, and will be charged a separate inspection fee as set forth in this administrative regulation for each separate parcel, as if each parcel were a separately-licensed establishment.

(b) Failure of the establishment to be open and available for an inspection within a reasonable period of time after the inspector requests access for inspection shall be deemed by the board to be a violation of KRS Chapter 316, including KRS 316.150(1)(a), and may subject the establishment and its establishment manager to disciplinary action.

(2) The inspector shall inspect the establishment to see if it has suitable and dignified quarters appropriate for the category of services for which it is licensed.

(3) An establishment that provides embalming services shall have completed and signed embalming reports available for inspection upon request.

(4) The following forms shall be available for inspection or copying by the inspector:

(a) A current general price list of charges for services to the public;

(b) A current price list of caskets as charged to the public;

(c) A current price list of outer burial containers as charged to the public; and

(d) All apprentice calendars and apprentice travel forms.

(5)(a) An establishment seeking an initial inspection for the purpose of obtaining a new license under KRS Chapter 316 may request the inspection by the inspector of the Board of Funeral Directors and Embalmers of the Commonwealth of Kentucky, and will be assessed a fee ~~in the amount of \$250~~ as promulgated in 201 KAR 15:030 for the inspection. This fee will cover the inspector's initial visit, and one (1) subsequent visit for re-inspection to assure that any initial deficiencies have been cured.

(b) An establishment licensed under KRS Chapter 316 that is routinely inspected by the inspector of the Board of Funeral Directors and Embalmers of the Commonwealth of Kentucky shall be assessed an inspection fee, as promulgated in 201 KAR 15:030 payable to the board. ~~of \$400.~~ This fee shall not be assessed more than one (1) time per calendar year.

(c) An establishment licensed under KRS Chapter 316 that requires a re-inspection within a period of three (3) months following a routine inspection, due to a deficiency found by the inspector of the Board of Funeral Directors and Embalmers of the Commonwealth of Kentucky on a routine inspection, shall be

assessed a re-inspection fee ~~of \$200~~ as promulgated in 201 KAR 15:030. This fee shall be paid regardless of any disciplinary action that otherwise may be taken against the establishment for the failure of the inspection.

(d) An establishment licensed under KRS Chapter 316 may request an inspection by the inspector of the Board of Funeral Directors and Embalmers of the Commonwealth of Kentucky, and shall pay a fee ~~of \$400~~ as promulgated in 201 KAR 15:030 for the inspection.

(e) If an establishment fails three (3) consecutive inspections within a period of six (6) months, any subsequent inspections required to determine if the failures have been cured shall require payment ~~of a fee of \$200~~ as promulgated in 201 KAR 15:030 for each subsequent inspection. In an instance of three (3) consecutive failures of inspections within six (6) months, the board may also, in its sole discretion, direct that the establishment in question cease operations for an appropriate period of time to permit the establishment to become compliant, and may assess a fine based upon the violations and failure to correct same.

(f) Inspection fees will be invoiced by the board to the licensee, and will not be due at the time of the inspection.

Section 6. Establishment Manager. (1) Each establishment shall have a Kentucky-licensed funeral director, a Kentucky-licensed embalmer, or an individual licensee as required by KRS 316.125(2)(b)(5) to manage and supervise the establishment.

(2) The establishment shall notify the board of a change of the funeral director or the establishment manager by submitting the Information and Name Change Application signed by the licensed owner and the new establishment manager within five (5) working days of the change.

(3) An establishment manager who leaves the employment of an establishment shall notify the board in writing within five (5) working days of the departure.

Section 7. Transferability. (1) Establishment licenses shall not be transferable.

(2) If a sale or lease occurs:

(a) The existing establishment license may remain in force by mutual consent of the parties for a period of thirty (30) days or until the next regularly scheduled board meeting, whichever occurs first.

(b) During the transition period, the establishment shall be operated under the name shown on the existing license until a new license is issued.

(c) An application for a new license shall be submitted for review at the next board meeting following the sale or lease.

(3) If a relocation or name change occurs, an Information and Name Change Application shall be submitted to the board.

(4)(a) Following the death of a Kentucky-licensed owner, funeral director, or embalmer, the establishment may operate for ninety (90) days while under temporary supervision by a licensed funeral director or embalmer. A licensee who is already identified as the establishment manager for another establishment under KRS 316.125(4) may act as the temporary establishment manager for the establishment under this section for the limited ninety (90) day period.

(b) The temporary establishment manager shall be identified to the board in writing by letter within fifteen (15) days of the death of the Kentucky-licensed owner, funeral director, or embalmer.

(c) A licensee may be the temporary establishment manager for only one (1) establishment at a time.

Section 8. Opening of an Establishment. (1) An establishment shall not operate or be opened for business prior to passing an inspection by the state board inspector and the issuance of an establishment license by the board for that establishment.

(2) To apply for an establishment license, the following shall be submitted to the board:

(a) A completed Establishment Application;

(b) The fee required ~~by~~ as promulgated in 201 KAR 15:030 administrative regulations;

(c) A picture of the establishment and signage;

(d) A picture of the establishment manager;

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(e) If purchasing the establishment, a certified copy of the property deed or other document demonstrating the property transfer and applicant's ownership;

- (f) If a corporation, the articles of incorporation;
- (g) If a partnership, the partnership agreement;
- (h) If a limited liability company, the LLC agreement; and

(i) If the property is not owned by the applicant, a commercial lease, certificate of occupancy, or other legal document that demonstrates that the applicant has possession and control of the premises sufficient to be responsible for the property being configured to meet the requirements of these regulations.

(3) Violation of this section shall be grounds for denial of the application for the license by the board.

(4) All establishment licenses shall expire July 31 of each year. Establishments shall renew by submitting the following to the board:

- (a) An Establishment Renewal Application;
- (b) The renewal fee established in KRS 316.130(4) and 201 KAR 15:030; and
- (c) A list of all licensed funeral directors and embalmers affiliated with the establishment.

Section 9. Advertising and Signage. (1) An establishment shall use the exact name listed on the license for the establishment in all advertisements and signage.

(2) Descriptive terms shall be distinctly separated from the name of the establishment in all signage and advertisements unless registered as part of the official name.

(3) Any advertising, designation, or signage for the funeral establishment shall match the classification on the establishment's license.

Section 10. Closure of an Establishment. (1) If an establishment is to be closed, for any reason, the establishment licensee shall notify the board that the establishment is to be closed, and whether the closure is permanent or for a specified period of time.

(2) An establishment that is closing shall give notice of closure to the Office of the Attorney General together with a listing of any pre-need contracts that remain in effect for the closing establishment.

(3) The licensee for a closing establishment shall give written notice of closure to clients with whom the establishment has a pre-need contract, and shall include in that notice how the establishment intends to honor its contractual obligation.

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

- (a) "Establishment Application", 9/2019;
- (b) "Information and Name Change Application", 9/2019; and
- (c) "Establishment Renewal Application", 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Embalmers and Funeral Directors, 9114 Leesgate Rd, Ste 4, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

CHRISTI K. MOFFETT, Executive Director

APPROVED BY AGENCY: June 29, 2021

FILED WITH LRC: June 30, 2021 at 12:56 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., via ZOOM. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of this hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 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: Christi Moffett, Executive Director of Kentucky Board of Embalmers and Funeral Directors, 9114 Leesgate Road, Suite 4, Louisville, Kentucky 40222, phone 502.426.4589 fax 502.426.4117; email christik.moffett@ky.gov.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Christi Moffett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation moves all fees into one regulation.

(b) The necessity of this administrative regulation: HB220 removed fees from statutes placing them in administrative regulations. The bill goes into effect 6/29/21. Board renewals start 7/1/21.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation brings all the fees into one regulation for easy access.

(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: All the fees will be located in one regulation

(b) The necessity of the amendment to this administrative regulation: HB220 removed fees from statutes placing them in administrative regulations. The bill goes into effect 6/29/21. Board renewals start 7/1/21.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation removes the inspection fees from 201 KAR 15:110, along with all fees and puts them all in one, easy to access regulation.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Moving all the fees into one regulation will make it easier for readers.

(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:

(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: Pay renewal or fee as defined

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

Apprentices will pay \$75 per license

Establishments will pay the following based on their volume (case count)

Case Counts	Fee
99+	\$ 450
100-299	\$ 550
300-499	\$ 650
500+	\$ 750

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be legally licensed for a period of one year for establishments. Apprentice applications will be processed and presented to the board for consideration.

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

(a) Initially: No additional cost

(b) On a continuing basis: No additional cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? No special or additional funding will be required for implementation or enforcement.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: These fees are not increasing; just being moved to a single regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation gathers all the fees into one regulation. There is a fee increase for establishments based on case counts.

(9) TIERING: Is tiering applied? Yes,

Case Count	%	KBEFD # Est	Fees
99+	54%	275	\$ 450
100-299	40%	204	\$ 550
300-499	4%	20	\$ 650
500+	2%	10	\$ 750

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

- Funeral Directors, Embalmers
- Funeral Establishments and Embalming Services
- Funeral Apprentices

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

- 201 KAR 15:030
- KRS 316.030(4)(g)
- KRS 316.030(5)(f)
- KRS 316.125(2)(a)
- 201 KAR 15:040 Section 1(1)
- 201 KAR 15:040 Section 3(3)
- 201 KAR 15:040 Section 4(1)
- 201 KAR 15:050 Section 4(5)
- 201 KAR 15:110 Section 5(5)b
- 201 KAR 15:110 Section 5(5)c
- 201 KAR 15:110 Section 5(5)d
- 201 KAR 15:110 Section 5(5)e
- 201 KAR 15:125 Section 1(2)(b)
- 201 KAR 15:125 Section 2(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. None

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

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

(c) How much will it cost to administer this program for the first year? No additional cost to the agency

(d) How much will it cost to administer this program for subsequent years? 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 (+/-):

PROPOSED

Case Calls	KBEFD Facilities	Fee	Income
99+	275	\$ 450	\$ 123,750
100-299	204	\$ 550	\$ 112,200
300-499	20	\$ 650	\$ 13,000
500+	10	\$ 750	\$ 7,500
			\$ 256,450

EXISTING

Existing	KBEFD Facilities	Fee	Income
Flat Fee	510	\$ 200	\$ 102,000

Expenditures: None  
Other Explanations: None

STATEMENT OF EMERGENCY REGULATION  
201 KAR 15:125E

During its 2021 regular session, the General Assembly passed House Bill 220 (attached), an amendment to KRS 316.030 to allow the Board of Embalmers and Funeral Directors to establish fees through the promulgation of administrative regulations, to remove outdated language and processes. HB 220 was signed by the Governor on March 15, 2021. This emergency regulation removes fees from this regulation and centralizes all fees in one regulation. HB 220 goes into effect June 29, 2021. The renewal period of individuals and establishments for the Kentucky Board of Embalmers and Funeral Directors is July 1 through 31st. This emergency regulation will be replaced by an ordinary regulation and will be submitted at the same time. The ordinary regulation is identical to the emergency.

ANDY BESHEAR, Governor  
CHRISTI K. MOFFETT, Executive Director

BOARDS AND COMMISSIONS  
Board of Embalmers and Funeral Directors  
(Emergency Amendment)

201 KAR 15:125E. Surface transportation permit.

EFFECTIVE: June 30, 2021  
RELATES TO: KRS 316.165  
STATUTORY AUTHORITY: KRS 316.165, 316.210  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.210 authorizes the Board of Embalmers and Funeral Directors to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 316. KRS 316.165(1) authorizes the board to issue a permit to an applicant for the sole and limited purpose of being allowed to provide surface transportation of dead human bodies. This administrative regulation establishes the criteria for issuance of these permits.

Section 1. Application. (1) An applicant seeking a permit to provide surface transportation for dead human bodies shall be of the age of eighteen (18) prior to submitting an application.

(2) An applicant applying for a permit to provide surface transportation and removal services for dead human bodies shall submit:

- (a) A completed and signed application form, "Surface Transportation & Removal Permit Application", 9/2019;
- (b) A fee in [the amount of \$150] as promulgated in 201 KAR 15:030;

(c) Evidence of training and compliance with the standards of the Occupational Safety and Health Administration for universal precautions and blood-borne pathogens, 29 Code of Federal Regulations (C.F.R.) 1910.1030;

(d) Two (2) passport-sized photographs of the applicant;

(e) An official copy of a criminal justice information system (CJIS) report obtained from the Federal Bureau of Investigation no more than ninety (90) days prior to the application; and

(f) Evidence of possession and control or ownership of an appropriate vehicle and necessary supplies for surface transportation of dead human bodies.

(3)(a) An appropriate vehicle shall have enclosed cargo space of sufficient size to transport a dead human body securely and without exposure to weather.

- (b) Necessary supplies shall include:
1. Mortuary or ambulance cot;
  2. Collapsible or flexible stretcher;
  3. Sheets and cot cover;
  4. Pillow or head block;
  5. Rubber or plastic sheeting;
  6. Towels;
  7. Zippered mortuary body bag or disaster pouch;
  8. Straps;
  9. Protective clothing; and
  10. Sanitary accessories.

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Section 2. Examination. (1) An applicant seeking a surface transportation permit shall be required to pass an examination on Kentucky laws and transport procedures. The examination fee ~~[shall be seventy five (75) dollars and may]~~ as promulgated in 201 KAR 15:030, to be paid at the time of application [or at the time of examination].

(2) The examination shall be administered ~~[by the board concurrently with other monthly examinations.]~~ at the conclusion of the course.

(3) The board shall offer a training course related to the subject matter of the examination.

Section 3. Scope of Permit. (1) Permit holders shall only engage in surface transportation of dead human bodies requested by an authorized person from the establishment by which the permit holder is employed. Surface transportation shall be limited to obtaining the dead human bodies from the location from which the transportation services were requested, and transport to the establishment by which the permit holder is employed.

(2) Permit holders shall present a photo identification to the person or establishment requesting transport, to establish that the permit holder is employed by the establishment to which transport is being requested.

(3) Permit holders shall not engage in any services of funeral directing or embalming or distribute any documents or materials related to such services.

(4) Permit holders may only be employed by one (1) establishment at one (1) time.

(5) Permit holders shall not be required to use a casket for transportation of dead human bodies, but shall be required to use a container as may be required by the above referenced OSHA guidelines.

(6) No individual who obtains or holds a permit from this board to transport dead human bodies may use transport removals performed under that permit to accumulate the number of removals required to complete an apprenticeship. All apprenticeship removals shall be performed within the requirements of the apprenticeship and under supervision, to the extent set forth in these administrative regulations. Hours accumulated in performing removals under a Transport Permit will not be counted toward the apprentice's weekly work hours requirement.

Section 4. Permit Issuance and Renewal. (1) The Surface Transportation Permit issued or renewed under this administrative regulation shall be effective for a period of one (1) year from its date of issuance.

(2) Renewal of the Surface Transportation Permit may be effected by sending to the board:

(a) A completed Surface Transportation and Removal Permit Application with the Renewal box checked. An applicant for renewal need not include any information already given on the original application, but shall include on the form any new or changed information;

(b) A renewal fee ~~[of fifty (50) dollars]~~ as promulgated in 201 KAR 15:030; and

(c) Evidence that the permit holder has in his or her possession or control an acceptable vehicle and the requisite equipment and supplies to perform surface transportation of dead human bodies.

Section 5. Incorporation by Reference. (1) "Surface Transportation & Removal Permit Application", 10/2019, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Embalmers and Funeral Home Directors, 9114 Leesgate Rd., Suite 4, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

CHRISTI K. MOFFETT, Executive Director

APPROVED BY AGENCY: June 29, 2021

FILED WITH LRC: June 30, 2021 at 12:56 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., via ZOOM. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of this hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 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: Christi Moffett, Executive Director of Kentucky Board of Embalmers and Funeral Directors, 9114 Leesgate Road, Suite 4, Louisville, Kentucky 40222, phone 502.426.4589 fax 502.426.4117; email christik.moffett@ky.gov.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Christi Moffett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation moves all fees into one regulation

(b) The necessity of this administrative regulation: HB220 removed fees from statutes placing them in administrative regulations. The bill goes into effect 6/29/21. Board renewals start 7/1/21.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation removes the fees from 201 KAR 15:125 to one Fees regulation 201 KAR15:030.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation brings all the fees into one regulation for easy access.

(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: All the fees will be located in one regulation

(b) The necessity of the amendment to this administrative regulation: HB220 removed fees from statutes placing them in administrative regulations. The bill goes into effect 6/29/21. Board renewals start 7/1/21.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Moving all the fees into one regulation will make it easier for readers.

(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:

(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:

Pay renewal or fee as defined

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

Apprentices will pay \$75 per license

Establishments will pay the following based on their volume (case count)

Case Counts	Fee
99+	\$ 450
100-299	\$ 550
300-499	\$ 650
500+	\$ 750

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be legally licensed for a period of one year for establishments. Apprentice applications will be processed and presented to the board for consideration.

(5) Provide an estimate of how much it will cost to implement

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this administrative regulation:

- (a) Initially: No additional cost
- (b) On a continuing basis: No additional cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? No special or additional funding will be required for implementation or enforcement.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: These fees are not increasing; just being moved to a single regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation gathers all the fees into one regulation. There is a fee increase for establishments based on case counts.

(9) TIERING: Is tiering applied? Yes,

Case Count	%	KBEFD # Est	Fees
99+	54%	275	\$ 450
100-299	40%	204	\$ 550
300-499	4%	20	\$ 650
500+	2%	10	\$ 750

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

- Funeral Directors, Embalmers
- Funeral Establishments and Embalming Services
- Funeral Apprentices

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

- 201 KAR 15:030
- KRS 316.030(4)(g)
- KRS 316.030(5)(f)
- KRS 316.125(2)(a)
- 201 KAR 15:040 Section 1(1)
- 201 KAR 15:040 Section 3(3)
- 201 KAR 15:040 Section 4(1)
- 201 KAR 15:050 Section 4(5)
- 201 KAR 15:110 Section 5(5)b
- 201 KAR 15:110 Section 5(5)c
- 201 KAR 15:110 Section 5(5)d
- 201 KAR 15:110 Section 5(5)e
- 201 KAR 15:125 Section 1(2)(b)
- 201 KAR 15:125 Section 2(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. None

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

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

(c) How much will it cost to administer this program for the first year? No additional cost to the agency

(d) How much will it cost to administer this program for subsequent years? 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 (+/-):

PROPOSED

Case Calls	KBEFD Facilities	Fee	Income
99+	275	\$ 450	\$ 123,750
100-299	204	\$ 550	\$ 112,200

300-499	20	\$ 650	\$ 13,000
500+	10	\$ 750	\$ 7,500
			\$ 256,450

EXISTING			
Existing	KBEFD Facilities	Fee	Income
Flat Fee	510	\$ 200	\$ 102,000

Expenditures: None  
Other Explanations: None

STATEMENT OF EMERGENCY  
902 KAR 2:212E

This emergency administrative regulation is being promulgated to establish actions that the Department for Public Health may take in response to a declared national or state emergency. These actions include enhancing prevention of the spread of the infectious disease COVID-19 by wearing a face covering in public, subject to certain exceptions. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)1. and 4. to meet an imminent threat to public health, safety and welfare, and to protect human health. This emergency administrative regulation will not be replaced by an ordinary administrative regulation as these measures are in direct response to the declared state public health emergency. This emergency administrative regulation differs from the previously filed emergency administrative regulation on this same subject, 902 KAR 2:211E. Section 2(2) amends the groups of individuals who are required to wear face coverings, and the penalties for non-compliance have been removed.

ANDY BESHEAR, Governor  
ERIC C. FRIEDLANDER, Secretary

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

902 KAR 2:212E. Covering the face in response to declared national or state public health emergency.

EFFECTIVE: Jun 16, 2021  
RELATES TO: KRS 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.

(2) Each person in Kentucky shall cover their nose and mouth with a face covering if the person is:

(a) 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) In a healthcare setting; or

(c) In a long-term care setting.

Section 3. 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 4. 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>.

DR. STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 14, 2021

FILED WITH LRC: June 16, 2021 at 3:21 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; email [CHFSregs@ky.gov](mailto: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 administrative regulation requires the wearing of face coverings at specific locations in the commonwealth of Kentucky to prevent the spread of COVID-19 during the declared national or state public health emergency.

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

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

commonwealth.

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

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This is a statewide administrative regulation that could potentially affect certain specific populations and specialized locations throughout the commonwealth.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: Citizens of the commonwealth will be required to wear face coverings in certain places and venues to prevent the spread of COVID-19.

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

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

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

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

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

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

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

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

(9) TIERING: Is tiering applied? Tiering is applied in this administrative regulation as Section 2(2) of this administrative regulation outlines specialized locations where wearing a face mask is still required.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Cabinet for Health and Family Services, specific populations of the commonwealth, and specific targeted Kentucky businesses, organizations, and governments.

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

regulation. KRS 12.270(2), 39A.180, 194A.010, 194A.025, 194A.050(1), 211.025, 211.180(1), 211.190(1), 214.020

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**STATEMENT OF EMERGENCY  
907 KAR 23:020E**

This emergency administrative regulation is being promulgated to establish and fully implement the single state managed care organization (MCO) pharmacy benefits manager (PBM) required by 2020's Senate Bill 50. Specifically, this emergency administrative regulation is being promulgated to clarify that a \$10.64 dispensing fee will be paid once per month per drug per pharmacy for all Medicaid outpatient prescriptions and to emphasize the enabling statutes for SB 50. In addition, this administrative regulation will allow for additional dispensing fees to be paid for compounded drugs. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)3. to comply with the legislative mandate established in 2020's SB 50 to reorganize the outpatient pharmacy benefits managed by each contracted MCO's PBM to a single PBM for the entire managed care population. The single MCO PBM has been procured and pursuant to the awarded contract will commence operations on July 1, 2021. This emergency administrative regulation is also needed pursuant to KRS 13A.190(1)(a)2. to preserve state and federal funding. Failure to implement the single MCO PBM and comply with a received federal approval could result in a loss of federal funds. In addition, some cost savings could be achieved via the implementation of the single MCO PBM, however, that is difficult to determine until a period of time after it is operational. Finally, DMS needs this administrative regulation pursuant to KRS 13A.190(1)(a)1. to preserve the welfare of Medicaid recipients. Emergency implementation of this administrative regulation is necessary to ensure that the existing independent pharmacies remain viable and continue to reliably serve the Medicaid population in geographically diverse areas of the state. The Department for Medicaid Services further certifies that this administrative regulation has been brought in a timely matter. Multiple issues surrounding this legislation took an extended time to negotiate, including designing a request for proposals, defending a challenge to the awarded request for proposal, and preparing large-scale system changes to accommodate the movement of a large number of recipients into a single PBM system. Furthermore, final decisions relating to dispensing fees were not made until April of 2021. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor  
ERIC FRIEDLANDER, Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Medicaid Services  
Division of Policy and Operations  
(Emergency Amendment)**

**907 KAR 23:020E. Reimbursement for outpatient drugs.**

EFFECTIVE: June 29, 2021

RELATES TO: KRS 205.5510 to 205.5520, 205.560, 205.561, 205.5631, 205.5632, 205.5634, 205.5636, 205.5638, 205.5639, 205.6316(4), 217.015, 42 C.F.R. 440.120, 447.500 - 447.520, 42 U.S.C. 256b, 1396a - 1396d, 1396r-8

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 205.561(2), 205.6316(4), 42 U.S.C. 1396a(a)(30), 42 U.S.C. 1396r-8

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. KRS 205.561(2) and 205.6316(4) require the department to promulgate an administrative regulation to establish the professional dispensing fee for covered drugs. This administrative regulation establishes the Medicaid Program reimbursement requirements, including the professional dispensing fee, for covered outpatient drugs dispensed to all enrolled Medicaid recipients [~~who are not enrolled with a managed care organization~~].

Section 1. Reimbursement. Reimbursement to a pharmacy or medical provider participating in the Medicaid Program for a covered outpatient drug provided to an eligible recipient shall be determined in accordance with the requirements established in this section. (1) A rebate agreement in accordance with 42 U.S.C. 1396r-8(a) shall be signed by the drug manufacturer, or the drug shall be provided based on an exemption from the rebate requirement established by 907 KAR 23:010, Section 5(3).

(2) A pharmacy claim shall meet the point of sale (POS) requirements for services in accordance with 907 KAR 1:673.

(3) Reimbursement shall not be made for more than one (1) prescription to the same recipient during the same time period for a drug with the same:

(a) National Drug Code (NDC); or

(b) Drug or active ingredient name, strength, and dosage form.

(4) A timely claim payment shall be processed in accordance with 42 C.F.R. 447.45.

(a) In accordance with 42 C.F.R. 447.45, a claim shall be submitted to the department within twelve (12) months of the date of service.

(b) The department shall not reimburse for a claim submitted to the department after twelve (12) months from the date of service unless the claim is for a drug dispensed to an individual who was retroactively determined to be eligible for Medicaid.

(c) The department shall not reimburse a claim for a drug dispensed to an individual who was retroactively determined to be eligible for Medicaid after 365 days have lapsed from the date that the department issued the notice of retroactive eligibility.

(5) Reimbursement shall be denied if:

(a) The recipient is ineligible on the date of service;

(b) The drug is excluded from coverage in accordance with 907 KAR 23:010; or

(c) Prior authorization is required by the department and the request for prior authorization has not been approved prior to dispensing the drug, except in an emergency supply situation.

(6) Pursuant to KRS 205.622, prior to billing the department, a provider shall submit a bill to a third party payer if the provider has knowledge that the third party payer may be liable for payment.

(a) If a provider is aware that a Medicaid recipient has additional insurance or if a recipient indicates in any manner that the recipient has additional insurance, the provider shall submit a bill to the third party in accordance with KRS 205.622.

(b) A provider who is aware that a recipient may have other insurance, but the other insurance is not identified on the medical

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assistance identification card or by the recipient, shall notify the department's fiscal agent of the potential third-party liability.

(7) There shall be no copayment or cost-sharing for an outpatient drug[Drug copayment requirements and provisions shall be as established in 907 KAR 1:604].

(8) If a payment is made for a drug that was not administered or dispensed in accordance with 907 KAR 23:010 or the payment was not appropriately reimbursed as required by this administrative regulation, the provider shall refund the amount of the payment to the department or the department may, at its discretion, recoup the amount of the payment.

(9) Adherence to the requirements established in this section shall be monitored through an on-site audit, post payment review of the claim, a computer audit, or an edit of the claim.

Section 2. Reimbursement Methodology. (1) Drug cost shall be determined in the pharmacy program using drug pricing and coding information obtained from nationally recognized comprehensive drug data files with pricing based on the actual package size utilized.

(2) Lowest of Logic. Except as provided in Section 4 of this administrative regulation, covered outpatient drug cost shall be reimbursed at the lowest of the:

(a) National Average Drug Acquisition Cost or NADAC, plus the professional dispensing fee;

(b) Wholesale acquisition cost or WAC, plus the professional dispensing fee;

(c) Federal upper limit or FUL, plus the professional dispensing fee;

(d) Maximum allowable cost or MAC, plus the professional dispensing fee; or

(e) The provider's usual and customary charge to the public, as identified by the claim charge, plus the professional dispensing fee[price].

(3) A clotting factor shall be reimbursed via the lowest of logic established in subsection (2) of this section and shall include the Average Sales Price plus six (6) percent, plus the professional dispensing fee.

(4) Pursuant to KRS 205.5510 to 205.5520:

(a) Reimbursement methodologies for the managed care population shall be subject to the terms of the awarded contract to administer the single pharmacy benefits manager or PBM for the managed care population.

(b) The single PBM for the managed care population shall not discriminate against 340B contract pharmacies via any reimbursement methodologies utilized.

Section 3. Professional Dispensing Fee. (1) Effective April 1, 2017, the professional dispensing fee for a covered outpatient drug prescribed by an authorized prescriber and dispensed by a participating pharmacy provider in accordance with 907 KAR 23:010, and pursuant to a valid prescription shall be \$10.64 per pharmacy provider per recipient per drug per month.

(2) The professional dispensing fee for a compounded drug shall be \$10.64 per pharmacy provider per recipient per drug reimbursed up to three (3) times every thirteen (13) days.

Section 4. Reimbursement Limitations. (1) Emergency supply. Dispensing of an emergency supply of a drug shall be made outside of the prescriber's normal business hours and as permitted in accordance with 907 KAR 23:010.

(2) Partial fill. If the dispensing of a drug results in partial filling of the quantity prescribed, including an emergency supply, reimbursement for the drug ingredient cost for the actual quantity dispensed in the partial fill and the completion fill for the remainder of the prescribed quantity shall:

(a) Utilize the lowest of logic established by Section 2 of this administrative regulation; and

(b) Include payment of only one (1) professional dispensing fee, which shall be paid at the time of the completion fill.

(3) Maintenance drugs. The department shall not reimburse for a refill of a maintenance drug prior to the end of the dispensing period established by 907 KAR 23:010 unless the department

determines that it is in the best interest of the recipient.

(4) For a nursing facility resident meeting Medicaid nursing facility level of care criteria, and in accordance with 201 KAR 2:190 and 902 KAR 55:065, an unused drug paid for by Medicaid shall be returned to the originating pharmacy and the department shall be credited for the drug ingredient cost.

(5) For a Medicaid recipient participating in a hospice program, payment for a drug shall be in accordance with 907 KAR 1:340.

(6) 340B Pharmacy Transactions.

(a) A pharmacy dispensing drugs purchased through the 340B Program pursuant to a 340B eligible prescription from a covered entity shall bill the department no more than the actual 340B acquisition cost, plus the professional dispensing fee.

(b) For a 340B purchased drug dispensed by a pharmacy, the lowest of logic shall include the 340B ceiling price.

(c) A drug dispensed by a 340B contract pharmacy shall not be eligible as a 340B transaction and shall be reimbursed in accordance with the lowest of logic as required by Section 2 of this administrative regulation plus the professional dispensing fee.

(d) Reimbursement to a 340B contract pharmacy dispensing a 340B eligible prescription for the managed care population shall not include the 340B ceiling price in the lowest of logic.

(7) Physician administered drugs (PAD).

(a) Federal rebate required. Only covered PAD products that are federally rebateable pursuant to a manufacturer rebate agreement shall be reimbursed.

(b) Non-340B purchased PAD. Reimbursement for drug cost for a drug administered by a physician or the physician's authorized agent in an office or outpatient clinic setting, not purchased through the 340B Program, and submitted for reimbursement as a medical benefit shall be reimbursed only for the drug cost by the lowest of logic required by Section 2 of this administrative regulation, which shall include the average sales price (ASP) plus six (6) percent. A professional dispensing fee shall not be paid for PAD.

(c) 340B purchased PAD. For a drug purchased through the 340B Program and administered by a physician or the physician's authorized agent in an office or outpatient clinic setting, and submitted for reimbursement as a medical benefit, the lowest of logic required by Section 2 of this administrative regulation shall include the 340B ceiling price. The covered entity shall bill no more than the actual 340B acquisition cost. A professional dispensing fee shall not be paid for PAD.

(8) Non-340B hemophilia products. Clotting factors acquired outside of the 340B Program shall be reimbursed by the lowest of logic required by Section 2 of this administrative regulation, which shall include the average sales price (ASP) plus six (6) percent. The professional dispensing fee established by Section 3 of this administrative regulation shall also be paid.

Section 5. The maximum allowable cost, or MAC, shall be determined by taking into account each drug's cost, rebate status (non-rebateable or rebateable) in accordance with 42 U.S.C. 1396r-8(a), marketplace status (obsolete, terminated, or regional availability), equivalency rating (A-rated), and relative comparable pricing. Other factors considered shall include clinical indications of drug substitution, utilization, and availability in the marketplace. (1) Drug pricing resources used to compare estimated acquisition costs for multiple-source drugs shall include comprehensive data files maintained by a vendor under contract to the department, such as:

(a) NADAC as published by CMS;

(b) WAC, manufacturer's price list, or other nationally recognized sources;

(c) The Average Manufacturers Price for 5i Drugs as reported by CMS;

(d) ASP as published by CMS;

(e) Nationally recognized drug file vendors approved for use at a federal level and that have been approved by the department;

(f) Pharmacy providers; or

(g) Wholesalers.

(2) The department shall maintain a current listing of drugs and their corresponding MAC prices accessible through the department's pharmacy webpage.



(3) The process for a pharmacy provider to appeal a MAC price for a drug shall be as established in this subsection.

(a) The pharmacy provider shall email or fax a completed Kentucky Medicaid MAC Price Research Request Form to Kentucky's authorized agent in accordance with the instructions on the form.

(b) An appeal of a MAC price for a drug shall be investigated and resolved within three (3) business days.

(c) If available, the provider shall be supplied with the name of one (1) or more manufacturers who have a price comparable to the MAC price.

(d) The MAC price and effective date of that price shall be adjusted accordingly, retroactive to the date of service for the claim in question, if:

1. It is determined that a manufacturer does not exist in the price range referenced in paragraph (c) of this subsection; or

2. The provider is able to document that despite reasonable efforts to obtain access, he or she does not have access to the one (1) or more manufacturers supplied to the provider.

(e) If an adjusted MAC price becomes effective, the provider shall be informed that the claim may be rebilled for the price adjustment.

Section 6. Federal Approval and 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 7. Incorporation by Reference. (1) "Kentucky Medicaid MAC Price Research Request Form", 2012, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at:

(a) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at: <https://chfs.ky.gov/agencies/dms/dpo/ppb/Pages/default.aspx> [<http://www.chfs.ky.gov/dms/incorporated.htm>].

LISA D. LEE, Commissioner  
ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 23, 2021

FILED WITH LRC: June 29, 2021 at 11:36 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; email [CHFSregs@ky.gov](mailto:CHFSregs@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services' (DMS's) reimbursement provisions and requirements regarding outpatient drugs dispensed or administered to all Medicaid recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's reimbursement provisions and requirements regarding all outpatient drugs dispensed or administered to Medicaid recipients.

(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 DMS's reimbursement provisions and requirements regarding outpatient drugs dispensed or administered to all Medicaid recipients.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding outpatient drugs dispensed or administered to all Medicaid recipients.

(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 implements 2020's SB 50 and the department's awarded request for proposals as required by that legislation. The administrative regulation is amended to clarify and establish requirements relating to the managed care and fee-for-service populations. In addition, the administrative regulation establishes when the professional dispensing fee can be assessed, clarifies clotting factor reimbursement, and establishes professional dispensing fees for compounded drugs. Finally, the regulation is amended to remove cost-sharing and comply with Senate Bill 55's removal of all co-pays.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is needed to implement 2020's SB 50 and the department's awarded request for proposals as required by that legislation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment allows for the implementation of a single-state PBM as required by KRS 205.5512-.5520.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow for 2020's SB 50 to be fully implemented.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All participating pharmacy providers dispensing covered drugs (approximately 1,500) and all participating medical providers administering covered drugs (approximately 46,000) will be affected by the administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In order to be reimbursed by the DMS, participating providers will have to submit pharmacy or medical claims for covered outpatient drugs in accordance with this administrative regulation and applicable billing rules.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs experienced by affected providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicable providers will benefit by receiving a true drug ingredient cost based reimbursement

along with a professional dispensing fee from DMS for dispensing covered outpatient drugs to all Medicaid recipients.

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

(a) Initially: DMS estimates that moving to a single PBM model for all Medicaid recipients will be cost-neutral. DMS will continue to assess costs and provide updates via the required reporting functions of 2021's SB 192 and KRS 205.5510 to 205.5520.

(b) On a continuing basis: DMS estimates that moving to a single PBM model for all Medicaid recipients will be cost-neutral. DMS will continue to assess costs and provide updates via the required reporting functions of 2021's SB 192 and KRS 205.5510 to 205.5520.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency 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: At this time, DMS does not assess that an increase in fees or funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? DMS will be affected by this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 205.561(2), 205.6316(4), 42 U.S.C. 1396a(a)(30), 42 U.S.C. 1396f-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.

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

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

(c) How much will it cost to administer this program for the first year? DMS estimates that moving to a single PBM model for all Medicaid recipients will be cost-neutral. DMS will continue to assess costs and provide updates via the required reporting functions of 2021's SB 192 and KRS 205.5510 to 205.5520.

(d) How much will it cost to administer this program for subsequent years? DMS estimates that moving to a single PBM model for all Medicaid recipients will be cost-neutral. DMS will continue to assess costs and provide updates via the required reporting functions of 2021's SB 192 and KRS 205.5510 to 205.5520.

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

Revenues (+/-): \_\_\_\_\_  
 Expenditures (+/-): \_\_\_\_\_  
 Other Explanation: \_\_\_\_\_

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. Part 447.

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). Revising reimbursement methodology for outpatient drugs dispensed or administered to Medicaid recipients shall not change compliance standards.

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.

STATEMENT OF EMERGENCY  
 921 KAR 1: 400E

This emergency administrative regulation is necessary to ensure that the Worksheet for Monthly Child Support Obligation (CS-71) and the Worksheet for Monthly Child Support Obligation Exception (CS-71.1) are updated to coincide with the June 29, 2021 effective date of House Bill 404 (Ky Acts Chapter 47), passed in the 2021 regular session that updated the child support guidelines table. The above-referenced forms are used in conjunction with the guidelines table to establish or modify a child support obligation. This amendment is deemed to be an emergency pursuant to KRS 13A.190(1)(a) 3, as the administrative regulation is necessary to meet an imminent deadline to coincide with the effective date of House Bill 404, which amended Kentucky Revised Statute 403.212. This emergency administrative regulation will be replaced by an identical ordinary administrative regulation.

ANDY BESHEAR, Governor  
 ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES  
 Department for Income Support  
 Division of Child Support Enforcement  
 (Emergency Amendment)

921 KAR 1:400E. Establishment, review, and modification of child support and medical support orders.

EFFECTIVE: June 29, 2021

RELATES TO: KRS 205.710-, ~~205.802~~[205.800], 205.990, 213.046(4), (9), 403.160(1), (2)(a), (b), 403.210-403.240, 405.430, 405.440, 405.991, 406.021, 406.025, 454.220, 45 C.F.R. 302.50, 302.56, 302.80, 303.4, 303.8, 303.30-303.32, 42 U.S.C. 651-669B  
 STATUTORY AUTHORITY: KRS 194A.050(1), 205.795, 405.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the cabinet 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 and 405.520 authorize the secretary of

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the cabinet to promulgate and adopt administrative regulations to operate the Child Support Enforcement Program in accordance with federal law and regulations. This administrative regulation establishes the requirements for the establishment, review, and modification of child support and medical support orders.

Section 1. Support Obligation Shall be Established. (1) A child support and medical support obligation shall be established by:

- (a) A court of competent jurisdiction; or
- (b) An administrative order.

(2) The obligation shall be the amount as established administratively or judicially, as computed by the:

(a) CS-71, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation; ~~or~~

(b) CS-71.1, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation Exception; ~~or~~

(c) Any other form incorporated by a regulation promulgated by the agency.

(3) The amount determined shall be the amount to be collected. Any support payment collected shall reduce the amount of the obligation dollar for dollar.

(4) For a public assistance case and a nonpublic assistance case for which child support services are being provided, the cabinet shall use state statutes and legal process in establishing the amount of a child support and medical support obligation, including KRS 403.211, 403.212, 405.430 and 454.220.

(5) In addition to the deductions specified in KRS 403.212(2), the deduction for a prior-born child residing with a parent for an administratively or judicially imputed child support obligation, as specified in KRS 403.212(2)(~~h~~g)3, shall be calculated by using:

(a) That parent's portion of the total support obligation as indicated on the worksheet, if:

1. There is a support order; and
2. A copy of the child support obligation worksheet is obtained;

or

(b) 100 percent of the income of the parent with whom the prior born child resides, if:

1. There is no support order;
2. There is a support order, but no support obligation worksheet; or
3. A worksheet cannot be obtained.

(6) In accordance with 45 C.F.R. 303.4(d), within ninety (90) calendar days of locating a noncustodial parent, or obligor, the cabinet shall:

- (a) Complete service of process; or
- (b) Document an unsuccessful attempt to serve process.

(7) If service of process has been completed, the cabinet shall, if necessary:

- (a) Establish paternity;
- (b) Establish a child support or medical support obligation; or
- (c) Send a copy of any legal proceeding to the obligor and obligee within fourteen (14) calendar days of issuance.

(8) If a court or administrative authority dismisses a petition for support without prejudice, the cabinet shall, at that time, determine when to appropriately seek an order in the future.

Section 2. Administrative Establishment. (1) The cabinet may administratively establish a child support obligation or medical support obligation, or both if:

- (a) Paternity is not in question;
- (b) There is no existing order of support for the child;
- (c) The noncustodial parent, or obligor, resides or is employed in Kentucky; and
- (d) The noncustodial parent's, or obligor's, address is known.

(2) To gather necessary information for administrative establishment, as appropriate the cabinet shall:

- (a) Send to the custodial parent or nonparent custodian forms:
  1. CS-133, Custodial Parent Information Request;
  2. CS-132, Child Care Expense Verification; and
  3. CS-136, Health Insurance Information Request;
- (b) Send to the custodial parent the CS-65, Statement of Income and Resources;
- (c) Send to the noncustodial parent forms:

1. CS-64, Noncustodial Parent Appointment Letter;
2. CS-65, Statement of Income and Resources;
3. CS-132, Child Care Expense Verification; and
4. CS-136, Health Insurance Information Request;

(d) Send a CS-130, Income Information Request, to the employer of the:

1. Custodial parent; or
2. Noncustodial parent, or obligor; and

(e) Issue a CS-84 Administrative subpoena in accordance with KRS 205.712(2)(k) and (n), if appropriate.

(3) The cabinet shall determine the monthly support obligation in accordance with the child support guidelines as contained in KRS 403.212 or subsection (4) of this section.

(4) In a default case, the cabinet shall set the obligation based upon the needs of the child or the previous standard of living of the child, whichever is greater in accordance with KRS 403.211(5).

(5) After the monthly support obligation is determined, the cabinet shall serve a CS-66, Administrative Order/Notice of Monthly Support Obligation, in accordance with the requirements of KRS 405.440 and 42 U.S.C. 654(12).

(6) The cabinet shall not administratively modify an obligation that is established by a court of competent jurisdiction, except as provided in subsection (7) of this section.

(7) If support rights are assigned to the cabinet, the cabinet shall direct the obligor to pay to the appropriate entity by modifying the order:

- (a) Administratively upon notice to the obligor or obligee; or
- (b) Judicially through a court of competent jurisdiction.

Section 3. Review and Adjustment of Child Support and Medical Support Orders. (1) In accordance with KRS 405.430(6), the cabinet may modify the monthly support established. Every thirty-six (36) months the cabinet shall notify each party subject to a child support order of the right to re-quest a review of the order.

(2) Pursuant to 45 C.F.R. 303.8, the cabinet shall conduct a review upon the request of:

- (a) Either parent;
- (b) The state agency with assignment; or
- (c) Another party with standing to request a modification.

(3) In accordance with 45 C.F.R. 303.8(e), within 180 days of receiving a request for review or of locating the nonrequesting parent, whichever occurs later, the cabinet shall:

- (a) Conduct the review;
- (b) Modify the order; or
- (c) Determine the circumstances do not meet criteria for modification.

(4) The cabinet shall provide notification within fourteen (14) calendar days of modification or determination to each parent or custodian, if appropriate, and legal representatives by issuing a CS-79, Notification of Review Determination, in accordance with KRS 205.712(2)(m).

(5) In accordance with subsections (2) and (3) of this section, the cabinet or the cabinet's designee shall seek modification of an administrative or judicial support order to include medical support on behalf of the child as defined in KRS 403.211(7)(a) through (d).

(6) Retroactive modification of a child support order shall occur in accordance with KRS 403.211(5) and 403.213(1).

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "CS-64, Noncustodial Parent Appointment Letter", 3/10;
- (b) "CS-65, Statement of Income and Resources", ~~6/2021~~ [42/45];
- (c) "CS-66, Administrative Order/Notice of Monthly Support Obligation", 3/10;
- (d) "CS-71, Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation", ~~6/2021~~ [3/49];
- (e) "CS-71.1, Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation Exception", ~~6/2021~~ [3/49];
- (f) "CS-79, Notification of Review Determination", 3/10;
- (g) "CS-84, Administrative Subpoena", 8/18;
- (h) "CS-130, Income Information Request", 3/10;
- (i) "CS-132, Child Care Expense Verification", 3/10;

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- (j) "CS-133, Custodial Parent Information Request", 3/10; and  
(k) "CS-136, Health Insurance Information Request", 12/15.

(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/dcbcs/Pages/default.aspx>.

STEVEN P. VENO, Commissioner  
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 3, 2021

FILED WITH LRC: June 29, 2021 at 11:55 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; email [CHFSregs@ky.gov](mailto: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 requirements for the establishment, review and modification of child and medical support orders.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement requirements for the establishment, review and modification of child and medical support orders in accordance with 42 U.S.C. 651-654, 656, 666, 667, 669B and 45 C.F.R. 302 and 303.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Cabinet has responsibility under KRS 194A.050(1), 205.795, 405.520, and by virtue of applying for federal funds under 42 U.S.C. 651-669B to establish, review, and modify child support and medical support obligations. This administrative regulation sets forth such procedures and processes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist with further establishing procedures to ensure effective administration of and conforming to KRS 403.211 through 403.213.

(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 an update in a citation after HB 404 (2021 session) became law as well as updating material incorporated by reference: Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation (CS-71) and the Commonwealth of

Kentucky, Worksheet for Monthly Child Support Obligation Exception (CS-71.1).

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to update a citation and to update material incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying the criteria used by the Cabinet in establishing, reviewing, and modifying child support and medical support orders. This amendment identifies each party that has a right to request a review or modification of the child or medical support order, conforming to 45 C.F.R. 303.8. This amendment also identifies KRS 403.212 and 403.211(5) as the laws governing how child support obligations are determined.

(d) How the amendment will assist in the effective administration of the statutes: The forms being revised have been updated to reflect the changes implemented in HB 404 (2021) in regard to determining and establishing a child support obligation.

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

Administrative Office of the Courts – Judges and Staff  
Private Attorneys  
Child Support Enforcement Attorneys and Staff  
Participants in the Child Support 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: Administrative Office of the Courts – must educate the Judiciary regarding the new Worksheet for Monthly Child Support Obligation and the Worksheet for Monthly Child Support Obligation Exception.

Private Attorneys – will access the updated information to become familiar with the revised forms.

Child Support Enforcement Attorneys and Staff – will receive guidance from the Child Support Program regarding the revised forms.

Participants with new or cases where participants request a review and possible modification, will access or be provided by a child support office, the revised forms.

(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 forms for determining an obligation.

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

(a) Initially: The amendment to this administrative regulation will be implemented with no allocated funds. There will be minimal costs associated with implementing the changes on our websites.

(b) On a continuing basis: The administrative regulation has no associated allocation of funding. Once updated on our websites, no additional costs are associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding include state general funds and federal funds under 42 U.S.C. 401-419, Title IV-D of the Social Security Act.

(7) Provide an assessment of whether an 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

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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.

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 302 and 303, 42 U.S.C. 651-654, 656, 666, 667, 669B.

2. State compliance standards. KRS 194A.050(1), 205.710, 205.712, 205.725, 205.735, 205.765, 205.792, 205.793, 205.795, 403.211, 403.212, 403.213, 405.430, 405.440, 405.450, 405.520, 405.550, 405.991, 406.021, 406.025 and 454.220.

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the 42 U.S.C. 654(4)(A), and 666(a)(10) and (c)(1).

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. 42 U.S.C. 651 - 654, 656, 666(a)(10) and (c)(1), 667, and 669B. 45 C.F.R. 302 and 303. KRS 194A.050(1), 205.710, 205.712, 205.725, 205.735, 205.765, 205.792, 205.793, 205.795, 403.211, 403.212, 403.213, 405.430, 405.440, 405.450, 405.520, 405.550, and 405.991.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this administrative regulation will be implemented with no allocated funds. There will be minimal costs associated with implementing the changes on Child Support Enforcement program websites. This administrative regulation will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment to this administrative regulation will be implemented with no allocated funds. There will be minimal costs associated with implementing the changes on the Child Support Program's computer system and website. This administrative regulation will not generate revenue.

(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.

STATEMENT OF EMERGENCY  
921 KAR 2:015E

This emergency administrative regulation is necessary in order to immediately utilize General Fund moneys appropriated specifically for the reimbursements provided to personal care homes in fiscal year 2021-2022. House Bill 192 (2021 Regular Session, Acts Chapter 169) appropriated \$2,200,000 to support an increase in the reimbursements provided to personal care homes. This increase is established in Section 9 of this administrative regulation and the cabinet will monitor the provision of this reimbursement to ensure consistency with appropriated funds. This amendment is deemed to be an emergency pursuant to KRS 13A.190(1)(a)1., 2., and 3. as supporting personal care homes better ensures a healthy and safe environment for residents. Also, this emergency amendment is necessary in order to prevent the loss of state funds appropriated specifically beginning this fiscal year and to meet the imminent deadline of the beginning of this fiscal year, July 1, 2021, included in House Bill 192. 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  
ERIC C. FRIEDLANDER, Secretary

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

921 KAR 2:015E. Supplemental programs for persons who are aged, blind, or have a disability.

EFFECTIVE: July 1, 2021

RELATES TO: KRS Chapter 194A, 202A.011(12), 205.245, 209.020(4), 216.530, 216.557(1), [216.750(2);] 216.765(2), Chapter 216B, Chapter 514, 20 C.F.R. 416.120, 416.212, 416.2030, 416.2095, 416.2096, 416.2099, 8 U.S.C. 1621, 1641, 42 U.S.C. 1381-1383

STATUTORY AUTHORITY: KRS 194A.050(1), 205.245, 42 U.S.C. 1382e-g

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. 42 U.S.C. 1382 authorizes the cabinet to administer a state funded program of supplementation to all former recipients of the Aid to the Aged, Blind, and Disabled Program as of December 13, 1973, and who were disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 establishes the mandatory supplementation program and the supplementation to other needy persons who are aged, blind, or have a disability. In addition, any state that makes supplementary payments on or after June 30, 1977, and does not have a pass-along agreement in effect with the Commissioner of the Social Security Administration, formerly a part of the U.S. Department of Health, Education, and Welfare, shall be determined by the commissioner to be ineligible for payments under Title XIX of the Social Security Act in accordance with 20 C.F.R. 416.2099. This administrative regulation establishes the provisions of the supplementation program.

Section 1. Definitions. (1) "Activities of daily living" is defined by KRS 194A.700(1).

(2) "Adult" is defined by KRS 209.020(4).

(3) "Aid to the Aged, Blind and Disabled Program" means the

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former state-funded program for an individual who was aged, blind, or had a disability.

(4) "Care coordinator" means an individual designated by a community integration supplementation applicant or recipient to fulfill responsibilities specified in Section 6(2) of this administrative regulation.

(5) "Department" means the Department for Community Based Services or its designee.

(6) "Full-time living arrangement" means a residential living status that is seven (7) days a week, not part time.

(7) "Instrumental activities of daily living" is defined by KRS 194A.700(9).

(8) "Private residence" means a dwelling that meets requirements of Section 4(2)(d) of this administrative regulation.

(9) "Qualified immigrant [alien]" means an immigrant [alien] who, at the time the person applies for, receives, or attempts to receive state supplementation, meets the U.S. citizenship requirements of 907 KAR 20:001.

(10) "Qualified mental health professional" is defined by KRS 202A.011(12).

(11) "Serious mental illness" or "SMI" means a mental illness or disorder in accordance with Section 6(1) of this administrative regulation.

(12) "Supplemental security income" or "SSI" means a monthly cash payment made pursuant to 42 U.S.C. 1381 to 1383f to the aged, blind, or disabled.

Section 2. Mandatory State Supplementation. (1) A recipient for mandatory state supplementation shall include a former Aid to the Aged, Blind and Disabled Program recipient who became ineligible for SSI due to income but whose special needs entitled the recipient to an Aid to the Aged, Blind and Disabled Program payment as of December 1973.

(2) A mandatory state supplementation recipient shall be subject to the same payment requirements as specified in Section 4 of this administrative regulation.

(3) A mandatory state supplementation payment shall be equal to the difference between:

(a) The Aid to the Aged, Blind and Disabled Program payment for the month of December 1973; and

(b) 1. The total of the SSI payment; or

2. The total of the SSI payment and other income for the current month.

(4) A mandatory payment shall discontinue if:

(a) The needs of the recipient as recognized in December 1973 have decreased; or

(b) Income has increased to the December 1973 level.

(5) The mandatory payment shall not be increased unless:

(a) Income as recognized in December 1973 decreases;

(b) The SSI payment is reduced, but the recipient's circumstances are unchanged; or

(c) The standard of need as specified in Section 9 of this administrative regulation for a class of recipients is increased.

(6) If a husband and wife are living together, an income change after September 1974 shall not result in an increased mandatory payment unless total income of the couple is less than December 1973 total income.

Section 3. Optional State Supplementation Program. (1) Except as established in Sections 7, 8, and 9 of this administrative regulation, optional state supplementation shall be available to a person who meets technical requirements and resource limitations of the medically needy program for a person who is aged, blind, or has a disability in accordance with:

(a) 907 KAR 20:001;

(b) 907 KAR 20:005, Sections 5(2), (3), (4), (7), 10, and 12;

(c) 907 KAR 20:020, Section 2(4)(a);

(d) 907 KAR 20:025; or

(e) 907 KAR 20:040, Section 1.

(2) A person shall apply or reapply for the state supplementation program in accordance with 921 KAR 2:035 and shall be required to:

(a) Furnish a Social Security number; or

(b) Apply for a Social Security number, if a Social Security number has not been issued.

(3) If potential eligibility exists for SSI, an application for SSI shall be mandatory.

(4) The effective date for state supplementation program approval shall be in accordance with 921 KAR 2:050.

Section 4. Optional State Supplementation Payment. (1) An optional supplementation payment shall be issued in accordance with 921 KAR 2:050 for an eligible individual who:

(a) Requires a full-time living arrangement;

(b) Has insufficient income to meet the payment standards specified in Section 9 of this administrative regulation; and

(c) 1. Resides in a personal care home and is eighteen (18) years of age or older in accordance with KRS 216.765(2);

2. Resides in a family care home and is at least eighteen (18) years of age in accordance with 902 KAR 20:041, Section 3(14);

3. Receives caretaker services and is at least eighteen (18) years of age; or

4.a. Resides in a private residence;

b. Is at least eighteen (18) years of age; and

c. Has SMI.

(2) A full-time living arrangement shall include:

(a) Residence in a personal care home that:

1. Meets the requirements and provides services established in 902 KAR 20:036; and

2. Is licensed under KRS 216B.010 to 216B.131;

(b) Residence in a family care home that:

1. Meets the requirements and provides services established in 902 KAR 20:041; and

2. Is licensed under KRS 216B.010 to 216B.131;

(c) A situation in which a caretaker is required to be hired to provide care other than room and board; or

(d) A private residence, which shall:

1. Be permanent housing with:

a. Tenancy rights; and

b. Preference given to single occupancy; and

2. Afford an individual with SMI choice in activities of daily living, social interaction, and access to the community.

(3) A guardian or other payee who receives a state supplementation check for a state supplementation recipient shall:

(a) Return the check to the Kentucky State Treasurer, the month after the month of:

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 10 of this administrative regulation; or

b. Residence other than a private residence pursuant to subsection (2)(d) of this section; or

2. Death of the state supplementation recipient; and

(b) Notify a local county department within five (5) working days of the death or discharge of the state supplementation recipient.

(4) Failure to comply with subsection (3)(a) of this section may result in prosecution in accordance with KRS Chapter 514.

(5) If there is no guardian or other payee, a personal care or family care home that receives a state supplementation check for a state supplementation recipient shall:

(a) Return the check to the Kentucky State Treasurer, the month after the month of:

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 10 of this administrative regulation;

b. Another personal care or family care home; or

c. Residence other than a private residence pursuant to subsection (2)(d) of this section; or

2. Death of the state supplementation recipient; and

(b) Notify a local county department within five (5) working days of the:

1. Death or discharge of the state supplementation recipient; or

2. Voluntary relinquishment of a license to the Office of the Inspector General.

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(6) If a personal care or family care home receives a state supplementation check after voluntary relinquishment of a license, as specified in subsection (5)(b)2. of this section, the personal care or family care home shall return the check to the Kentucky State Treasurer.

(7) Failure to comply with subsections (5)(a) or (6) of this section may result in prosecution in accordance with KRS Chapter 514.

Section 5. Eligibility for Caretaker Services. (1) Service by a caretaker shall be provided to enable an adult to:

(a) Remain safely and adequately:

1. At home;
2. In another family setting; or
3. In a room and board situation; and

(b) Prevent institutionalization.

(2) Service by a caretaker shall be provided at regular intervals by:

(a) A live-in attendant; or

(b) One (1) or more persons hired to come to the home.

(3) Eligibility for caretaker supplementation shall be verified annually by the cabinet with the caretaker to establish how:

(a) Often the service is provided;

(b) The service prevents institutionalization; and

(c) Payment is made for the service.

(4) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if the:

(a) Client is taken daily or periodically to the home of the caretaker; or

(b) Caretaker service is provided by the following persons living with the applicant:

1. The spouse;
2. Parent of an adult or minor child who has a disability; or
3. Adult child of a parent who is aged, blind, or has a disability.

Section 6. Eligibility for Community Integration Supplementation. (1) Eligibility for the community integration supplementation shall be based upon a diagnosis of SMI by a qualified mental health professional. SMI shall:

(a) Not include a primary diagnosis of Alzheimer's disease or dementia;

(b) Be described in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM);

(c) Impair or impede the individual's functioning in at least one (1) major area of living such as inability to care for or support self, communicate, or make and maintain interpersonal relationships; and

(d) Be unlikely to improve without treatment, services, or supports.

(2) Eligibility for the community integration supplementation shall be verified annually by the cabinet with the applicant, recipient, or care coordinator to establish how:

(a) Often services, including those that address subsection (1)(c) of this section, are provided;

(b) The services prevent institutionalization and support private residence in accordance with Section 4(2)(d) of this administrative regulation; and

(c) Payment is made for the services.

(3) Unless criteria in Section 10 of this administrative regulation are met by the applicant or recipient, SMI supplementation shall not be available to a resident of a home, facility, institution, lodging, or other establishment:

(a) Licensed or registered in accordance with KRS Chapter 216B; or

(b) Certified in accordance with KRS Chapter 194A.

Section 7. Resource Consideration. (1) Except as provided in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy in accordance with:

(a) 907 KAR 20:001;

(b) 907 KAR 20:020, Section 2(4)(a);

(c) 907 KAR 20:025; and

(d) 907 KAR 20:040, Section 1.

(2) An individual or couple shall not be eligible if countable resources exceed the limit of:

(a) \$2,000 for an individual; or

(b) \$3,000 for a couple.

Section 8. Income Considerations. (1) Except as provided in subsections (2) through (8) of this section, income and earned income deductions shall be considered according to the policy for the medically needy in accordance with:

(a) 907 KAR 20:001;

(b) 907 KAR 20:020, Section 2(4)(a);

(c) 907 KAR 20:025; and

(d) 907 KAR 20:040, Section 1.

(2) The optional supplementation payment shall be determined by:

(a) Adding:

1. Total countable income of the applicant or recipient, or applicant or recipient and spouse; and

2. A payment made to a third party on behalf of an applicant or recipient; and

(b) Subtracting the total of paragraph (a)1. and 2. of this subsection from the standard of need in Section 9 of this administrative regulation.

(3) Income of an ineligible spouse shall be:

(a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and

(b) Conserved in the amount of one-half (1/2) of the SSI standard for an individual for:

1. The applicant or recipient; and

2. Each minor dependent child.

(4) Income of an eligible individual shall not be conserved for the needs of the ineligible spouse or minor dependent child.

(5) Income of a child shall be considered if conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.

(6) The earnings of the eligible individual and ineligible spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(7) If treating a husband and wife who reside in the same personal care or family care home as living apart prevents them from receiving state supplementation, the husband and wife may be considered to be living with each other.

(8) The SSI twenty (20) dollar general exclusion shall not be an allowable deduction from income.

Section 9. Standard of Need. (1) To the extent funds are available, the standard of need shall be the amount listed in this subsection in addition to all cost of living adjustments determined by the Social Security Administration that have taken place since 2021 [2019] pursuant to 42 U.S.C. 415(i) and published at <https://www.ssa.gov/cola/>:

(a) For a resident of a personal care home, ~~\$1,409~~ [\$1,294];

(b) For a resident of a family care home, ~~\$965~~ [\$943];

(c) For an individual who receives caretaker services:

1. A single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability, ~~\$855~~ [\$833];

2. An eligible couple, both aged, blind, or having a disability and one (1) requiring care, ~~\$1,251~~ [\$1,248]; or

3. An eligible couple, both aged, blind, or having a disability and both requiring care, ~~\$1,305~~ [\$1,272]; or

(d) For an individual who resides in a private residence and has SMI, ~~\$1,313~~ [\$1,294].

(2)(a) In a couple case, if both are eligible, the couple's income shall be combined prior to comparison with the standard of need.

(b) One-half (1/2) of the deficit shall be payable to each.

(3) A personal care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a sixty (60) dollar personal needs allowance that shall be retained by the client.

(4) A family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollar personal needs allowance that shall be

retained by the client.

Section 10. Temporary Stay in a Medical Facility. (1) An SSI recipient who receives optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if the:

(a) SSI recipient meets eligibility for medical confinement established by 20 C.F.R. 416.212;

(b) Social Security Administration notifies the department that the admission shall be temporary; and

(c) Purpose shall be to maintain the recipient's home or other living arrangement during a temporary admission to a health care facility.

(2) A non-SSI recipient who receives mandatory or optional state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if:

(a) The non-SSI recipient meets the requirements of subsection (1)(c) of this section;

(b) A physician certifies, in writing, that the non-SSI recipient is not likely to be confined for longer than ninety (90) full consecutive days; and

(c) A guardian or other payee, personal care home, or family care home, receiving a state supplementation check for the state supplementation recipient, provides a local county department office with:

1. Notification of the temporary admission; and

2. The physician statement specified in paragraph (b) of this subsection.

(3) A temporary admission shall be limited to the following health care facilities:

(a) Hospital;

(b) Psychiatric hospital; or

(c) Nursing facility.

(4) If a state supplementation recipient is discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge.

Section 11. Citizenship requirements. An applicant or recipient shall be a:

(1) Citizen of the United States; or

(2) Qualified immigrant [a]i[æ].

Section 12. Requirement for Residency. An applicant or recipient shall reside in Kentucky.

Section 13. Mental Illness or Intellectual Disability (MI/ID) Supplement Program. (1) A personal care home:

(a) May qualify, to the extent funds are available, for a quarterly supplement payment of fifty (50) cents per diem for a state supplementation recipient in the personal care home's care as of the first calendar day of a qualifying month;

(b) Shall not be eligible for a payment for a Type A Citation that is not abated; and

(c) Shall meet the following certification criteria for eligibility to participate in the MI/ID Supplement Program:

1. Be licensed in accordance with KRS 216B.010 to 216B.131;

2. Care for a population that is at least thirty-five (35) percent mental illness or intellectual disability clients in all of its occupied licensed personal care home beds and who have a:

a. Primary or secondary diagnosis of intellectual disability including mild or moderate, or other ranges of intellectual disability whose needs can be met in a personal care home;

b. Primary or secondary diagnosis of mental illness excluding organic brain syndrome, senility, chronic brain syndrome, Alzheimer's, and similar diagnoses; or

c. Medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis;

3. Have a licensed nurse or an individual who has received and successfully completed certified medication technician or Kentucky medication aide training on duty for at least four (4) hours during the first or second shift each day;

4. Not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician training in effect prior to July 1990, as a result of this minimum requirement;

5. Be verified by the Office of the Inspector General in accordance with Section 15(2) through (4) of this administrative regulation; and

6. File an STS-1, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Application for Benefits, with the department by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter.

a. Quarters shall begin in January, April, July, and October.

b. Unless mental illness or intellectual disability supplement eligibility is discontinued, a new application for the purpose of program certification shall not be required.

(2) A personal care home shall provide the department with its tax identification number and address as part of the application process.

(3) The department shall provide an STS-2, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Notice of Decision to Personal Care Home, to a personal care home following:

(a) Receipt of verification from the Office of the Inspector General as specified in Section 15(6) of this administrative regulation; and

(b) Approval or denial of an application.

(4) A personal care home shall:

(a) Provide the department with an STS-3, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Monthly Report Form, that:

1. Lists every resident of the personal care home who was a resident on the first day of the month;

2. Lists the last four (4) digits only of the resident's Social Security Number;

3. Lists the resident's date of birth; and

4. Is marked appropriately for each resident to indicate the resident:

a. Has a mental illness diagnosis;

b. Has an intellectual disability diagnosis; or

c. Receives state supplementation; and

(b) Submit the STS-3 to the department on or postmarked by the fifth working day of the month by:

1. Mail;

2. Fax; or

3. Electronically.

(5) The monthly report shall be used by the department for:

(a) Verification as specified in subsection (4)(a) of this section;

(b) Payment; and

(c) Audit purposes.

(6)(a) A personal care home shall notify the department within ten (10) working days if its mental illness or intellectual disability percentage goes below thirty-five (35) percent for all personal care residents.

(b) A personal care home may be randomly audited by the department to verify percentages and payment accuracy.

Section 14. Mental Illness or Intellectual Disability (MI/ID) Training. (1)(a) A personal care home's licensed nurse or individual who has successfully completed certified medication technician or Kentucky medication aide training shall complete the personal care home mental illness or intellectual disability training workshop provided through the Department for Behavioral Health, Developmental and Intellectual Disabilities, once every two (2) years.

(b) Other staff may complete the training workshop in order to assure the personal care home always has at least one (1) certified staff employed for certification purposes.

(2) The personal care home mental illness or intellectual disability training shall be provided through a one (1) day workshop. The following topics shall be covered:

(a) Importance of proper medication administration;

(b) Side effects and adverse medication reactions with special attention to psychotropics;



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(c) Signs and symptoms of an acute onset of a psychiatric episode;

(d) SMI;

(e) SMI recovery;

(f) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bipolar disorder, or intellectual disability;

(g) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or intellectual disability;

(h) Instruction in providing a necessary activity to meet the needs of a resident who has a diagnosis of mental illness or intellectual disability;

(i) Activities of daily living and instrumental activities of daily living;

(j) Adult learning principles; and

(k) Information about 908 KAR 2:065 and the process for community transition for individuals with SMI.

(3) Initial training shall:

(a) Include the licensed nurse or the individual who has successfully completed certified medication technician or Kentucky medication aide training and may include the owner or operator; and

(b) Be in the quarter during which the STS-1 is filed with the department.

(4)(a) A personal care home shall have at least one (1) direct care staff member who has received training.

(b) A personal care home shall have on staff a licensed nurse or individual who:

1. Has successfully completed certified medication technician or Kentucky medication aide training; and

2.a. Has received mental illness or intellectual disability training; or

b. Is enrolled in the next scheduled mental illness or intellectual disability training workshop.

(5) The Department for Behavioral Health, Developmental and Intellectual Disabilities shall provide within five (5) working days a:

(a) Certificate to direct care staff who complete the training workshop; and

(b) Listing to the department of staff who completed the training workshop.

(6) The department shall pay twenty-five (25) dollars, to the extent funds are available, to a personal care home:

(a) That has applied for the MI/ID Supplement Program; and

(b) For each staff member receiving training up to a maximum of five (5) staff per year.

Section 15. MI/ID Supplement Program Certification. (1) The Office of the Inspector General shall visit a personal care home to certify eligibility to participate in the MI/ID Supplement Program.

(a) The personal care home's initial MI/ID Supplement Program Certification Survey:

1. May be separate from an inspection conducted in accordance with KRS 216.530; and

2. Shall be in effect until the next licensure survey.

(b) After a personal care home's initial MI/ID Supplement Program Certification Survey is completed, the personal care home may complete any subsequent certification survey during the licensure survey as specified in paragraph (a)2. of this subsection.

(c) The department shall notify the Office of the Inspector General that the personal care home is ready for an inspection for eligibility.

(2) During the eligibility inspection, the Office of the Inspector General shall:

(a) Observe and interview residents and staff; and

(b) Review records to assure the following criteria are met:

1. Certification is on file at the personal care home to verify staff's completion of training, as specified in Section 14(1) through (4) of this administrative regulation;

2. The personal care home:

a. Has certified staff training all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or intellectual disability training workshop; and

b. Maintains documentation of completion at the in-service

training for all direct care staff;

3. Medication administration meets licensure requirements and a licensed nurse or individual who has successfully completed certified medication technician or Kentucky medication aide training;

a. Demonstrates a knowledge of psychotropic drug side effects; and

b. Is on duty as specified in Section 13(1)(c)3. of this administrative regulation; and

4. An activity is being regularly provided that meets the needs of a resident.

a. If a resident does not attend a group activity, an activity shall be designed to meet the needs of the individual resident, for example, reading or other activity that may be provided on an individual basis.

b. An individualized care plan shall not be required for the criteria in clause a. of this subparagraph.

(3) The Office of the Inspector General shall review the personal care home copy of the training certification prior to performing a record review during the MI/ID Supplement Program Certification Survey process.

(4) If at least thirty-five (35) percent of the population is mental illness or intellectual disability clients, as specified in Section 13(1)(c)2. of this administrative regulation, on the day of the visit, a personal care home shall be deemed to have an ongoing qualifying percentage effective with the month of request for certification as specified in subsection (1)(c) of this section.

(5) If the mental illness or intellectual disability population goes below thirty-five (35) percent of all occupied personal care beds in the facility, the personal care home shall notify the department as specified in Section 13(6)(a) of this administrative regulation.

(6) The Office of the Inspector General shall provide the department with a completed STS-4, Mental Illness or Intellectual Disability (MI/ID) Supplement Certification Survey, within fifteen (15) working days of an:

(a) Initial survey; or

(b) Inspection in accordance with KRS 216.530.

(7) The Office of the Inspector General shall provide a copy of a Type A Citation issued to a personal care home to the department by the fifth working day of each month for the prior month.

(8) The personal care home shall receive a reduced payment for the number of days the Type A Citation occurred on the first administratively feasible quarter following notification by the Office of the Inspector General, in accordance with 921 KAR 2:050.

(9) If a criterion for certification is not met, the department shall issue an STS-2 to a personal care home following receipt of the survey by the Office of the Inspector General as specified in subsection (6) of this section.

(10) The personal care home shall provide the department with the information requested on the STS-2:

(a) Relevant to unmet certification criteria specified on the STS-4; and

(b) Within ten (10) working days after the STS-2 is issued.

(11) If a personal care home fails to provide the department with the requested information specified in subsection (10) of this section, assistance shall be discontinued or decreased, pursuant to 921 KAR 2:046.

(12) If a personal care home is discontinued from the MI/ID Supplement Program, the personal care home may reapply for certification, by filing an STS-1 in accordance with Section 13(1)(c)6. of this administrative regulation, for the next following quarter.

Section 16. Hearings and Appeals. An applicant or recipient of benefits under a program described in this administrative regulation who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing under 921 KAR 2:055.

Section 17. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "STS-1, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Application for Benefits", 01/15;

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(b) "STS-2, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Notice of Decision to Personal Care Home", 01/15;

(c) "STS-3, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Monthly Report Form", 01/19; and

(d) "STS-4, Mental Illness or Intellectual Disability (MI/ID) Supplement Certification Survey", 01/19.

(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.

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

APPROVED BY AGENCY: June 10, 2021

FILED WITH LRC: July 1, 2021 at 8 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; 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 a program for supplemental payments to persons who are aged, blind, or have a disability in accordance with KRS 205.245 and the Mental Illness or Intellectual Disability (MI/ID) Supplement Program.

(b) The necessity of this administrative regulation: The administrative regulation is needed to establish conditions and requirements regarding the State Supplementation Program and the MI/ID Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes through its establishment of a supplemental program of persons who are aged, blind, or have a disability and its compliance with the agreement with the Social Security Administration, formerly a part of the U. S. Department of Health, Education, and Welfare, to maintain the state's eligibility for federal Medicaid funding.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the eligibility requirements and standards of need for the State Supplemental Program for persons who are aged, blind, or have a disability.

(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 administrative regulation lists the standards of need for individuals receiving Supplemental Security Income (SSI) as of 2021 and cites the federal language pertaining to Social Security Administration SSI cost of living adjustments and the website where the cost of living adjustment (COLA) is issued so that affected entities may be able to find the COLA for each subsequent year. This amendment incorporates the appropriated General Fund moneys in the amount of \$2.2 Million in each fiscal year, to the extent funds are available, to support an increase in the reimbursements provided to personal care homes, per House Bill 192 (2021 Regular Session, Acts Chapter 169). The individual reimbursement rate was calculated using the average of 1,900 residents from SFY 2018 through SFY 2020. The total annual appropriation of \$2.2 Million divided among 1,900 residents, divided by 12 months was used to calculate the monthly reimbursement rate of \$96 (rounded down to whole dollar value). The Cabinet for Health and Family Services will monitor the reimbursement rate annually to adjust the rate accordingly, not to exceed \$2.2 Million per year appropriated.

(b) The necessity of the amendment to this administrative regulation: This amendment implements the General Fund appropriation of \$2.2 million annually to support an increase in reimbursements provided to personal care homes, as required by HB 192.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes through its establishment of a supplemental program for persons who are aged, blind, or have a disability and its compliance with the agreement with the Social Security Administration. The amendment implements the executive branch budget bill passed in the 2021 legislative session.

(d) How the amendment will assist in the effective administration of the statutes: This amendment implements the General Fund appropriation of \$2.2 Million annually as appropriated to support an increase in reimbursements provided to Personal Care Homes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In SFY 2018-2020, there were an average of 1,900 residents of personal care homes in Kentucky.

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

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

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Increased reimbursements for personal care homes.

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

(a) Initially: There will be negligible fiscal impact to the Cabinet for Health and Family Services to implement.

(b) On a continuing basis: There will be negligible fiscal impact to the Cabinet for Health and Family Services to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Fund appropriations and agency funds are used to implement and enforce the State Supplementation Program.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because

this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

- 1. Federal statute or regulation constituting the federal mandate. 20 C.F.R. Part 416, 42 U.S.C. 1382e-g
- 2. State compliance standards. KRS 194.050(1), 205.245
- 3. Minimum or uniform standards contained in the federal mandate. 20 C.F.R. Part 416, 42 U.S.C. 1382 e-g
- 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 a stricter requirement, or additional or different responsibilities or requirements, than those required by federal mandate.
- 5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter requirement, or additional or different responsibilities or requirements, than those required by federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

- (1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Community Based Services, administers this program.
- (2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194.050(1), 205.245, 42 U.S.C.1328e-g, 20 C.F.R. Part 416.
- (3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 administrative regulation will not generate additional revenue in the first year.
  - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The administrative regulation will not generate any additional revenue in subsequent years.
  - (c) How much will it cost to administer this program for the first year? No additional costs are projected to administer this program for the first year.
  - (d) How much will it cost to administer this program for subsequent years? No additional costs are projected to administer this program for subsequent years.

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

Revenues (+/-):  
 Expenditures (+/-):  
 Other Explanation:

STATEMENT OF EMERGENCY  
921 KAR 4:116E

This emergency administrative regulation is necessary in order to immediately utilize federal Coronavirus Aid, Relief, and Economic Security (CARES) Act funding and American Rescue Plan Act funding as the Acts authorize states to adjust Low Income Home Energy Assistance Program (LIHEAP) services furnished during fiscal years 2020 and 2021, including services furnished with the state's regular LIHEAP appropriations during those years. This amendment utilizes additional federal LIHEAP block grant funds to offer more assistance in paying for summer cooling

utilities. This amendment is deemed to be an emergency pursuant to KRS 13A.190(1)(a)1. and 2., as these services will protect human health, safety, and welfare through providing assistance with summer cooling, especially to vulnerable populations, and federal funding will be lost if not used as soon as possible. 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  
ERIC C. FRIEDLANDER, Secretary

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

921 KAR 4:116E. Low Income Home Energy Assistance Program or "LIHEAP".

EFFECTIVE: July 1, 2021

RELATES TO: KRS 45.357, 194A.010, [194A.050(1)]; 194A.060, 194A.070, 45 C.F.R. Part 96 Subpart H, 42 U.S.C. 8621-8627, 42 U.S.C. 9902(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 42 U.S.C. 8621  
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. The Cabinet for Health and Family Services has the responsibility under 42 U.S.C. 8621 to administer the Low Income Home Energy Assistance Program to help low-income households meet the cost of home energy. This administrative regulation establishes the eligibility and benefits criteria for heating and cooling assistance. This administrative regulation imposes a stricter requirement than the federal mandate because additional reporting requirements are necessary to comply with KRS 45.357. The imposition of additional requirements and responsibilities is to ensure necessary compliance with applicable state laws.

Section 1. Definitions. (1) "Agency" means Community Action Kentucky (CAK), or a local community action agency contracted to provide LIHEAP.

(2) "Annual low income home energy assistance program state plan" means an application prepared in accordance with 42 U.S.C. 8624(c) and 45 C.F.R. Part 96, Subpart H, sections 96.83 to 96.87.

(3) "Authorized representative" means the person who presents to an agency a written statement signed by the head of the household, or spouse of the head of the household, authorizing that person to apply on the household's behalf.

(4) "Crisis component" means the component that provides assistance to households that are experiencing a home heating or cooling crisis.

(5) "Economic unit" means one (1) or more persons sharing common living arrangements.

(6) "Emergency" means, at the time of application, the household:

- (a) Is without heat;
- (b) Will be disconnected from a utility service within forty-eight (48) hours;
- (c) Will be without bulk fuel within four (4) days; or
- (d) Will be without cooling as specified in Section 3 of this administrative regulation.

(7) "Energy" means electricity, gas, and other fuel that is used to sustain reasonable living conditions.

(8) "Gross household income" means all earned and unearned income, including lump sum payments received by a household during the calendar month preceding the month of application.

(9) "Heating season" means the period from October through April.

(10) "Household" means an individual or group of individuals

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who are living together in the principal residence as one (1) economic unit and who purchase energy in common.

(11) "Household demographics" means an applicant's:

- (a) Address;
- (b) Household composition that includes:
  1. Size;
  2. Age group;
  3. Relationship to applicant;
  4. Sources of income;
  5. Liquid assets; and
  6. Type of housing; and
- (c) Heat source.

(12) "Level of poverty" or "poverty level" means the degree to which a household's gross income matches the official poverty income guidelines published annually in the Federal Register by the U.S. Department of Health and Human Services, under authority of 42 U.S.C. 9902(2).

(13) "Life-threatening situation" means, at the time of application, a household is or will be without heat or cooling within eighteen (18) hours and temperatures are at a dangerous level as determined by the National Weather Service.

(14) "Principal residence" means the place:

- (a) Where a person is living voluntarily and not on a temporary basis;
- (b) An individual considers home;
- (c) To which, when absent, an individual intends to return; and
- (d) Is identifiable from another residence, commercial establishment, or institution.

(15) "Subsidy component" means the heating or cooling component that provides an eligible household with:

- (a) A payment to the household's energy provider; or
- (b) A payment to a landlord, if utilities are included in the rent.

Section 2. Application. (1) A household or authorized representative applying for LIHEAP shall provide to an agency the following:

- (a) Proof of household income;
- (b) Most recent:
  1. Heating bill;
  2. Cooling bill; or
- 3. Verification that heating or cooling is included in the rent;
- (c) Statement of household demographics; and
- (d) A Social Security number, or a permanent residency card, for each household member.

(2) An application shall not be considered complete until the required information, as specified in subsection (1) of this section, is received by the agency.

Section 3. Eligibility Criteria. (1) Income. Gross household income shall be at or below 130 percent of the official poverty income guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services pursuant to 42 U.S.C. 9902(2), unless:

- (a) Program funding is enhanced through a federal or state award; or
- (b) The cabinet approves an increase to the poverty income guidelines due to funding availability.

(2) The household shall be responsible for paying:

- (a) Home heating;
- (b) Cooling costs; or
- (c) Heating or cooling costs as an undesignated portion of the rent.

(3) Crisis component. In addition to meeting the criteria in subsections (1) and (2) of this section, an applicant shall:

- (a) Be within four (4) days of running out of fuel, if propane, fuel oil, coal, wood, or kerosene is the primary heat source;
- (b) Have received a past-due or disconnect notice, if natural gas or electric is the primary heat or cooling source; or
- (c) Have received a notice of eviction for nonpayment of rent, if home heating or cooling cost is included as an undesignated portion of the rent.

(4) Summer cooling component. In addition to meeting the criteria in subsections (1) and (2) of this section, to be eligible to

receive an [a-window] air conditioner unit, an applicant shall:

- (a) Be without an adequate source of cooling; and
- (b) Have a household member who:
  1. Has a health condition that requires cooling to prevent further deterioration, verified by a physician's statement prepared on the physician's letterhead;
  2. Is sixty-five (65) years of age or older; or
  3. Is under the age of six (6) years.

Section 4. Benefits. (1) For a subsidy component, payment to the household's heating or cooling provider shall be made for the full benefit amount as follows:

(a) Benefits shall be determined prior to implementation of the component, based upon calculations from fuel usage data and from an average heating season energy cost for the six (6) primary heating fuels.

(b) The amount of benefits shall be based upon household income and type of heating or cooling source used.

(c) A household with the lowest income and highest heating season fuel cost shall receive highest benefits.

(d) Benefits shall be a percentage of the average annual heating season energy cost of the primary heating fuel.

(e) A household living in federally assisted housing or receiving a utility allowance shall be eligible for lower benefits.

(2) For a crisis component, benefits shall be the minimum amount necessary to alleviate a heating or cooling crisis. A household living in federally assisted housing may be eligible.

(a) A benefit may be:

1. Fuel or other energy source for heating or cooling;
2. A space heater loaned on a temporary basis until:
  - a. Fuel is delivered; or
  - b. Another resource is located to alleviate the crisis;
3. A blanket or sleeping bag;
4. Emergency shelter; or
5. An [a-window] air conditioner unit.

(b) In determining the minimum amount of assistance, an agency shall take into consideration a direct subsidy for payment of utility cost received by the household from another program.

(c) A household may receive assistance more than one (1) time, but shall not receive more than the maximum allowable during each component period for the primary heating fuel or cooling source. The maximum allowable benefit shall equal cost for delivery up to:

1. Two (2) tons of coal;
2. Two (2) cords of wood;
3. 200 gallons of propane;
4. 200 gallons of fuel oil;
5. 200 gallons of kerosene; or
6. \$400 for natural gas or electric, unless:

a. Program funding is enhanced through a federal or state award; or

b. The cabinet approves an increase to the benefit amount due to funding availability.

(d) A household threatened with eviction whose heat or cooling costs are an undesignated portion of the rent shall not receive more than the maximum allowable payment for the primary heating fuel or cooling source.

(3) For cooling component benefits, a household shall be eligible for:

(a) A one (1) time subsidy payment during each component period to the household's:

1. Electric utility provider; or
2. Landlord, if the cost of cooling is included as an undesignated portion of the rent;

(b) An [a-window] air conditioner unit, if:

1. Criteria in Section 3(4) of this administrative regulation are met; and

2. The agency has the funding to purchase an [a-window] air conditioner unit or has an [a-window] air conditioner unit available for the household; and

(c) Benefits based on:

1. The household's level of poverty, unless program funding is enhanced through a federal or state award or the cabinet approves

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an increase to the poverty income guidelines due to funding availability; and

2.a. Subsidized housing with:

(i) Zero percent to one hundred (100) percent of poverty receiving up to one hundred (100) [~~fifty (50)~~] dollars; or

(ii) 101 percent to 150 percent of poverty receiving up to \$200 [~~one hundred (100) dollars~~]; or

[2-]b. Nonsubsidized housing with:

(i) Zero to one hundred (100) percent of poverty receiving up to \$400 [~~\$200~~]; or

(ii) 101 percent to 150 percent of poverty receiving up to \$300 [~~\$150~~].

Section 5. Benefit Delivery Methods. (1)(a) Payment under a subsidy component shall be authorized by a one (1) party check made payable to the household's:

1. Energy provider; or

2. Landlord, if the cost of heating or cooling is included as an undesignated portion of rent.

(b) At the recipient's discretion, the total benefit may be made in separate authorizations to more than one (1) provider if heating or cooling services were provided by more than one (1) provider. However, the total amount of the payments shall not exceed the maximum for the primary source of heating or cooling.

(2) For a crisis component, a direct cash payment shall not be made to the recipient. A payment shall be authorized to:

(a) An energy provider by a one (1) party check upon delivery of fuel, restoration, or continuation of service;

(b) A vendor who supplies a heater, blanket, emergency lodging, or [~~window~~] air conditioning unit; or

(c) A landlord, if heating or cooling cost is included in the rent.

Section 6. Right to a Fair Hearing. (1) An individual who has been denied assistance or whose application has not been acted upon in accordance with time standards established in Section 8 of this administrative regulation shall be provided an administrative review by the agency.

(2) An individual dissatisfied with the results of an administrative review may request a hearing to be held in accordance with 921 KAR 2:055.

Section 7. Vendor Selection for Nonmetered Fuel Provider. (1) Subsidy component.

(a) An agency shall solicit vendors for all nonmetered fuels and shall establish an approved vendor listing.

(b) The agency shall place an advertisement for interested vendors in a local newspaper with the largest circulation and shall contact all vendors in good standing that participated in the program during the last contract period.

(c) A potential vendor shall provide the agency with a fixed price in gallons for kerosene, propane or fuel oil, cords for wood, or tons for coal, delivered or picked up by the client.

(d) A prospective vendor shall:

1. Allow agency and authorized federal or state representatives to inspect records upon request;

2. Maintain records to financial transactions regarding LIHEAP for a period of three (3) years;

3. Inform the agency if information is received that a household has obtained a benefit by misrepresentation;

4. Provide fuel as specified and at the price quoted;

5. Comply with federal and state law pertaining to equal employment opportunity; and

6. Comply with billing procedures established by the agency.

(e) A household shall select a vendor from the agency's approved vendor list.

(2) Crisis component.

(a) Each agency shall perform a local price survey for each bulk fuel type and shall establish a reasonable price for quality of fuel, delivery and on-site pick-up for each fuel type.

(b) Each agency shall maintain a list of approved vendors and prices throughout the crisis component.

(c) A household may use its regular vendor if the price does not exceed the established price for that fuel type and mode of

delivery.

(d) For a household with no regular vendor, the agency shall select from its vendor list the lowest priced vendor capable of providing fuel within:

1. Eighteen (18) hours for a life-threatening situation; or

2. Forty-eight (48) hours for an emergency situation.

Section 8. Time Standards. (1) Under a subsidy component, an eligibility determination shall be made by an agency within five (5) working days after receipt of information required by Section 2 of this administrative regulation.

(2) Under a crisis or cooling component, benefits shall be authorized so that a:

(a) Crisis situation is resolved within forty-eight (48) hours; or

(b) Life-threatening situation is resolved within eighteen (18) hours.

(3) Under a subsidy, crisis or cooling component, an applicant shall have five (5) working days from the date of application to provide required information to an agency as specified in Section 2 of this administrative regulation, or the application shall be denied.

Section 9. Effective Dates. (1) Implementation and termination dates for LIHEAP shall depend upon the availability of funds.

(2) If additional federal funds are made available, LIHEAP may be reactivated after termination under the same terms and conditions as shown in this administrative regulation.

Section 10. Allocation of Federal Funds. (1) An amount of federal funds sufficient to provide benefits to eligible households that apply during the subsidy application period shall be reserved for a subsidy component.

(2) The balance of benefit funds for LIHEAP shall be reserved for a crisis component as follows:

(a) Benefit funds reserved for the crisis component shall be allocated based upon each local administering agency's percentage of the statewide population at or below 130 percent of the poverty level unless:

1. Program funding is enhanced through a federal or state award; or

2. The cabinet approves an increase to the poverty income guidelines due to funding availability.

(b) \$400,000 of crisis benefit funds shall be identified as contingency funds and allocated to agencies based on need as approved in advance by the cabinet.

(3) \$25,000 or more shall be reserved for the Preventive Assistance Program to assist families with an energy payment not to exceed \$300 for each family if the payment:

(a) Prevents the removal of a child from the family; or

(b) Assists in reuniting a child with the family.

Section 11. Energy Provider Responsibilities. A provider accepting payment from LIHEAP for energy or services provided to an eligible recipient shall comply with the following provisions:

(1) Reconnection of utilities and delivery of fuel during a crisis component shall be accomplished upon certification for payment.

(2) A household shall be charged, in the normal billing process, the difference between actual cost of the home energy and amount of payment made through this program.

(3) A LIHEAP recipient shall be treated the same as a household not receiving benefits.

(4) The household on whose behalf benefits are paid shall not be discriminated against, either in the costs of goods supplied or the services provided.

(5) A landlord shall not increase the rent of a recipient household due to receipt of a LIHEAP payment.

Section 12. Annual Plan. A copy of the state's annual Low Income Home Energy Assistance Program state plan prepared in accordance with 42 U.S.C. 8624(c) and 45 C.F.R. Part 96, Subpart H, sections 96.83 to 96.87 may be obtained by a request in writing made to the Commissioner of the Department for Community Based Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621.

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

APPROVED BY AGENCY: June 10, 2021

FILED WITH LRC: July 1, 2021 at 8:00 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on 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 person: Laura Begin or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the eligibility and benefits criteria for the Low Income Home Energy Assistance Program (LIHEAP) in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the eligibility and benefits criteria for LIHEAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 194A.050, which authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to qualify for federal funds and to cooperate with other state and federal agencies. The cabinet has the responsibility under 42 U.S.C. 8621 to implement the LIHEAP program.

(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 eligibility and benefits criteria for the implementation and operation of LIHEAP.

(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 changes the existing administrative regulation by increasing program cooling component benefits due to a federal funding award increase in Low Income Home Energy Assistance Program (LIHEAP) block grant funds. The emergency version of this amendment is necessary in order to immediately utilize federal Coronavirus Aid, Relief, Economic Security (CARES) Act funding and American Rescue Plan Act funding as the Acts authorize states to adjust LIHEAP services furnished during fiscal years 2020 and 2021, including services furnished with the state's regular LIHEAP appropriations during those years. The increase in services available that assist in paying for heating and cooling are especially needed for households that may be experiencing economic hardships due to the COVID-19 pandemic. This amendment is deemed to be an emergency pursuant to KRS

13A.190(1)(a)1. and 2., as these services will protect human health, safety, and welfare through providing assistance in paying for summer cooling and federal funding will be lost if not used as soon as possible. The amendment also deletes the requirement that air conditioning units provided through the program be window units only.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary in order to utilize federal funding awarded specific to this program that must be used this fiscal year.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by maintaining standards for program eligibility, benefit provisions, and compliance.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows for greater utilization of LIHEAP in Kentucky, but maintains all program requirements consistent with federal and state law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The cabinet holds a master agreement with Community Action Kentucky (CAK), which subcontracts with twenty-two community action agencies and one local government to provide LIHEAP benefits throughout Kentucky's 120 counties. In FFY 2020, Kentucky served over 314,000 households through LIHEAP heating and cooling subsidy and crisis components.

(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 are required. Applicants who meet the program eligibility requirements contained in this administrative regulation may receive additional assistance relating to summer utility cooling.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs associated with providing LIHEAP services will be absorbed within the sub-award of the federal LIHEAP block grant. Implementing this amendment will be paid by additional federal LIHEAP funds awarded to Kentucky.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants who meet the program eligibility requirements contained in this administrative regulation may receive additional assistance relating to summer utility cooling.

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

(a) Initially: The U.S. Department of Health and Human Services allocates LIHEAP funding annually to states. No general funds are used in the implementation of this administrative regulation as LIHEAP is funded 100% by federal funds. American Rescue Plan Act funding in the amount of \$61.5 million dollars was awarded to Kentucky for this program.

(b) On a continuing basis: The cabinet will ensure that the programs and state administrative activities funded under the LIHEAP block grant are within federal appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation is 100% federally funded. No general funds are used in administering LIHEAP. The source of these funds is the LIHEAP block grant, CARES Act funding, and American Rescue Plan.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary to implement this administrative regulation. The cabinet will implement and enforce this administrative regulation in subsequent years within federal appropriations for LIHEAP.

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

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This administrative regulation does not directly or indirectly establish or increase fees.

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

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 8621

2. State compliance standards. KRS 45.357, 194A.010, KRS 194A.050(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 8621

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment does not impose stricter requirements than those required by the federal mandate. However, the current administrative regulation in place imposes additional responsibilities and requirements than those required by federal mandate. This administrative regulation imposes a stricter requirement than the federal mandate because additional reporting requirements are necessary to comply with state law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Additional reporting requirements are necessary in order to comply with KRS 45.357. The imposition of the additional requirements and responsibilities is necessary to ensure compliance with applicable 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 will be impacted by this administrative regulation. The cabinet holds a master agreement with Community Action Kentucky (CAK), which subcontracts with twenty-two community action agencies and one local government to provide LIHEAP benefits throughout Kentucky's 120 counties.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 45.357, 194A.010, 194A.050(1), 194A.060, 194A.070, 45 C.F.R. Part 96 Subpart H, 42 U.S.C. 8621-8627, 42 U.S.C. 9902(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? This administrative regulation will not generate revenue for the state or local government during the first year.

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

(c) How much will it cost to administer this program for the first year? The cabinet will utilize the administrative funds available under the LIHEAP block grant to administer these programs in the first year. Costs will be within available appropriations.

(d) How much will it cost to administer this program for subsequent years? The cabinet will utilize the administrative funds under the LIHEAP Block Grant to administer these programs in subsequent years. Costs will be within available appropriations.

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 922 KAR 2:160E

This emergency administrative regulation is necessary in order to immediately utilize General Fund moneys appropriated specifically for the Child Care Assistance Program (CCAP) in fiscal year 2021-2022. House Bill 405 (2021 Regular Session, Acts Chapter 176) appropriated \$12,000,000 to provide a \$2 per child increase in the CCAP provider reimbursement rate. This increase is reflected in the incorporated material and will be provided to participants effective immediately. This amendment is deemed to be an emergency pursuant to KRS 13A.190(1)(a)1., 2., and 3. as the Child Care Assistance Program ensures that low-income families have access to safe and healthy child care for their children and increasing the provider reimbursement rate is beneficial to the welfare of the Commonwealth as these businesses are vital to the workforce. This emergency is necessary to meet the imminent deadline of the fiscal year beginning on July 1, 2021, established in House Bill 405 and to prevent the loss of funds appropriated specifically for this fiscal year. 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  
ERIC C. FRIEDLANDER, Secretary

### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Child Care (Emergency Amendment)

#### 922 KAR 2:160E. Child Care Assistance Program.

EFFECTIVE: July 1, 2021

RELATES TO: KRS 194A.060, [199.892,] 199.894(1), (5), 199.896, 199.898(1), (2), 199.8982, 199.899, [199.8994,] 214.036, 314.011(5), 337.275, 600.020, 605.120(5), 620.020(10), [2016 Ky. Acts ch. 149, Part 1, C.9(7);] 7 C.F.R. Part 1463, 20 C.F.R. Parts 676-678, 34 C.F.R. Part 361, Part 463, 45 C.F.R. Part 98, 205.10(a)(6), 205.50(a)(1)(i), 400.66(d), 7 U.S.C. 2012, 25 U.S.C. 1261, 1401, 5501, 29 U.S.C. 723(a)(5), 34 U.S.C. 20102(c), 38 U.S.C. 1815, 42 U.S.C. 601-619, 1395w-141, 1771-1793, 2000d, 3001, 4950-5085, 8621, 9857-9858q, 9902(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.892, 199.8994

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary [Secretary] of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.892 enables the Cabinet for Health and Family Services to promulgate administrative regulations to qualify to receive federal funds under provisions of the federal Social Security Act, 42 U.S.C. 9857-9858q, and to provide for effective regulation of child care centers. KRS 199.8994 requires the cabinet to administer all child care funds to the extent allowable under federal law or regulation and in a manner that is in the best interest of the clients to be served. This administrative regulation establishes requirements that enable the Cabinet for Health and Family Services to qualify for federal funds under the Child Care and Development Fund, and establishes procedures for the implementation of the Child Care Assistance Program to the extent that funding is available.

Section 1. Definitions. (1) "Applicant" means a child's natural or adoptive parent or an individual caring for a child in loco parentis who is applying for CCAP.

(2) "Cabinet" is defined by KRS 199.894(1).

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(3) "Change in a circumstance" means a change that may affect eligibility or benefit amounts, such as:

- (a) Beginning or ending employment;
- (b) Change in an employer or obtaining additional employment;
- (c) Increase or decrease in the number of work hours;
- (d) Increase or decrease in the rate of pay;
- (e) Increase or decrease in family members;
- (f) Change in self-employment activity;
- (g) Change in scheduled hours care is needed;
- (h) Beginning or ending an educational activity;
- (i) Change in child care provider;
- (j) Change in address or residence;
- (k) Change in marital status;
- (l) Beginning or ending receipt of unearned income; or
- (m) Enrollment in a certified trade school or an accredited college or university.

(4) "Child care" means the provision of care for a child for a portion of a day on a regular basis, designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development, and supervision.

(5) "Child Care and Development Fund" or "CCDF" is defined by 45 C.F.R. 98.2.

(6) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families, who meet the eligibility requirements of this administrative regulation, with the financial resources to find and afford quality child care.

(7) "Child care certificate" is defined by 45 C.F.R. 98.2.

(8) "Child protective services" is defined by 922 KAR 1:330, Section 1(5).

(9) "Child with a special need" means a child who has multiple or severe functional needs requiring ongoing specialized care.

(10) "Employment" means public or private, permanent or temporary work for an average of twenty (20) hours per week for compensation or as an unpaid job requirement.

(11) "Family" means an applicant or parent, a child, and another responsible adult if present, residing in the same home.

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

(13) "Full day" means child care that is provided for five (5) or more hours per day.

(14) "Good academic standing" means a student is meeting the trade school, college, or university's requirements for attendance and satisfactory progress towards the completion of coursework.

(15) "Health professional" means a person actively licensed as a:

- (a) Physician;
- (b) Physician assistant;
- (c) Advanced practice registered nurse;
- (d) Qualified mental health professional as defined by KRS 600.020(52); or
- (e) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(16) "Homeless" means an individual or a family lacking a fixed, regular, and adequate nighttime residence, including a child experiencing homelessness as defined by 45 C.F.R. 98.2.

(17) "In loco parentis" means a person acting in place of a parent, including:

- (a) A legal guardian;
- (b) An individual related by blood, marriage, or adoption to the child; or
- (c) A nonrelative pursuing legal custody of the child within one (1) year of application.

(18) "Infant" means a child who is less than one (1) year old.

(19) "Kentucky Transitional Assistance Program" or "K[-]TAP" means Kentucky's Temporary Assistance for Needy Families or "TANF" money payment program established in 921 KAR Chapter 2.

(20) "Parent" is defined by 45 C.F.R. 98.2.

(21) "Part day" means child care that is provided for less than five (5) hours per day.

(22) "Preschool child" means a child who has reached the third birthday up to, but not including, the sixth birthday.

(23) "Preventive services" is defined by KRS

~~620.020(12)~~[620.020(10)].

(24) "Provider" means the entity providing child care services, such as:

- (a) A member of a limited liability corporation (LLC);
- (b) The head of an organization;
- (c) An owner of a corporation;
- (d) A member of a partnership;
- (e) An owner of a business;
- (f) An individual provider; or
- (g) A stockholder of a stock-holding company.

(25) "Qualified alien" or "qualified immigrant" means a child who meets the requirements of 921 KAR 2:006, Section 1(14).

(26) "Registered provider" means a child care provider who meets the requirements of 922 KAR 2:180.

(27) "Related" means having one (1) of the following relationships:

- (a) Child;
- (b) Stepchild;
- (c) Grandchild;
- (d) Great-grandchild;
- (e) Niece;
- (f) Nephew;
- (g) Sibling;
- (h) Child in legal custody; or
- (i) Child living in loco parentis.

(28) "Responsible adult" means a person other than the applicant who is in the child's household and who is:

- (a) The natural parent, adoptive parent, or stepparent; or
- (b) The spouse of an individual caring for a child in loco parentis.

(29) "School-age child" means a child who has reached the sixth birthday.

(30) "State median income" or "SMI" means the estimated median income of households in the state.

(31) "Supplemental Nutrition Assistance Program" or "SNAP" means the program, formerly known as the Food Stamp Program:

- (a) Defined by 7 U.S.C. 2012; and
- (b) Governed by 921 KAR Chapter 3.

(32) "Teen parent" means a head of household under the age of twenty (20) and attending high school or obtaining a GED.

(33) "Toddler" means a child who has reached the first birthday up to, but not including, the third birthday.

Section 2. Application Rights and Requirements. (1) An individual may apply or reapply for CCAP through the cabinet or its designee.

(2)(a) Unless an applicant is approved according to the criteria in Section 5 or 6 of this administrative regulation, an application shall have been made on the date:

1. The following is received at the cabinet or its designee's office:

a. A signed DCC-90, Subsidized Child Care Assistance Application Summary; or

b. Submission in accordance with 921 KAR 2:040, Section 1(6); or

2. The agency is contacted, if the person:

- a. Has a physical or mental disability; and
- b. Needs special accommodation due to the impairment.

(b) An applicant may designate an authorized representative who presents identification to make application.

(c) An applicant may be:

1. Assisted by another individual of choice in the application process; and

2. Accompanied by the individual in a contact with the agency.

(d) In accordance with the procedures established [described] in 920 KAR 1:070, interpreter services shall be provided for persons who are:

- 1. Deaf; or
- 2. Hard of hearing.

(e) Interpreter services shall be provided for a non-English speaking individual in accordance with Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d.

(3) The cabinet or its designee shall not discriminate against



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an applicant based on age, race, color, sex, disability, religious creed, national origin, or political beliefs.

(4) For the month child care payment is intended to cover, a family shall meet the technical and financial eligibility criteria, according to its particular circumstances, as described in Sections 3, 4, 5, 6, 7, and 8 of this administrative regulation.

(a) An applicant or recipient shall be the primary source of information and shall:

1. Furnish verification of:
  - a. Income;
  - b. Technical eligibility; and
  - c. Employment; and

2. Give written consent to the cabinet or its designee necessary to verify information pertinent to the eligibility determination.

(b) Upon receiving written notice of a request for information or a scheduled appointment to present required documentation, failure of an applicant or recipient to respond shall be considered a failure to present adequate proof of eligibility.

(c) A homeless household shall have a minimum of [an extended period to verify information not to exceed] three (3) months to verify information in accordance with 42 U.S.C. 9858c(c)(3)(B)(i).

(5) The cabinet or its designee shall:

(a) Render a decision on each application; and

(b) Within thirty (30) calendar days of receipt of the application submitted in accordance with subsection (2) of this section, send notice to the applicant in accordance with Section 12(4) of this administrative regulation.

(6) Each decision regarding eligibility for assistance shall be supported by documentation recorded in the applicant or recipient's case record.

(7) A family shall not receive:

- (a) Assistance until approval of the application for benefits; or
- (b) Benefits prior to application.

Section 3. Technical Eligibility. (1) A child shall be eligible for child care assistance, if the child:

(a) Is a:

1. Resident of Kentucky; and
2. U.S. citizen, qualified immigrant, or qualified alien;

(b) Is under age:

1. Thirteen (13) at the time of application or recertification; or
2. Nineteen (19) at the time of application or recertification and

is:

a. Physically or mentally incapable of caring for themselves [himself], as demonstrated by a written document provided by a health professional;

b. Under court supervision; or

c. Identified as a priority by federal statute, regulation, or funding source; and

(c) Has a current immunization certificate showing that the child is immunized, unless:

1. There is an exception pursuant to KRS 214.036; or

2. The child is attending a:

- a. Licensed child-care center;
- b. Certified child-care home;
- c. Public school;
- d. Head Start; or
- e. Other entity that requires the immunization record.

(2) If a child served by the CCAP is not immunized, child care assistance benefits shall be available or continue for a period of thirty (30) calendar days following the notification of the needed immunization while the family takes necessary action to comply with the immunization requirement.

(3) A family shall not be eligible for a CCAP benefit if care is provided by:

(a) A parent or stepparent;

(b) A legal guardian;

(c) A member of the K[-]TAP or SNAP case in which the child in need of child care assistance is included;

(d) A person living in the same residence as the child in need of care;

(e) A provider not:

1. Licensed according to 922 KAR 2:090, Child-care center licensure;

2. Certified according to 922 KAR 2:100, Certification of family child-care homes; or

3. Registered according to 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

(f) A Head Start program unless the child care is provided before, after, or in between the Head Start program's operating hours as wrap-around child care; or

(g) Another child care provider if the family operates the child care business in the home.

(4) If the restrictions specified in subsection (3) of this section do not apply to the provider related to the child, the provider related to the child may be eligible for payment from CCAP if the requirements of 922 KAR 2:180 are met.

Section 4. Requirements for Low Income Working Family Eligibility Determination. (1) A child shall be eligible to receive CCAP if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:

(a) An applicant who has employment an average twenty (20) hours per week;

(b) An applicant and a responsible adult who have employment an average of forty (40) hours per week combined, if the individual with the least employment has an average of at least five (5) hours of employment per week;

(c) An applicant and a responsible adult if either the applicant or the responsible adult has employment an average of twenty (20) hours per week, and the other is physically or mentally unable to provide adequate care or supervision as documented by a written statement from a health professional;

(d) A relative or fictive kin caregiver pursuant to 922 KAR 1:565 [the conditions of a program established by KRS 605.120(5);] who meets:

1. All requirements in this section; and

2. Income eligibility standards established in Section 8 of this administrative regulation;

(e) A teen parent attending high school or pursuing a general equivalency degree (GED), including a period of recess or temporary break up to [not to exceed] three (3) months; or

(f) An applicant who meets the eligibility requirements specified in Section 7 of this administrative regulation.

(2) A child shall be eligible to receive CCAP for a minimum of [up to] three (3) months or in accordance with Section 9 of this administrative regulation if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:

(a) An applicant who is homeless;

(b) An applicant who is [is]

~~1. is~~ engaged in job search; and

~~2. Submits a completed DCC-90P, CCAP Job Search Documentation, within the three (3) months of job search verifying a minimum of ten (10) contacts with prospective employers;]~~

(c) A recipient after the loss of employment, a reduction in the required number of employment hours, or cessation of attendance at a job training or educational program in accordance with 42 U.S.C. 9858c(c)(2)(N)(iii), to allow for job search or resumption of work or attendance at job training or educational program; or

(d) A recipient on maternity leave or other medical leave from employment as verified by a health professional, unless a temporary disability as verified by a health professional necessitates longer than three (3) months of CCAP eligibility.

(3) Compliance with subsection (1) of this section for an applicant or a responsible adult who is self-employed shall be determined by dividing income calculated in accordance with Section 8(6)(d) of this administrative regulation by an hourly pay rate of no less than minimum wage established in accordance with KRS 337.275.

Section 5. Requirements for Protection and Permanency Eligibility Determination.

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(1) A child shall be eligible to receive CCAP if the child:

(a) Resides with an applicant who:

1. Receives child protective or preventive services; or
2. Needs to receive child protective or preventive services based upon an assessment conducted by child protective services staff pursuant to 922 KAR 1:330; and

(b) Meets the requirements listed in Section 3 of this administrative regulation.

(2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a separate application, as an integral part of a protective or preventive services plan in accordance with 922 KAR 1:430.

(3)(a) Based on the assessment in accordance with 922 KAR 1:330, the cabinet may waive the family copayment required by Section 11 of this administrative regulation for a child who participates in CCAP as a result of child protective services authorization.

(b) If the cabinet waives the family copayment in accordance with paragraph (a) of this subsection, the cabinet shall document the reason for the waiver in the child's protective services case plan.

Section 6. State-Funded Workforce Training Child Care Eligibility Determination. A child shall be eligible for CCAP if the child:

(1) Resides with an applicant who is participating in the:

(a) Kentucky Works Program established [~~described~~] in 921 KAR 2:370; or

(b) Supplemental Nutrition Assistance Program Employment and Training Program (SNAP E&T) pursuant to 921 KAR 3:042; and

(2) Meets the requirements listed in Section 3 of this administrative regulation.

Section 7. Education and Job Training Child Care Eligibility Determination. (1) To [~~Effective June 28, 2019, to~~] the extent funds are available, a child shall be eligible for CCAP if the child:

(a) Resides with an applicant who:

1. Is enrolled in:

a.(i) A certified trade school or an accredited college or university;

(ii) A full-time program that leads to a general educational development (GED); or

(iii) A program that leads to a degree or certification; and

b. Accordance with subsection (2) of this section;

2. Is in good academic standing with the trade school, college, or university in which the applicant is enrolled;

3. Provides verification of enrollment and good academic standing from the trade school, college, or university in which the applicant is enrolled;

4. Meets income eligibility criteria of Section 8 of this administrative regulation; and

5. Has not received CCAP for more than sixty (60) months due to enrollment in a certified trade school or an accredited college or university; and

(b) Meets the requirements established in Section 3 of this administrative regulation.

(2) While an applicant is enrolled in a certified trade school or an accredited college or university:

(a) The applicant's coursework shall be completed in-person or online; and

(b) The applicant shall be classified as a full-time student as defined by the trade school, college, or university.

(3) An applicant who does not complete a term at a trade school, college, or university shall be responsible for the cost of child care tuition for the term.

Section 8. Income Eligibility. (1) A child shall be eligible for CCAP if the family's income is less than or equal to:

(a) 160 percent of the federal poverty guidelines [~~level~~] as adjusted annually by the U.S. Department of Health and Human Services through calendar year 2021 [~~2018~~] at initial application; or

(b) 200 percent of the federal poverty guidelines [~~level~~] as

adjusted annually by the U.S. Department of Health and Human Services through calendar year 2021 [~~2018~~] at recertification or recalculation.

(2) Except for a child who is eligible as specified in Section 5 of this administrative regulation, gross income received or anticipated to be received by the applicant and responsible adult shall be considered when the cabinet or its designee determines the family's eligibility for the CCAP.

(3) A child who is eligible for CCAP as specified in Section 5 of this administrative regulation shall be eligible without regard to the family's income.

(4) Excluded income shall be:

(a) K[-]TAP child only payments, including back payment;

(b) A payment received from the kinship care program [~~Kinship Care Program~~], pursuant to 922 KAR 1:130, including back payment;

(c) Educational grant, loan, scholarship, and work study income;

(d) The value of a:

1. Kentucky Works supportive services payment pursuant to 921 KAR 2:017; or

2. SNAP E&T transportation payment pursuant to 921 KAR 3:042;

(e) The value of United States Department of Agriculture program benefits including:

1. Donated food;

2. Supplemental food assistance received pursuant to 42 U.S.C. 1771;

3. Special food service program for a child pursuant to 42 U.S.C. 1775;

4. Nutrition program for the elderly pursuant to 42 U.S.C. 3001; and

5. The monthly allotment under SNAP;

(f) Payment made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;

(g) In-kind income;

(h) Reimbursement for transportation in performance of an employment duty, if identifiable;

(i) Nonemergency medical transportation payment;

(j) Highway relocation assistance;

(k) Urban renewal assistance;

(l) Federal disaster assistance and state disaster grant;

(m) Home produce utilized for household consumption;

(n) Housing subsidy received from federal, state, or local governments;

(o) Receipt distributed to a member of certain Indian tribes by the federal government pursuant to 25 U.S.C. 1261, 1401, and 5501;

(p) Funds distributed per capita to or held in trust for a member of an Indian tribe by the federal government pursuant to 25 U.S.C. 1261, 1401, and 5501;

(q) Payment for supporting services or reimbursement of out-of-pocket expense made to an individual volunteering as:

1. Senior health aide; or

2. Member of the:

a. Service Corps of Retired Executives; or

b. Active Corps of Executives;

(r) Payment made to an individual from a program pursuant to 42 U.S.C. 4950 to 5085 if less than the minimum wage under state or federal law, whichever is greater, including:

1. Volunteers in Service to America (VISTA);

2. Foster Grandparents;

3. Retired and Senior Volunteer Program; or

4. Senior Companion;

(s) Payment from the cabinet for:

1. Child foster care; or

2. Adult foster care;

(t) Energy assistance payment made under:

1. The Low Income Home Energy Assistance Program pursuant to 42 U.S.C. 8621; or

2. Other energy assistance payment made to an energy provider or provided in-kind;

(u) The principal of a verified loan;

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(v) Up to \$12,000 to Aleuts and \$20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for a hardship experienced during World War II;

(w) The advance payment or refund of earned income tax credit;

(x) Payment made from the Agent Orange Settlement Fund;

(y) Payment made from the Radiation Exposure Compensation Trust Fund;

(z) Up to \$2,000 per year of income received by individual Indians denied from a lease or other use of individually-owned trust or restricted lands;

(aa) Payment made to an individual because of the individual's status as a victim of Nazi persecution;

(bb) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census;

(cc) A payment received from the National Tobacco Growers Settlement Trust;

(dd) A Tobacco Loss Assistance Program payment pursuant to 7 C.F.R. 1463;

(ee) A payment received from a crime victim compensation program according to the Antiterrorism and Effective Death Penalty Act of 1996 pursuant to 34 U.S.C. 20102(c);

(ff) A payment made, pursuant to 38 U.S.C. 1815 by the Veteran's Administration, to children of female Vietnam veterans;

(gg) A discount or subsidy provided to Medicare beneficiaries pursuant to 42 U.S.C. 1395w-141;

(hh) Any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement Programs pursuant to 45 C.F.R. 400.66(d);

(ii) Reimbursement payment for a vocational rehabilitation individual participating in Preparing Adults for Competitive Employment pursuant to 29 U.S.C. 723(a)(5);

(jj) Income or earnings from a program funded under the Workforce Innovation and Opportunity Act pursuant to 20 C.F.R. Parts 676-678 or 34 C.F.R. Part 361 or 463;

(kk) Waiver reimbursement in accordance with 907 KAR 1:170, 907 KAR 1:835, or 907 KAR 7:015 to a parent for the care of a child in the home; or

(ll) Supplemental Security Income (SSI) for a child.

(5) Deductions from gross income shall be:

(a) Actual, legally obligated child support payment made by the applicant or responsible adult to a party not living in the family's residence; and

(b) Operating costs to determine adjusted gross income from self-employment.

(6) Best estimate.

(a) Gross income shall be computed by using a best estimate of income that may exist in the benefit month.

(b) The following method shall be used to calculate a best estimate of earned income other than earned self-employment:

1. Cents shall:

a. Not be rounded to the nearest dollar before adding or multiplying hourly or daily earnings; and

b. Be rounded to the nearest dollar before adding or multiplying weekly, biweekly, semi-monthly, monthly, quarterly, or annual earnings;

2. Unless it does not represent the ongoing situation, income from all pay periods in the preceding two (2) calendar months shall be used;

3. A monthly amount shall be determined by adding gross income from each pay period, dividing by the total number of pay periods considered, and converting the pay period figure to a monthly figure by multiplying a:

a. Weekly amount by four and one-third (4 1/3);

b. Biweekly amount by two and one-sixth (2 1/6); or

c. Semimonthly amount by two (2); and

4. If income has recently begun and the applicant or recipient has not received a calendar month of earned income, the anticipated monthly income shall be computed by:

a. Multiplying the:

(i) Hourly rate by the estimated number of hours to be worked in a pay period; or

(ii) Daily rate by the estimated number of days to be worked in the pay period;

b. Converting the resulting pay period figure to a monthly amount pursuant to subparagraph 3.c. of this paragraph; and

c. Rounding to the nearest dollar.

(c) For a case with unearned income, other than unearned self-employment income, a monthly amount shall be determined by:

1. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis; and

2. Averaging the amount of unstable unearned income received in the three (3) prior calendar months, unless it does not represent the ongoing situation.

(d) For a case with self-employment income, a monthly amount shall be determined as follows:

1. If the self-employment enterprise has been in operation for at least a year, the income shall be prorated by dividing the income from the last calendar year by twelve (12);

2. If the self-employment enterprise has been in operation for less than a year, the income shall be prorated by dividing by the number of months the business has been in existence; and

3. Profit shall be determined by:

a. Rounding the total gross income to the nearest dollar;

b. Rounding the total amount of allowable expenses to the nearest dollar;

c. Dividing total gross income and total amount of allowable expenses separately by twelve (12) or the appropriate number of months, and rounding the quotients to the nearest dollar; and

d. Subtracting the rounded monthly allowable expense quotient from the rounded monthly gross income quotient.

(e) If the cabinet or its designee becomes aware of a change in circumstance, the best estimate shall be recalculated.

Section 9. Continuing Eligibility. (1) Continued eligibility under the CCAP shall be recertified at least every twelve (12) months.

(2) Eligibility shall be reviewed at each twelve (12) month recertification for a child who is placed with a relative or fictive kin caregiver. A child who is placed with a relative or fictive kin caregiver shall remain eligible pursuant to Section 5 of this administrative regulation for as long as the cabinet determines that child care is necessary in order to prevent child maltreatment or entry into the foster care system.

(3) Eligibility shall be reviewed and recalculated if necessary due to a known or reported change in circumstance.

(4) Unless a nonrelative is approved as fictive kin pursuant to 922 KAR 1:140 or 922 KAR 1:565 and Section 5 of this administrative regulation, a nonrelative who is acting in loco parentis for a child shall be required to show proof of efforts to seek permanent custody of the child or adopt the child within one (1) year of initial application as a condition of continued eligibility for CCAP.

(5) In accordance with 42 U.S.C. 9858c(c)(2)(N), if a family's income does not exceed eighty-five (85) percent of Kentucky's SMI, the family shall remain eligible for CCAP until recertification in accordance with this section.

Section 10. Payment Rates and Policy. (1)(a) To the extent funds are available, the cabinet shall make payments as listed in the DCC-300, Kentucky Child Care Maximum Payment Rate Chart [~~effective December 1, 2018~~].

(b) The rates in the DCC-300 shall represent the maximum payment rates on a per day, per child, per child care provider basis.

(c) The maximum payment rates shall include the following categories:

1. Full day;

2. Part day;

3. Licensed Type I;

4. Licensed Type II;

5. Certified;

6. Registered;

7. Infant/Toddler;

8. Preschool child; and

9. School-age child.

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(2) To the extent funds are available, a licensed or certified provider shall receive:

(a) Two (2) dollars per day beyond the maximum rate if the provider is accredited by the:

1. National Association for the Education for Young Children;
2. National Early Childhood Program Accreditation;
3. National Association for Family Child Care;
4. Council on Accreditation; or
5. Other accrediting body approved by the Early Childhood Advisory Council or the cabinet; or

(b) One (1) dollar per day beyond the maximum rate for nontraditional care for providing child care assistance based on the parent's schedule between:

1. 7 p.m. to 5 a.m. daily; or
2. Friday, 7 p.m. through Monday, 5 a.m.

(3) To the extent funds are available, a licensed, certified, or registered provider shall receive a special care rate of one (1) additional dollar per day beyond the maximum rate for care of a child:

- (a) With a special need; or
- (b) Who is age thirteen (13), but under age nineteen (19) at application or recertification, and is:

1. Physically or mentally incapable of caring for himself as determined by a health professional; or
2. Under court supervision.

(4) The cabinet or its designee shall determine the maximum daily reimbursement rate not to exceed the amount charged to the general public.

(5) A child care provider registered according to 922 KAR 2:180 shall not be paid for more than:

- (a) Three (3) children receiving CCAP per day; or
- (b) Six (6) children receiving CCAP per day, if those children are:

1. A part of a sibling group; and
2. Related to the provider.

(6) A family meeting the requirements of Section 4 or 6 of this administrative regulation shall be eligible for payment to cover child care needs due to full-time or part-time enrollment in an educational program.

(7) To the extent funds are available, required enrollment fees shall be paid no more than three (3) times in a twelve (12) month period for a family meeting the requirements in Section 5 or 6 of this administrative regulation.

Section 11. Family Copayment. (1) Unless a family copayment has been waived in accordance with Section 5(3) of this administrative regulation, a family of a child served by the CCAP shall be responsible for a copayment in accordance with the family copayment table in subsection (3) of this section.

(2) If a court orders a parent of a CCAP-eligible child to pay a portion of the child's child care expenses, the court-ordered payment shall be in lieu of the family copayment required by subsection (3) of this section.

(3)(a) The cabinet or its designee shall determine a copayment that a family shall pay to the provider for the cost of child care, based on the following table:

Family Co-Payment Per Day									
Income Range Monthly		Family Size 2		Family Size 3		Family Size 4		Family Size 5 or More	
		Family Co-Pay With 1 Child	Family Co-Pay With 2 or more	Family Co-Pay With 1 Child	Family Co-Pay With 2 or more	Family Co-Pay With 1 Child	Family Co-Pay With 2 or more	Family Co-Pay With 1 Child	Family Co-Pay With 2 or more
0	899	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
900	999	\$2	\$2	\$3	\$2	\$2	\$2	\$2	\$2
1,000	1,099	\$3	\$3	\$3	\$2	\$3	\$2	\$3	\$3
1,100	1,199	\$4	\$4	\$4	\$3	\$3	\$2	\$3	\$3
1,200	1,299	\$4	\$4	\$5	\$4	\$4	\$3	\$3	\$3
1,300	1,399	\$5	\$5	\$5	\$5	\$5	\$3	\$4	\$4
1,400	1,499	\$6	\$5	\$6	\$5	\$6	\$4	\$4	\$4
1,500	1,599	\$7	\$6	\$6	\$6	\$6	\$5	\$5	\$5
1,600	1,699	\$8	\$6	\$7	\$6	\$7	\$6	\$6	\$6
1,700	1,799	\$9	\$7	\$8	\$7	\$8	\$6	\$7	\$7
1,800	1,899	\$10	\$8	\$9	\$7	\$8	\$7	\$8	\$8
1,900	1,999	\$10	\$9	\$10	\$8	\$9	\$8	\$9	\$9
2,000	2,099	\$11	\$10	\$11	\$8	\$9	\$8	\$9	\$9
2,100	2,199.99	\$12	\$10	\$11	\$9	\$10	\$9	\$10	\$10
2,200	2,299.99	\$12	\$11	\$12	\$10	\$11	\$9	\$10	\$10
2,300	2,399.99	\$12	\$12	\$13	\$11	\$12	\$9	\$10	\$10
2,400	2,499.99	\$12	\$12	\$13	\$12	\$13	\$10	\$11	\$11
2,500	2,599.99	\$12	\$13	\$14	\$12	\$13	\$10	\$11	\$11
2,600	2,699.99	\$12	\$13	\$14	\$13	\$14	\$12	\$13	\$13
2,700	2,799.99	\$12	\$13	\$14	\$13	\$14	\$13	\$14	\$14
2,800	2,899.99	\$12	\$13	\$14	\$14	\$15	\$14	\$15	\$15
2,900	2,999.99	\$12	\$13	\$14	\$14	\$15	\$16	\$17	\$17
3,000	3,099.99	\$12	\$13	\$14	\$15	\$16	\$18	\$19	\$19
3,100	3,199.99	\$12	\$13	\$14	\$15	\$16	\$20	\$21	\$21
3,200	3,299.99	\$12	\$13	\$14	\$15	\$16	\$20	\$21	\$21
3,300	3,399.99	\$12	\$13	\$14	\$15	\$16	\$22	\$23	\$23
3,400	3,499.99	\$12	\$13	\$14	\$15	\$16	\$22	\$23	\$23
3,500	3,599.99	\$12	\$13	\$14	\$15	\$16	\$24	\$25	\$25
3,600	3,699.99	\$12	\$13	\$14	\$15	\$16	\$25	\$25	\$25

(b) The maximum copayment for an eligible family with more than five (5) members shall be twenty-five (25) dollars.

(c) In accordance with 45 C.F.R. 98.21, a copayment for an eligible family shall:

1. Be determined at initial application or recertification; and
2. Not increase during the twelve (12) month eligibility period.

Section 12. Family Rights and Responsibilities. (1) The family of a child served by the CCAP shall have rights pursuant to KRS 199.898(1) and (2).

(2) Unless an alternative program such as Head Start, state preschool, or state kindergarten is available and accessible during the time child care is needed, an applicant for a child who receives or has been approved to receive CCAP benefits shall:

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(a) Be offered choice of child care assistance subject to the availability of state and federal funds; and

(b) Receive a DCC-94, Child Care Service Agreement and Certificate.

(3) Upon enrollment or reenrollment with a provider, an applicant approved in accordance with Section 4 of this administrative regulation shall sign and return the:

(a) DCC-94; or

(b) DCC-90.

(4) Notification of action. (a) A DCC-94C, Provider Notification Letter, shall provide notice to a provider of a child's discontinuation from CCAP or disenrollment with a provider.

(b) A DCC-94.1, CHILD CARE Approval/Change Notice, shall provide notice of:

1. A change in the certification period of child;

2. Approval of an application; or

3. Continued eligibility.

(c) A DCC-105, Child Care Denial/Discontinuance Notice, shall provide notice of:

1. Denial of an application;

2. Discontinuance of a CCAP benefit;

3. Reason for adverse action;

4. Citation from an applicable state administrative regulation; and

5. Information regarding the opportunity to request an administrative hearing in accordance with Section 18 of this administrative regulation.

(d) The language on the form shall differ according to the purpose of the notice described in paragraphs (a) through (c) of this subsection.

(5) An applicant for a child served by CCAP shall advise the cabinet or its designee of a change in a circumstance within ten (10) calendar days of the day the change is known.

(6) Failure to report a change in a circumstance may result in a:

(a) Decrease or discontinuance of CCAP benefits based on the type of change; or

(b) Claim in accordance with 922 KAR 2:020.

(7) An applicant for a child served by CCAP who fails to cooperate with a cabinet quality control or case review shall be:

(a) Discontinued from CCAP benefits; and

(b) Unable to participate in CCAP until the applicant meets the requirements of the quality control or case review.

(8) An applicant for a child served by CCAP shall report to the cabinet or its designee a provider whom the applicant suspects is not fulfilling requirements in accordance with Section 14(1)(c) of this administrative regulation.

Section 13. Cabinet Requirements. (1) The DCC-94 shall:

(a) Be used for child care assistance provided by a licensed, certified, or registered provider; and

(b) Not be considered a contract, employment, or grant to the child care provider, but shall be considered assistance to the applicant pursuant to 45 C.F.R. 98.30(c)(6).

(2) The cabinet or its designee shall provide consumer information regarding conditions for termination of the DCC-94 pursuant to KRS 199.8994(6)(b).

(3) The cabinet or its designee shall assure that a provider of child care assistance funded under the CCDF and other local, state, or federal funds shall comply with the applicable regulatory requirements pursuant to:

(a) 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties;

(b) 922 KAR 2:090, Child-care center licensure;

(c) 922 KAR 2:100, Certification of family child-care homes;

(d) 922 KAR 2:120, Child-care center health and safety standards;

(e) 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

(f) 922 KAR 2:190, Civil penalties;

(g) 922 KAR 2:270, Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes, upon its adoption; and

(h) 922 KAR 2:280, Background checks for child care staff members, reporting requirements, and appeals.

(4) The cabinet or its designee shall complete a home inspection of a registered child care provider in CCAP in accordance with 42 U.S.C. 9858c(2)(K)(i)(IV) and 922 KAR 2:180.

(5) If CCAP benefits are reduced or discontinued due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to each family receiving child care assistance.

(6) If the daily maximum payment rate is reduced due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to licensed, certified, or registered providers.

(7) The cabinet shall send a notice of adverse action at least ten (10) calendar days in advance of taking adverse action.

(8) In accordance with 45 C.F.R. 98.46, the cabinet shall prioritize child care assistance benefits as determined by the available funds as follows:

(a) Child protective or preventive services authorization;

(b) A child with a special need;

(c) A child experiencing homelessness as defined by 45 C.F.R. 98.2;

(d) A child in the custody of the cabinet;

(e) K[-]TAP recipients participating in the Kentucky Works Program established in 921 KAR 2:370;

(f) Teen parents attending high school or pursuing a general equivalency degree (GED);

(g) A K[-]TAP recipient attempting to transition off assistance through employment;

(h) A parent whose K[-]TAP case has been discontinued during the previous twelve (12) months and who needs child care assistance in order to accept or retain employment;

(i) A low income working parent; or

(j) A parent in education or training programs leading to self-sufficiency.

Section 14. Provider Requirements. (1) A licensed child-care center, certified family child-care home, or registered child care provider that serves a child who participates in the CCAP shall:

(a) Sign and give to the parent for submission to the cabinet or its designee, upon a child's enrollment or reenrollment with the provider and prior to receiving payment from the CCAP, the DCC-94;

(b) Report all absences on the DCC-97, Provider Billing Form, submitted to the cabinet or its designee;

(c) 1. Maintain the DCC-94E, Child Care Daily Attendance Record, in which the attendance is:

a. Recorded legibly each time the child arrives and each time the child departs the provider's care; and

b. Signed legibly with first and last name by the parent or applicant for the child served by CCAP; and

2. Submit the DCC-94E upon request of the cabinet or its designee;

(d) Comply with the applicable regulatory requirements pursuant to:

1. 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties;

2. 922 KAR 2:090, Child-care center licensure;

3. 922 KAR 2:100, Certification of family child-care homes;

4. 922 KAR 2:120, Child-care center health and safety standards;

5. 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

6. 922 KAR 2:190, Civil penalties;

7. 922 KAR 2:270, Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes~~[- upon its adoption];~~ and

8. 922 KAR 2:280, Background checks for child care staff members, reporting requirements, and appeals; ~~and~~

(e) Complete the cabinet approved training on billing and the DCC-94E prior to receiving an initial payment from CCAP; ~~and~~

(f) Complete, retain on file, and provide to the CCAP billing section documentation demonstrating completion of cabinet

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approved training on billing once during each year of operation or upon change of the staff member submitting billing information.

(2) A licensed or certified child care provider shall complete and submit the DCC-94B, Licensed or Certified Provider Agreement Form, prior to receiving payment from CCAP.

(3) A licensed child care provider shall maintain written documents with attendance records stating the reason for any absence of a child receiving CCAP in excess of five (5) absences per month per child.

(4)(a) If CCAP records indicate that a certified family child-care home or a licensed child-care center is operating over capacity, as specified in 922 KAR 2:100 or 922 KAR 2:120 respectively, by having two (2) or more shifts, the cabinet shall request an operating plan from the provider.

(b) An operating plan in accordance with paragraph (a) of this subsection shall specify:

1. Each employee of each shift;
2. The work hours for each employee of each shift;
3. The management for each shift;
4. The work hours for each management employee of each shift; and
5. The children enrolled for each shift.

(c) The cabinet shall approve a provider for overcapacity if:

1. The operating plan meets all requirements of:
  - a. For a licensed child-care center, 922 KAR 2:090 and 922 KAR 2:120; or
  - b. For a certified family child-care home, 922 KAR 2:100; and
2. The provider has had less than two (2) health, safety, or welfare deficiencies or violations within the previous twenty-four (24) month period, even if deficiencies were corrected.

(5) A registered child care provider in CCAP shall comply with an inspection in accordance with 42 U.S.C. 9858c(c)(2)(K)(i)(IV) and 922 KAR 2:180 conducted by the cabinet or its designee.

(6) A provider shall be ineligible for CCAP if the provider:

(a) Was discontinued or disqualified from participation in a governmental assistance program due to fraud or abuse of the program;

(b) Has had a previous ownership interest in a child-care provider, which had a prior certification, license, registration, or permit to operate denied, suspended, revoked, or voluntarily relinquished as a result of an investigation or pending adverse action; or

(c) Is a parent, spouse, sibling, or child of a previous provider described in paragraphs (a) and (b) of this subsection, and the previous provider will be involved in the new provider's operations in any capacity.

Section 15. Other Services. To the extent funds are available, a child whose family's income is over the income limits for the CCAP described in Section 8 of this administrative regulation may be eligible for:

- (1) Child care payments;
- (2) Enrollment fees;
- (3) Activity or day trip fees;
- (4) Material fees;
- (5) Transportation fees; or
- (6) Other items relating to child care services with prior approval of the cabinet.

Section 16. An improper payment, claim, or penalty in CCAP shall be handled in accordance with 922 KAR 2:020.

Section 17. Criteria for Nonpayment. (1) Payment under the CCAP shall:

(a) Not be made to a licensed provider for more than five (5) absences per child during a month if the provider fails to verify in writing, and maintain attendance records verifying, that the additional absences were related to:

1. A death in the family;
2. An illness of the:
  - a. Child; or
  - b. Applicant; or
3. A disaster verified by utility provider, local, state, or federal

government;

(b) Not be made to a certified provider for more than five (5) absences per child during a month;

(c) Not be made to a registered provider for any absences;

(d) Be denied in accordance with KRS 199.8994(6);

(e) Cease if a family or provider defaults on a payment in accordance with Section 11 of this administrative regulation or 922 KAR 2:020;

(f) Not be made if a family no longer meets the technical or financial eligibility requirements under the CCAP;

(g) Not be made to a provider for payment requests ninety (90) days after the date of service;

(h) Not be made to a licensed or certified provider for more than ten (10) holidays per calendar year;

(i) Cease if a provider denies:

1. A parent of a child in care, the cabinet, the cabinet's designee, or a representative of an agency with regulatory authority:

- a. Entry into the provider's premises during operating hours; or
- b. Access to a child in care; or

2. The cabinet, the cabinet's designee, or a representative of an agency with regulatory authority access to the provider's records relevant to a:

- a. Cabinet review, including CCAP quality control or case review; or
- b. Review by another agency with regulatory authority;

(j) Not be made to a provider if the provider's DCC-94E in accordance with Section 14(1)(c) of this administrative regulation does not support billing for a child reported as served for the same period of time on the DCC-97;

(k) Not be made if a licensed or certified provider cares for a child served by CCAP at a location not specified on the DCC-94; or

(l) Not be made to a provider for a child in care over the capacity of the provider, as governed by 922 KAR 2:100 or 922 KAR 2:120, unless an operating plan is approved in accordance with Section 14(4) of this administrative regulation.

(2) Subject to the availability of state or federal funds, the cabinet may suspend approval of initial application for benefits under the CCAP following the priorities established in Section 13(8) of this administrative regulation.

Section 18. Administrative Hearings. (1) A CCAP applicant or recipient may request an administrative hearing regarding eligibility determination, recalculation, or recertification in accordance with 921 KAR 2:055.

(2) An administrative hearing pertaining to a matter not specified in subsection (1) of this section may be requested in accordance with:

(a) 922 KAR 2:260; or

(b) 922 KAR 2:020.

Section 19. Records. Records of CCAP shall be maintained and disclosed in accordance with:

(1) KRS 194A.060;

(2) 45 C.F.R. 98.90(e); and

(3) 45 C.F.R. 205.50(a)(1)(i).

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DCC-90, Subsidized Child Care Assistance Application Summary", 7/2019;

(b) ["DCC-90P, CCAP Job Search Documentation", 10/17;

(c) "DCC-94, Child Care Service Agreement and Certificate", 07/21[40/47];

(d) ["DCC-94.1, CHILD CARE Approval/Change Notice", 10/17;

(e) ["DCC-94B, Licensed or Certified Provider Agreement Form", 04/17;

(f) ["DCC-94C, Provider Notification Letter", 10/17;

(g) ["DCC-94E, Child Care Daily Attendance Record", 7/13;

(h) ["DCC-97, Provider Billing Form", 04/13;

(i) ["DCC-105, Child Care Denial/Discontinuance Notice", 10/17; and

(j) ["DCC-300, Kentucky Child Care Maximum Payment Rate Chart", 07/21[42/48].

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

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

APPROVE BY AGENCY: June 10, 2021

FILED WITH LRC: July 1, 2021 at 7:51 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; email [CHFSregs@ky.gov](mailto: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 enables the cabinet to qualify for federal funds under the Child Care and Development Fund (CCDF) and establishes procedures for the implementation of the Child Care Assistance Program (CCAP) to the extent that funding is available.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to qualify for federal funds under CCDF and for the proper administration of CCAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorized statutes by allowing the cabinet to qualify for federal funds and establishing procedures for the implementation of CCAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the CCAP in a manner that is consistent with federal and state requirements, including available funding, and the interests of the clients to be served, child care providers, and taxpayers.

(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 incorporates the appropriated General Fund moneys in the amount of \$12,000,000 in fiscal year 2021-2022 to the Department for Community Based Services to provide a \$2 per child increase in the Child Care Assistance Program provider reimbursement rate for full-day care. This amendment is consistent with House Bill 405 (2021 Regular Session, Acts Chapter 176) and is reflected in the incorporated material - the DCC-300, Kentucky Child Care

Maximum Payment Rate Chart. The amendment also requires CCAP-participating child care providers to complete annual training on billing and makes other necessary updates and technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to obligate additional funds from the General Fund appropriation to the Department for Community Based Services to provide a \$2 per child increase in the Child Care Assistance Program provider reimbursement rate for full-day care. The purpose of this appropriation was included in House Bill 405 (2021 Regular Session, Acts Chapter 176).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by aligning policy with more efficient operations, promoting parents' efforts to achieve self-sufficiency and the provision of quality child care, enhancing program integrity, and preserving the health and welfare of vulnerable children. This amendment specifically conforms with an appropriations bill passed in the 2021 Regular Session.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its refinement of CCAP in accordance with federal and state laws and the interests of households and children served.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of May 2021, there were 12,750 families and 23,346 children enrolled in CCAP, and over 1,600 child care providers participating in CCAP.

(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: Participating providers will need to complete the cabinet approved training on billing and the DCC-94E annually or upon a change in their billing staff. This will allow providers to receive a refresher on how to submit billing and become aware of any updates, allowing for a smoother reimbursement process.

(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): Regulated entities will benefit from increased provider reimbursement rates.

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

(a) Initially: The amendment to this administrative regulation will be implemented within available federal and state appropriations for CCAP. An additional \$12 million in General Funds has been appropriated to implement this increase in provider reimbursement rates.

(b) On a continuing basis: The administrative regulation will be implemented within available federal and state appropriations for CCAP. The administrative body will continually monitor its costs to make any adjustments necessary to maintain CCAP and related services within available funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding to be used for implementation and enforcement of this administrative regulation are the federal Child Care and Development Fund Block Grant, state match, state maintenance of effort funds, and state General Funds.

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

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

The amendment to this administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? The Child Care Assistance Program is implemented in a like manner statewide. However, provider payment rates are tiered to recognize the higher operating costs of certain geographical, more populated areas. The provider payment rates were originally established based on the classification of cities. The rates are further supported by the analysis of the market rate survey results specified in KRS 199.899.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

2. State compliance standards. KRS 194A.050(1), 199.892, 199.8994

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services will be impacted by this administrative regulation. Any local government or school district operating a child care program that receives CCAP 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, 199.892, 199.8994, 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 additional 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 additional revenue.

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation will be implemented with appropriated General Fund moneys in the amount of \$12 million. In SFY 2019, \$21,491,449.45 was used from General Funds to provide CCAP.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will be implemented within available federal and state appropriations for CCAP. In total, the projected impact of this specific amendment is approximately \$12 million annually.

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:



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**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.

**NONE**

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee  
IJC = Interim Joint Committee

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

201 KAR 2:061. Procedures followed by the Kentucky Board of Pharmacy in the investigation and hearing of complaints.

RELATES TO: KRS 218A.205, 315.121, 315.131, 315.191[(4)], 21 C.F.R. 310.305(b)

STATUTORY AUTHORITY: KRS 218A.205(3)(e), (f), (5), 315.191(1), (2), (3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations relating to the practice of pharmacy, including a process for complaints and hearings. KRS 315.191(2) authorizes[provides] the board [with the authority] to enforce pharmacy laws and administrative regulations. KRS 218A.205(3)(e), (f) and (5) require the board to promulgate administrative regulations relating to complaints, licensure standards, and disciplinary actions. The administrative regulation establishes board procedure for investigations, the administrative hearings process, and the penalties for violations.

Section 1. Definitions. (1) "Adverse drug experience" means any adverse event associated with the use of a drug in humans, whether or not considered drug related, including the following:

(a) An adverse event occurring in the course of the use of a drug product in professional practice;

(b) An adverse event occurring from drug overdose, whether accidental or intentional;

(c) An adverse event occurring from drug abuse;

(d) An adverse event occurring from drug withdrawal; and

(e) Any failure of expected pharmacological action.[:]

(2) "Agreed order" means a formal written agreement between the board and the licensee, permit holder, or registrant that stipulates that a violation of pharmacy law may have occurred and specifies the disciplinary terms and conditions imposed on the licensee, permit holder, or registrant.

(3) "Board" is defined by KRS 315.010(4).~~[means the Kentucky Board of Pharmacy:]~~

(4) "Charge" means a specific allegation alleging a violation of a specified provision of KRS[~~this~~] Chapter 315, the provisions of KRS Chapters 217 and 218A pertaining to prescription drugs, or 201 KAR Chapter 2.[:]

(5) "Complaint" means a formal administrative pleading that sets forth charges against a licensee, permit holder, or registrant and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B.[:]

(6) "Diversion agreement" means an interim agreement between the board and the licensee, permit holder, or registrant that is utilized as a method of ensuring patient safety during a time mutually agreed upon. [At the conclusion of the time period, the case review panel may dismiss the grievance, issue a complaint, issue a letter of concern or reprimand, modify the terms of the diversion agreement, or enter into an agreed order with the licensee, permit holder, or registrant.]

(7) "Executive director" means the executive director of the Kentucky Board of Pharmacy.[:]

(8) "FDA" is defined by KRS 315.400(10).~~[means United States Food and Drug Administration:]~~

(9) "General counsel" means the general counsel of the Kentucky Board of Pharmacy or any attorney hired or contracted with the Kentucky Board of Pharmacy to provide legal services.[:]

(10) "Grievance" means any allegation [in whatever form] alleging misconduct by a licensee, permit holder, or registrant.[:]

(11) "Inordinate amount of compounded human drug products"

means when a pharmacy has distributed interstate during any calendar year more than fifty (50) percent of the sum of the number of prescription orders for compounded human drug products that the pharmacy sent out of the facility in which the drug products were compounded during that same calendar year plus the number of prescription orders for compounded human drug products that were dispensed at the facility in which they were compounded during that same calendar year.[:]

(12) "Letter of concern" means an advisory letter to notify a licensee, permit holder, or registrant that, although there is insufficient evidence to support disciplinary action, the board believes the licensee, permit holder, or registrant needs ~~to~~ [should] modify or eliminate certain practices and that the continuation of those practices may result in action against the licensee, permit, or registration.[:]

(13) "Letter of reprimand" means a letter admonishing a licensee, permit holder, or registrant for violating pharmacy law, but notifying the licensee, permit holder, or registrant that in consideration of mitigating evidence, the board has determined that disciplinary action is not appropriate.[:]

(14) "Pharmacy Law" means any [provision of] law in KRS Chapter 315 and 201 KAR Chapter 2 or any [provision of] law in KRS Chapter 217 or 218A relating to prescription drugs.

(15) "Product quality issue" means any incident that causes the drug product or its labeling to be mistaken for, or applied to, another article, any contamination, any significant chemical, physical, or other change or deterioration in the distributed drug product, or any failure of one (1) or more distributed batches of the drug product to meet the applicable specifications.

(16) "Serious adverse drug experience" means:

(a) Any adverse drug experience occurring at any dose that results in death, a life-threatening adverse drug experience, inpatient hospitalization or prolongation of existing hospitalization, a persistent or significant disability of incapacity, or a congenital anomaly or birth defect; or

(b) Important medical events that do[may] not result in death, are ~~not~~ [be] life-threatening, or do not require hospitalization ~~that are~~ [may be] considered as a serious adverse drug experience ~~if/when~~, based upon appropriate medical judgment, ~~these events~~ [they] may jeopardize the patient or subject and may require medical or surgical intervention to prevent ~~results of a serious adverse drug experience. [one (1) of the above-mentioned outcomes:]~~

(17) "Serious product quality issue" means any product quality issue that may have the potential to cause a serious adverse drug experience.

Section 2. Grievances. (1) A grievance[complaint] against a licensee may:

(a) Be submitted orally or in writing; ~~and~~ [and]

(b) Originate from a consumer, competitor, health professional, government or provider agency, or other interested party.

(2) A grievance [complaint shall] may[can] be [accepted] submitted anonymously, and if the grievance [complaint] is accompanied by sufficient corroborating evidence [as would allow the board to believe, based upon a totality of the circumstances,] that there is a reasonable probability ~~of~~ [that there has been] a violation of pharmacy law, the grievance shall be accepted by the executive director or the general counsel, [exists that the complaint is meritorious-]

(3) A grievance [complaint] shall not be required to be sworn to or notarized.

(4) A grievance that alleges an adverse drug experience[exposure] or a product quality issue from human drug products compounded in Kentucky and distributed outside the state shall be reviewed, and if the grievance is accepted and involves an alleged serious adverse drug ~~experience~~ [exposure]

or serious product quality issue, the grievance shall be reported to the FDA within five (5) business days from receipt of the grievance.

(5) A grievance that alleges an adverse drug experience[exposure] or a product quality issue from a compounded human drug product that was compounded in Kentucky by a physician and distributed outside the state shall be reported to the Kentucky Board of Medical Licensure and the FDA within five (5) business days from receipt of the grievance.

Section 3 [2]. Investigations. (1) Except as established in[provided-by] subsection (2) of this section, upon [receipt] acceptance of a grievance [complaint], the executive director [board] shall instruct its staff or a special investigator to:

(a) Conduct an investigation; [and]

(b) [Report the conclusions and recommendations of the investigation to the:

1. Executive director; and

2. Board member assigned by the board to review conclusions and recommendations relating to an investigation.] Except as established in[provided-by] paragraph (d) of this subsection, notify the licensee, permit holder, or registrant via written letter sent through the United States Postal Service that a grievance has been filed, and that the board is investigating the merits of the grievance. If during the investigation, it is alleged that another licensee, permit holder, or registrant may have violated pharmacy law, that licensee, permit holder, or registrant shall also be notified via written letter sent through the United States Postal Service that a grievance has been filed and the board is investigating the grievance. Any licensee, permit holder, or registrant under investigation shall be given the opportunity to provide a written statement to the executive director; [and]

(c) Report the case to the case review panel within 120 days of the receipt of the grievance. If an extension of time is requested, the case shall be brought before the case review panel to approve or deny the extension of time. If an extension of time is approved, the licensee, permit holder, or registrant that is the subject of the investigation shall be notified via written letter sent through the United States Postal Service of the extension of time. An extension shall not[cannot] be granted for a period exceeding 120 days. Multiple extensions shall be[are] permitted; and

(d) The executive director may hold an investigation in abeyance for a reasonable period of time or approve of a delay in notice to the licensee, permit holder, or registrant in order to permit law enforcement or a government agency to perform or complete essential investigative tasks, following a request by law enforcement or a government agency.

(2) If the grievance [complaint] pertains to the improper, inappropriate, or illegal dispensing of controlled substances, the board shall:

(a) File a report with the Attorney General's office, the Office of Inspector General's office, and the Department of the Kentucky State Police within three (3) business days;

(b) Commence an investigation within seven (7) days of the grievance [complaint]; and

(c) Produce a charging decision within 120 days of the receipt of the grievance [complaint], unless an extension for a definite time period is requested in writing by a law enforcement agency due to an ongoing criminal investigation.

(3) If the grievance pertains to human drug products compounded in Kentucky and distributed outside of Kentucky, the investigation shall include assessing if[whether] there is a public health risk associated with the compounded drug product and if[whether] any public health risk associated with the product is adequately contained.

(4) A special investigator shall only be utilized if[when] a conflict of interest exists that prevents any board inspector from being assigned to investigate the grievance.

Section 4[3]. Case Review Panel (1) A panel consisting of [the] three (3) assigned board members, [member the executive director, and the pharmacy drug inspector] shall review the findings [conclusions and recommendation] relating to an investigation.

(2) Board staff or a special investigator shall provide the written

findings and evidence from each investigation to the case review panel, executive director, and general counsel at least seven (7) days prior to the meeting of the case review panel.

(3) The case review panel may[shall be empowered to] request the attendance of any person, including the assigned inspector, at any meeting of the case review panel for[in regard to] the investigation of any grievance or consideration of any disciplinary matter.

(4) The executive director and general counsel shall attend case review panel meetings in a non-voting, ex-officio capacity.

(5) The panel shall determine if a preponderance of the evidence exists or does not exist that the licensee, permit holder, or registrant violated pharmacy law. If the panel determines that the preponderance of the evidence indicates that the licensee, permit holder, or registrant did not violate the law, the case review panel shall dismiss the case with or without prejudice or issue a letter of concern.

(6) After reviewing the evidence, if the case review panel determines that a preponderance of the evidence indicates that the licensee, permit holder, or registrant violated pharmacy law, the case review panel, shall [recommend] adopt one (1) of the following dispositions[options to the board]:

(a) Non-adverse action against the licensee, permit holder, or registrant. Non-adverse action includes:

1. Issuance of a letter of [a] reprimand [restricting the licensee, permit or certificate holder]; or

2. Entry into a diversion agreement; [-]

(b) Attempting[Attempt] resolution of the case through an agreed order; [or]

(c) The issuance of a formal complaint, order, and notice of hearing; or]

(e) Dismissal of the case with or without prejudice; or]

(d) Returning the case to the inspector or special investigator for further investigation.

(7) [(3)] Documentation of a letter of [board] reprimand, letter of concern, or diversion agreement shall be maintained in [the appropriate] board records [files] for three (3) years.

(8) Within thirty (30) days of the case review panel decision, the licensee, permit holder, or registrant shall be informed via letter sent through the United States Postal Service of the decision of the case review panel.

(9) In the case of recusal by a member of the case review panel, the executive director shall replace the recused board member as a voting member of the case review panel.

(10) If the case review panel determines by a preponderance of the evidence that a grievance involving human drug products compounded in Kentucky and distributed to another state did violate pharmacy law, the board shall take action to ensure that the relevant pharmacy investigates the root cause of the problem that is the subject of the grievance and undertakes sufficient corrective action to address any identified public health risk related to the problem, including the risk that future similar problems may occur. A sufficient corrective action plan may include tasks such as locating expired components, finding record-keeping errors, and ensuring proper temperature and sterility controls. [

Section 4. (1) With the approval of the board, the executive director shall notify the licensee, permittee, or certificate holder, in writing, that he or she may request an administrative conference before the executive director and the pharmacy drug inspector to be held prior to the hearing.

(2) The licensee, permit or certificate holder shall be notified that he or she may appear with counsel.

(3) An administrative conference shall be held to determine whether an agreement may be reached to resolve the complaint that is acceptable to all parties.

(4) If an agreement is reached, it shall be submitted to the board for approval and board order.]

Section 5. Settlement. (1) At any time after notice of a grievance or the filing of a complaint, a settlement conference may be requested by the licensee, permit [or certificate] holder, registrant, or [the] their attorney [for that person] to resolve a

grievance or a complaint.

(2) If a settlement conference is requested, it shall be scheduled. The settlement conference shall include the general counsel [board's attorney], the licensee, permit [or certificate] holder, registrant, [and] the attorney for [that] the licensee, permit holder, or registrant [person], and anyone else at the request of the licensee, permit holder, or registrant.

(3) Except as established/provided in subsection (4) of this section, if the parties to a settlement conference [agree on stipulations, proposed terms, and conditions for an agreed order to resolve the complaint, they shall forward the agreed order to the board for approval] reach an agreement, general counsel, with the consent of the executive director, may/shall be authorized to resolve the case with a settlement agreement.

(4) If the case involves harm to any member of the public, diversion of controlled substances, proposed probation, suspension or revocation, the proposed settlement agreement [agreed order is] shall be reviewed [approved] by the case review panel. If the settlement agreement is approved by the case review panel, [board,] the grievance or complaint shall be considered resolved [and a hearing shall not be held].

Section 6. Hearings. All hearings shall be conducted in accordance with the provisions of KRS 315.131(1) and KRS Chapter 13B.

Section 7. Final Order. [~~Posthearing Proceedings.~~] (1) The board shall deliberate on issuance of a final order [~~on all cases~~] in closed session. Board members that voted on the disposition of the case for the case review panel shall recuse themselves. If/in the event of board member recusal and the need for a tie-breaking vote, the executive director shall be available to deliberate and vote on issuance of the final order.

(2) Board counsel shall not attend, or be involved in any manner with, the closed session.

(3) The specific findings of the board shall be made in open session following the board's deliberation.

Section 8. Required Penalties for Violations of KRS Chapter 218A. (1) Pursuant to KRS 218A.205(3)(f)(e)1., a licensee convicted of a felony offense related to dispensing a controlled substance shall, at a minimum, be permanently banned from dispensing any controlled substance.

(2) Pursuant to KRS 218A.205(3)(f)(e)2., the board shall impose restrictions short of a permanent ban from dispensing controlled substances on a licensee convicted of a misdemeanor offense relating to the dispensing of a controlled substance.

(3) Pursuant to KRS 218A.205(3)(f)(e)3., a licensee disciplined by the licensing board of another state relating to the improper, inappropriate, or illegal dispensing of a controlled substance shall, at a minimum, have the same disciplinary action imposed in Kentucky as the disciplinary action imposed by the licensing board of the other state.

(4) Pursuant to KRS 218A.205(3)(g)(f), the board shall submit all disciplinary actions to the National Practitioner Data Bank of the United States Department of Health and Human Services either directly or through a reporting agent.

Section 9. Required Reporting of Investigative Findings to the FDA. (1) At the conclusion of an investigation of a grievance involving a serious adverse drug experience or a serious product quality issue relating to a drug product compounded at a pharmacy in Kentucky, but distributed outside the state, the board shall share, as permitted by state law, the findings of the investigation with the FDA.

(2) The board shall/will maintain records of grievances involving adverse drug experiences or product quality issues relating to human drug products compounded at a pharmacy, the investigations of the grievances, and any response to or action taken as a result of the grievance beginning when the board receives notice of the grievance. The board shall maintain these records for at least three (3) years. The three (3) year period begins on the date of final action on a grievance, or the date of a

decision that the grievance requires no action.

Section 10. Information Sharing with the FDA. (1) On an annual basis, the board shall identify pharmacies that distribute inordinate amounts of compounded human drug products interstate and within thirty (30) days of identifying the pharmacy, notify FDA of the/such pharmacy.

(2) For pharmacies that have been identified as distributing inordinate amounts of compounded human drug products interstate during any calendar year, the board shall/will identify during the same calendar year:

(a) The total number of prescription orders for sterile compounded human drugs distributed interstate; [and]

(b) The names of states in which the pharmacy is licensed; [and]

(c) The names of states into which the pharmacy distributed compounded human drug products; and

(d) If/Whether the state inspected for and found during its most recent inspection that the pharmacy distributed compounded human drug products without valid prescription orders for individually identified patients.

(3) If the board becomes aware of a physician who is distributing any amount of compounded human drug products interstate, the board shall notify the Kentucky Board of Medical Licensure and within thirty (30) business days of identifying the physician, notify the FDA.

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 Examiners of Psychology**  
**(As Amended at ARRS, July 8, 2021)**

**201 KAR 26:115. Definition of psychological testing.**

RELATES TO: KRS 319.010

STATUTORY AUTHORITY: KRS 319.032(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(b) requires the Board of Examiners of Psychology to promulgate administrative regulations to establish and define the scope of practice within the field of psychology. This administrative regulation establishes parameters of psychological testing.

Section 1. Definition. "Psychological testing" means [means] [is defined as] the use of one (1) or more standardized measurement instruments, devices, or procedures including the use of computerized psychological tests, to observe or record human behavior, and which require the application of appropriate normative data for interpretation or classification and includes the use of standardized instruments for the purpose of the diagnosis and treatment of mental and emotional disorders and disabilities, the evaluation or assessment of cognitive and intellectual abilities, personality and emotional states and traits, and neuropsychological functioning.

Section 2. Psychological Tests. Psychological tests may include a version or reformulation of [one (1) of the following]:

(1) Individual tests for the evaluation of cognitive and intellectual abilities, examples of which are:

- (a) The Wechsler [series] intelligence scales;
- (b) The Stanford-Binet intelligence scales; and[and]
- (c) The Kaufman Assessment Battery for Children;

(2) Individual, objective, and projective tests of personality and emotional states and traits, examples of which are:

- (a) The Minnesota Multiphasic Personality Inventory; [and]
- (b) The Millon Clinical Multiaxial Inventory;
- (c) The Millon Adolescent Clinical Inventory; and[and]
- (d) Projective techniques including:

- 1. The Rorschach Ink Blots;

2. Thematic Apperception Test; ~~and~~
3. The Holtzman Ink Blots; and

(3) Individual tests of neuropsychological functioning, examples of which are:

- (a) The Halstead-Reitan Battery;
- (b) The Luria-Nebraska Battery;
- (c) The ~~Lezak~~ Lezak or Kaplan Battery~~;~~; and
- (d) The NEPSY (A Developmental Neuropsychological Assessment).

Section 3. Services that are described as "psychological testing" shall only be administered and interpreted by persons credentialed by this board or who meet the formal academic training and experience qualifications established in KRS Chapter 319 and these administrative regulations [described above] and who are otherwise exempt by statute.

(1) Persons credentialed by this board, as well as other licensed or certified professionals, may also use tests of language, education, and achievement, as well as tests of abilities, interests, and aptitudes. With the exception of the test categories and psychological tests listed in Section 2 of this administrative regulation, the use of these other tests is not exclusively within the scope of this administrative regulation.

(2) ~~[Members of other professions]~~ Persons not credentialed by this board shall not train or supervise any person in performing psychological testing.

(3) The practice of psychology shall be construed within the meaning of the definition contained in KRS 319.010(7) without regard to ~~if~~ whether payment is received for services rendered.

(4) Services that are described as "psychological testing~~and treatment~~" shall be administered to minor children only upon the notification of and the granting of written permission by the parent or legal guardian, unless otherwise required by the courts subject to specific state or federal law.

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**BOARDS AND COMMISSIONS**  
**Board of Examiners of Psychology**  
**(As Amended at ARRS, July 8, 2021)**

**201 KAR 26:121. Scope of practice and dual licensure.**

RELATES TO: KRS 319.010, 319.015, 319.032(1)(b), 319.050(7)

STATUTORY AUTHORITY: KRS 319.032(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(b) requires the board to promulgate administrative regulations establishing and defining scope of practice within the field of psychology. This administrative regulation establishes the required scope of practice for licensed psychologists who hold the health service provider designation, licensed psychologists, certified psychologists, certified psychologists with autonomous functioning, licensed psychological associates, and licensed psychological practitioners.

Section 1. A license holder shall not practice or present himself or herself outside the area or areas of competency specified in the application for a license and approved by the board based upon examination and review of qualifications, training, and experience, unless the credential holder has obtained additional education, training, experience, or supervision appropriate to the new practice area.

Section 2. Scope of Practice. (1) A licensed psychologist who holds the health service provider designation, a licensed psychologist, a certified psychologist with autonomous functioning, a certified psychologist, a licensed psychologist associate, or a licensed psychological practitioner may:

- (a) Work in various health care service delivery settings; and
- (b) Provide one (1) or more of the following direct or supportive

services:

1. Diagnosis of an emotional, mental, nervous, or addictive disorder, including mental health conditions or an adjustment problem of an individual or group through the use of psychological testing or other techniques;

2. Evaluation or assessment of the functioning of an individual, group, or organization;

3. Treatment of an emotional, mental, nervous, or addictive disorder, including mental health conditions, or an adjustment problem of an individual or group;

4. Intervention or a preventive technique that facilitates the functioning of an individual, group, or organization;

5. Consultation services;

6. Program planning or development services;

7. Evaluation of a psychological or human service program; or
8. Supervision of health service delivery by a licensed psychologist who holds the health service provider designation, as established in 201 KAR 26:171.

~~(2)(9.)~~ The practice of psychology shall be construed within the meaning of the definition contained in KRS 319.010(7) without regard to whether payment is received for services rendered.

~~(3)(2.)~~ All license holders from this board shall restrict their practice to the delivery of specific services for which they are competent based on professional education, training, and experience.

Section 3. Dual Credentialing. (1) An individual who holds both a license to practice psychology from this board and a mental health credential from another regulatory board authorized by a Kentucky statute shall:

- (a) Inform the recipient of a particular service under which license the provider is practicing; and

- (b) Not participate in the ~~the~~ practice of psychology~~;~~, as defined by KRS 319.010, under the auspices of another credential, recognizing that some activities are exempted by KRS 319.015.

(2) Psychological testing, as defined by 201 KAR 26:115, shall not be delivered under a credential other than a license issued by the Board of Examiners of Psychology.

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**BOARDS AND COMMISSIONS**  
**Board of Examiners of Psychology**  
**(As Amended at ARRS, July 8, 2021)**

**201 KAR 26:130. Grievances and administrative complaints.**

RELATES TO: KRS 319.005, 319.032, 319.082, 319.118, 319.990

STATUTORY AUTHORITY: KRS 319.032(1)(k)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(k) requires the board to promulgate administrative regulations that establish the procedure for investigating complaints or suspected violations of KRS Chapter 319 and notifying proper law enforcement authorities. KRS 319.005 prohibits unlicensed persons from engaging in the practice of psychology or using the title of psychologist, licensed psychologist, certified psychologist, licensed psychological practitioner, or licensed psychological associate. KRS 319.082 delineates the causes for which disciplinary action may be taken against a credential holder. KRS 319.118 authorizes the board to institute and maintain actions to restrain or enjoin violations of applicable statutes, administrative regulations, and orders of the board. KRS 319.990 sets forth the criminal penalty for violations and authorizes prosecution of violators. KRS 319.032 authorizes the board to develop guidelines for use in complaints involving alleged sexual misconduct by a licensed holder, and for training of investigators in these matters. This administrative regulation is established to protect and safeguard the health and safety of the citizens of Kentucky and to provide procedures for filing, evaluating, and

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disposing of administrative complaints asserted against credential holders or applicants for licenses.

Section 1. Definitions. (1) "Administrative complaint" means a formal administrative pleading authorized by the board that sets forth charges against a credential holder or applicant and commences a formal disciplinary proceeding in accordance with KRS Chapter 13B.

(2) "Board" is defined in KRS 319.010(2), and for purposes of this administrative regulation, shall also mean [refer to] a hearing panel.

(3) "Charge" means a specific allegation contained in any document issued by the board or hearing panel alleging a violation of a specified provision of the KRS Chapter 319 or 201 KAR Chapter 26.

(4) "Grievance" means any allegation alleging misconduct by a licensed holder or applicant or alleging that an unlicensed person is engaging in the practice of psychology or using the title of psychologist.

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

(6) "Person" means any individual, partnership, corporation, association, or public or private organization of any character other than an agency.

(7) "Respondent" means the person against whom a grievance or administrative complaint has been made.

Section 2. Grievance. (1) Source. A grievance may be initiated by:

- (a) The board;
- (b) The public; or
- (c) Any governmental agency.

(2) Form.

(a) A grievance shall:

1. Be in writing through use of hard copy or digital forms provided by the board;

2. Clearly identify the [person] licensee against whom the grievance is being made;

3. Contain the date the grievance is initiated;

4. Clearly identify the complainant through printed name, contact information, and signature [Identify by printed name and signature the person making the grievance]; [and]

5. Contain a clear and concise statement of the facts giving rise to the grievance, including the relationship of the complainant to the licensee; [;]

6. Indicate if the grievance arises out of a court-involved evaluation, consultation, treatment, or psychoeducation of a person [s];

7. Provide consent, or a means of acquiring consent, from the legal guardian for investigations involving minors or adults under guardianship [from their legal guardian(s)]; and

8. Provide a waiver of confidentiality for the complainant and the complainant's minor children or wards, if applicable.

(b) A certified copy of a court record for a misdemeanor or felony conviction relating to the practice of psychology shall be considered a valid grievance.

(c) The board shall not accept or process anonymous grievances or administrative complaints.

(3) A grievance shall be filed with the board at its designated office or place of business, or by e-mail. [Receipt. A grievance may be received by any:

(a) Board member;

(b) Credential holder designated by the board; or

(c) Staff member.]

(4) Response. The board shall provide a copy of the grievance [shall be provided] to the respondent [by the board] in a timely manner along with additional information and documents supplied by the complainant throughout the administrative process.

(5) The respondent shall have ~~[fifteen (15)]~~ twenty (20) days to file with the board a written response to the grievance [with the board].

~~[6](5)]~~ Initial review [At the next regularly-scheduled meeting of the board or as soon thereafter as practicable, the board or a

panel of the board shall review the grievance and response. At that time, the board shall determine if an investigation is warranted, and if so, the board may appoint one (1) of its members or any agent or representative of the board to conduct an investigation of the grievance.] of the grievance by the complaint screening committee:

(a) All grievances shall [will] be assigned an identification number and be referred to as such to ensure anonymity.

(b) At the next subsequent regularly-scheduled meeting of the board's designated complaint screening committee, or as soon thereafter as practicable, the complaint screening board or a panel committee of the board shall review the grievance and response as well as determine if the matter is within the board's jurisdiction. At that time, and if [should] all necessary information for decision making is [be] available, the complaint screening committee may recommend:

1. Dismissal of the grievance if the complaint screening committee determines there is no evidence of a violation of law or ethics as provided by the statutes [statues] or administrative regulations pertaining to the practice of psychology; if it is determined that the facts alleged in the grievance or investigative report do not constitute a prima facie violation, the complaint screening committee shall notify the complainant and the respondent that no further action shall be taken at the present time.

2. Investigation;

3. Tabling the decision to allow for acquisition of additionally requested information, which may include a fitness for duty evaluation; [or]

4. Referral of the grievance to the full board for further review and action; or

5. Issuing a voluntary assurance of compliance to unlicensed individuals whom engage in the practice of psychology.

~~(7)(6)]~~ Investigation. The board shall provide [make available] investigators to explore the ethical and professional conduct of respondents related to the filing of grievances. [

~~(a) The respondent shall be contacted. With the consent of the respondent, a meeting may be scheduled at which time he or she may respond further to the allegations of the grievance. The board and the respondent shall have the right to be represented at the meeting by legal counsel.~~

~~(b) Report of investigation. Upon the completion of the investigation, the person or persons making that investigation shall submit a written report to the board containing a succinct statement of the facts disclosed by the investigation.~~

~~(c) Consideration of grievance, and investigative report.~~

1. ~~The board shall determine if there has been a prima facie violation of KRS 319.082 based on consideration of the:~~

a. ~~Grievance;~~

b. ~~Investigative report, if an investigation was warranted under subsection (5) of this section; and~~

c. ~~Psychological or physical examination, if one was ordered under Section 6 of this administrative regulation.~~

2. ~~If the investigator is a member of the board, the investigating member shall not vote on disposition of the grievance.~~

3. ~~If it is determined that the facts alleged in the grievance or investigative report do not constitute a prima facie violation, the board shall notify the person making the grievance and the respondent that no further action shall be taken at the present time.~~

4. ~~If it is determined that there is a prima facie violation, the board shall:~~

a. ~~Issue an administrative complaint against the credential holder or applicant;~~

b. ~~File suit to enjoin the violator; or~~

c. ~~Seek criminal prosecution pursuant to KRS 319.990.]~~

(a) The investigator shall review the factors and variables within the grievance that are pertinent to the practice of psychology and consider the circumstances for which the board's review is required.

(b) The respondent shall be contacted by the investigator or board administrator to begin the investigation. With the consent of the respondent, a meeting may be scheduled at which time [he or she] the respondent may further respond [reply to further] to the allegations of the grievance. The board and the respondent shall have the right to be represented at the meeting by legal counsel.

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(b) 1. If the grievance pertains to a minor[(s)] or any person under legal guardianship as a consumer, collateral, or participant of the investigation, the investigator shall [will] acquire consent from all-involved legal guardians of the minor[(s)] or ward[(s)] prior to proceeding with the investigation, unless otherwise ordered by a court of law.

2. If the grievance arises out of a court-involved evaluation, treatment, or psychoeducation of a person whereby the respondent's engagement was affiliated with a legal action, the investigator shall secure information from all involved parties, as well as judicial officers and other involved professionals, concerning the role of the respondent and the purpose and scope of the respondent's court-affiliation. The investigator shall [will] also secure information from opposing parties and other stakeholders in the legal process when assessing the role of the respondent in legal proceedings and how the role is related to the grievance.

3. Investigators shall [will] consider information from multiple data-gathering methods [in-order] to increase accuracy and objectivity.

4. Investigators shall strive to use a balanced and fair process of investigation through collection of valid collateral source information that demonstrates sufficiency and reliability.

5. In the investigation of the grievance, the investigator shall review all data provided from both the complainant and the respondent as well as answer to all requested information from the board.

6. Investigators shall [will] perform reasonable inquiry when confronted with information about a possible violation of law or ethics; however, the scope of the investigation shall be delineated by grievance.

7. Investigators shall [will] be free from multiple relationships and conflicts of interest prior to acceptance and through completion of the investigation.

8. If the investigator is a member of the board, the investigating member shall not vote on disposition of the grievance.

9. Investigators shall [will] complete the investigation in less than sixty (60) days from the respondent's final interview. **If an extension is [When extensions are] needed, the investigator shall [will] inform the complaints screening committee of the reason for the extension as well as an estimated date of completion in fourteen (14) day intervals.**

(8) Report of investigation. Upon the completion of the investigation, the person or persons making the investigation shall submit a written report to the board complaints screening committee containing a succinct statement of the facts disclosed or discovered by [in] the investigation. The investigator shall [will] also acknowledge incomplete, unreliable, or missing data.

(9) After consideration of the grievance and investigative report by the complaint screening committee, the committee may consider the options in paragraph (6)b of this section. /

**1(a)] If referred to the board, the board shall determine, with the weight it sees fit, if there has been a prima facie violation of KRS 319.082 based on consideration of the [following, with the weight it sees fit].**

**(a)]1.] Grievance;**

**(b)]2.] Response;**

**(c)]3.] Investigative report, if an investigation was warranted;**

**(d)]4.] Fitness for duty examination, if an examination was warranted**

(10) If it is determined that the facts alleged in the grievance or investigative report do not constitute a prima facie violation, the board shall notify the person making the grievance and the respondent that no further action shall be taken at the present time.

(11) If it is determined that there is a prima facie violation, the board shall:

**(a)]a.] Issue an administrative complaint against the credential holder or applicant;**

**(b)]b.] File suit to enjoin the violator; or**

**(c)]c.] Seek criminal prosecution pursuant to KRS 319.990.**

Section 3. Administrative Complaint. If the board determines

that the grievance shall be made an administrative complaint, the administrative complaint shall be adjudicated pursuant to KRS Chapter 13B.

Section 4. Administrative Response. Within twenty (20) days of service of the formal administrative complaint, the respondent shall file with the board a written response to the specific allegations set forth in the administrative complaint. Allegations not properly responded to shall be deemed admitted, and may form the basis for a default adjudication against the [person] respondent subject to the administrative complaint if the requisite elements of a violation are admitted. The board may, for good cause, permit the late filing of a response.

Section 5. Allegations of Sexual Misconduct by a License Holder. (1) To assure confidentiality for the complainant, the alleged victim's name shall not be used in any written document. This individual shall be identified by initials only or by some other mechanism for identification adopted by the board.

(2) Upon request, the testimony of the alleged victim may be taken by deposition in order to assure his or her confidentiality.

(3) To protect the confidentiality of all parties, the board may issue an order restraining all parties and their representatives, including counsel, from any discussion or release of information about the allegations outside of the investigative and hearing processes.

(4) In accordance with the provisions of KRS 319.032(1)(d), the board may hold some or all of the hearing procedures in closed session.

Section 6. Fitness for Duty Examination. (1) If there is reasonable cause to believe that a credential holder or applicant for a license is physically or mentally incapable of practicing psychology with reasonable skill and safety to clients, the board may order the credential holder or applicant to submit to an examination by a psychologist or other health care provider designated by the board to determine the credential holder's or applicant's fitness and competence to practice psychology.

(2) The expense of this examination shall be borne by the board.

(3) The board shall then consider the findings and conclusion of the examination.

(4) **The board shall provide** a copy of the examination **[shall be provided by the board]** to the respondent. The respondent may file with the board a written response to the examination within fifteen (15) days of the date on which the findings and conclusion of the examination was provided to the respondent.

(5)(a) Based on consideration of the psychological or physical examination, the board shall determine if there has been a prima facie violation of KRS 319.082.

(b) If it is determined that the findings and conclusion of the examination do not constitute a prima facie violation of KRS 319.082, the board shall **[so]** notify the **respondent and complainant, if any [person].**

(c) If it is determined that there is a prima facie violation of KRS 319.082, the board shall issue an administrative complaint against the credential holder or applicant.

Section 7. Board Member Training for Cases of Sexual Misconduct. (1) Within six (6) months of their appointment, all board members and investigators shall undergo specialized training to cover the content specified by KRS 319.032(1)(e).

(2) An investigator shall not be assigned to cases where sexual misconduct has been alleged until the required training has been completed.

(3) Training shall consist of a three (3) hour course **that [which]** includes the content specified by KRS 319.032(1)(e) and may be delivered by means of either live presentation, individual tutorial, or electronic media.

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**BOARDS AND COMMISSIONS**  
**Board of Examiners of Psychology**  
**(As Amended at ARRS, July 8, 2021)**

**201 KAR 26:155. Licensed psychologist: application procedures and temporary license.**

RELATES TO: KRS 319.050

STATUTORY AUTHORITY: 319.032(1) (a), (c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) and (c) require the board to promulgate administrative regulations establishing the requirements for an applicant for licensure as a psychologist. This administrative regulation establishes the requirements for applicants for licensure, and the conditions for a temporary license.

Section 1. Application. (1) After the requirements established in KRS 319.050(2) are met, an application for a credential as a licensed psychologist or [and for temporary licensure] ~~[and as]~~ a temporarily licensed psychologist may be submitted ~~[after the requirements established in KRS 319.050(2) are met]~~ to the board, ~~[or]~~ to an online application management system contracted by the board for the purposes of application screening, or as the board directs.

(2) The application made to the board or to the online application management system ~~[shall be made by submitting a completed Application for Licensure as a Psychologist to the board. The application shall:]~~ shall include:

(a) ~~[Include]~~ A certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of ~~[his or her]~~ their knowledge and belief; and
2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification.~~;~~ ~~[and]~~

(b) ~~[Be accompanied by:]~~ Payment of the application fee, which shall be:

1. Made payable to the Kentucky State Treasurer if the application is processed through the board;~~;~~ or

2. [payment shall be] Made to the online application management system as directed by the board.

~~1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 26:160;~~

~~[c)]2.]~~ Three (3) recommendations from persons qualified to evaluate the applicant's professional ability within five (5) years from the date of application, including two (2) persons who have received a doctorate in psychology (Ph.D., PsyD., Ed.D.). The recommendations shall be submitted on the Recommendation Form for Licensure as a Psychologist; and

~~[d)]3.]~~ An official transcript for all levels of education required for licensure. Transcripts shall [must] be received in sealed envelopes or electronically directly from the school or a third-party clearinghouse.

Section 2. Temporary Licensure. (1) Pending successful completion of required examinations, an applicant may request permission to practice psychology at the doctoral level on a temporary basis pursuant to KRS 319.050(3). The request for a temporary credential shall be cosigned by the candidate and the proposed supervisor, who shall be a licensed psychologist with health service provider certification approved by the board.

(2) Supervision during the period of temporary licensure shall be a minimum of one (1) hour of individual, face-to-face supervision on a weekly basis.

(3) A report of supervision shall be submitted on a regular basis as required by 201 KAR 26:171, Section 6.

(4) The candidate shall take the national EPPP within one (1) year of the board's written approval of temporary licensure.

(5)(a) A temporary license shall be valid for one (1) year from the date of the notice of approval by the board.

(b) During the period of temporary licensure, a candidate shall:

1. Successfully complete all credentials and examination procedures;
2. Pass the EPPP; and

3. Pass the Kentucky examinations as outlined in 201 KAR 26:230, Section 1(2), [on psychological practice, ethical principles, and] [the] ~~[Kentucky law]~~ within one (1) year of the date of the notice of approval by the board for a temporary license.~~]~~

~~(c)1. A candidate shall score at least an eighty (80) percent to pass the] [structured] [jurisprudence examination of Kentucky mental health law.~~

~~2. A candidate shall score a 100 percent to pass the oral examination on ethical principles and professional practice.]~~

(6)(a) Upon exceptional circumstances and upon written request cosigned by the board approved supervisor, the board may approve an extension of the period of temporary licensure.

(b) If a temporary licensee requires an extension after one (1) year, the licensee may request a six (6) month extension.

(c) After the six (6) months, a second extension may be requested for an additional six (6) months.

(d) After a total of two (2) years of [for] temporary licensure, the licensee may request a second temporary license following the [aforementioned] steps in this section.

(e) If after two (2) years on the second temporary license another extension is requested, the licensee may request a third temporary license following the [aforementioned] steps in this section.

(f) Licensees shall not exceed a total of six (6) years of extensions for all temporary licenses nor hold a temporary license for longer than six (6) years.

(g) All extensions are provided by the board at the board's discretion.

~~[h)](b)]~~ A licensee shall submit a completed Request for Extension of Temporary Licensure as a Psychologist to request an extension.

Section 3. (1) An individual who submits an Application for Licensure as a Psychologist and has been approved by another state to take the EPPP shall submit:

(a) The official notice of the results of the EPPP from the state psychology regulatory board that approved the [

~~(a) The official notice of the results of the EPPP from the state board that approved the]~~ applicant to take the EPPP; or

(b) A request to ASPPB to release the results of the EPPP to the board and notify the board of the submission of the request.

(2) The applicant shall submit the official notice or notification of the request to ASPPB to the board within thirty (30) days of taking the examination.

Section 4. Grace Period for Submission of Credentials. ~~[In order]~~ To allow for processing of the candidate's materials by the board, there shall be a grace period not to exceed sixty (60) days within which candidates who have completed their degree requirements may begin to practice psychology under supervision of a board-approved supervisor, as established in 201 KAR 26:190.

(1) Upon acceptance of employment or the beginning of the required period of supervision, the candidate and the licensed psychologist who shall serve as his or her supervisor shall immediately submit a letter of notice to the board indicating that he or she has begun to practice in Kentucky and that application materials are forthcoming. Failure to submit this notice shall be deemed as grounds for disciplinary action against the candidate and the supervisor.

(2) The candidate shall ensure that all materials are forwarded to the board within thirty (30) days from the date of employment or supervision. Once the application is complete, the board shall review the material at its next scheduled meeting and, if appropriate, issue either a temporary or permanent credential. If the candidate does not meet the requirements for the credential, or if the application material is insufficient to take any action, he or she shall be notified by the board and directed to cease practice until the requirements are met or the necessary documentation has been submitted.

(3) ~~[Under no circumstances shall]~~ The grace period shall not be extended beyond sixty (60) days. Candidates who fail to



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achieve approval within this timeframe shall not practice psychology until credentialed by the board.

(4) Upon filing the notice set forth in Section 3(1) of this administrative regulation, the candidate is deemed to be practicing psychology under the jurisdiction of the board, and shall comply with KRS Chapter 319 and 201 KAR Chapter 26.

Section 5. Incomplete Application. An incomplete application shall ~~be denied two (2) years from the date of filing]~~ be determined to be expired one (1) year from the date of filing, and may be destroyed.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Licensure as a Psychologist", [~~February 2017]~~ March 2021;

(b) "Recommendation Form for Licensure as a Psychologist", [~~February 2017]~~ March 2021; and

(c) "Request for Extension of Temporary Licensure as a Psychologist", [~~February 2017]~~ March 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Examiners of Psychology, 500 Mero Street [~~911 Leawood Drive~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material is also available on the Board's Web site.

CONTACT PERSON: David C. Trimble, Board Attorney, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-8823, fax (502) 564-3969, email DavidC.Trimble@ky.gov.

**BOARDS AND COMMISSIONS  
Board of Examiners of Psychology  
(As Amended at ARRS, July 8, 2021)**

**201 KAR 26:171. Requirements for clinical supervision.**

RELATES TO: KRS 319.032(1)(l), 319.050(3), (6), 319.056(4), (5), 319.064(3), (5), 319.082(1), 319.092(3)(d), 319.118(1)

STATUTORY AUTHORITY: KRS 319.032(1)(l)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(l) requires the board to promulgate an administrative regulation governing the clinical supervision of a certified psychologist, licensed psychological associate, candidate for licensure, or a credential holder sanctioned by the board. This administrative regulation establishes the requirements for clinical supervision.

Section 1. Board Approval Required. (1) Except for graduate students as provided in Section 14 of this administrative regulation, a supervisory arrangement shall have the prior approval of the board, with both clinical supervisor and supervisee petitioning the board in writing.

(2) If there is a change in clinical supervisor or in the supervisory arrangement, the clinical supervisor and supervisee shall:

(a) Proceed with the change as soon as practicable so as to avoid a lapse of clinical supervision for the supervisee; and

(b) Notify the board within thirty (30) days of the change for approval of the change of clinical supervisor or supervisory arrangement.

(3) It shall be the joint responsibility of the clinical supervisor and supervisee to assure that all reports, plans and goals, or other records of a supervisory relationship required by KRS Chapter 319, or these administrative regulations, are complete and filed with the board in a timely manner.

Section 2. Clinical Supervision Requirements. (1) All clinical supervision requirements shall:

(a) Be met with individual, face-to-face, weekly contact between clinical supervisor and supervisee except as provided in subsection (2) of this section and Sections 11 and 14 of this administrative regulation; and

(b) Include additional clinical supervision sessions as needed.

(2) An alternative format of clinical 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.

Section 3. Relief from Clinical Supervision Requirements During Inactive Period. (1) A certified psychologist or licensed psychological associate may petition the board to be relieved of his or her obligation to maintain clinical supervision during which period he or she shall not practice psychology.

(2) The certified psychologist or licensed psychological associate shall obtain a clinical supervisor approved by the board before the resumption of practice.

(3) Upon resumption of practice, the certified psychologist or licensed psychological associate shall:

(a) Document compliance with continuing education requirements; and

(b) Report on his or her activities and employment related to psychology during the period without clinical supervision.

Section 4. Training and Continuing Education for Clinical Supervisors. (1) A licensed psychologist with health service provider designation who has been approved by the board as a clinical supervisor shall attend a board approved training session in clinical supervisory practices within twelve (12) months of obtaining approval as a supervisor.

(2) A board approved clinical supervisor shall obtain a minimum of three (3) continuing education hours in clinical supervision theory or techniques in each three (3) year renewal cycle as required by 201 KAR 26:175, Section 2(4)(a). The board shall suspend its approval of a clinical supervisor if the clinical supervisor does not complete the required continuing education.

Section 5. Clinical Supervisor Obligations. (1) The clinical supervisor shall make all reasonable efforts to be assured that each supervisee's practice is in compliance with this administrative regulation.

(2) The clinical supervisor shall report to the board an apparent violation of KRS 319.082(1) on the part of the supervisee.

(3) The clinical supervisor shall inform the board immediately of a change in the ability to clinically supervise, or in the ability of a supervisee to function in the practice of psychology in a competent manner.

(4) The clinical supervisor shall control, direct, or limit the supervisee's practice as appropriate to ensure that the supervisee's practice of psychology is competent.

(5) The clinical supervisor of record shall be responsible for the practice of psychology by the supervisee. If the board initiates an investigation concerning a supervisee, the investigation shall include the clinical supervisor of record.

(6) For each person supervised pursuant to KRS 319.050(3), (6), 319.056(4), (5), 319.064(3), (5), or 319.092(3)(d), the clinical supervisor shall maintain a record of each supervisory session that shall include the type, place, and general content of the session. This record shall be maintained for a period of not less than six (6) years after the last date of clinical supervision.

Section 6. Clinical Supervisory Report. (1) In calculating the amount of time spent in full-time practice while under clinical supervision, 1,800 hours of supervised practice shall be equivalent to one (1) year of experience.

(2) The clinical supervisor shall submit a Supervisory Report to the board of the clinical supervision of each supervisee according to the following schedule:

CREDENTIAL STATUS	REPORTING PERIOD	REPORT DUE DATE(S)
(a) Licensed psychological associate or certified psychologist with 4 or more years of full-time practice, or its equivalent	Every 2 years (with prior board approval)	Anniversary date of supervisee's licensure

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(b) Licensed psychological associate or certified psychologist with fewer than 4 years of full-time practice, or its equivalent	Yearly	Anniversary date of supervisee's licensure
(c) Temporarily licensed psychologist	Every 6 months and 1 month prior to [structured] <u>jurisprudence and competency examinations [exam]</u>	
(d) Temporarily licensed psychological associate	Every 6 months	
(e) Sanctioned credential holder	Quarterly	January, April, July, and October 15th

(3) The report shall include:

- (a) A description of the frequency, format, and duration of clinical supervision;
- (b) An assessment of the functioning of the supervisee, including the strengths and weaknesses of the supervisee; and
- (c) Other information which may be relevant to an adequate assessment of the practice of the supervisee.

Section 7. Multiple Clinical Supervisors. (1) If a supervisee has more than one (1) board-approved clinical supervisor, the clinical supervisors shall be in direct contact with each other [one another] at least once every six (6) months, and they shall provide Supervisory Plans and Goals to the board and copies to each other [one another].

(2) A request to have more than two (2) clinical supervisors at one (1) time shall require a special application to the board that [which] shall include detailed information as to how the clinical supervisors shall communicate and coordinate with each other in providing the required clinical supervision.

Section 8. Clinical Supervisor Responsibilities. The clinical supervisor of record shall:

- (1) Review and countersign psychological assessments as appropriate based on the supervisee's level of experience;
- (2) Review treatment plans, progress notes, and correspondence as needed to assess the competency of the supervisee to render psychological services;
- (3) Jointly establish with the supervisee Supervisory Plans and Goals that shall be submitted to the board at the beginning of the supervisory relationship. The Supervisory Plans and Goals shall:
  - (a) Be updated or revised and submitted to the board with the regular report of clinical supervision;
  - (b) Include intended format and goals to be accomplished through the supervisory process; and
  - (c) Include methods that the clinical supervisor and supervisee shall employ to evaluate the supervisory process. [;]
- (4) Have direct observation of the supervisee's work:
  - (a) For a licensed psychological associate or a certified psychologist with less than four (4) years of full-time, post-licensure practice, or its equivalent, or a licensure candidate with temporary permission to practice, direct observation shall take place at least once every two (2) months;
  - (b) For a licensed psychological associate or certified psychologist with more than four (4) years of full-time, post-licensure practice, or its equivalent, direct observation shall take place as needed;
  - (c) Direct observation may be accomplished through audiotaping, video camera, videotaping, one (1) way mirror, or as a co-therapist. [;]
- (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; and

(8) Have knowledge of the supervisee's physical and emotional well-being when it has a direct bearing on the supervisee's competence to practice.

Section 9. Supervisee Responsibilities. (1) The supervisee shall:

- (a) Keep the clinical supervisor adequately informed at all times of his or her activities and ability to function; and
  - (b) Seek clinical supervision as needed in addition to a regularly scheduled supervisory session.
- (2) The supervisee shall:
- (a) Participate with the clinical supervisor in establishing Supervisory Plans and Goals and in completing the regular Supervisory Reports;
  - (b) Be jointly responsible with the clinical supervisor for ensuring that a Supervisory Report has been sent to the board in accordance with the reporting schedule established in Section 6(2) of this administrative regulation; and
  - (c) Report to the board an apparent violation of KRS 319.082(1) on the part of the clinical supervisor.

Section 10. Identification of Provider. The actual deliverer of a service shall be identified to the client. A billing for a rendered service shall identify which service was performed by the certified psychologist, licensed psychological associate, temporary licensed psychologist, trainee, or other provider and supervised by the licensed psychologist.

Section 11. Frequency of Clinical Supervision. (1) A licensed psychological associate or certified psychologist shall have a minimum of one (1) hour of individual face-to-face clinical supervision on a weekly basis for the first two (2) years of full-time practice or its equivalent following licensure.

(2) After two (2) years of full-time, post-licensure practice, or its equivalent, the clinical supervisor and supervisee may petition the board using a Request for Change of Supervisor and/or Frequency form to alter the format, frequency, or duration of supervision if the proposed change includes a minimum of two (2) one (1) hour individual face-to-face meetings every four (4) weeks, and the total amount of clinical supervision is not less than four (4) hours per four (4) week period. This petition may include a request to change the format from individual to group clinical supervision. Clinical Supervision requirements for part-time practice may be modified at the discretion of the board upon approval of the submitted plan.

(3)(a) After four (4) years of full-time, post-licensure practice, or its equivalent, the clinical supervisor and supervisee may petition the board for further modification of the format, frequency, or duration of supervision using a Request for Change of Supervisor and/or Frequency form, if the proposed change includes a minimum amount of one (1) hour of face-to-face clinical supervision per month. Additional modifications of the format, frequency, or duration of clinical supervision may be submitted for approval by the board.

(b) Upon a change of clinical supervisor, a new Supervisory Plans and Goals shall be submitted by the clinical supervisor and supervisee to the board for approval. This plan may require additional clinical supervision than was previously approved by the board.

(c) Upon termination of the supervisor-supervisee relationship, the final Supervisory Report shall be submitted to the board within thirty (30) days of the termination.

(4) Any change in the frequency or duration of clinical supervision under this section may not occur automatically, but only upon a written request to the board and approval of the request by the board.

Section 12. Clinical Supervision of a Disciplined Credential Holder. (1) The board shall appoint an approved clinical supervisor to supervise a disciplined credential holder for the period of time defined by the board.

(2) The disciplined credential holder shall be responsible for paying the fee for clinical supervision.

(3) The clinical supervisor shall have completed the board

approved training course in supervision.

(4) The clinical 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 clinical supervision submitted by the board liaison;

3. Develop a specific plan of clinical supervision; and

4. Review the reporting requirements that shall be met during the period of clinical 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 ensure that the disciplined credential holder's practice is in compliance with KRS Chapter 319 and 201 KAR Chapter 26;

(f) Report to the board any apparent violation of KRS 319.082(1) on the part of the disciplined credential holder;

(g) Immediately report to the board in writing a change in the ability to clinically supervise, or in the ability of the disciplined credential holder to function in the practice of psychology in a competent manner;

(h) Review and countersign psychological assessments as needed or appropriate;

(i) Review treatment plans, notes, and correspondence 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 modalities and techniques being used by the disciplined credential holder; and

(m) Have knowledge of the disciplined credential holder's physical and emotional well-being when it has direct bearing on the disciplined credential holder's competence to practice.

(5) The clinical supervisor shall control, direct, or limit the disciplined credential holder's practice as appropriate to ensure that the disciplined credential holder's practice is competent.

(6) The clinical 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 clinical supervision. The meeting shall include the clinical supervisor, disciplined credential holder, and board liaison. A written summary of the supervision shall be submitted by the clinical supervisor to the board two (2) weeks following this meeting with a copy to the board liaison.

Section 13. Board Liaison for Disciplined Credential Holder. The board shall appoint a board member to serve as a liaison between the board and the approved clinical supervisor. The board liaison shall:

(1) Recruit the clinically supervising psychologist from a list provided by the board;

(2) Provide the clinically supervising psychologist with the originating complaint, agreed order, or findings of the hearing and supply other material relating to the disciplinary action as deemed appropriate by the liaison;

(3) Ensure that the clinically supervising psychologist is provided with the necessary documentation for liability purposes to clarify that he or she is acting as an agent of the board pursuant to KRS 319.118(1) and has immunity commensurate with that of a board member;

(4) Provide the clinically supervising psychologist with a written description of the responsibilities of the clinical supervisor and a copy of the responsibilities of the liaison;

(5) Ensure that the board has sent a written notification letter to

the disciplined credential holder. The notification letter shall:

(a) State the name of the supervising clinical psychologist; and

(b) Specify that the disciplined credential holder shall meet with the clinical supervising psychologist and the liaison within thirty (30) days of the date of the notification letter. [;]

(6) Meet with the clinically supervising psychologist and disciplined credential holder within thirty (30) days of the date of the notification letter to summarize the actions of the board, review the applicable statutes and administrative regulations regarding clinical supervision requirements for a disciplined credential holder, and assist with the development of a plan of supervision. The plan of supervision shall be written at the first meeting;

(7) Submit the report of supervision to the board for approval. The liaison shall place the report of supervision on the agenda for review and approval at the next regularly scheduled board meeting. In the interim, the clinically supervising psychologist and disciplined credential holder shall continue to meet;

(8) Remain available to the clinically supervising psychologist to provide assistance and information as needed;

(9) Report any problem or concern to the board regarding the supervision and communicate a directive of the board to the clinically supervising psychologist;

(10) Review the quarterly report of supervision and forward the report to the supervision committee of the board for approval; and

(11) Meet with the clinically supervising psychologist and the disciplined credential holder at the end of the term of supervision to summarize the clinical supervision.

Section 14. Psychology Graduate Students. Graduate-level psychology students who are providing services in psychological health care settings including independent practice settings shall:

(1) Be clinically supervised by a psychologist licensed by the Board of Examiners of Psychology with health service provider status, licensed at the doctoral level by the State Board of Examiners in the state in which the training program exists, or by a licensed mental health professional approved by the training program who is affiliated with either the university training program or the practice setting;

(2) Be registered for credit in his or her course of study;

(3) Clearly identify their status as unlicensed psychology trainees to all clients and payers[payers];

(4) Give to all clients and payers[payers] the name of the licensed psychologist responsible for their 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 license from the board.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Supervisory Plans and Goals", December 2018;

(b) "Supervisory Report", December 2018; and

(c) "Request for Change of Supervisor and/or Frequency", October 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Examiners of Psychology, 500 Mero Street, [914 Leawood Drive,] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: David C. Trimble, Board Attorney, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-8823, fax (502) 564-3969, email DavidC.Trimble@ky.gov.

**BOARDS AND COMMISSIONS**  
**Board of Examiners[Examiners] of Psychology**  
**(As Amended at ARRS, July 8, 2021)**

**201 KAR 26:180. Requirements for granting licensure as a psychologist by reciprocity.**

RELATES TO: KRS 319.032(1)(i)  
 STATUTORY AUTHORITY: KRS 319.032(1)(i)  
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(i) requires the board to promulgate an administrative regulation governing the granting of a license through reciprocity. This administrative regulation establishes the requirements for licensure as a psychologist by reciprocity.

Section 1. The board shall issue a license to an applicant who qualifies for a license as a psychologist pursuant to an agreement of reciprocity entered into by the board of this jurisdiction with the board or boards of any other jurisdiction or multiple jurisdictions.

Section 2. The applicant for licensure as a psychologist by reciprocity shall:

- (1) Submit a completed Application for Licensure as a Psychologist by Reciprocity;
- (2) Hold a current valid license in good standing to practice psychology that has been granted by at least one (1) state, ~~[or]~~ the District of Columbia, ~~[or]~~ a U.S. Territory, or a Canadian province that maintains a psychology registration board:
  - (a) That is a constituent member of the Association of State and Provincial Psychology Boards (ASPPB); and
  - (b) With whom this board has an agreement of reciprocity. ~~[;]~~
- (3) Have a minimum of five (5) years of full-time practice or its equivalent as determined by the board in the other jurisdiction; and
- (4) ~~[Has]~~ Not have been disciplined by any licensure board.

Section 3. The board shall conduct a jurisprudence and competency [an] examination on psychological practice of an applicant for licensure by reciprocity as outlined in 201 KAR 26:230, Section 1(2). [The applicant shall demonstrate an acceptable level of knowledge of Kentucky mental health law. An applicant shall score at least an eighty (80) percent to pass the [structured] jurisprudence examination of Kentucky mental health law. An applicant shall score a 100 percent to pass the oral examination on ethical principles and professional practice.]

Section 4. An applicant for licensure with the health service provider designation shall comply with KRS 319.050(7).

Section 5. If an applicant for licensure with the health service provider designation does not have an additional 1,800 hours of supervised experience as required by KRS 319.050 and 201 KAR 26:125, the board may determine that the applicant's practice experience is equivalent to the required year of experience. The board may substitute an applicant's employment experience for the additional 1,800 hours of supervised experience as required by KRS 319.050 and 201 KAR 26:125, and may award the applicant the Health Service Provider designation.

Section 6. A person holding the Certificate of Professional Qualification in Psychology (CPQ) issued by the ASPPB or a successor organization or a person who holds a certificate from the National Register of Health Service Providers in Psychology, the American Board of Professional Psychology (ABPP), or a successor organization and has a minimum equivalent of five (5) years of full-time practice at the independent level and has had no disciplinary action taken by a licensure board or on record in the ASPPB database shall:

- (1) Be deemed to meet the qualifications for licensure by reciprocity as established in this administrative regulation; and
- (2) Upon meeting the requirements established in Section 3 of this administrative regulation, shall be granted a license with the health service provider designation.

Section 7. An applicant for licensure as a psychologist by reciprocity may request permission to practice psychology at the doctoral level on a temporary basis pursuant to KRS 319.050(3). The request for a temporary credential shall be issued in accordance with 201 KAR 26:155, Section 2. The temporary credential shall expire in accordance with 201 KAR 26:155, Section 2(5).

Section 8. Incomplete Application. An incomplete application shall be determined to be expired one (1) year from the date of filing and may be destroyed.

Section 9. Incorporation by Reference. (1) "Application for Licensure as a Psychologist by Reciprocity", [February 2017] March 2021, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Examiners of Psychology, 500 Mero Street [911 Leawood Drive], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material may be directly viewed on the agency's Web site, www.psy.ky.gov.

CONTACT PERSON: David C. Trimble, Board Attorney, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-8823, fax (502) 564-3969, email DavidC.Trimble@ky.gov.

**BOARDS AND COMMISSIONS**  
**Board of Examiners of Psychology**  
**(As Amended at ARRS, July 8, 2021)**

**201 KAR 26:185. Requirements for granting licensure as a psychologist to an applicant licensed in another state.**

RELATES TO: KRS 319.032(1) (a), (i), 319.050(2)  
 STATUTORY AUTHORITY: KRS 319.032(1) (i)  
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1) (a) requires the Board of Examiners of Psychology to promulgate administrative regulations to establish requirements for licensure. KRS 319.032(1)(i) requires the board to promulgate an administrative regulation governing reciprocal agreements with other states. This administrative regulation establishes the requirements for granting a license to an applicant who is licensed in another state that does not have an agreement of reciprocity with this board.

Section 1. (1) The board shall consider an applicant for licensure in psychology in Kentucky who:

- (a) Is licensed in another state that does not have an agreement of reciprocity with the Kentucky Board of Examiners of Psychology;
- (b) Holds a current valid license or certificate, in good standing, to practice psychology that has been granted by:
  1. At least one (1) state;
  2. The District of Columbia; ~~[or]~~
  3. A United States Territory; or
  4. A Canadian province that maintains a psychology registration board that is a constituent member of the Association of State and Provincial Psychology Boards (ASPPB). ~~[;]~~
- (c) Has a minimum of five (5) years of full-time practice or its equivalent as determined by the board in the other jurisdiction; and
- (d) Has not been disciplined by any psychology licensure board.

(2) The board shall consider if the applicant meets the requirements established in KRS 319.050(2). If an applicant for licensure does not have the supervised experience as required by KRS 319.050(2)(d), the board may determine that the applicant's practice experience is equivalent to the required supervised experience based upon the information submitted in the application.

- (3) An applicant for licensure as a psychologist shall submit:
  - (a) A completed Application for Licensure of a Psychologist

Licensed in Another State with the supplementary documentation required by this subsection to the board, ~~[or]~~ to an online application management system contracted by the board for the purposes of application screening, **or** as the board directs;

(b) Three (3) letters of reference from persons qualified to evaluate the applicant's professional ability, including two (2) persons who have received a doctorate in psychology (Ph.D. PsyD., Ed.D.);

(c) An official transcript for all levels of education required for licensure. Transcripts shall [must] be received in sealed envelopes or electronically directly from the school or a third-party clearinghouse;

(d) A Curriculum Vitae that demonstrates five (5) years of full-time practice of psychology;

(e) To the Examination for Professional Practice in Psychology (EPPP):

1. Developed by the ASPPB examination contractor; and
2. Owned by the ASPPB. ~~;~~

(f) A verified computerized EPPP scaled score of 500 or greater. The board shall accept the applicant's previous examination results for the national EPPP examination if the original test scores satisfied the doctoral licensure requirement as to criterion level at the time of that examination; and

(g) ~~[Payment of \$200]~~ Payment of the application fee, **which shall be:**

1. Made payable directly to the Kentucky State Treasurer if the application is processed through the board; **or [payment shall be]**
2. Made to the online application management system as directed by the board.

(4) The board shall review the applicant's:

(a) Record as to complaints or hearings held in previous jurisdictions; and

(b) Professional references.

Section 2. An applicant for licensure as a psychologist shall submit to a ~~[structured]~~ jurisprudence examination **as outlined in 201 KAR 26:230, Section 1(2), [on Kentucky mental health law. An applicant shall score at least an eighty (80) percent to pass the]** ~~[structured]~~ ~~[jurisprudence examination of Kentucky mental health law.]~~

Section 3. In addition to meeting the requirements in Section 2 of this administrative regulation, an applicant for licensure as a psychologist shall submit to a **competency** ~~[structured]~~ ~~[oral]~~ examination **as outlined in 201 KAR 26:230, Section 1(2) [on ethical principles and professional practice administered by two (2) licensed psychologists.**

~~(1) Each examiner shall independently rate the applicant's performance.~~

~~(2) The applicant shall demonstrate an acceptable level of knowledge in each of the areas in order to pass the examination.~~

~~(3) An applicant who receives a pass rating from the two (2) examiners shall have successfully passed the oral examination and shall be eligible to be granted a license as a licensed psychologist.~~

~~(4) An applicant shall score a 100 percent to pass the oral examination on ethical principles and professional practice.]~~

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**BOARDS AND COMMISSIONS**  
**Board of Examiners of Psychology**  
**(As Amended at ARRS, July 8, 2021)**

**201 KAR 26:190. Requirements for supervised professional experience.**

RELATES TO: KRS 319.050, 319.053, 319.056, 319.064

STATUTORY AUTHORITY: KRS 319.032, 319.050(2)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) and (1)(l) require the Board of Examiners of Psychology to promulgate administrative regulations to establish requirements for licensure and supervision. This administrative regulation establishes requirements for supervised professional experience.

Section 1. Supervisory Requirements for an Applicant for Licensure as a Psychologist. (1) The applicant for licensure as a psychologist with the authorization to provide psychological health care services shall have completed a minimum of 3,600 hours of supervised professional experience in accordance with this administrative regulation.

(2) A minimum of 1,800 hours of the supervised professional experience shall be a pre-doctoral internship of 1,800 hours with at least 100 hours of supervisory sessions.

(3) The remaining 1,800 hours of supervised experience shall be pre-doctoral, postdoctoral, or a combination of pre- and post-doctoral supervised professional experience acceptable to the board based upon the requirements of Sections 2 and 3 of this administrative regulation.

(4) Supervised experience shall consist of practica, field placement, or other professional experiences not including the beginning courses and accompanying practica in assessment and treatment techniques.

(5) At least fifty (50) percent of the supervised experience shall be in service-related activities, such as treatment, assessment, interviews, report-writing, case presentations, and consultations.

Section 2. For a person applying for licensure as a psychologist, the pre-doctoral internship shall meet the following criteria:

(1) The experience shall occur within an organized training program, in contrast to supervised experience or on-the-job training and have a planned, programmed sequence of training experiences;

(2) The training program shall have a clearly designated staff psychologist who shall be:

(a) Responsible for the integrity and quality of the training program;

(b) Actively licensed by the Board of Examiners in Psychology; or

(c) Licensed at the doctoral level by the State Board of Examiners in the state in which the training program exists or otherwise meets the standards of applicable state law; and

(d) For school psychology doctoral internships, the responsible psychologist director may be from an affiliate agency or from the university training program. ~~;~~

(3) Internship supervision shall be provided by a staff member of the internship agency or by an affiliate of that agency who has clinical responsibility for the cases being supervised. At least half of the internship supervision shall be provided by one (1) or more psychologists with an appropriate doctorate degree;

(4) The internship shall provide training in a range of assessment and treatment activities conducted directly with clients seeking psychological services;

(5) At least twenty-five (25) percent of the trainee's time shall be in direct client contact;

(6) The internship shall include a minimum of two (2) hours per week of regularly scheduled, formal, face-to-face individual supervision. There shall also be at least two (2) additional hours per week in learning activities such as case conferences, seminars dealing with clinical issues, and group supervision;

(7) Training shall be post-clerkship, post-practicum, and post-

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externship level;

(8) The internship shall have a written statement or brochure that:

(a) 1. Describes the goals and content of the internship; and  
2. States clear expectations for quality and quantity of the trainee's work; and

(b) Shall be made available to prospective interns ~~;~~]

(9) The internship experience shall be completed within twenty-four (24) months;

(10) The trainee shall have a title such as "intern", "resident," "fellow," or other designation of trainee status; and

(11) The internship agency, preparing institution, and intern shall have a written agreement that describes the goals and content of the internship including clearly stated expectations for the nature of experiences offered in the agency and for the quantity and quality of the work.

Section 3. Additional Required Supervisory Experience. (1) For a person applying for licensure as a psychologist to provide psychological health care services, the 1,800 hours of supervised professional experience, in addition to the internship required by KRS 319.050(2)(d), shall be a training-oriented professional experience that:

(a) May include course-related field experience and practica; and

(b) Shall not include the beginning courses and practica in assessment and treatment techniques.

(2) In addition to training in a range of diagnostic and treatment activities conducted directly with clients seeking psychological services, the supervised professional experience shall consist of a planned and organized sequence of activities that includes explicit training and supervision in the following areas:

(a) Clinical skill development;

(b) Legal and regulatory issues;

(c) Ethical dilemmas and issues; and

(d) Supervisory skill development.

(3) During the 1,800 hours of supervised professional experience in addition to the internship, the candidate shall:

(a) Be under supervision as required by 201 KAR 26:171; and

(b) Be providing psychological health care services under the supervision of a licensed psychologist or other licensed mental health professional approved by the doctoral training program who is affiliated with the training program or with the practice setting in a:

1. Health care facility or agency;
2. Regional mental health or mental retardation board;
3. School, college, or university;
4. Government agency;
5. Independent practice; or
6. Formalized postdoctoral internship program.

(4) The applicant and the supervisor of record shall design and describe the proposed experience, including the areas listed in subsection (2) of this section.

(5) If the supervised professional experience in addition to the internship is in an independent practice, a special application letter shall affirm:

(a) The identity of the applicant, supervisor, and employer;

(b) That the supervising licensed psychologist is not hired, employed, or engaged under contract by the applicant and shall not be terminated by the applicant;

(c) That the applicant is not an owner [one (1) of the owners] of the independent practice or organization, but rather serves as an employee; and

(d) That the applicant has both administrative and clinical supervision that shall be provided by the independent practice or employer.

(6) If the supervised experience is in a university setting, the application shall also:

(a) Be proffered by a full-time faculty member;

(b) Include a plan that contains each of the areas established in subsection (2) of this section; and

(c) Include a minimum of 400 hours of direct and indirect client involvement that:

1. Is supervised by a licensed psychologist; and

2. Includes:

a. Supervising student clinical work;

b. Diagnostic and interviewing activity that occurs within clinical research projects; or

c. Clinical work in the context of teaching psychotherapy, interviewing, or psychological testing.

(7) The board shall not grant a request for temporary licensure if the request does not contain an explicit and acceptable plan for the supervised experience as required by this section.

Section 4. An applicant for licensure as a psychological associate shall complete supervised experience consisting of course-related field experience, practica, and formal internships adding up to a minimum of 600 supervised hours that shall meet the following criteria:

(1) The experience shall occur within an organized training program and consist of a planned, programmed sequence of training experiences;

(2) The preparing institution's psychology training program shall have a clearly-designated placement director who shall be responsible for the integrity and quality of the experiential component of the training program;

(3) Weekly practicum and internship supervision shall be provided by a staff member of the placement agency, by an affiliate of that agency, or by a university faculty member. At least half of the supervision shall be provided by one (1) or more psychologists with an appropriate doctorate degree and license;

(4) Field experiences, practica, and internships shall provide training in a range of diagnostic and treatment activities conducted directly with clients seeking psychological services;

(5) At least twenty-five (25) percent of the trainee's time shall be in direct client contact;

(6) The preparing institution shall maintain a written statement or brochure describing the goals and content of the required field experiences, practica, and internships; and

(7) Students participating in university-sanctioned supervised experience shall be clearly identified to clients and payors[~~payors~~] as trainees.

Section 5. An applicant for licensure as a psychological practitioner shall complete the equivalent of five (5) full-time years of psychological practice under the direct supervision of a licensed psychologist approved by the board, consistent with the requirements of 201 KAR 26:171. (1) For purposes of this requirement, a candidate shall complete the equivalent of five (5) full-time years of supervised experience from the date of initial credentialing as a psychological associate, excluding any period of temporarily licensed psychological associate ~~[with]~~ A full-time year comprises[~~comprising~~] at least 1,800 hours of supervised professional experience.

(2) A school psychologist who is employed in a Kentucky school system, credentialed by the Professional Standards Board, and also credentialed as a psychological associate by this board, may contract for on-going clinical supervision in the school setting with a board-approved licensed psychologist who is neither an employee nor a contractor of the school system.

(a) The supervised professional experience shall meet the conditions of this administrative regulation and may be used by the licensed psychological associate employed by the school system to meet the requirements for application to become a licensed psychological practitioner.

(b) To fulfill the requirements of 201 KAR 26:171, there shall be an explicit written plan approved by the board between the school system, the school psychologist, and the board-approved supervisor that delineates roles and responsibilities, without restricting the ability of the school district to direct or control the activities of its employee.

(c) A person trained in school psychology, if employed by an agency other than a public school or engaged in practice outside of the school setting, shall obtain clinical supervision in the manner specified by 201 KAR 26:171.

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### BOARDS AND COMMISSIONS Board of Examiners of Psychology (As Amended at ARRS, July 8, 2021)

#### 201 KAR 26:200. Education requirements.

RELATES TO: KRS 319.050, 319.053, 319.064  
STATUTORY AUTHORITY: KRS 319.032,  
319.053[319.050(2)(b)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1) (a) requires the Board of Examiners of Psychology to promulgate administrative regulations to establish requirements, standards, and tests to determine the moral, intellectual, educational, scientific, technical, and professional qualifications of applicants for licensure. KRS 319.050 establishes requirements for licensed psychologists. KRS 319.064 establishes requirements for licensed psychological associates. KRS 319.053(1)(c)(f) requires an applicant for licensure as a licensed psychological practitioner to document at least sixty (60) hours of graduate study in psychology or a related field acceptable to the board. This administrative regulation establishes education requirements for licensure by the board.

Section 1. Psychology Degree Requirements. For purposes of licensure, a degree in psychology shall:

- (1) Be from a recognized institution of higher learning as established in this administrative regulation;
- (2) Be clearly identified by the granting institution as a psychology program wherever the program may be administratively housed;
- (3) Be specified in pertinent institutional catalogs and brochures as intended to educate and train professional psychologists;
- (4) Require a dissertation for the degree as psychological in method and content and an expected product of doctoral training in psychology;
- (5) Require that any thesis required for the degree shall be psychological in method and content and an expected product of master's training in psychology;
- (6) Stand as a recognizable, coherent, organized entity within the institution;
- (7) Require within the psychology faculty clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;
- (8) Be an integrated, organized sequence of study;
- (9) Require an identifiable psychology faculty and a psychologist responsible for the program;
- (10) Require an identifiable body of students who are matriculated in that program for a degree; and
- (11) Include educational experiences with titles, such as practicum, internship, or field training, including:
  - (a) For a doctoral degree, require a [~~three (3)~~] six (6) graduate semester-hour practica, three (3) hours of psychotherapy, [counseling, or] intervention and three (3) hours of assessment, excluding industrial and/ organizational psychology[practicum]; or [.]
  - (b) For a master's degree, require a minimum of 600 supervised hours in course-related field experience, practica, and formal internship, as part of the degree program.

Section 2. Psychology Curriculum Requirements. (1) In determining the approval of curricular experiences and course work, the board shall consider:

(a) The duration of graduate study:

1. For a doctoral degree, a minimum of three (3) years, including a minimum of one (1) full academic year in residence at the institution, consisting of a minimum of 250 contact hours or its equivalent of curricular experiences and course work delivered through face-to-face in person context with other students and with

faculty of the institution, without regard to the specific physical location in which the course work is conducted; or

2. For a master's degree, a minimum of forty-five (45) semester hours.

(b) In addition to instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, the core program shall require each student to demonstrate competence by including a minimum of three (3) or more graduate semester hours (five (5) or more graduate quarter hours) in each of these four (4) areas:

1. Biological bases of behavior, including the subject matters of physiological psychology, comparative psychology, neuropsychology, sensation and perception, and psychopharmacology;

2. Cognitive-affective bases of behavior, including the subject matters of learning, thinking, motivation, and emotion;

3. Social bases of behavior, including the subject matters of social psychology group process and organizational psychology and systems; and

4. Individual differences, including the subject matters of personality theory, human development, and abnormal psychology.

(c) In addition to the core program, the curriculum shall include appropriate course work in the specialty area of training. For candidates who seek to deliver or supervise psychological health services, the [such] training shall include specific training in diagnosis, psychological testing, assessment of individual differences, and the design and implementation of appropriate intervention techniques, such as psychotherapy, counseling, and consultation.

(2) The applicant shall provide any relevant documentation requested by the board to confirm compliance with or satisfaction of the requirements of this administrative regulation.

(3) A deficiency in course work or other requirements shall be corrected by appropriate remedial work.

Section 3. Psychology Accreditation Requirements. (1) A regionally accredited educational institution shall be accredited by one (1) of the following, or an equivalent accreditation entity:

- (a) Southern Association of Colleges and Schools;
- (b) Middle States Commission on Higher Education;
- (c) Middle States Association of Colleges and Schools;
- (d) New England Association of Schools and Colleges;
- (e) North Central Association of Colleges and Schools;
- (f) Northwest Commission on Colleges and Universities;
- (g) Northwest Accreditation Commission; or [and]
- (h) Western Association of Schools and Colleges.

(2) Accreditation shall include accreditation by one (1) of the associations established in subsection (1) of this section at:

- (a) Level 3, master's degree granting accreditation;
- (b) Level 4, doctoral degree granting accreditation; or
- (c) Level 5, graduate or professional degree granting accreditation.

(3) Licensed psychological practitioner educational requirements.

(a) Graduate course work shall be related to psychological practice and may include independent study and distance learning. All graduate course work shall have been offered by a regionally accredited university meeting the standards described in [Sections 5 and 6 of] this administrative regulation. Continuing education credits shall not qualify to meet this requirement.

(b) The applicant shall provide any documentation required by the board in the manner and form prescribed by the board to confirm compliance with or satisfaction of the requirements of this section.

(c) At the discretion of the board, any deficiency in course work or other requirements may be corrected by appropriate remedial work.

Section 4. (1) A regionally-accredited educational institution shall be accredited by any one (1) of the following:

- (a) Southern Association of Colleges and Schools;
- (b) Middle States Association of Colleges and Schools;
- (c) New England Association of Colleges and Schools;

(d) North Central Association of Colleges and Schools;

(e) North Western Association of Schools and Colleges; or

(f) Western Association of Schools and Colleges [Southern Association of Colleges and Schools, Middle States Association of Colleges and Schools, New England Association of Colleges and Schools, North Central Association of Colleges and Schools, North Western Association of Schools and Colleges, and Western Association of Schools and Colleges].

(2) Accreditation shall be by one (1) of the associations listed in this section at Level 3, ~~[(f)]~~master's degree granting accreditation~~[(f)]~~.

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**BOARDS AND COMMISSIONS**  
**Board of Examiners of Psychology**  
**(As Amended at ARRS, July 8, 2021)**

**201 KAR 26:230. Examinations and applications.**

RELATES TO: KRS 319.032(1)(a), 319.050, 319.053, 319.064

STATUTORY AUTHORITY: KRS 319.032(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) requires the board to promulgate an administrative regulation establishing the examination requirements for an applicant for licensure. KRS 319.050(1) and 319.064~~(2)(c), (3)(4))[(e)]~~ require an applicant to successfully complete the required examination prior to licensure. This administrative regulation establishes the examination and application requirements.

Section 1. (1) The national examination shall be the Examination for Professional Practice in Psychology (EPPP) developed by the Association of State and Provincial Psychology Boards (ASPPB) examination contractor and owned by the ASPPB.

(a) The EPPP shall be taken by computer administration.

(b) The board shall submit to the ASPPB examination contractor a list of applicants eligible to sit for the examination.

(2) The Kentucky examinations shall consist of a jurisprudence examination of Kentucky mental health law, and a competency examination of ethical principles, and professional practice.

(a) A candidate shall score at least an eighty (80) percent to pass the jurisprudence examinations.

(b) A candidate shall score a 100 percent to pass the competency examination. [The] [structured] [jurisprudence examinations shall cover Kentucky mental health law, ethical principles, and professional practice, and shall consist of an oral competency exam and a written jurisprudence exam.]

Section 2. General Requirements. (1) An applicant for licensure [examination] shall:

(a) 1. Submit a completed application as required by 201 KAR 26:155, Section 1;~~[(f)] [or] 201 KAR 26:280, Section 1; 201 KAR 26:180, Section 2; 201 KAR 26:185, Section 2; and 201 KAR 26:290, Section 1;~~ and

2. ~~[(b)]~~ Pay the applicable fee established in 201 KAR 26:160; ~~or~~

~~[(b) [(f)]~~ Submit the application required by subsection (1) of this section to the online application management system designated by the board ~~that shall:~~

~~1. [(a)]~~ Include a certification by the applicant that the:

~~a. [(1)]~~ Information in the application is true, correct, and complete to the best of their knowledge and belief; and

~~b. [(2)]~~ Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

~~2. [(b)]~~ Be accompanied by payment of the application fee

that shall:

~~a. [(b)]~~ Payment of the application fee made payable directly to the Kentucky State Treasurer if the application is processed through the board;~~[(f)] or [(b)]~~ payment shall

~~b.~~ Be made to the online application management system as directed by the board.

~~(2) [(f)]~~ Once the Licensed Psychologist Applicant has completed all items, including sending supplemental materials, the online application management system completes a primary source verification process then forwards the application to the board for final review.

~~(3) [(g)]~~ The Credentialing Committee of the Board reviews the application and determines the applicant's eligibility for licensure.

~~(4) [(2)]~~ The applicant shall sit for the national (EPPP) examination within one (1) year of the notice of the application being approved by the board. An applicant may sit for the national (EPPP) examination at any approved ASPPB examination contractor testing center in the United States, U.S. Territories, ~~or [and] Canada~~, but shall register and apply for licensure in only one (1) jurisdiction.

~~(5) [(3)]~~ If an applicant loses eligibility to sit for the national (EPPP) examination because of failure to reschedule, cancel, or appear to take the examination as stated in subsection ~~(4) [(2)]~~ of this section:

(a) The applicant shall forfeit all fees paid; and

(b) Any temporary license issued to the applicant shall be terminated.

Section 3. Examination for Licensure as a Licensed Psychologist. (1) The applicant shall pass:

(a) The national (EPPP) examination in accordance with subsection (2) of this section; and

(b) The Kentucky [structured] examinations as outlined in Section 1(2) of this administrative regulation. The competency examination shall be administered by two (2) licensed psychologists approved by the board [on competency and jurisprudence Kentucky mental health law], ~~ethical principles, and professional practice~~.

(2) The applicant shall obtain an EPPP scaled score of 500 or greater or shall have obtained a previous national EPPP passing score which satisfied the doctoral licensure requirement as to criterion level at the time of that examination. The applicant shall be notified by the board of the score, as well as of passing or failing the examination.

(3) If an applicant for licensure as a licensed psychologist fails the national (EPPP) examination, the candidate shall reapply to the board, pay the appropriate fee to the ASPPB examination contractor and be deemed eligible by the board to be permitted to sit again for the national (EPPP) examination.

(a) The candidate shall continue to function under the supervision of the board-approved supervisor until:

1. The national (EPPP) examination and Kentucky examinations [structured] [jurisprudence examinations on Kentucky mental health law, ethical principles, and professional practice] are successfully completed; or

2. The temporary license is terminated.

(b) The applicant for licensure as a licensed psychologist shall not be scheduled for the Kentucky examinations [jurisprudence examination] [on Kentucky mental health law] [nor the oral competency examination] until the national (EPPP) examination has been successfully passed and the board has determined that the requirements for supervised experience for licensure as a licensed psychologist have been met.

(4) The competency examination shall not be required for an applicant who is board-certified by the American Board of Professional Psychology (ABPP) or a successor organization or holds a current license in good standing from a jurisdiction with a reciprocity agreement with this board. ~~[(In addition to) [The jurisprudence examination shall require that the applicant] [demonstrating] [demonstrate an acceptable level of knowledge of Kentucky mental health law,] [an applicant for licensure as a licensed psychologist shall submit to a structured oral examination administered by two (2) licensed psychologists~~



approved by the board. The structured oral examination shall not be required for an applicant who holds a Certificate of Professional Qualification in Psychology (CPQ) issued by the ASPPB or a successor organization or is board-certified by the American Board of Professional Psychology (ABPP) or a successor organization or holds a current license in good standing from a jurisdiction with a reciprocity agreement with this board.}]

~~(a) [This structured oral] [The competency examination shall be administered by two (2) licensed psychologists approved by the board and shall cover ethical principles and professional practice.] [The applicant shall demonstrate an acceptable level of knowledge in each of the areas in order to pass the examination.}]~~

~~(b) Each examiner shall independently rate the applicant's performance.~~

~~(c) An applicant who receives a pass rating from each of the examiners shall have successfully passed the [structured oral] [competency examination.]~~

(5) If the applicant does not pass either one of the Kentucky examinations on the first attempt, [fails the first] [structured oral] [jurisprudence examination,] the applicant may reapply with a detailed remediation plan, including [but not limited to] the process by which the applicant proposes to improve his or her performance on the examination, the time proposed to be spent on remediation, and with whom the applicant proposes to study or obtain further instruction and any other information requested by the board.]

(a) Upon completion of the remediation plan approved by the board, the applicant shall be administered a [structured oral] second examination. [by a second team composed in the same manner as the first team.]

~~(6)(b) If the applicant does not pass either one of the Kentucky examinations on the second attempt, the applicant may reapply with an additional remediation plan. Upon completion of the remediation plan approved by the board, the applicant shall be administered a third examination. [second structured] [oral] [examination is not passed,] [failed], the applicant may reapply with a further remediation plan approved by the board.~~

~~(c) Upon completion of the approved second remediation plan, the applicant shall be administered a [structured oral] [third examination.] [by a team of the licensed psychologist members of the board and appointed examiners as needed.~~

(d) A majority of the examining team shall rate the applicant as having passed or failed the structured oral examination on ethical principles and professional practice.}]

~~(7)(6) An applicant may only take each one of the structured examinations [examination] on three (3) occasions. If [the] an applicant for licensure as a licensed psychologist [fails to] does not pass on the third attempt, [the structured oral examination, and wishes to] they may apply to be credentialed as a licensed psychological associate,] by completing an [a completed] application and paying the appropriate fee, as required by 201 KAR 26:160, [shall be submitted.] The board shall accept the applicant's previous examination results to satisfy the requirements for the licensed psychological associate application. [as-to criteria level.]~~

Section 4. Examination for Licensure as a Licensed Psychological Practitioner. (1) The applicant shall pass:

(a) A national (EPPP) examination unless the applicant's previous examination results for the national (EPPP) examination satisfied the doctoral licensure requirement as to criterion level at the time of that examination; or

(b) The applicant shall obtain a computerized national (EPPP) scaled score of 500 or greater. The applicant shall be notified by the board of the score, as well as of passing or failing the examination.

(2) Pursuant to KRS 319.050(3), an applicant for licensure as a licensed psychological practitioner who has been approved to sit for the national (EPPP) examination shall continue to be supervised until all requirements for licensure as a licensed psychological practitioner have been completed.

(3) If an applicant for licensure as a licensed psychological practitioner fails to obtain a scaled score of 500 or greater on the EPPP examination, the candidate may reapply to the board, pay the appropriate fee to the ASPPB examination contractor and be permitted to sit for the national (EPPP) examination again.

(4) The applicant for licensure as a licensed psychological practitioner shall not be scheduled for ~~the~~ [the examination on] Kentucky examinations [mental health law. The applicant shall demonstrate an acceptable level of knowledge in each of the areas in order to pass the examination] until the national (EPPP) examination has been successfully passed and the required five (5) years of supervised experience or its equivalent have been approved by the board.

(5) An applicant for licensure as a licensed psychological practitioner shall submit to a competency examination as outlined in Section 1(2) of this administrative regulation administered by an at least one (1) licensed psychologist and either a certified psychologist with autonomous functioning or a licensed psychological practitioner. The applicant for licensure as a licensed psychological practitioner shall also complete a jurisprudence examination as outlined in Section 1(2) of this administrative regulation. [In addition to demonstrating an acceptable level of knowledge of Kentucky mental health law, an applicant for licensure as a licensed psychological practitioner shall submit to a structured oral examination administered by an examination team consisting of at least one (1) licensed psychologist and either a certified psychologist with autonomous functioning or a licensed psychological practitioner.}]

~~(a) [This structured oral] [The competency examination shall cover ethical principles and professional practice.] [The applicant shall demonstrate an acceptable level of knowledge in each of the areas in order to pass the examination.}]~~

~~(b) Each examiner shall independently rate the applicant's performance, using the same criteria as the [structured oral] [competency examination for licensed psychologist candidates.~~

~~(c) An applicant who receives a pass rating from each of the examiners shall have successfully passed the [structured oral] [competency examination.]~~

(6) If the applicant [fails] does not pass either one of the Kentucky examinations on the first attempt the [first structured oral] [competency examination], the applicant may reapply with a [detailed] remediation plan, including [but not limited to] the process by which the applicant proposes to improve his or her performance on the examination, the time proposed to be spent on remediation, and how the applicant proposes to study or obtain further instruction and any other information requested by the board. Upon completion of a remediation plan approved by the board, the applicant, Once the remediation plan is completed, the second competency examination] [and] shall be administered a second examination. [a structured oral examination by a second team composed in the same manner as the first team.]

(7) If the applicant [fails] does not pass either one of the Kentucky examinations on the second attempt, [the second] [oral] [examination,] the applicant may reapply with an additional [another detailed] remediation plan. Upon completion of a remediation plan approved by the board, the applicant [, and] shall be administered a [structured oral] third examination. [by a team of the licensed members of the board and appointed examiners as needed. A majority of the examining team shall rate the applicant as having passed the examination.]

(8) An applicant may only take each [the] examination three (3) times, and would have to remain as a Psychological Associate under board approved supervision if either [the] examination is failed three (3) times.

Section 5. Examination for Licensure as a Psychological Associate. (1) The applicant shall:

(a) Obtain a national (EPPP) scaled score of 400 or greater; or

(b) Have obtained an EPPP passing score for licensure at the master's level in effect at the time of the applicant's previous national (EPPP) examination.

(c) The applicant shall be notified by the board of the score, as well as of passing or failing the examination.

(2) Pursuant to KRS 319.064(3), an applicant for licensure as a licensed psychological associate who has been approved to sit for the national (EPPP) examination and whose supervisory arrangement has been approved by the board shall be considered to be functioning under a temporary license.

(3) If an applicant for licensure as a psychological associate fails the national (EPPP) examination, the applicant shall:

(a) File a detailed remediation plan, cosigned by the supervisor within thirty (30) days of notice of failure; and

(b) Be eligible to retake the national (EPPP) examination upon approval of the plan by the board.

Section 6. **Incorporation by Reference.** (1) ~~The following is incorporated by reference in this regulation:~~

(a) Application for Licensure as a Psychologist ~~as required by 201 KAR 26:155, Section 1 or 26:280, Section 1.~~ March 2021, is incorporated by reference.

(2) ~~This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Examiners of Psychology, 500 Mero Street, Frankfort, Kentucky, 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~

CONTACT PERSON: David C. Trimble, Board Attorney, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-8823, fax (502) 564-3969, email DavidC.Trimble@ky.gov.

**BOARDS AND COMMISSIONS**  
**Board of Examiners of Psychology**  
**(As Amended at ARRS, July 8, 2021)**

**201 KAR 26:250. Employment of a psychological associate, a temporarily licensed psychological associate, or a temporarily licensed psychologist.**

RELATES TO: KRS 319.032(1)(b), 319.032(1)(l), 319.064(5)

STATUTORY AUTHORITY: KRS 319.032(1)(b), 319.032(1)(l)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(l) requires the Board of Examiners of Psychology to promulgate an administrative regulation governing the supervision and employment of a licensed psychological associate, temporarily licensed psychological associate, or ~~a-a~~ temporarily licensed psychologist. KRS 319.064(5) prohibits a licensed psychological associate, ~~or-a~~ temporarily licensed psychological associate, or ~~fa~~ temporarily licensed psychologist from practicing independently, except under the employment and supervision of a board approved licensed psychologist. This administrative regulation establishes the requirements for the employment of a licensed psychological associate, ~~or-a~~ temporarily licensed psychological associate, or ~~fa~~ temporarily licensed psychologist.

Section 1. Employment of a licensed psychological associate, ~~fa~~ temporarily licensed psychological associate, or ~~fa~~ temporarily licensed psychologist (which are licensees requiring supervision) by a regional mental health or ~~fa~~ mental retardation board, college or university, or government agency shall not be considered independent practice.

Section 2. (1) A licensed psychological associate, ~~or-a~~ temporarily licensed psychological associate, or ~~fa~~ temporarily licensed psychologist may be employed in a supervisor's independent practice, if the supervisor is responsible for the direction and control of the practice of the licensed psychological associate, ~~or-a~~ temporarily licensed psychological associate, or ~~fa~~ temporarily licensed psychologist.

(2) ~~Any such~~ Employees shall be paid compensation. ~~Such~~ Employees shall ~~may~~ not be independent contractors and receive a Form 1099 for their compensation. Any independent contractor shall ~~must~~ have an independent license.

Section 3. (1) A special application shall:

(a) Be submitted to the board by the supervisor of record and a licensed psychological associate, ~~or-a~~ temporarily licensed psychological associate, or ~~fa~~ temporarily licensed psychologist if:

1. a. The licensed psychological associate, ~~or-a~~ temporarily licensed psychological associate, or ~~fa~~ temporarily licensed psychologist is employed in an independent practice; and

b. The supervisor of record is not the employer; or

2. The employer is not an organization listed in Section 1 of this administrative regulation.

(b) Be approved by the board before the practice begins.

(c) Identify the licensed psychological associate, ~~or~~ temporarily licensed psychological associate, or temporarily licensed psychologist, supervisor, and employer.

(d) Certify that:

1. The supervising licensed psychologist is not hired, employed, or engaged under contract by the licensed psychological associate, ~~or~~ temporarily licensed psychological associate, or temporarily licensed psychologist;

2. The licensed psychological associate, ~~or~~ temporarily licensed psychological associate, or temporarily licensed psychologist is not an owner ~~one of the owners~~ of the independent practice or organization, but rather serves as an employee; and

3. The licensed psychological associate, ~~or~~ temporarily licensed psychological associate, or temporarily licensed psychologist has both administrative and clinical supervision that ~~which~~ are provided by the independent practice or organization.

(2) The arrangement described in the application shall be approved by the board before the practice begins.

Section 4. A licensed psychological associate, ~~or-a~~ temporarily licensed psychological associate, or temporarily licensed psychologist shall not pay, hire, or employ a supervisor to provide supervision in accordance with 201 KAR 26:171.

Section 5. A licensed psychological associate, ~~or-a~~ temporarily licensed psychological associate, or temporarily licensed psychologist who works as an employee for more than one (1) independent practice or organization shall obtain approval from the board for a supervisor of record for each independent practice or organization and shall comply with 201 KAR 26:171 for approval to have more than two (2) supervisors of record.

Section 6. In all communications and advertising with the public, the licensed psychological associate's, ~~or~~ temporarily licensed psychological associate's, or temporarily licensed psychologist's relationship with the employer and the supervisor shall be clearly indicated.

Section 7. The licensed psychological associate, ~~or~~ temporarily licensed psychological associate, or temporarily licensed psychologist and the supervisor shall comply with the requirements for supervision established in 201 KAR 26:171.

Section 8. Incorporation by Reference. (1) "Special Application", (~~October 2016~~) March 2021 edition), is incorporated by reference.

(2) ~~(2)~~ This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Examiners of Psychology, 500 Mero Street~~[914 Leawood Drive]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be found on the Board's Web site, www.psy.ky.gov.

CONTACT PERSON: David C. Trimble, Board Attorney, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-8823, fax (502) 564-3969, email DavidC.Trimble@ky.gov.

**BOARDS AND COMMISSIONS**  
**Board of Examiners of Psychology**  
**(As Amended at ARRS, July 8, 2021)**

**201 KAR 26:280. Licensed psychological associate: application procedures and temporary license.**

RELATES TO: KRS 319.064

STATUTORY AUTHORITY: KRS 319.032(1)(a), (c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) and (c) require the Board of Examiners of Psychology to promulgate administrative regulations establishing the requirements for an applicant for licensure as a psychological associate. This administrative regulation establishes the requirements for applicants for licensure and the conditions for a temporary license.

Section 1. Application. (1) After the requirements established in KRS 319.064(2) are met, an application for a credential to perform certain functions as a licensed psychological associate may be submitted ~~[after the requirements established in KRS 319.064(2) are met]~~ to the board, ~~for~~ to an online application management system contracted by the board for the purposes of application screening, or as the board directs.

(2) The application required by subsection (1) of this section shall be made to the board or to the online application management system and shall:~~[shall be made by submitting a completed Application for Licensure as a Psychological Associate to the board. The application shall:]~~

(a) Include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of ~~[his or her]~~ their knowledge and belief; and
2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification ~~]; and]~~

(b) Be accompanied by payment of the application fee that shall:

1. Be [Payment of the application fee] made payable directly to the Kentucky State Treasurer if the application is processed through the board;[,] or [payment shall]

2. Be made to the online application management system as directed by the board.[]

~~1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 26:160.[]~~

~~[c)]2.] Include~~ three (3) letters of reference or completed Recommendation Form for Licensure as a Psychological Associate from persons qualified to evaluate the applicant's professional ability, including two (2) persons who have received a doctorate in psychology (Ph.D., Psy.D., or Ed.D.); and

~~[d)]e.] Include~~ an official transcript for all levels of education required for licensure. Transcripts shall [must] be received in sealed envelopes or electronically directly from the school or a third-party clearinghouse.

(3) Incomplete Application. An incomplete application shall be determined to be expired one (1) year from the date of filing, and may be destroyed.

Section 2. Temporary Licensure. (1) An applicant may request permission to perform functions as a licensed psychological associate on a temporary basis pursuant to KRS 319.064(3).

(2) The request for a temporary credential shall be co-signed by the candidate and the pro-posed supervisor, who shall be a licensed psychologist approved by the board and who holds the health services provider designation.

(3)(a) A temporary license shall be valid for one (1) year from the date of the notice of approval by the board.

(b) During the period of temporary licensure, a candidate shall:

1. Successfully complete all credentials and examination procedures; and
2. Pass the Examination for Professional Practice in Psychology (EPPP).

(4)(a) Under exceptional circumstances and upon written request cosigned by the board approved supervisor, the board may

approve an extension of the period of temporary licensure.

(b) A licensee shall submit a completed Request for Extension of Temporary Licensure as a Psychological Associate to the board to request an extension.

(c) If a temporary license requires an extension after one (1) year, the licensee may request a six (6) month extension.

(d) After the six (6) months, a second extension may be requested for an additional six (6) months.

(e) After a total of two (2) years of [for] extensions, the licensee may request a second temporary license following the [aforementioned] steps in this section.

(f) If after two (2) years on the second temporary license another extension is requested, the licensee may request a third temporary license following the [aforementioned] steps in this section.

(g) Licensees shall not exceed a total of six (6) years of extensions for all temporary licenses nor hold a temporary license longer than six (6) years.

(h) All extensions are provided by the board at the board's discretion.

Section 3. Grace Period for Submission of Credentials. ~~[In order]~~ To allow for processing of the candidate's materials by the board, there shall be a grace period not to exceed sixty (60) days within which a candidate who has completed his or her degree requirements may begin employment by an agency to practice psychology under supervision with a board-approved supervisor. (1) Upon acceptance of employment, the candidate and the licensed psychologist with health service practitioner designation who shall serve as the clinical supervisor shall immediately submit a letter of notice to the board indicating that he or she has begun to practice in Kentucky and that application materials are forthcoming. Failure to submit this notice may be grounds for disciplinary action against the candidate and the clinical supervisor.

(2) It shall be the responsibility of the candidate to ensure that all materials are forwarded to the board within thirty (30) days from the date of agency employment. Once the application is complete, the board shall review the material at its next scheduled meeting and, if appropriate, issue either a temporary or permanent credential. If the candidate does not meet the requirements for the credential, or if ~~[his or her]~~ their application material is insufficient to take any action, ~~[he or she]~~ they shall be directed to cease practice until the requirements are met.

(3) The grace period shall not be extended beyond sixty (60) days. A candidate who fails to achieve approval within this timeframe shall not practice psychology until credentialed by the board.

(4) Upon filing the notice set forth in subsection (1) of this section, the candidate shall be practicing psychology under the jurisdiction of the board, and shall be subject to KRS Chapter 319 and 201 KAR Chapter 26.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Licensure as a Psychological Associate", ~~February 2017]~~ March 2021;

(b) "Recommendation Form for Licensure as a Psychological Associate", ~~February 2017]~~ March 2021; and

(c) "Request for Extension of Temporary Licensure as a Psychological Associate", ~~February 2017.]~~ March 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Examiners of Psychology, 500 Mero Street [911-Leawood Drive], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: David C. Trimble, Board Attorney, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-8823, fax (502) 564-3969, email DavidC.Trimble@ky.gov.

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BOARDS AND COMMISSIONS  
Board of Examiners of Psychology  
(As Amended at ARRS, July 8, 2021)

201 KAR 26:290. Licensed psychological practitioner: application procedures.

RELATES TO: KRS 319.053

STATUTORY AUTHORITY: 319.032(1)(a), (c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) and (c) require the Board of Examiners of Psychology to promulgate administrative regulations establishing the requirements for an applicant for licensure as a psychological practitioner. This administrative regulation establishes the requirements for these applicants.

Section 1. Application. (1) After the requirements established in KRS 319.053(1) are met, an applicant for licensure as a licensed psychological practitioner shall submit a completed Application for Licensure as a Psychological Practitioner [after the requirements established in KRS 319.053(1) are met] to the board, [or] to an online application management system contracted by the board for the purposes of application screening, or as the board directs.

(2) The application shall:

(a) Include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of [his or her] their knowledge and belief; and

2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification. [; and]

(b) Be accompanied by payment of the application fee that shall:

1. Be [A payment to the Kentucky State Treasurer for the application fee as required by 201 KAR 26:160;] [Payment of the application fee] made payable to the Kentucky State Treasurer if the application is processed through the board; or [payment shall]

2. Be made to the online application management system as directed by the board.

[c]2.] [Three (3) letters of completed Recommendation for Licensure as a Psychological Practitioner from persons who are familiar with the clinical work of the applicant. One (1) letter shall be from the current board-approved supervisor of record outlining the candidate's scope of practice and the other two (2) letters shall be from licensed mental health professionals acceptable to the board;] Include two (2) letters of completed Recommendation for Licensure as a Psychological Practitioner forms from licensed mental health professionals acceptable to the board who are familiar with the clinical work of the applicant; [;] outlining the candidate's scope of practice and the other two (2) letters shall be from licensed mental health professionals acceptable to the board; and]

[d]3.] Include an official transcript for all levels of education required for licensure. Transcripts shall [must] be received in sealed envelopes or electronically directly from the school or a third-party clearinghouse; and

[e]4.] Include one (1) completed Supervisor Recommendation for Licensure as a Psychological Practitioner that shall be from the current board-approved clinical supervisor of record.

[3][e)] An incomplete application may be determined to be expired one (1) year from the date of filing, and may be destroyed.]

4. A completed Supervisor Recommendation for Licensure as a Psychological Practitioner.]

Section 2. Temporary Licensure. Temporary credentials shall not be issued to persons applying for licensed psychological practitioner status. An applicant may continue to practice under board-approved supervision as a licensed psychological associate or as a certified psychologist pending successful completion of all requirements for a change of status to a licensed psychological practitioner.

(1) The candidate shall obtain an acceptable score on the national (EPPP) examination as established in 201 KAR 26:230,

Section 4.

(2) The board shall accept the applicant's previous examination results for the national (EPPP) examination if the original test score satisfied the doctoral licensure requirement as to criterion level at the time of that examination.

(3) ~~The Kentucky examinations as outlined in 201 KAR 26:230 Section 1(2) shall be successfully completed by the applicant as described in 201 KAR 26:230, Section 4(5). [The applicant shall pass the] [structured] [competency and jurisprudence examinations on Kentucky mental health law, ethical principles, and professional practice established in 201 KAR 26:230, Section 4(5). An applicant shall score at least an eighty (80) percent to pass the] [structured] [jurisprudence examination of Kentucky mental health law. An applicant shall score a 100 percent to pass the [oral] competency examination on ethical principles and professional practice.]~~

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

(a) "Application for Licensure as a Psychological Practitioner", [February 2017] March 2021;

(b) "Supervisor Recommendation for Licensure as a Psychological Practitioner", [February 2017] March 2021; and

(c) "Recommendation for Licensure as a Psychological Practitioner", [February 2017] March 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Examiners of Psychology, 500 Mero Street, [911 Leewood Drive] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. These materials may also be viewed on the board's Web site.

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BOARDS AND COMMISSIONS  
Board of Examiners of Psychology  
(As Amended at ARRS, July 8, 2021)

201 KAR 26:310. Telehealth and telepsychology.

RELATES TO: KRS 319.140[, 29 U.S.C. 794(d)]

STATUTORY AUTHORITY: KRS 319.032(2), ~~[; KRS]~~ 319.140(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.140 requires a treating psychologist utilizing telehealth to ensure a patient's [patient's] [recipient's] informed consent and to maintain confidentiality. This administrative regulation protects the health and safety of the citizens of Kentucky and establishes procedures for preventing abuse and fraud through the use of telehealth, prevents fee-splitting through the use of telehealth, and utilizes telehealth in the provision of psychological services and in the provision of continuing education.

Section 1. Definitions. (1) "Client" is defined by 201 KAR 26:145, Section 3.2[;]

(2) "Telehealth" means [is defined by KRS 319.140(3)] [;]

[a)] delivery of health care-related services, by a provider who is a health care provider licensed in Kentucky, to a patient [recipient] through a face-to-face encounter with access to real-time interactive audio and video technology. Telehealth shall not include the delivery of services through electronic mail, text chat, facsimile, or standard audio-only telephone call and shall be delivered over a secure communications connection that complies with the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. secs. 1320d to 1320d-9; [;

[b)] Shall not include the delivery of services through electronic mail, text chat, facsimile, or standard audio-only telephone call; and

[c)] Shall be delivered over a secure communications connection that complies with the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. secs.

1320d to 1320d-9:]

(3) "Telepsychology" means the "practice of psychology", as defined by KRS 319.010(7), between the psychologist and the patient [recipient] [patient] that is provided using:

(a) [Provided using an] Electronic communication technology; or

(b) Two (2) way, interactive, simultaneous audio and video.

(4) "Telehealth service" means any service that is provided via telehealth and is one (1) of the following:

(a) Event;

(b) Encounter;

(c) Consultation;

(d) Visit;

(e) Remote patient monitoring;

(f) Referral; or

(g) Treatment.

Section 2. Client Requirements. A credential holder using telehealth to deliver psychological services or who practices telepsychology shall, upon initial contact with the client:

(1) Make reasonable attempts to verify the identity of the client;

(2) Obtain alternative means of contacting the client other than electronically;

(3) Provide to the client alternative means of contacting the credential holder other than electronically;

(4) Document if the client has the necessary knowledge and skills to benefit from the type of telepsychology provided by the credential holder;

(5) Use secure communications with clients, including encrypted text messages via e-mail or secure Web sites, and not use personal identifying information in non-secure communications;

(6) Inform the client in writing about:

(a) The limitations of using technology in the provision of telepsychology;

(b) Potential risks to confidentiality of information due to technology in the provision of telepsychology;

(c) Potential risks of disruption in the use of telepsychology;

(d) When and how the credential holder will respond to routine electronic messages;

(e) The [in-what] circumstances in which the credential holder will use alternative communications for emergency purposes;

(f) Who else may have access to client communications with the credential holder;

(g) How communications can be directed to a specific credential holder;

(h) How the credential holder stores electronic communications from the client; and

(i) The reporting of clients required by 201 KAR 26:145, Section 7.

Section 3. Competence, Limits on Practice, Maintenance, and Retention of Records. (1) A credential holder using telehealth to deliver psychological services or who practices telepsychology shall:

(a) [(4)] Limit the practice of telepsychology to the area of competence in which proficiency has been gained through education, training, and experience;

(b) [(2)] Maintain current competency in the practice of telepsychology through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge;

(c) [(3)] Document the client's presenting problem, purpose, or diagnosis;

(d) [(4)] Follow the record-keeping requirements of 201 KAR 26:145, Section 6; and]

(e) [(5)] Ensure that confidential communications obtained and stored electronically cannot be recovered and accessed by unauthorized persons when the credential holder disposes of electronic equipment and data; and];]

(f) [(6)] Document the client's written informed consent to the services being provided and the provision of those services via telehealth, including that the patient has the right to refuse telehealth consultation or services, has been informed of

alternatives to telehealth services, that the client shall be entitled to receive information from the provider regarding the services rendered, that the client's information shall be protected by applicable federal and state law regarding patient confidentiality, that the client shall have the right to know the identity of all persons present at any site involved in the telehealth services, and to exclude any such person/person(s)], and that the client shall have the right to be advised, and to object to, any recording of the telehealth consultation or services.

(2) [(7)] The requirement of a written informed consent shall not apply to an emergency situation if the client is unable to provide informed consent and the client's legally authorized representative is not available.

Section 4. Compliance with Federal, State, and Local Law. A credential holder using telehealth to deliver psychological services or who practices telepsychology shall comply with:

(1) State law where the credential holder is credentialed and state law regarding the practice of psychology [be licensed to practice psychology] where the client is [domiciled] located at the time services are rendered; and

(2) Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to make technology accessible to a client with disabilities;

Section 5. Representation of Services and Code of Conduct. A credential holder using telehealth to deliver psychological services or who practices telepsychology:

(1) Shall not, by or on behalf of the credential holder, engage in false, misleading, or deceptive advertising of telepsychology; and

(2) Shall comply with 201 KAR 26:145.

CONTACT PERSON: David C. Trimble, Board Attorney, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-8823, fax (502) 564-3969, email DavidC.Trimble@ky.gov.

**BOARDS AND COMMISSIONS**

**Board of Licensure of Marriage and Family Therapists  
(As Amended at ARRS, July 8, 2021)**

**201 KAR 32:030. Fees.**

RELATES TO: KRS 335.330, 335.340(1), (3), 335.342

STATUTORY AUTHORITY: KRS 335.320(4), 335.330, 335.340(1), (3), 335.348

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.330 requires the board to promulgate an administrative regulation establishing the initial fee for licensure required to be paid by an applicant for licensure and requires an applicant to pass a written examination prescribed by the board. KRS 335.340(1) requires that all licenses issued under KRS 335.330 shall be renewed annually, and that the board promulgate an administrative regulation establishing the fee for licensure renewal. KRS 335.340(3) requires the board to promulgate an administrative regulation establishing the late renewal fee. This administrative regulation establishes fees for licensure as a marriage and family therapist or marriage and family therapy [therapist] associate.

Section 1. Initial Application Fee. The initial application fee for licensure as a marriage and family therapist shall be:

(1) Fifty (50) dollars;

(2) Nonrefundable; and

(3) Payable to the Kentucky State Treasurer.

Section 2. Initial Licensure Fee. The initial fee for licensure as a marriage and family therapist shall be:

(1) \$175;

(2) Nonrefundable; and

(3) Payable to the Kentucky State Treasurer.

Section 3. Initial Application. (1) An applicant for licensure as a marriage and family therapist shall submit a completed Licensure as a Marriage and Family Therapist Application to the board in

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accordance with KRS 335.330 and with the fees required under Sections 1 and 2 of this administrative regulation.

(2) The applicant shall complete six (6) hours of training in the field of suicide assessment, treatment, and management every six (6) years as required by 201 KAR 32:060, Section 1(4).

(3) The applicant shall complete the three (3) hours of training in the field of domestic violence, **elder abuse, neglect, and exploitation** within three (3) years of licensure as required by 201 KAR 32:060, Section 1(5).

(4) The applicant shall document professional experience obtained as a marriage and family ~~therapy~~[therapist] associate, including 1,000 client hours over a minimum of two (2) years, and verify clinical supervision as required by 201 KAR 32:035.

Section 4. Examination Fee. (1) An applicant shall pass the National Marital and Family Therapy Examination administered and verified by the Association of Marital and Family Therapy Regulatory Boards.

(2) The applicant shall pay the required examination fee.

Section 5. Renewal Fee. (1) A licensed marriage and family therapist shall submit a completed Licensure as a Marriage and Family Therapist Renewal Application to the board in accordance with KRS 335.340.

(2) The fee for renewal of licensure as a marriage and family therapist shall be:

- (a) \$150 annually;
- (b) Nonrefundable; and
- (c) Payable to the Kentucky State Treasurer.

(3) The licensee shall complete six (6) hours of training in the field of suicide assessment, treatment, and management every six (6) years as required by 201 KAR 32:060, Section 1(4).

(4) The licensee shall complete the three (3) hours of training in the field of domestic violence, **elder abuse, neglect, and exploitation** within three (3) years of licensure as required by 201 KAR 32:060, Section 1(5).

(5) The licensee shall submit proof of completion of the continuing education requirements under 201 KAR 32:060.

Section 6. Late Renewal Fees. (1) A licensee who renews a license during the ninety (90) day grace period provided by KRS 335.340(3) shall pay a late renewal fee of seventy-five (75) dollars in addition to the payment of the renewal fee as established in Section 5 of this administrative regulation.

- (2) The fee shall be:
- (a) Nonrefundable; and
  - (b) Payable to the Kentucky State Treasurer.

Section 7. Administrative Fine. A licensee who fails to meet the continuing education unit requirements as set forth in 201 KAR 32:060, by the renewal date, shall pay an additional administrative fine of seventy-five (75) dollars.

Section 8. Reinstatement of Expired License. (1) In accordance with KRS 335.340, an expired license shall be reinstated by:

- (a) Submitting a completed Application for License Reactivation;
- (b) Paying of the renewal fee as established in Section 5 of this administrative regulation for each year since the date of last active licensure;
- (c) Paying of a reinstatement fee of \$100, which shall be:
  1. Nonrefundable; and
  2. Payable to the Kentucky State Treasurer; and
- (d) Meeting all other requirements of this section of this administrative regulation.

(2) The applicant for reinstatement of an expired license shall submit proof of:

- (a) Completion of fifteen (15) hours of continuing education for each year since the date of last active licensure as required by 201 KAR 32:060;
- (b) Completion of six (6) hours of training in the field of suicide assessment, treatment and management every six (6) years as

required by 201 KAR 32:060, Section 1(4); and

(c) Completion of three (3) hours of training in the field of domestic violence, **elder abuse, neglect, and exploitation** within three (3) years of licensure as required by 201 KAR 32:060, Section 1(5).

Section 9. Fees for Providers of Continuing Education. (1) There shall be a nonrefundable fee of ~~\$100~~[fifty (50) dollars] for a single continuing education workshop offered an unlimited number of times in a calendar year, January 1 to December 31. The provider shall submit the Continuing Education Program Provider Approval Application **at least sixty (60) days in advance of the commencement of the program and** with the applicable fee ~~required under this subsection~~[per day for six (6) continuing education workshops or less offered a single time].

(2) There shall be a nonrefundable fee of ~~\$300~~ for a provider designated as an approved sponsor for continuing education **and that is providing more than one (1) continuing education program for two (2) consecutive calendar years, January 1 to December 31. The provider shall submit the Application for Continuing Education Sponsor at least sixty (60) days in advance of the commencement of the program and** with the ~~applicable fee required under this subsection~~[\$125 per day for seven (7) or more continuing education workshops offered a single time].

(3) ~~There shall be a nonrefundable fee of \$250 for a single continuing education workshop offered unlimited times in a calendar year, January 1 to December 31.~~

(4) ~~The provider shall submit the Continuing Education Program Provider Approval Application with the applicable fee required under subsections (1) through (3) of this section.~~

(5) The marriage and family therapist, and the marriage and family ~~therapy~~[therapist] associate shall submit the Application for Continuing Education Program Approval Individual for post approval only.

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

- (a) "Licensure as a Marriage and Family Therapist Application", July 2016;
- (b) "Licensure as a Marriage and Family Therapist Renewal Application", July 2016;
- (c) "Application for License Reactivation", July 2016;
- (d) "Continuing Education Program Provider Approval Application", ~~July 2021~~[September 2016]; [and]
- (e) "Application for Continuing Education Program Approval Individual", 2016; and
- (f) "Application for Continuing Education Sponsor", ~~May~~[January] 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Marriage and Family Therapists, 500 Mero Street, 2SC 32[911 Leewood Drive], Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

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

### BOARDS AND COMMISSIONS

#### Board of Licensure of Marriage and Family Therapists (As Amended at ARRS, July 8, 2021)

**201 KAR 32:035. Supervision of marriage and family therapy[therapist] associates.**

RELATES TO: KRS 335.300, 335.320(6), 335.330, 335.332  
STATUTORY AUTHORITY: KRS 335.320(4), (5), (9)  
NECESSITY FUNCTION AND CONFORMITY: KRS 335.320(9) requires the board to promulgate administrative

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regulations to implement KRS 335.300 to 335.399. KRS 335.320(4) requires the board to license applicants who satisfy the experience and educational requirements and who have paid the fee. KRS 335.320(5) requires the board to review and approve supervision contracts between marriage and family therapy associates and their approved supervisors. This administrative regulation establishes the supervision requirements for marriage and family therapy associates and their board-approved supervisors.

Section 1. Definitions. (1) "Group supervision" means supervision of three (3) to six (6) supervisees with the supervisor.

(2) "Individual supervision" means supervision of one (1) or two (2) supervisees with the supervisor.

(3) "Qualified mental health professional" means a licensed marriage and family therapist, licensed psychologist, licensed psychiatrist, licensed professional clinical counselor, or licensed clinical social worker.

(4) "Raw data" means video recorded sessions, live observation, or co-therapy with a board-approved supervisor.

(5) "Two (2) years of post-licensure experience in the practice of marriage and family therapy" means a minimum of two (2) years of the practice of marriage and family therapy consisting of 1,000 hours of direct, face-to-face or telehealth contact with individuals, couples, families, and groups in the practice of marriage and family therapy under the supervision of an approved supervisor. Face-to-face for the purposes of this definition includes synchronous contact via technology assisted services for those who have met the training requirements of 201 KAR 32:110.

Section 2. Qualifications for Board-Approved Supervisors Status. (1) Until December 31, 2015, a board-approved supervisor shall be:

(a) An American Association for Marriage and Family Therapy (AAMFT) approved supervisor in good standing;

(b) An AAMFT supervisor candidate; or

(c) A marriage and family therapist in good standing, who is licensed in Kentucky and has a minimum of five (5) years of post-licensure~~[postlicensure]~~ experience in the practice of marriage and family therapy.

(2) Except as established in subsection (3) of this section, effective January 1, 2016, a board-approved supervisor shall be:

(a) An American Association for Marriage and Family Therapy (AAMFT) approved supervisor in good standing, who is licensed in Kentucky and has a minimum of two (2) years of post-licensure experience in the practice of marriage and family therapy;

(b) An AAMFT supervisor candidate in good standing who is licensed in Kentucky and has three (3) years of post-licensure~~[postlicensure]~~ experience in the practice of marriage and family therapy; or

(c) A marriage and family therapist in good standing, who is licensed in Kentucky and has a minimum of five (5) years of post-licensure~~[postlicensure]~~ experience in the practice of marriage and family therapy, with the last eighteen (18) months of experience being in Kentucky.

(3) AAMFT approved supervisors, AAMFT supervisor candidates, and non-AAMFT board approved supervisors, approved as of December 31, 2015, shall maintain board approved status.

(4) To obtain initial board-approved supervisor status, an applicant who is not an AAMFT supervisor or supervisor candidate in good standing shall provide proof of completion of six (6) hours of board-approved continuing education courses in supervision.

(a) The course shall be taken within the two (2) years preceding the date of application to become a board-approved supervisor.

(b) This requirement shall be in addition to the hours of continuing education required for licensure renewal.

(c) Each approved course shall be live or online and shall include:

1. Kentucky law governing the practice of marriage and family therapy, both in KRS 335.300 to 335.399 and 201 KAR Chapter 32;

2. Theories of supervision;

3. Ethical issues involved in supervision; and

4. Supervisor responsibilities such as logs, treatment planning, and recording.

(5) To maintain board-approved supervisor status, a non-AAMFT approved supervisor shall complete at least two (2) hours of continuing education in supervision every year. These two (2) hours shall be included in the hours of continuing education required for licensure renewal. Each approved course shall be live or online and shall include:

(a) Kentucky law governing the practice of marriage and family therapy, both in KRS 335.300 to 335.399 and 201 KAR Chapter 32;

(b) Theories of supervision;

(c) Ethical issues involved in supervision; and

(d) Supervisor responsibilities such as logs, treatment planning, and recording.

(6) To renew as a board-approved supervisor, an AAMFT approved supervisor or supervisor candidate shall complete at least one (1) hour of continuing education every year in Kentucky law governing the practice of marriage and family therapy found both in KRS 335.300 to 335.399 and 201 KAR Chapter 32. The course shall be attended live or online. The one (1) hour shall be included in the hours of continuing education required for licensure renewal.

Section 3. Clinical Supervision. (1) Clinical supervision shall:

(a) Be equally distributed throughout the qualifying period and shall average at least four (4) hours per month as specified in the supervision contract;

(b) Be clearly distinguishable from psychotherapy, didactic enrichment, or training activities;

(c) Focus on raw data from the supervisee's clinical work within in the last twelve (12) months;

(d) Be direct, face-to-face contact between the supervisor and supervisee; or be conducted via live video conferencing if both the supervisor and supervisee have met the educational requirements of 201 KAR 32:110, Section 3(1) and (2)~~[unless an alternative form of supervision has been approved by the board based on undue burden for the supervisor or supervisee such as in cases of serious illness or injury];~~ and

(e) Continue until the supervisee is licensed by the board.

(2) The supervision process shall focus on:

(a) Accurate diagnosis of client problems leading to proficiency in applying professionally recognized nomenclature and developing a plan for treatment as established in DSM 5: Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (2013);

(b) Development of treatment skills appropriate to the therapeutic process;

(c) Development of sensitivity to context and issues relating specifically to the family or individual being counseled;

(d) Acknowledgment of an awareness of the use of the professional self of the therapist in the process of therapy;

(e) Increased theoretical and applied knowledge for the therapist;

(f) Acquisition of a greater depth of knowledge and range of techniques in the provision of marriage and family therapy; and

(g) Awareness of ethical issues in practice, in order to safeguard and enhance the quality of care available to marriage and family therapy clients.

Section 4. Standards for Raw Data Used for Supervision. The use of raw data in a supervision session shall constitute a minimum of fifty (50) hours of the 200 hours of required supervision. In a group setting, raw data can only be used for an individual presenting or conducting the raw data, not the entire group.

Section 5. In a therapy session involving a board-approved supervisor and supervisee:

(1) The role of the board-approved supervisor as a supervisor or co-therapist shall be clearly defined prior to beginning a therapy session; and

(2) The supervisees shall receive credit for client contact hours and supervision hours.

Section 6. Documentation Requirements. (1) The board-approved supervisor and marriage and family ~~therapy~~[therapist] associate shall maintain copies of the completed Supervisory Log, which shall document:

- (a) The frequency and type of supervision provided; and
- (b) The method of supervision utilized, such as observation, dialogue and discussion, and instructional techniques employed.

(2) No more than 100 hours of supervision shall take place in group supervision.

(3) At least 100 hours shall take place in individual supervision.

Section 7. Number of Supervisees. (1) A board-approved supervisor shall not supervise more than ~~twelve (12)~~[six-(6)] marriage and family ~~therapy~~[therapist] associates at the same time, unless approved by the board.

(2) A request to supervise more than ~~twelve (12)~~[six-(6)] marriage and family ~~therapy~~[therapist] associates shall be submitted to the board for approval and shall demonstrate in writing the supervisor's plan and ability to supervise additional marriage and family ~~therapy~~[therapist] associates.

Section 8. Temporary Supervision. (1) In extenuating circumstances, if a marriage and family ~~therapy~~[therapist] associate is without supervision, the associate may continue working up to ninety (90) calendar days under the supervision of a qualified mental health professional while an appropriate board-approved supervisor is sought and a new supervision contract is submitted to the board. Extenuating circumstances include situations such as death or serious illness of the board-approved supervisor, a leave of absence by the supervisor, or the termination of the supervisor's employment.

(2)(a) Within thirty (30) calendar days of a change in status of board-approved supervision, the supervisee shall:

- 1. Notify the board of these circumstances; and
- 2. Submit, in writing, a plan for resolution of the situation.

(b) The written plan shall include:

- 1. The name of the temporary supervisor;
- 2. Verification of the credential held by the temporary supervisor;
- 3. An address for the temporary supervisor; and
- 4. A telephone number for the temporary supervisor.

Section 9. Board-approved Supervisor's Responsibilities to Clients and Supervisees. (1) A board-approved supervisor shall be responsible for ensuring the proper and appropriate delivery of marriage and family therapy services to clients.

(2) A board-approved supervisor shall be responsible for fostering the professional competence and development of the marriage and family ~~therapy~~[therapist] associates under his or her supervision.

(3) A board-approved supervisor shall be responsible for compliance with the code of ethics established in 201 KAR 32:050 and take steps to ensure that supervisees comply with the code of ethics as well.

Section 10. Incorporation by Reference. (1) "Supervisory Log", 7/2015, is incorporated by reference. (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the ~~Department of Professional Licensing~~[Kentucky Office of Occupations and Professions], ~~500 Mero Street, 2 SC 32~~[944 Leawood Drive], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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

## BOARDS AND COMMISSIONS

### Board of Marriage and Family Therapists (As Amended at ARRS, July 8, 2021)

#### 201 KAR 32:060. Continuing education requirements.

RELATES TO: KRS 194.540, 210.366, 335.300(4), 335.340

STATUTORY AUTHORITY: KRS 335.320(4), (9), 335.340(7)

NECESSITY, FUNCTION, AND CONFORMITY: ***KRS***

***335.320(4) requires the board to license marriage and family therapist applicants who satisfy experience and education requirements and have paid the fee required in KRS 335.330. KRS 335.320(9) requires the board to promulgate administrative regulations to implement KRS 335.330 to***

***335.339.*** KRS 335.340(7) authorizes the board to promulgate administrative regulations to establish the fees and other requirements for a permit as a marriage and family ~~therapy~~[therapist] associate. This administrative regulation establishes the requirements for continuing education and the methods and standards for the accreditation of continuing education courses.

Section 1. Accrual of Continuing Education Hours; Computation of Accrual. (1) Effective January 1, 2017, a minimum of fifteen (15) approved continuing education hours shall be accrued by each licensee and a minimum of ten (10) approved continuing education hours shall be accrued by each associate during each one (1) year renewal period.

(2) All hours shall be in "the practice of marriage and family therapy" as defined by KRS 335.300(4) and shall relate to the professional application of psychotherapeutic and systems theories and techniques in the delivery of services to individuals, couples, and families.

(3) Three (3) hours of the hours required by subsection (1) of this section for licensees and associates shall be accrued in the field of professional marriage and family therapy ethics.

(4) Commencing on January 1, 2017, each licensee and associate shall be required to show proof of completion of six (6) hours of continuing education in suicide assessment, treatment, and management every six (6) years beginning January 1, 2015 as required by KRS 210.366. These hours shall be in addition to the requirements set forth in subsection (1) of this section unless preapproved by the board as meeting the requirements set forth in subsection (2) of this section or meets requirements of Section 2 of this administrative regulation.

(5) Within three (3) years of initial licensure or certification, ~~each licensee and associate~~[all mental health professionals] shall successfully complete a three (3) hour training that covers dynamics of domestic violence, elder abuse, neglect, and exploitation; effects of domestic violence and elder abuse, neglect, and exploitation on adult and child victims; legal remedies for protection; lethality and risk issues; model protocols for addressing domestic violence and elder abuse, neglect, and exploitation; available community resources and victim services and reporting requirements as required by KRS 194A.540.

Section 2. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the license or permit shall be directly related to the professional growth and development of marriage and family therapy practitioners and associates. Education hours shall be earned by completing any of the educational activities established in this ~~section~~[subsection].

(1) Programs not requiring board review and approval. Programs from the following sources shall be ~~determined~~***as***[deemed to be] relevant to the practice of marriage and family therapy and shall be approved without further review by the board:

(a) Programs provided or approved by the American Association for Marriage and Family Therapy (AAMFT) and its state affiliates;

(b) Academic courses as defined in 201 KAR 32:010; and

(c) Continuing education programs offered by Commission on Accreditation for Marriage and Family Therapy Education accredited institutions.



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(2) Programs requiring board review and approval. Programs from the following sources shall be reviewed and may be determined to be relevant and subsequently approved by the board:

(a) Relevant programs including online study courses, manualized training, and face-to-face workshops, by other organizations, educational institutions, or other service providers approved by the board;

(b) Relevant programs or academic courses presented by the licensee. Presenters of relevant programs or academic courses may earn full continuing education credit for each contact hour of instruction, not to exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of the same course; and

(c) Relevant publications in a professionally recognized or juried publication. Credit shall not be granted except for those publications that were published within the one (1) year period immediately preceding the renewal date. A licensee shall earn one-half (1/2) of the continuing education hours required for a relevant publication. More than one (1) publication shall not be counted during each renewal period.

Section 3. Continuing Education Providers. (1) Any entity seeking to obtain approval of a continuing education program prior to its offering shall pay the fee as established in 201 KAR 32:030, Section 9, and submit a Continuing Education Program Provider Approval Application, as incorporated by reference in 201 KAR 32:030, Section 10, to the board at least sixty (60) days in advance of the program. The application shall include the:

- (a) Type of learning activity;
- (b) Subject matter;
- (c) Names and qualifications of the instructors; and
- (d) Number of continuing education hours offered.

(2) A continuing education activity shall be qualified for preapproval if the activity being presented:

- (a) Is an organized program of learning;
- (b) Pertains to subject matters that integrally relate to the practice of marriage and family therapy;
- (c) Contributes to the professional competency of the licensee or associate; and
- (d) Is conducted by individuals who have relevant educational training or experience.

(3) An approved continuing education sponsor is a person or organization which is approved by the board to provide more than one (1) continuing education **program[programs]** over a two (2) consecutive calendar year period of time.

(a) Any person or organization seeking to obtain approval as a continuing education sponsor shall:

1. Pay the fee **as** established in 201 KAR 32:030, Section 9; and

2. Complete the Application for Continuing Education Sponsor, **as incorporated by reference in 201 KAR 32:030, Section 10**, and submit it at least sixty (60) days in advance of offering courses. The application shall include the following:

- a. Continuing education sponsor provider information;
- b. Sponsor administrator information;

c. One (1) sample continuing education course that would qualify for approval under Section 1(2) of this administrative regulation. Although only one (1) course is submitted, it is understood that this course serves as an example of all courses provided[providing Kentucky];~~;~~

d. The sample course provided **shall[must]** include the following:

- (i) Published course or similar description;
- (ii) Complete resume of each instructor;
- (iii) Copy of the program indicating hours of education;
- (iv) **Timed[Time]** agenda, **including[include]** coffee and lunch breaks listed;

(v) Copy of the evaluation tool to be used; **[and]**

(vi) Official certificate from the provider. The official certificate **shall[must]** include the following statement: "KY LMFT Board granted approval for this program on \_\_\_\_\_ (date)."; **and**

(vii) The documents submitted in this subsection **shall[must]**

be kept on file for each of the programs and courses presented as board-approved continuing education hours. The board may request a copy of this information at any time;~~;~~

e. The delivery format for which the applicant is applying;

f. A description of how the continuing education of licensed marriage and family therapist and permitted marriage and family therapy associates support the overall goals of the provider;

g. A description of the target audience, including education level and profession, to whom the program is directed;

h. A statement that the applicant will provide all legally required disability accommodations to participants at live events;

i. A statement that all live programs offered for board-approved credit will be presented in facilities compliant with all federal and state laws, including the Americans with Disabilities Act, 42 U.S.C. 12101, et seq.;

j. A description of the process by which the applicant selects presenters for the continuing education programs;

k. A statement of whether the provider maintains policies concerning program fee, refunds, and cancellations;

l. A description of the organization's procedure for verifying attending, including sign-in sign-out procedures;

m. A description of the organization's procedure for distributing certificates of completion;

n. A description of the record-keeping process that will be utilized to maintain all materials for a period of five (5) years following each program;

o. A description of the method by which program evaluations are obtained from participants and how the evaluation results are used for future program planning; and

p. An attestation that the information provided in the application:

(i) Is complete;

(ii) If approved as a continuing education sponsor, the provider will comply with the terms set forth by the board;

(iii) Board approval will be for a period of two (2) consecutive calendar years;

(iv) Board approval will include all programs and courses that meet board continuing education requirements; and

(v) That the board has the right to audit, at any time, programs and courses to evaluate if they comply with board **administrative** regulations.

(b) An approved continuing education sponsor shall submit to the board an annual report of the education programs offered during the year.

(c) Notwithstanding this subsection, the board shall individually approve the following courses:

1. The six (6) hours of board-approved continuing education courses in supervision under 201 KAR 32:035, Section 2(4);

2. The two (2) hours of continuing education in supervision under 201 KAR 32:035, Section 2(5) needed by a non-AAMFT approved supervisor to maintain board-approved supervisor status;

3. The one (1) hour of continuing education in Kentucky law required under 201 KAR 32:035, Section 2(6);

4. The three (3) hours of marriage and family therapy ethics required by Section 1(3)~~(4)~~ of this administrative regulation; and

5. The fifteen (15) hour telehealth course required by 201 KAR 32:110, Section 3.

(d) The applicant **shall[must]** designate an authorized representative to serve as the sponsor administrator.

1. The administrator is responsible for assuring:

a. That the content of all programs offering continuing education hours meet the qualifications of Section 1(2) of this administrative regulation; and

b. That the programs are conducted by individuals who have relevant education training or experience.

2. The administrator shall serve as the primary contact person with the board concerning sponsor program matters.

Section 4. Responsibilities and Reporting Requirements of Licensees and Associates. (1) Licensees and associates shall:

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

(b) Identify personal continuing education needs;

(c) Take the initiative in seeking continuing professional education activities to meet these needs; and

(d) Seek ways to integrate new knowledge, skills, and attitudes.

(2) Each person holding a license or permit shall:

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

(b) If seeking approval for continuing education from a program not already approved pursuant to Section 2(2) of this administrative regulation and not exempted from requiring board approval pursuant to Section 2(1) of this administrative regulation, submit an Application for Continuing Education Program Approval Individual, as incorporated by reference in 201 KAR 32:030, Section 10 to the board for consideration. The application shall include the:

1. Agenda that is detailed, timed, and includes topics and presenters;

2. Presenter's biography, including education;

3. Credentials of all presenters;

4. All presenters' experience related to topic;

5. Description of training; and

6. Objectives and goals;

(c) Maintain records of continuing education hours. Each licensee and associate shall maintain, for a period of one (1) year from the date of renewal, all documentation verifying successful completion of continuing education hours. During each renewal period, up to fifteen (15) percent of all licensees and associates shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education hours for the current renewal period. Verification of continuing education hours shall not otherwise be reported to the board;

(d) Document attendance and participation in a continuing education activity in the form of official documents including transcripts, certificates, or affidavits signed by instructors. The type of documentation required shall vary depending on the specific activity submitted to the board for approval; and

(e) Fully comply with the provisions of this administrative regulation. Failure to comply shall constitute a violation of KRS 335.340(7) and may result in the refusal to renew, suspension, or revocation of the license or permit.

Section 5. Carry-over of Continuing Education Hours, Prohibited. There shall not be a carry-over of continuing education hours earned in excess of those required under Section 1 of this administrative regulation into the immediately following renewal period.

Section 6. Board to Approve Continuing Education Hours; Appeal Upon Approval Denial. In the event of denial, in whole or part, of any Application for [approval of] Continuing Education Program Approval Individual, as incorporated by reference in 201 KAR 32:030, Section 10[hours], the licensee or associate shall have the right to request reconsideration by the board of its decision. The request shall be in writing and shall be received by the board within thirty (30) days after the date of the board's decision denying approval of continuing education hours.

Section 7. Waiver or Extensions of Continuing Education. (1) The board may, in individual cases involving medical disability, illness, or undue hardship, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill the same or make the required reports.

(2) A request for waiver or extension shall be in writing and submitted within the renewal grace period.

(3) A written request for waiver or extension of time involving medical disability or illness shall be submitted by the licensee or associate accompanied by a verifying document signed by a licensed physician, a physician's assistant, or a nurse practitioner, and shall be received by the board within the grace period.

(4) A written request for waiver or extension of time involving undue hardship shall be submitted by the licensee or associate accompanied by a verifying document signed by the licensee or associate, and shall be received by the board within the grace

period.

(5) A waiver of the minimum continuing education requirements or an extension of time within which to fulfill the continuing education requirements may be granted by the board for a period of time not to exceed one (1) calendar year.

(6) If the medical disability, illness, or undue hardship upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the licensee or associate shall reapply for the waiver or extension in writing prior to the expiration of the previous extension or waiver.

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

(a)] "Application for Continuing Education Sponsor", May[January] 2021, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Marriage and Family Therapists, 500 Mero Street, 2SC32, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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

## BOARDS AND COMMISSIONS

### Board of Alcohol and Drug Counselors (As Amended at ARRS, July 8, 2021)

#### 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 for 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:

**(a)** An individual, family, or group who directly receives services from an alcohol and drug counselor or peer support specialist;

**(b)** 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

**(c)** 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)** A certified alcohol and drug counselor who:

**1.** Has at least two (2) years of post-certification~~[postcredentia]~~ experience;

**2. ~~and~~** Has attended the board-sponsored supervision training;

**3. ~~who~~** Provides supervision; and

**4. ~~Has a~~~~whose~~** credential ~~that~~ is currently in good standing with the board; ~~;~~ ~~or~~

**(b)** A licensed clinical alcohol and drug counselor who:

**1. a.** Has at least twelve (12) months of post-licensure experience; or

**b.** Has attended the board-sponsored supervision training;

**2.** Who provides supervision; and

**3. ~~Has a~~~~whose~~** credential ~~that~~ 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 **309.080 to 309.089**~~[Chapter 309]~~;

(b) Administrative regulations promulgated in accordance with KRS **309.080 to 309.089**~~[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~~(8)~~~~(6)(4)]~~.

**(25)(23)(21)** "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080~~(9)~~~~(7)(5)]~~.

**(26)(24)(22)** "Licensee" is defined by KRS 309.080~~(10)~~~~(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~~(12)~~~~(10)(8)]~~.

**(29)(27)(25)** "Registrant" is defined by KRS 309.080~~(13)~~~~(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.

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**  
**(As Amended at ARRS, July 8, 2021)**

**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, **Application,** KBADC Form 1, shall be fifty (50) dollars. **The application fee for a certified clinical supervisor, Application for 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

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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 paragraph[subparagraph] (a)[1-] of this subsection[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 as a certified alcohol and drug counselor, 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 licensed clinical alcohol and drug counselor and licensed clinical alcohol and drug counselor associate[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)[(e)] 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 himself or herself/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 cancellation 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)[(e)] 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, KBADC Form 16.

(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, KBADC Form 16.

(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, KBADC Form 16.

(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 a licensed clinical alcohol and drug counselor, and a licensed clinical alcohol and drug counselor associate[licensure] shall be \$300 for a three (3) year period, and shall accompany the Application for Renewal, KBADC Form 16.

(l)[(i)](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

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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, KBADC Form 16.**

**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, **KBADC Form 17;**

(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 alcohol[drug] and drug[alcohol] counselor associate II, and 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, **KBADC Form 17;**

(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, **KBADC Form 17;**

(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, KBADC Form 17;**

**(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 **written request[application]** for reactivation, **as required by 201 KAR 35:080, Section 4.**

(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 written request[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 **written request[application]** for reactivation.

(d)[(e)] The fee for reactivation of a license shall be \$300 for a three (3) year period commencing on the date the board approves the **written request[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 shall be/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];~~ **March**

(c) "KBADC Form 17, Application for Reinstatement", ~~March 2021~~~~[June 2015];~~ **and**

**(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[944-Leawood Drive], Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m. The board's Web site address is: <https://adc.ky.gov>.

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

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

**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) require[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)[(e)] A minimum of sixty (60) continuing education hours shall be accrued by each person holding a license as a licensed clinical alcohol and drug counselor during the three (3) year licensure period for renewal with at least three (3) continuing education hours in ethics.

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

(2) A minimum of nine (9) continuing education hours shall be accrued by each person holding a certificate as a certified clinical supervisor during the three (3) year licensure period for renewal, at least three (3) hours of which shall be the board sponsored clinical supervision training. These hours may[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;

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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 licensure, or 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 licensure, or 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>.

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**  
**(As Amended at ARRS, July 8, 2021)**

**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:

1. Comply with the board-approved curriculum in KRS 309.0841; and

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

**(b) A certified alcohol and drug counselor associate I shall:**

**1. Complete at least thirty (30) additional classroom hours of board-approved curriculum during the first twelve (12) months after an initial certificate has been issued, that includes:**

**a. Screening assessment and engagement;**

**b. Treatment planning, collaboration, and referral;**

**c. Counseling; and**

**d. Professional and ethical responsibilities; and**

**2. File with the board KBADC Form 21, Certified Alcohol and Drug Counselor Associate I, Verification of Board-Approved Training for the First Twelve (12) Months After Initial Certification as Associate I, within thirty (30) days of the completion of twelve (12) months after initial certification as a certified alcohol and drug counselor associate I.**

(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 **Board-Approved Curriculum/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 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", July/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; and

(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~~[944 Leaweed 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>.

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

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

**201 KAR 35:055. Temporary registration or certification.**

RELATES TO: KRS 309.083, 309.0831

STATUTORY AUTHORITY: KRS 309.0813(1), (5), 309.083, 309.0831

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(1) and (5) authorize the board to promulgate administrative regulations establishing the requirements for registering with the Board of Alcohol and Drug Counselors 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. This administrative regulation establishes the requirements for temporary credentials **for registered alcohol and drug peer support specialists and certified alcohol drug counselors.**

Section 1. Application for Temporary Registration. (1) An applicant for temporary registration as a certified alcohol and drug peer support specialist may submit an application after the requirements established in KRS 309.0831(1), (2), (6), (7), and (10) are met.

(2) The application required by subsection (1) of this section

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shall be made by submitting a completed KBADC Form 1, incorporated by reference in 201 KAR 35:020. The application shall:

(a) Include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and  
2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:

1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 35:020, Section 1(1);

2. Proof of a high school diploma or equivalent;

3. A signed agreement to abide by the standards of practice and code of ethics approved by the board as established in 201 KAR 35:030;

4. KBADC Form 2, Attestation of Recovery, in which the applicant declares that he or she has been in recovery for a minimum of one (1)[two (2)] years from a substance-related disorder; and

5. A supervision agreement signed by the applicant and the applicant's supervisor.

Section 2. Application for Temporary Certification. (1) An applicant for temporary certification as a certified alcohol and drug counselor may submit KBADC Form 1, incorporated by reference in 201 KAR 35:020, after the requirements established in KRS 309.083(1), (2), (6), (7), and (10) are met.

(2) The application shall:

(a) Include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and

2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:

1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 35:020, Section 1(1);

2. An official transcript for the highest level[all levels] of education required for certification;

3. A signed agreement to abide by the standards of practice and code of ethics approved by the board as established in 201 KAR 35:030; and

4. A supervision agreement signed by the applicant and the applicant's supervisor.

Section 3. Period of Temporary Registration[Credential]. (1) The period of a temporary registration[credential] shall be terminated upon the passage of two (2) years from issuance.

Section 4. Period of Temporary Certification. (1) The period of temporary certification shall be terminated upon the passage of two (2) years from issuance.

(2) The board may approve an extension of the period of a temporary certification [credential] for a maximum of two (2) years if a:

(a) Written request is submitted that is cosigned by the board approved supervisor; and

(b) One (1) of the following exists:

1. A circumstance established[delineated] in 201 KAR 35:040, Section 8(1); or

2. The temporary certified alcohol and drug counselor[credential holder] presents evidence of insufficient time to:

a. Complete supervision, training, or work experience; or

b. Successfully pass the required examination.

(3) The board shall not grant more than three (3)[two (2)] extensions of the period of a temporary certification[credential].

Section 5[4]. Incorporation by Reference. (1) "KBADC Form 2, Attestation of Recovery", March 2021[June 2015], is incorporated

by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Alcohol and Drug Counselors, 500 Mero St. 2 SC 32[911 Leewood 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>.

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

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

#### 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 through[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 **shall** 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) [40] and subsection [section] (3)(d) of this section [regulation].

Section 2. Except as **established [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 **established [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 **requesting [shall submit a Form 4, Request to Provide Supervision,]** to become approved by the board to provide supervision **shall:**

**1. Submit a complete and signed Form 4, Request to**

**Provide Supervision:**

**2. For: (b)]** a certified alcohol and drug counselor **or licensed alcohol and drug counselor, have [who has]** at least two (2) years of post-certification experience, including Alcohol and Drug Counselor credentials transferred through reciprocity, and **have [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]

**3. For:**

**(c)]** a licensed clinical alcohol and drug counselor, **have [who has]** at least twelve (12) months of post-licensure experience, including Advanced Alcohol and Drug Counselor credentials transferred through reciprocity, or **have [has]** attended the board-sponsored supervision training; **and**

**4. Submit information as to whether or not the applicant has any unresolved complaints against the applicant's license or certification in Kentucky or any other state and, if there is an unresolved complaint, submit official documentation of the complaint or complaints. The board shall consider the severity, frequency, and history of violations and unresolved complaints.**

(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 **ensure [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;

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(b) An assessment of the functioning of the supervisee, including the strengths and weaknesses; and

(c) Other information ~~that could~~**[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 **established/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 **established/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 **professional**"**[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 **through/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:

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(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 **established[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 **through[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[~~ReOequest~~] 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[~~941 Leewood Drive~~], Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. The board's Web site address is: <https://adc.ky.gov>.

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

### BOARDS AND COMMISSIONS

#### Board of Alcohol and Drug Counselors (As Amended at ARRS, July 8, 2021)

**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 **through[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 Leewood 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>.

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

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

**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 through[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 CCSS.

(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 established [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 shall/may be granted to a credential holder who meets the criteria established in this section 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 established ~~[provided]~~ in KRS 309.083 through 309.0833, 201 KAR 35:025, 35:050, and 35:070.

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.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET**  
**Kentucky Board of Education**  
**Department of Education**  
**(As Amended at ARRS, July 8, 2021)**

**702 KAR 3:060. Procedure for payment of employees.**

RELATES TO: KRS 157.390, 157.395, 160.291, 160.450, 161.210(1)

STATUTORY AUTHORITY: KRS 156.070(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.291 requires/provides for all school employees working on a continuing, regular basis of less than twelve (12) months a year to be paid regularly, on dates determined by the employing board of education, with the gross salary received on each pay date to be equal to the employee's annual salary divided by the number of pay dates and with payments deemed to be for services rendered. KRS 160.450 requires/provides for the fiscal year of all school districts

to begin on July 1 and end on June 30. KRS 161.210 requires a teacher or other person in a public school to submit reports at the time and in the manner prescribed by the state board. KRS 156.070 requires/gives the Kentucky Board of Education to manage ~~[the management]~~ and control ~~[of the]~~ public schools. KRS 157.395 requires a local board of education to provide a public school teacher who has attained certification from the National Board for Professional Teaching Standard with an annual salary supplement ~~[of \$2000]~~ for the life of the certificate while the teacher is employed as a teacher or mentor in the field of national certification. ~~[A teacher who attained certification from the National Board for Professional Teaching Standards before July 1, 2020 shall receive a national board certification salary supplement of \$2,000 for the life of the certificate. A teacher who attains certification after July 1, 2020, shall receive an annual national board certification salary supplement for the life of the certificate in accordance with the amount appropriated for this purpose by the General Assembly. If an annual supplement amount appropriated by the General Assembly is less than \$2,000, the local board may provide an additional supplement up to the amount required for the total annual supplement to equal \$2,000. A local board of education requests reimbursement for these purposes from the fund to Support Education Excellence in Kentucky (SEEK).]~~ This administrative regulation establishes procedures relative to payment of certified and classified school employees.

Section 1. A board of education shall establish a calendar for payment of salaries to all school employees working on a continuing, regular basis of less than twelve (12) months a year and may require a teacher to present reports of attendance and other necessary reports before the salary check is delivered.

Section 2. A board of education may adopt a policy whereby employees' salaries may be made payable for a period in excess of the number of months for which the school is operated, not exceeding twelve (12) months if the board adopts one (1) of the following plans:

(1) The board of education shall write all deferred salary checks on or before June 30 of the current fiscal year and these deferred checks shall then be delivered at the regular pay periods in July and August of the following fiscal year; or

(2) The board of education shall set up a payroll account into which shall be transferred on the order of the board of education on or before June 30, the gross amount for salaries earned by employees but not paid. The amounts transferred into this payroll account shall be held for the payment of deferred employees' salaries and shall not be used for any other purpose. Payment of salaries from this fund shall be at the regular pay periods in July and August of the following fiscal year.

Section 3. Upon written request to the superintendent by a school district employee, a local board of education shall pay all deferred salary checks to the employee. To comply with the written request, a local board shall provide the deferred checks prior to the end of the fiscal year and no later than the first regular payroll date occurring after completion of the employee's responsibilities or duties.

Section 4. (1) A board of education shall pay an annual national board certification salary supplement ~~[of \$2,000]~~ to a teacher who has attained certification from the National Board for Professional Teaching Standards who works as a teacher or mentor in the field of certification at least fifty (50) percent of the time.

(2) A board of education shall request reimbursement for salaries supplements paid during a school year by submitting the following information to the Department of Education by May 15 of that school year:

- (a) Teacher's name;
- (b) ~~[Social Security number;~~
- (c) ~~[Field of national certification;~~
- (d) ~~[Subject and grade;~~
- (e) ~~[Date of certification;~~
- (f) ~~[For teachers eligible for the first time, the date of~~

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completion of all requirements for the National Board for Professional Teaching certificate;

~~(f)~~~~(g)~~ School name; and

~~(g)~~~~(h)~~ Reimbursement amount requested.

(3) If an eligible teacher satisfactorily completes all requirements for the National Board for Professional Teaching certificate by September 1 of the school year, the salary supplement [of \$2,000] shall be added to the teacher's annual salary. If the teacher becomes eligible for the national board certification salary supplement during the school year, the school district shall pay the portion of the salary supplement equal to the portion of the school year during which the teacher was eligible. ~~If an eligible teacher completes all requirements for the National Board for Professional Teaching certificate between September 2 and December 31 of the school year, the salary supplement of \$1,000 shall be added to the teacher's annual salary.~~

(4) If the teacher becomes ineligible for the national board certification salary supplement during the school year, the school district shall pay the portion of the salary supplement equal to the portion of the school year during which the teacher was eligible.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

CONTACT PERSON: Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (As Amended at Education Assessment and Accountability Review Subcommittee, July 6, 2021)

#### 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 12 [twelve (12)]" non-graduates" means all students enrolled in grade 12 [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 (1) of five (5) 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)] [(24)] "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.



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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 12 [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.

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(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.~~

	Novice		Apprentice		Proficient	Distinguished
	Low	High	Low	High		
Year 1 Student Performance						
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 12 [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 12 [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 9 [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) ~~[(e)]~~ 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 (5) performance levels from highest to lowest: Blue, Green, Yellow, Orange, and Red. Performance of schools, LEAs, and state shall [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)]

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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. [

(e) 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 **shall [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] Kentucky Department of Education Technical Advisory Panel**; 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 shall[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.]

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LABOR CABINET  
Department of Workers' Claims  
(As Amended at ARRS, July 8, 2021)

**803 KAR 25:015. Issuance of citations and procedure in workers' compensation enforcement hearings.**

RELATES TO: KRS Chapter 13B, 342.990

STATUTORY AUTHORITY: KRS ~~13B.070(3)]~~~~13B.090(3)]~~, 13B.170, ~~342.267~~, 342.260, 342.990(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 13B.170 authorizes administrative agencies to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 13B governing administrative hearings. KRS 342.260 requires the Commissioner [~~Executive Director~~] of the Department [~~Office~~] of Workers' Claims to promulgate administrative regulations necessary to carry on the work of the department[~~office~~] and administrative law judges. KRS 13B.070(3) requires administrative agencies to promulgate administrative regulations to set forth specific procedures to facilitate informal settlement of matters. KRS ~~342.260(4)]~~~~342.260(3)]~~ requires processes and procedures to be as summary and simple as reasonably possible. KRS 342.267 and 342.990 establish penalties for various violations of KRS Chapter 342. KRS 342.990 also provides a party the opportunity to challenge a penalty assessed against them. This administrative regulation establishes procedures for enforcement hearings under KRS Chapter 342.

Section 1. Definitions. (1) "Administrative law judge" means an informal appointed pursuant to KRS ~~342.230(2)]~~~~342.230(3)]~~.

(2) "Business day" means any day except Saturday, Sunday or any day which is a legal holiday.

~~(3) "Commissioner" is defined by KRS 342.0011(9). [The definition of "hearing officer" shall be governed by KRS 13B.010(7)-:]~~

~~(3) "Business Working day" means a day that falls on a Monday through Friday, with the exception of a state or federal holiday, or other day on which the Department [Office] of Workers' Claims is officially closed for business.]~~

Section 2. (1) Prior to issuing a notice of citation and penalty, the commissioner [~~executive director~~] may issue a show cause order to a person who has allegedly violated KRS Chapter 342 or 803 KAR Chapter 25 [an administrative regulation promulgated thereunder] to appear at an informal conference to show cause why a citation should not be issued.

(2) The show cause order shall include the following:

(a) Detailed explanation of alleged violations;

(b) Statutes or administrative regulations that were allegedly violated; and]

(c) Date, time, and place of show cause informal conference; and:]

(d) If the commissioner [~~executive director~~] is not presiding over the informal conference, the name of the commissioner's designee [~~presiding hearing officer~~].

(3) The person issued a show cause order shall be present on the specified date, time, and place and show cause why a citation should not be issued.

(4) The commissioner [~~executive director~~] or the commissioner's designee [~~hearing officer~~] shall gather relevant evidence concerning the alleged violations of KRS Chapter 342 from a representative of the Department [~~Office~~] of Workers' Claims and the person to whom the show cause order was issued.

(5) If the commissioner [~~executive director~~] is presiding over the informal conference and the parties wish to resolve the matter informally without the necessity of a citation and a formal hearing, an agreement may be entered.

(6) If the commissioner's designee [~~a hearing officer~~] is presiding over the informal conference and the parties wish to resolve the matter informally without the necessity of a citation and formal hearing, a recommended agreed order shall be submitted to the commissioner [~~executive director~~] for approval.

(7) If the parties do not resolve the matter by agreement and

the commissioner's designee [~~a hearing officer~~] presides over the informal conference, the commissioner's designee [~~hearing officer~~] shall issue a recommended order which includes his findings of fact, conclusions of law, and recommended disposition to the commissioner [~~executive director~~] as to whether a citation should be issued.

(8) The commissioner [~~executive director~~] shall review the evidence and if applicable the recommended order and either:

(a) Issue a citation for [a] violation [or violations] of KRS Chapter 342 or 803 KAR Chapter 25 [the administrative regulations promulgated thereunder];

(b) Issue a statement that no citation is warranted; or

(c) Request additional evidence for further review.

~~(9) The commissioner may/has the discretion to immediately issue a citation for any violation of KRS Chapter 342 or 803 KAR Chapter 25 [the administrative regulations promulgated thereunder] without issuing a show cause order or conducting an informal conference.~~

Section 3. Issuance of Citation and Notice of Contest. (1) If the commissioner [~~executive director~~] initiates enforcement of a civil penalty pursuant to KRS 342.990, the "notice of citation and penalty" shall be delivered to the appropriate party by certified mail or hand-delivered by authorized personnel of the Department [~~Office~~] of Workers' Claims.

(2) The party to whom a notice of citation and penalty has been delivered may contest the citation and penalty by filing a written "notice of contest" with the commissioner [~~executive director~~] within fifteen (15) working days of the receipt of the notice of citation and penalty.

(3) A notice of contest shall state the following:

(a) The specific grounds for [~~Grounds of~~] the contest; and

(b) Whether the fact of a violation or level of the civil penalty, or both, is being contested.

(4) If a notice of contest is not timely filed in accordance with KRS 342.990(4), the citation shall be [deemed] final and the penalty due for payment.

Section 4. Assignment to Administrative Law Judge; Prehearing Procedure. (1) ~~[As soon as practicable upon receipt of a notice of contest, the executive director shall direct the chief administrative law judge to assign the matter to an administrative law judge for a hearing.]~~

(2) In accordance with KRS 342.990(5), the administrative law judge shall[may] require parties to file a stipulation of uncontested facts not later than five (5) business [~~working~~] days prior to the scheduled hearing date.

~~(2) [(3)]~~ The administrative law judge may require each party to file a witness and exhibit list described in KRS 13B.090(3) not later than five (5) business [~~working~~] days prior to the scheduled hearing date with the administrative law judge and all other parties.

Section 5. Formal Hearing. (1) An administrative law judge shall preside over the conduct of the formal hearing and shall regulate the course of the proceeding in accordance with KRS Chapter 13B and any prehearing order issued by the administrative law judge.

(2) A party may submit proof at the formal hearing through the use of depositions, if the other parties received timely notice and had the opportunity to attend.

Section 6. Orders. (1) The administrative law judge shall determine if the commissioner's [~~executive director's~~] citation was properly issued and the penalty appropriately assessed and issue a final order in accordance with KRS 342.990(5) and 13B.120.

(2) The administrative law judge's final order shall be appealable to the Franklin Circuit Court in accordance with KRS 342.990(6) and 13B.140.

Section 7. Appeal/Payment of Fine. (1) If a party does not file a petition of appeal pursuant to KRS 342.990 and 13B.140, the order shall be [deemed] final and the civil penalty assessed in the order shall be due.

(2) A civil penalty that is not appealed to the Franklin Circuit Court shall be paid by certified check or money order payable to the Kentucky State Treasurer. The fine shall be mailed to the Department of Workers' Claims, Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. [~~Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601 ATTN: Enforcement Docket.~~]

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

**810 KAR 2:001. Definitions for 810 KAR Chapter 2.**

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. KRS 230.260(8) authorizes the commission to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in this state. This administrative regulation defines the terms used in 810 KAR Chapter 2.

Section 1. Definitions.

(1) "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled on January 1 of the year in which the horse was foaled.

(2) "Arrears" means sums due by a licensee as reflected by his or her account with the horsemen's bookkeeper, including subscriptions, jockey fees, driver fees, forfeitures, and any default incident to KAR Title 810.

(3) "Association" is defined by KRS 230.210(5).

(4) "Authorized agent" means in flat racing a person currently licensed as an agent for a licensed owner, jockey, or jockey apprentice by virtue of notarized appointment of agency filed with the commission.

(5) "Claiming race" means a race in which ownership of a horse participating in the race can[may] be transferred in conformity with 810 KAR 4:050 and 810 KAR 5:030.

(6) "Closing" means the time published by the association after which entries for a race are not[will not be] accepted by the racing secretary.

(7) "Commission" is defined by[is] 810 KAR 6:001. [~~means:~~

~~(a) The Kentucky Horse Racing Commission if used in the context of the administrative agency governing horse racing and pari-mutuel wagering; or~~

~~(b) The amount an association is authorized to withhold from a pari-mutuel wager pursuant to KRS 230.3615, if used in the context of pari-mutuel wagering.]~~

(8) "Conditions" means qualifications that determine a horse's eligibility to be entered in a race.

(9) "Dash" means in standardbred racing a race in a single trial or in a series of two (2) or three (3) races governed by one (1) entry fee for the series, in which a horse starts in all dashes with positions drawn for each dash and the number of purse distributions or payouts awarded exceeds the number of starters in the dash.

(10) "Day" means a twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

(11) "Declaration" means:

(a) In flat racing, the withdrawal of a horse entered in a race prior to time of closing of entries for the race in conformance with 810 KAR Chapter 4; or[.];

(b) In standardbred racing, the naming of a particular horse as a starter in a particular race.

(12) "Disciplinary action" means action taken by the stewards or the commission for a violation of KRS Chapter 230 or KAR Title 810 and can include:

(a) Refusal to issue or renew a license;

(b) Revocation or suspension of a license;

(c) Imposition of probationary conditions on a license;

(d) Issuance of a written reprimand or admonishment;

(e) Imposition of fines or penalties;

(f) Denial of purse money; or

(g) Forfeiture of purse money.

(13) "Disqualification" means a ruling of the stewards, judges, or the commission revising the order of finish of a race.

(14) "Draw" means the process of determining post positions by lot.

(15) "Driver" means in standardbred racing a person who is licensed to drive a horse in a race.

(16) "Electronic eligibility" means a computer-generated eligibility certificate that records a horse's racing statistics.

(17) "Entry" means the act of nominating a horse for a race in conformance with KAR Title 810.

(18) "Equipment" means in flat racing accoutrements other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, and includes riding crop, blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.

(19) "Extended pari-mutuel meeting" means in standardbred racing a meeting or series of meetings, at which no agriculture fair is in progress, with an annual total of more than six (6) days duration and during which pari-mutuel wagering is permitted.

(20) "Field" or "mutuel field" means a single betting interest involving more than one (1) horse that is not a mutuel entry.

(21) "Foul" means an action by a jockey or driver that tends to hinder another jockey, driver, or a horse in the proper running of the race.

(22) "Handicap" means in standardbred racing a race in which allowances are made according to a horse's:

(a) Age;

(b) Sex;

(c) Claiming price; or

(d) Performance.

(23) "Handicap race" means in flat racing a race in which the weights to be carried by the horses are assigned by the association handicapper with the intent of equalizing the chances of winning for all horses entered in the race.

(24) "Handle" means the aggregate of all pari-mutuel pools, excluding refundable wagers.

(25) "Horse" means an equine irrespective of age or sex designation and registered for racing with the applicable breed registry.

(26) "Ineligible" means a horse or person not qualified under KAR Title 810 or conditions of a race to participate in a specified racing activity.

(27) "Inquiry" means an investigation by the stewards or judges of a contest prior to declaring the result of the contest official.

(28) "Jockey" means a rider currently licensed to ride in races as a jockey, apprentice jockey, amateur jockey, or a provisional jockey permitted by the stewards to ride in three (3) races prior to applying for a license.

(29) "Judge" means a duly appointed racing official with powers and duties established[specified] in 810 KAR 2:050 serving at a current meeting in the Commonwealth.

(30) "Licensed premises" is defined by KRS 230.210[in 810 KAR 6:001]. [~~means:~~

~~(a) The location and physical plant described in response to question R of the "Commonwealth of Kentucky Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-Mutuel Wagering" filed for racing to be conducted in the following year;~~

~~(b) Real property of an association, if the association receives approval from the commission for a new location at which live racing will be conducted; or~~

~~(c) One (1) facility or real property that is:~~

~~1. Owned, leased, or purchased by a licensed association within a sixty (60) mile radius of the association's track but not contiguous to track premises, upon commission approval; and~~

~~2. For purposes of paragraphs (b) and (c) of this subsection, is not within a sixty (60) mile radius of another licensed track premise where live racing is conducted and not within a forty (40) mile radius of a simulcast facility, unless any affected track or simulcast~~

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facility agrees in writing to permit a noncontiguous facility within the protected geographic area.]

(31) "Licensee" means an individual, firm, association, partnership, corporation, trustee, or legal representative that has been duly issued a currently valid license to participate in racing in the Commonwealth.

(32) "Meeting" means the entire period of consecutive days, exclusive of dark days, granted by the commission to a licensed association for the conduct of live horse racing that:

(a) Begins at 10 a.m. of the first racing day; and

(b) Extends through a period ending one (1) hour after the last scheduled race of the last day.

(33) "Month" means calendar month.

(34) "Nomination" means a subscription or entry of a horse in a stakes or early closing race.

(35) "Nominator" means the person in whose name a horse is entered for a stakes race.

(36) "Objection" means a verbal claim of foul in a race lodged by the horse's jockey, driver, trainer, or owner before the race is declared official.

(37) "Official order of finish" means the order of finish of the horses in a contest as declared official by the stewards or judges.

(38) "Official time" means the elapsed time from the moment the first horse crosses the timing beam until the first horse crosses the finish line.

(39) "Owner" means a person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for the horse.

(40) "Pari-mutuel wagering", "mutuel wagering", or "pari-mutuel system of wagering" ~~is defined by KRS 230.210[in 810 KAR 6:001]. [means a system or method of wagering approved by the commission in which patrons are wagering among themselves and not against the association and amounts wagered are placed in one or more designated wagering pools and the net pool is returned to the winning patrons.]~~

(41) "Patron" means an individual present at a track, a licensed premises, or a simulcast facility who observes or wagers on a live or historical horse race.

(42) "Post" means the starting point of a race.

(43) "Post position" means the relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

(44) "Post time" means the advertised moment scheduled for the arrival of all horses at the starting point for a race.

(45) "Prize" means the combined total of any cash, premium, trophy, and object of value awarded to the owners of horses according to order of finish in a race.

(46) "Protest" means a written objection charging that a horse is ineligible to race, alleging improper entry procedures, or citing any act of an owner, trainer, driver, or official prohibited by rules, which, if true, would exclude that horse or driver from racing.

(47) "Purse" means the gross cash portion of the prize for which a race is run.

(48) "Race" means a running contest between horses, ridden by jockeys or driven by drivers at a recognized meeting, during regular racing hours, for a prize.

(49) "Race day" means a period of twenty-four (24) hours beginning at 12:01 a.m. and ending at midnight in which live racing is conducted by an association.

(50) "Racing official" means a racing commission member, commission staff as duties require, and all association racing department employees, as duties require.

(51) "Registration certificate" means the document, racing permit, or virtual certificate issued by the appropriate breed registry identifying the horse for racing.

(52) "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pari-mutuel pools.

(53) "Rulings" means determinations, decisions, or orders of the stewards, judges, or of the commission duly issued in writing and posted.

(54) "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries for the race in conformance

with KAR Title 810.

(55) "Scratch time" means the time set by the racing secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

(56) "Simulcasting" is defined by KRS 230.210[(49)].

(57) "Starter" means:

(a) An official who dispatches the horses from the starting gate; or

(b) A horse in a race when the starting gate doors open in front of it at the moment the starter dispatches the horses for the race.

(58) "Steward" means a duly appointed racing official with powers and duties established[specified] in 810 KAR 2:040 serving at a current meeting in the Commonwealth.

(59) "Subscription" means nomination or entry of a horse in a stakes race.

(60) "Suspended" means withdrawal by the steward, judge, or commission of racing privileges.

(61) "Thoroughbred racing" is defined by KRS 230.210[(24)].

(62) "Totalizator" means the system, including hardware, software, communications equipment, and electronic devices that accepts and processes the cashing of wagers, calculates the odds and prices of the wagers, and records, displays, and stores pari-mutuel wagering information.

(63) "Year" means twelve (12) consecutive months beginning with January and ending with December.

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

#### 810 KAR 3:001. Definitions for 810 KAR Chapter 3.

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes[grants] the Kentucky Horse Racing Commission to[(the "commission")]~~commission the authority to]~~ regulate conditions under which horse racing is conducted in Kentucky. KRS 230.260(8) authorizes[grants] the commission ~~[the authority]~~ to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in this state. This administrative regulation defines the terms used in 810 KAR Chapter 3.

#### Section 1. Definitions.

(1) "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled on January 1 of the year in which the horse was foaled.

(2) "Allowance race" means a race in which contestants receive weight allowance based on performance or winnings as stipulated in the conditions of the race.

(3) "ARCI" means the Association of Racing Commissioners International.

(4) "Association" is defined by KRS 230.210[(5)].

(5) "Authorized agent" means in flat racing any person currently licensed as an agent for a licensed owner, jockey, or jockey apprentice by virtue of notarized appointment of agency filed with the commission.

(6) "Claiming race" means a race in which ownership of a horse participating in the race can[may] be transferred in conformity with 810 KAR 4:050 and 810 KAR 5:030

(7) "Commission" is defined by[in] 810 KAR 6:001. ~~[means:~~

~~(a) The Kentucky Horse Racing Commission as defined by KRS 230.210(16) if used in the context of the administrative agency governing horse racing and pari-mutuel wagering; or~~

~~(b) The amount an association is authorized to withhold from a pari-mutuel wager pursuant to KRS 230.3615, if used in the~~

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context of pari-mutuel wagering.]

(8) "Conditions" means qualifications that determine a horse's eligibility to be entered in a race.

(9) "Coupled entry" means two (2) or more horses in a race that are treated as a single betting interest for pari-mutuel wagering purposes.

(10) "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

(11) "Directive" means an official order issued by the commission or the executive director.

(12) "Draw" means the process of determining post positions by lot.

(13) "Driver" means in standardbred racing a person who is licensed to drive a horse in a race.

(14) "Early closing race" means in standardbred racing a race for a definite amount of money in which entries close at least six (6) weeks prior to the race.

(15) "Electronic eligibility" means a computer-generated eligibility certificate that records a horse's racing statistics.

(16) "Entry" means the act of nominating a horse for a race in conformance with KAR Title 810.

(17) "Equipment" means in flat racing accoutrements other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, and includes whip, blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.

(18) "Horse" means any equine irrespective of age or sex designation and registered for racing with the applicable breed registry.

(19) "Ineligible" means a horse or person not qualified under KAR Title 810 or conditions of a race to participate in a specified racing activity.

(20) "Jockey" means a rider currently licensed to ride in races as a jockey, apprentice jockey, amateur jockey, or a provisional jockey permitted by the stewards to ride in three (3) races prior to applying for a license.

(21) "Judge" means a duly appointed racing official with powers and duties ***established[specified]*** in 810 KAR 2:050 serving at a current meeting in the Commonwealth.

(22) "Lessee" means a licensed owner whose interest in a horse is a leasehold.

(23) "Licensee" means an individual, firm, association, partnership, corporation, limited liability company, trustee, or legal representative that has been duly issued a currently valid license to participate in racing in the Commonwealth.

(24) "Meeting" means the entire period of consecutive days, exclusive of dark days, granted by the commission to a licensed association for the conduct of live horse racing ***that:***

***(a) Begins[– A meeting shall begin]*** at 10 a.m. of the first racing day; and

***(b) Extends[extend]*** through a period ending one (1) hour after the last scheduled race of the last day.

(25) "Mutuel entry" means a single betting interest involving two (2) or more horses entered in the same race and joined for pari-mutuel purposes because of common ties as to ownership or training so that a wager on one (1) horse joined in a mutuel entry is a wager on all horses joined in the same mutuel entry.

(26) "Nominal change in ownership" means the sale, pledge, encumbrance, execution of an option agreement, or any other transfer of less than five (5) percent of the equity securities or other ownership interest of a partnership, association, corporation, limited liability company, or other legal entity holding a license issued by the commission.

(27) "Owner" means any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for the horse.

(28) "Pari-mutuel wagering," "mutuel wagering," or "pari-mutuel system of wagering" ***is defined by KRS 230.210[in 810 KAR 6:001]*** ~~each means a system or method of wagering approved by the commission in which patrons are wagering among themselves and not against the association and amounts wagered are placed in one (1) or more designated wagering pools and the net pool is~~

~~returned to the winning patrons.]~~

(29) "Protest" means a written objection charging that a horse is ineligible to race, alleging improper entry procedures, or citing any act of an owner, trainer, driver, or official prohibited by rules which, if true, would exclude that horse or driver from racing.

(30) "Purse" means the gross cash portion of the prize for which a race is run.

(31) "Race" means a running contest between horses ridden by jockeys or driven by drivers at a recognized meeting, during regular racing hours, for a prize.

(32) "Racing official" means a racing commission member, commission staff, as duties require, and all association racing department employees, as duties require.

(33) "Result" means the part of the official order of finish in a race used to determine the parimutuel payoff of pari-mutuel pools.

(34) "Ruled off" means denial of entrance to premises of any association under jurisdiction of the commission.

(35) "Rulings" means all determinations, decisions, or orders of the stewards or of the commission duly issued in writing and posted.

(36) "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries for the race.

(37) "Simulcasting" is defined by KRS 230.210[~~(49)~~].

(38) "Steward" means a duly appointed racing official with powers and duties ***established[specified]*** in 810 KAR 2:040 serving at a current meeting in the Commonwealth.

(39) "Substantial change in ownership" means the sale, pledge, encumbrance, execution of an option agreement, or any other transfer of five (5) percent or more of the equity securities or other ownership interest of a partnership, association, corporation, limited liability company, or other legal entity holding a license issued by the commission.

(40) "Suspended" means withdrawal of racing privileges by the stewards or commission.

(41) "Totalizator" means the system, including hardware, software, communications equipment, and electronic devices, that accepts and processes the cashing of wagers, calculates the odds and prices of the wagers, and records, displays, and stores pari-mutuel wagering information.

(42) "USTA" means the United States Trotting Association.

(43) "Workout" means in flat racing the training exercise of a horse on the training track or main track of an association during which the horse is timed for speed over a specified distance.

(44) "Year" means twelve (12) consecutive months beginning with January and ending with December.

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

#### 810 KAR 4:001. Definitions for 810 KAR Chapter 4.

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.215, 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) ~~authorizes[grants]~~ the Kentucky Horse Racing Commission ~~["commission"]~~ ~~commission the authority~~ to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. KRS 230.260(8) ~~authorizes[grants]~~ the commission ~~[the authority]~~ to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in Kentucky ~~[this state]~~. This administrative regulation defines the terms used in 810 KAR Chapter 4.

Section 1. Definitions.

(1) "Added money" means the amount of money, exclusive of

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trophy, added into a stakes race by an association, a sponsor, a state-bred program, or other fund, and that is in addition to stakes fees paid by subscribers.

(2) "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled on January 1 of the year in which the horse was foaled.

(3) "Allowance race" means a race in which contestants receive weight allowance based on performance or winnings as stipulated in the conditions of the race.

(4) "Also eligible" means in flat racing an eligible horse, properly entered, which is not drawn for inclusion in a race, but which becomes eligible according to preference or lot if another horse is scratched prior to the scratch time deadline.

(5) "Appeal" means a request for the commission to investigate, consider, and review any decision or ruling of a steward [or judge] or official of a meeting.

(6) "Arrears" means all sums due by a licensee as reflected by his or her account with the horsemen's bookkeeper, including subscriptions, jockey fees, [driver fees,] forfeitures, and any default incident to KAR Title 810.

(7) "Association" is defined by KRS 230.210[~~(5)~~].

(8) "Authorized agent" means in flat racing any person currently licensed as an agent for a licensed owner, jockey, or jockey apprentice by virtue of notarized appointment of agency filed with the commission.

(9) "Calendar days" means consecutive days counted irrespective of number of racing days.

(10) "Claiming race" means a race in which ownership of a horse participating in the race may be transferred in conformity with 810[844] KAR 4:050.

(11) "Closing" means the time published by the association after which entries for a race are not accepted by the racing secretary.

(12) "Coggins test" means a blood test used to determine if a horse is positive for Equine Infectious Anemia.

(13) "Commission" is defined by/in] 810 KAR 6:001. [means:

~~(a) The Kentucky Horse Racing Commission (formerly known as the Kentucky Horse Racing Authority if used in the context of the administrative agency governing horse racing and pari-mutuel wagering; and~~

~~(b) The amount an association is authorized to withhold from a pari-mutuel wager pursuant to KRS 230.3615, if used in the context of pari-mutuel wagering.]~~

(14) "Conditions" means qualifications that determine a horse's eligibility to be entered in a race.

(15) "Coupled entry" means two (2) or more horses in a race that are treated as a single betting interest for pari-mutuel wagering purposes.

(16) "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

(17) "Declaration" means in flat racing the withdrawal of a horse entered in a race prior to time of closing of entries for the race in conformance with 810 KAR 4:030.

(18) "Directive" means an official order issued by the commission or the executive director.

(19) "Disciplinary action" means action taken by the stewards or the commission for a violation of KRS Chapter 230 or KAR Title 810 and can include:

- (a) Refusal to issue or renew a license;
- (b) Revocation or suspension of a license;
- (c) Imposition of probationary conditions on a license;
- (d) Issuance of a written reprimand or admonishment;
- (e) Imposition of fines or penalties;
- (f) Denial of purse money;
- (g) Forfeiture of purse money; or
- (h) Any combination of paragraphs (a) through (g) of this subsection.

(20) "Disqualification" means a ruling of the stewards[, judges,] or the commission revising the order of finish of a race.

(21) "Draw" means the process of determining post positions by lot.

(22) "Entry" means the act of nominating a horse for a race in conformance with KAR Title 810.

(23) "Equipment" means in flat racing accoutrements other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, and includes riding crop, blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.

(24) "Field" or "mutuel field" means a single betting interest, which is not a mutuel entry, involving more than one (1) horse.

(25) "Forfeit" means money due by a licensee because of an error, fault, neglect of duty, breach of contract, or alternative ruling of the stewards[, judges,] or the commission.

(26) "Foul" means any action by any jockey [or driver] that tends to hinder another jockey or any horse in the proper running of the race.

(27) "Handicap race" means in flat racing a race in which the weights to be carried by the horses are assigned by the association handicapper with the intent of equalizing the chances of winning for all horses entered in the race.

(28) "Horse" means any equine irrespective of age or sex designation and registered for racing with the applicable breed registry.

(29) "Ineligible" means a horse or person not qualified under Title 810 KAR or conditions of a race to participate in a specified racing activity.

(30) "Inquiry" means an investigation by the stewards [or judges] of a contest prior to declaring the result of the contest official.

(31) "Jockey" means a rider currently licensed to ride in races as a jockey, apprentice jockey, amateur jockey, or a provisional jockey permitted by the stewards to ride in three (3) races prior to applying for a license.

(32) "Lessee" means a licensed owner whose interest in a horse is a leasehold.

(33) "Licensee" means an individual, firm, association, partnership, corporation, trustee, or legal representative that has been duly issued a currently valid license to participate in racing in the Commonwealth.

(34) "Maiden" means in flat racing, a horse that has never won a race at a recognized meeting in any country.

(35) "Meeting" means the entire period of consecutive days, exclusive of dark days, granted by the commission to a licensed association for the conduct of live horse racing that:

(a) [A meeting] Begins at 10 a.m. of the first racing day; and  
(b) Extends[extend] through a period ending one (1) hour after the last scheduled race of the last day.

(36) "Month" means calendar month.

(37) "Mutuel entry" means a single betting interest involving two (2) or more horses entered in the same race and joined for pari-mutuel purposes because of common ties as to ownership or training so that a wager on one (1) horse joined in a mutuel entry is a wager on all horses joined in the same mutuel entry.

(38) "Nominator" means the person in whose name a horse is entered for a stakes race.

(39) "Objection" means a verbal claim of foul in a race lodged by the horse's jockey, [driver,] trainer, or owner before the race is declared official.

(40) "Official order of finish" means the order of finish of the horses in a contest as declared official by the stewards [or judges].

(41) "Official time" means the elapsed time from the moment the first horse crosses the timing beam until the first horse crosses the finish line.

(42) "Owner" means any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for the horse.

(43) "Pari-mutuel wagering", "mutuel wagering", or "pari-mutuel system of wagering" is defined by KRS 230.210[in 810 KAR 6:001]. [each means a system or method of wagering approved by the commission in which patrons are wagering among themselves and not against the association and amounts wagered are placed in one (1) or more designated wagering pools and the net pool is returned to the winning patrons.]

(44) "Post" means the starting point of a race.

(45) "Post position" means the relative place assigned to each



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horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

(46) "Post time" means the advertised moment scheduled for the arrival of all horses at the starting point for a race.

(47) "Protest" means a written objection charging that a horse is ineligible to race, alleging improper entry procedures, or citing any act of an owner, trainer, [driver,] or official prohibited by rules, which, if true, would exclude that horse or jockey[driver] from racing.

(48) "Purse" means the gross cash portion of the prize for which a race is run.

(49) "Purse race" means any race for which entries close at a time designated by the racing secretary, and for which owners of horses entered are not required by its conditions to contribute money toward its purse.

(50) "Race" means a running contest between horses[...], ridden by jockeys [or driven by drivers] at a recognized meeting, during regular racing hours, for a prize.

(51) "Race day" means any period of twenty-four (24) hours beginning at 12:01 a.m. and ending at midnight in which live racing is conducted by an association.

(52) "Racing official" means a racing commission member, commission staff, as duties require, and all association racing department employees, as duties require.

(53) "Recognized meeting" means any meeting with regularly scheduled live horse races, licensed by and conducted under administrative regulations promulgated by a governmental regulatory body, and conducted with the applicable breed registry.

(54) "Registration certificate" means the document, racing permit, or virtual certificate issued by the appropriate breed registry identifying the horse for racing.

(55) "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pari-mutuel pools.

(56) "Rulings" means all determinations, decisions, or orders of the stewards or of the commission duly issued in writing and posted.

(57) "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries for the race.

(58) "Scratch time" means the time set by the racing secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

(59) "Specimen" means a sample of blood, urine, or other biologic sample taken or drawn from a horse for chemical testing.

(60) "Stakes" mean all fees paid by subscribers to an added-money or stakes race for nominating, eligibility, entrance, or starting, as required by the conditions of the race, with the fees to be included in the purse.

(61) "Stakes race" means a race that closes more than seventy-two (72) hours in advance of its running and for which subscribers contribute money towards its purse

(62) "Starter" means either:

(a) An official who dispatches the horses from the starting gate;

or

(b) A horse in a race when the starting gate doors open in front of it at the moment the starter dispatches the horses for the race.

(63) "Steward" means a duly appointed racing official with powers and duties established in 810 KAR 2:040 serving at a current meeting in the Commonwealth.

(64) "Subscription" means nomination or entry of a horse in a stakes race.

(65) "Suspended" means withdrawal of racing privileges by the stewards or commission.

(66) "Thoroughbred racing" is defined by KRS 230.210[(21)].

(67) "Tote" or "tote board" means the totalizator.

(68) "Unplaced" means a horse that finishes a race outside the pari-mutuel payoff.

(69) "Walkover" means a race in which the only starter or all starters represent single ownership.

(70) "Weigh in" means in flat racing the presentation of a jockey to the clerk of scales for weighing after a race.

(71) "Weigh out" means in flat racing the presentation of a jockey to the clerk of scales for weighing prior to a race.

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

#### 810 KAR 5:001. Definitions for 810 KAR Chapter 5.

RELATES TO: KRS 230.210, 230.215, 230.260, 230.3615

STATUTORY AUTHORITY: KRS 230.215, 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations establishing conditions under which standardbred[thoroughbred] racing shall be conducted in Kentucky. KRS 230.260(8) authorizes the commission to promulgate necessary and reasonable administrative regulations establishing conditions under which horse racing at a horse race meeting shall be conducted in this state. This administrative regulation defines the terms used in 810 KAR Chapter 5.

#### Section 1. Definitions.

(1) "Added money" means the amount of money, exclusive of trophy, added into a stakes race by an association, a sponsor, a state-bred program, or other fund, and which is in addition to stakes fees paid by subscribers.

(2) "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled on January 1 of the year in which the horse was foaled.

(3) "Also eligible" means in standardbred racing:

(a) An eligible horse, properly entered, which is not drawn for inclusion in a race, but which becomes eligible according to preference or lot if another horse is scratched prior to the scratch time deadline; or

(b) The next preferred nonqualifier for the finals, or consolation from a set of elimination trials, which becomes eligible if a finalist is scratched by the judges for a rule violation, or is otherwise eligible if written race conditions permit.

(4) "Appeal" means a request for the commission to investigate, consider, and review any decision or ruling of a [steward,]judge[.] or official of a meeting.

(5) "ARCI" means the Association of Racing Commissioners International.

(6) "Association" is defined by KRS 230.210[(5)].

(7) "Claiming race" means a race in which ownership of a horse participating in the race may be transferred in conformity with 810 KAR 5:030.

(8) "Closing" means the time published by the association after which entries for a race will not be accepted by the racing secretary.

(9) "Coggins test" means a blood test used to determine if a horse is positive for Equine Infectious Anemia.

(10) "Commission" is defined in 810 KAR 6:001. [means:

(a) The Kentucky Horse Racing Commission if used in the context of the administrative agency governing horse racing and pari-mutuel wagering; or

(b) The amount an association is authorized to withhold from a pari-mutuel wager pursuant to KRS 230.3615, if used in the context of pari-mutuel wagering.]

(11) "Condition race" means an overnight race in which eligibility is determined according to specified conditions, such as[which may include the following]:

(a) Age;

(b) Sex;

(c) Earnings;

(d) Number of starts; or

(e) Positions of finishes.

(12) "Conditions" means qualifications that determine a horse's eligibility to be entered in a race.

(13) "Coupled entry" means two (2) or more horses in a race that are treated as a single betting interest for pari-mutuel wagering

purposes.

(14) "Dash" means [~~in standardbred racing~~] a race in a single trial or in a series of two (2) or three (3) races governed by one (1) entry fee for the series, in which:

(a) A horse starts in all races with positions drawn for each race; and

(b) The number of purse distributions or payouts awarded does exceed the number of starters in the race.

(15) "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

(16) "Declaration" means [~~in standardbred racing~~] the naming of a particular horse as a starter in a particular race.

(17) "Disqualification" means a ruling of the [~~stewards,~~] judges[;] or the commission revising the order of finish of a race.

(18) "Draw" means the process of determining post positions by lot.

(19) "Driver" means [~~in standardbred racing~~] a person who is licensed to drive a horse in a race.

(20) "Early closing race" means [~~in standardbred racing~~] a race for a definite amount of money in which entries close at least six (6) weeks prior to the race.

(21) "Electronic eligibility" means a computer-generated eligibility certificate that records a horse's racing statistics.

(22) "Elimination heat" means [~~in standardbred racing~~] an individual heat of a race in which the contestants qualify for a final heat.

(23) "Entry" means the act of nominating a horse for a race in conformance with KAR Title 810.

(24) "Extended pari-mutuel meeting" means [~~in standardbred racing~~] a meeting or series of meetings:

(a) At which **an agricultural fair is not**[~~no agriculture fair is~~] in progress;

(b) With an annual total of more than six (6) days duration; and

(c) During which pari-mutuel wagering is permitted.

(25) "Field" or "mutuel field" means a single betting interest involving more than one (1) horse that is not a mutuel entry.

(26) "Forfeit" means money due by a licensee because of an error, fault, neglect of duty, breach of contract, or alternative ruling of the [~~stewards,~~] judges[;] or the commission.

(27) "Foul" means any action by any [~~jockey or~~] driver that tends to hinder another driver[;] [~~jockey,~~] or any horse in the proper running of the race.

(28) "Futurity" means [~~in standardbred racing~~] a stake in which the dam of the competing animal is nominated either when in foal or during the year of foaling.

(29) "Handicap" means [~~in standardbred racing~~] a race in which allowances are made according to a horse's:

(a) Age;

(b) Sex;

(c) Claiming price; or

(d) Performance.

(30) "Horse" means any equine registered for racing with the applicable breed registry, irrespective of age or sex designation.

(31) "Ineligible" means a horse or person not qualified under Title 810 KAR or conditions of a race to participate in a specified racing activity.

(32) "In harness" means[;] [~~in standardbred racing,~~] that the performance will be to a sulky.

(33) "Judge" means a duly appointed racing official with powers and duties **established**[~~specified~~] in 810 KAR 2:050 serving at a current meeting in the Commonwealth.

(34) "Late closing race" means [~~in standardbred racing~~] a race for a fixed amount of money in which entries close less than six (6) weeks but more than three (3) days before the race is to be contested.

(35) "Lessee" means a licensed owner whose interest in a horse is a leasehold.

(36) "Licensed premises" is defined **by KRS 230.210**[~~in 810 KAR 6:001~~]. [means:

(a) The location and physical plant described in response to question S of the "Commonwealth of Kentucky Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-Mutuel Wagering" filed for racing to be

conducted in the following year;

(b) Real property of an association, if the association receives approval from the commission for a new location at which live racing will be conducted; or

(c) One (1) facility or real property that is:

1. Owned, leased, or purchased by a licensed association within a sixty (60) mile radius of the association's track but not contiguous to track premises, upon commission approval; and

2. For purposes of paragraphs (b) and (c) of this subsection, is not within a sixty (60) mile radius of another licensed track premises where live racing is conducted and not within a forty (40) mile radius of a simulcast facility, unless any affected track or simulcast facility agrees in writing to permit a noncontiguous facility within the protected geographic area.]

(37) "Licensee" means an individual, firm, association, partnership, corporation, trustee, or legal representative that has been duly issued a currently valid license to participate in racing in the Commonwealth.

(38) "Meeting" means the entire period of consecutive days, exclusive of dark days, granted by the commission to a licensed association for the conduct of live horse racing that:

(a) Begins at 10 a.m. of the first racing day; and

(b) Extends through a period ending one (1) hour after the last scheduled race of the last day.

(39) "Month" means calendar month.

(40) "Mutuel entry" means a single betting interest involving two (2) or more horses entered in the same race and joined for pari-mutuel purposes because of common ties as to ownership or training so that a wager on one (1) horse joined in a mutuel entry is a wager on all horses joined in the same mutuel entry.

(41) "Nomination" means a subscription or entry of a horse in a stakes or early closing race.

(42) "Nominator" means the person in whose name a horse is entered for a stakes race.

(43) "Objection" means a verbal claim of foul in a race lodged by the horse's [~~jockey,~~] driver, trainer, or owner before the race is declared official.

(44) "Official time" means the elapsed time from the moment the first horse crosses the timing beam until the first horse crosses the finish line.

(45) "Overnight race" means a contest for which entries close at a time set by the racing secretary.

(46) "Owner" means any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for the horse.

(47) "Pari-mutuel wagering," "mutuel wagering", or "pari-mutuel system of wagering" is defined **by KRS 230.210**[~~in 810 KAR 6:001~~]. [each means a system or method of wagering approved by the commission in which patrons are wagering among themselves and not against the association and amounts wagered are placed in one (1) or more designated wagering pools and the net pool is returned to the winning patrons.]

(48) "Patron" means an individual present at a track, a licensed premises, or a simulcast facility who observes or wagers on a live or historical horse race.

(49) "Post" means the starting point of a race.

(50) "Post position" means the relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

(51) "Post time" means the advertised moment scheduled for the arrival of all horses at the starting point for a race.

(52) "Protest" means a written objection charging that a horse is ineligible to race, alleging improper entry procedures, or citing any act of an owner, trainer, driver, or official prohibited by rules which, if true, would exclude that horse or driver from racing.

(53) "Purse" means the gross cash portion of the prize for which a race is run.

(54) "Purse race" means any race for which entries close at a time designated by the racing secretary, and for which owners of horses entered are not required by its conditions to contribute money toward its purse.

(55) "Race" means a running contest between horses, [ridden

by jockeys or] driven by drivers at a recognized meeting, during regular racing hours, for a prize.

(56) "Race day" means any period of twenty-four (24) hours beginning at 12:01 a.m. and ending at midnight in which live racing is conducted by an association.

(57) "Racing official" means a racing commission member, commission staff, as duties require, and all association racing department employees, as duties require.

(58) "Registration certificate" means the document, racing permit, or virtual certificate issued by the appropriate breed registry identifying the horse for racing.

(59) "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pari-mutuel pools.

(60) "Rulings" means all determinations, decisions, or orders of the judges[stewards] or of the commission issued in writing and posted.

(61) "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries for the race in conformance with Title 810 KAR.

(62) "Scratch time" means the time set by the racing secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

(63) "Simulcasting" is defined by KRS 230.210[(49)].

(64) "Stable name" means [in ~~standardbred racing~~] a name used other than the actual legal name of an owner or lessee and that[which] has been registered with the United States Trotting Association.

(65) "Stake" means [in ~~standardbred racing~~] a race that[which] will be contested in a year subsequent to the closing of that year in which[its closing]:

(a) [~~in which~~]The money given by the association conducting the race is added to the money contributed by the nominators, all of which, except deductions for breeders or nominator's awards, belongs to the winner or winners; and

(b) [~~in which,~~]Except as established[provided] in 810 KAR 5:050, Section 6, all of the money contributed by the nominators belongs to the winner or winners.

(66) "Stakes" mean all fees:

(a) Paid by subscribers to an added-money or stakes race for nominating, eligibility, entrance, or starting, as required by the conditions of the race; and

(b) Included in the purse.

(67) "Starter" means either:

(a) An official who dispatches the horses from the starting gate; or

(b) A horse in a race when the starting gate doors open in front of it at the moment the starter dispatches the horses for the race.

(68) "Subscription" means nomination or entry of a horse in a stakes race.

(69) "Sulky" means a dual-wheel racing vehicle with dual shafts not exceeding the height of the horse's withers.

(70) "Suspended" means withdrawal of racing privileges by the judges or commission.

(71) "USTA" means the United States Trotting Association.

(72) "Year" means twelve (12) consecutive months beginning with January and ending with December.

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

**810 KAR 6:001. Definitions for 810 KAR Chapter 6.**

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.215(2), [230.225(5), 230.260(8), 230.361(1), 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission [~~the "commission"~~]to regulate conditions under which ~~horse~~[thoroughbred] racing shall be conducted in Kentucky. KRS 230.260(8) authorizes the commission to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in ~~Kentucky~~[this state]. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel [~~mutuel~~] wagering on horse races under the pari-mutuel system of wagering. This administrative regulation defines the terms used in 810 KAR Chapter 6[4].

Section 1. Definitions.

(1) "Added money" means cash, exclusive of trophy or other award, added by the association to stakes fees paid by subscribers to form the total purse for a stakes race.

(2) "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled on January 1 of the year in which the horse was foaled.

(3) "Appaloosa horse" means a horse duly registered with the Appaloosa Horse Club, Inc., Moscow, Idaho.

(4) "Appaloosa racing" is defined by KRS 230.210(3).

(5) "Arabian horse" means "arabian" as defined by KRS 230.210[a horse duly registered with the Arabian Horse Club Registry of America].

(6)[(3)] "Arrears" means all sums due by a licensee as reflected by his or her account with the horsemen's bookkeeper, including subscriptions, jockey fees, forfeitures, and any default incident to 810 KAR Chapter 6[4].

(7)[(4)] "Association" is defined by KRS 230.210(5).

(8)[(5)] "Authorized agent" means any person currently licensed as an agent for a licensed owner or jockey by virtue of notarized appointment of agency filed with the commission.

(9)[(6)] "Betting interest" means a single horse, or more than one (1) horse joined as a mutual entry or joined in a mutual field, on which a single pari-mutuel wager can[may] be placed.

(10)[(7)] "Bleeder" means any horse known to have bled internally or from its nostrils during a workout or race.

(11)[(8)] "Breakage" means the net pool minus payout.

(12)[(9)] "Breeder" means the owner of the dam of a horse when the horse was foaled. A horse is "bred" at the place of its foaling.

(13)[(40)] "Calendar days" means consecutive days counted irrespective of number of racing days.

(14)[(44)] "Carryover" means nondistributed pool monies which are retained and added to a corresponding pool in accordance with 810 KAR 6:020.

(15)[(42)] "Claiming race" means any race in which every horse running in the race can[may] be transferred in conformity with 810 KAR 4:050.

(16)[(43)]—"Closing" means the time published by the association after which entries for a race will not be accepted by the racing secretary. [.]

(17)[(44)] "Commission" means:

(a) The Kentucky Horse Racing Commission if used in the context of the administrative agency governing horse racing and pari-mutuel wagering; or[and]

(b) If used in the context of pari-mutuel wagering, the amount an association is authorized to withhold from a pari-mutuel wager pursuant to KRS 230.3615, KRS 230.750, and KAR Title 810[of the Kentucky Administrative Regulations]. This meaning can also refer to "takeout" as defined by subsection (83) of this section[term may also be defined as "takeout," pursuant to

**810 KAR 6:0201**

(18)(15) "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

(19)(16) "Dead heat" means a finish of a race in which the noses of two (2) or more horses reach the finish line at the same time.

(20)(17) "Declaration" means the withdrawal of a horse entered in a race prior to time of closing of entries for the race in conformance with 810 KAR Chapter 6[4].

(21)(18) "Designated area" means any enclosed area that the commission has approved for the location of terminals used for wagering on ~~an~~ historical horse ~~race~~ races.

(22)(19) "Disciplinary action" means action taken by the stewards or the commission for a violation of KRS Chapter 230 or KAR Title 810 ~~or Title 811~~ and can include:

- (a) Refusal to issue or renew a license;
- (b) Revocation or suspension of a license;
- (c) Imposition of probationary conditions on a license;
- (d) Issuance of a written reprimand or admonishment;
- (e) Imposition of fines or penalties;
- (f) Denial of purse money;
- (g) Forfeiture of purse money; or
- (h) Any combination of paragraphs (a) through (g) of this subsection.

(23)(20) "Disqualification" means a ruling of the stewards or the commission revising the order of finish of a race.

(24) "Driver" means a person who is licensed to drive a horse in a harness race.

(25)(21) "Entry" means the act of nominating a horse for a race in conformance with KAR Title 810.

(26)(22) "Equipment" means accoutrements other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, and includes whip, blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.

(27)(23) "Exhibition race" means a race between horses of diverse ownership for which a purse is offered by the association, but on which ~~no~~ pari-mutuel wagering is **not** permitted.

(28)(24) "Exotic wager" means any pari-mutuel wager placed on a live or historical horse race ~~or races~~ other than a win, place, or show wager placed on a live horse race.

(29)(25) "Field" or "mutuel field" means a single betting interest involving more than one (1) horse that is not a mutuel entry.

(30)(26) "Forfeit" means money due by a licensee because of an error, fault, neglect of duty, breach of contract, or alternative ruling of the stewards or the commission.

(31)(27) "Free handicap" means a handicap for which ~~a~~ **no** nominating fee is **not** required to be weighted, but an entrance or starting fee ~~can~~ **may** be required for starting in the race.

(32)(28) "Handicap race" means a race in which the weights to be carried by the horses are assigned by the association handicapper with the intent of equalizing the chances of winning for all horses entered in the race.

(33)(29) "Handle" means the aggregate of all pari-mutuel pools, excluding refundable wagers.

(34)(30) "Historical horse race" means any horse race that:

(a) Was previously run at a licensed pari-mutuel facility located in the United States;

(b) Concluded with official results; and

(c) Concluded without scratches, disqualifications, or dead-heat finishes.

(35)(31) "Horse" means any equine (including and designated as a mare, filly, stallion, colt, ridgeling, or gelding) ~~a thoroughbred registered with The Jockey Club irrespective of age or sex designation~~.

(36)(32) "Ineligible" means a horse or person not qualified under 810 KAR Chapter 6[4] or conditions of a race to participate in a specified racing activity.

(37)(33) "Initial seed pool" means a nonrefundable pool of money ~~funded by~~ that **can** **may** be funded by an association in ~~an amount sufficient~~ order to ensure that a patron will be paid the minimum amount required on a winning wager on an historical

horse race ~~in the event of a minus pool~~.

(38)(34) "Jockey" means a rider currently licensed to ride in races ~~other than harness races~~ as a jockey, apprentice jockey, amateur jockey, or a provisional jockey permitted by the stewards to ride in three (3) races prior to applying for a license.

(39) "Judge" means a duly appointed racing official with powers and duties ~~established~~ **specified** in 810 KAR 2:050 ~~serving at a current meeting in the Commonwealth~~.

(40)(35) "Lessee" means a licensed owner whose interest in a horse is a leasehold.

(41)(36) "Licensed premises" **is defined by KRS 230.210** ~~means:~~

~~(a) For facilities in operation as of 2010, the location and physical plant described in response to question P of the "Commonwealth of Kentucky" the "Kentucky Horse Racing Commission Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-Mutuel Wagering" filed for racing to be conducted in 2010;~~

~~(b) Real property of an association, if the association receives approval from the commission after 2010 for a new location at which live racing will be conducted; or~~

~~(c) One (1) facility or real property that is:~~

~~1. Owned, leased, or purchased by a licensed association within a sixty (60) mile radius of the association's track but not contiguous to track premises, upon commission approval; and~~

~~2. Not for purposes of paragraphs (b) and (c) of this subsection, is not within a sixty (60) mile radius of another licensed track premise where live racing is conducted and not within a forty (40) mile radius of a simulcast facility, unless any affected track of simulcast facility agrees in writing to permit a noncontiguous facility within the protected geographic area.~~

(42)(37) "Licensee" means an individual, firm, association, partnership, corporation, trustee, or legal representative that has been duly issued a currently valid license to participate in racing in the Commonwealth.

(43)(38) "Maiden" means a horse ~~that~~ **which** has never won a race on the flat at a recognized meeting in any country. A maiden ~~that~~ **which** was disqualified after finishing first remains a maiden. Race conditions referring to maidens shall be interpreted as meaning maidens at the time of starting.

(44)(39) "Match race" means a race ~~that is~~ between two (2) horses ~~and~~ for which ~~no~~ other horses are **not** eligible.

(45)(40) "Meeting" means the entire period of consecutive days, exclusive of dark days, granted by the commission to a licensed association for the conduct of live horse racing that:

(a) Begins at 10 a.m. of the first racing day; and

(b) Extends through a period ending one (1) hour after the last scheduled race of the last day.

(46)(41) "Minus pool" means a pari-mutuel pool in which the amount of money to be distributed on winning wagers exceeds the amount of money contained in ~~the net pool~~ that pari-mutuel pool.

(47)(42) "Month" means calendar month.

(48)(43) "Mutuel entry" means a single betting interest involving two (2) or more horses entered in the same race and joined for pari-mutuel purposes because of common ties as to ownership or training so that a wager on one (1) horse joined in a mutuel entry is a wager on all horses joined in the same mutuel entry.

(49)(44) "Net pool" means the total amount wagered less refundable wagers and takeout.

(50)(45) "Nomination" means a subscription or entry of a horse in a stakes or early closing race.

(51)(46) "Nominator" means the person in whose name a horse is entered for a race.

(52)(47) "Owner" means any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for the horse.

(53)(48) "Pari-mutuel wagering," "mutuel wagering", or "pari-mutuel system of wagering" **is defined by KRS 230.210** ~~each means a system or method of wagering previously or~~

~~hereafter approved by the commission in which one (1) or more patrons wager on a horse race or races, whether live, simulcast, or previously run. Wagers shall be placed in one or more wagering pools, and wagers on different races or sets of races may be pooled together. Patrons may establish odds or payouts, and winning patrons share in amounts wagered including any carryover amounts, plus any amounts provided by an association less any deductions required, as approved by the racing commission and permitted by law. Pools may be paid out incrementally over time as approved by the commission~~ are wagering among themselves and not against the association and amounts wagered are placed in one or more designated wagering pools and the net pool is returned to the winning patrons].

(54) "Pari-mutuel pool" means any pool into which pari-mutuel wagers made by patrons are placed. For every wager placed into a pari-mutuel pool by a patron, that patron is eligible to receive at least a minimum payout on a winning wager.

(55)[(49)] "Patron" means an individual present at a track, licensed premises, or a simulcast facility who observes or wagers on [a] live or historical horse [race] races.

(56)[(50)] "Payout" means the amount of the net pool payable to an individual patron on his or her winning wager.

(57)[(51)] "Place," if used in the context of a single position in the order of finish in a race, means second; if used in the context of pari-mutuel wagering, a "place" wager means one involving a payoff on a betting interest ~~that~~**[which]** finished first or second in a race; **or** if used in the context of multiple positions in the order of finish in a race, "place or placing" means finishing first or second.

(58)[(55)] "Player-funded pool" means a pool of money funded by patrons wagering on a live or historical horse race or races that is only used to ensure that a patron will receive a payout on a winning wager in the event of a "minus pool" as defined in this **administrative** regulation.

(59)[(52)] "Post" means the starting point of a race.

(60)[(53)] "Post position" means the relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

(61)[(54)] "Post time" means the advertised moment scheduled for the arrival of all horses at the starting point for a race.

(62)[(55)] "Prize" means the combined total of any cash, premium, trophy, and object of value awarded to the owners of horses according to order of finish in a race.

(63)[(56)] "Purse" means the gross cash portion of the prize for which a race is run.

(64) "Quarter horse" **is defined by KRS 230.210[means a horse registered with the American Quarter Horse Association of Amarillo, Texas].**

(65)[(57)] "Purse race" means any race for which entries close at a time designated by the racing secretary, and for which owners of horses entered are not required by its conditions to contribute money toward its purse.

(66)[(58)] "Race" means a running contest between ~~(thoroughbreds)~~ horses, ridden by jockeys or driven by drivers, over a prescribed course free of obstacles or jumps, at a recognized meeting, during regular racing hours, for a prize.

(67)[(59)] "Race day" means any period of twenty-four (24) hours beginning at 12:01 a.m. and ending at midnight in which live racing is conducted by an association.

(68)[(60)] "Racing official" means a racing commission member, commission staff as duties require, and all association racing department employees, as duties require.

(69)[(61)] "Recognized meeting" means any meeting with regularly scheduled live horse races for thoroughbreds on the flat, licensed by and conducted under administrative regulations promulgated by a governmental regulatory body, to include foreign countries ~~that~~**[which]** are regulated by a racing authority ~~that~~**[which]** has reciprocal relations with The Jockey Club and whose race records can be provided to an association by The Jockey Club.

(70)[(62)] "Registration certificate" means, with respect to thoroughbreds:

(a) The document issued by The Jockey Club certifying the

name, age, color, sex, pedigree, and breeder of a horse as registered by number with The Jockey Club; or

(b) The document known as a "racing permit" issued by The Jockey Club in lieu of a registration certificate if a horse is recognized as a thoroughbred for racing purposes in the United States, but is not recognized as a thoroughbred for breeding purposes insofar as registering its progeny with the Jockey Club.

(71)[(63)] "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pari-mutuel pools.

(72)[(64)] "Rulings" means all determinations, decisions, or orders of the stewards or of the commission duly issued in writing and posted.

(73)[(65)] "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries for the race in conformance with KAR Title 810.

(74) [(66)] "Scratch time" means the time set by the racing secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

(75)[(67)] "Secretary" means the duly appointed and currently serving secretary of the commission.[

(68) "Seed pool" means a pool of money funded by patrons wagering on an historical horse race that is used to ensure that all patrons are paid the minimum payout on winning wagers.]

(76) "Simulcasting" is defined by KRS 230.210.

(77)[(69)] "Specimen" means a sample of blood, urine, or other biologic sample taken or drawn from a horse for chemical testing.

(78)[(70)] "Stakes" means all fees:

(a) Paid by subscribers to an added-money or stakes race for nominating, eligibility, entrance, or starting, as ~~[may be]~~required by the conditions of the race; and

(b) Included in the purse.

(79)[(71)] "Stakes race" means a race that closes more than seventy-two (72) hours in advance of its running and for which subscribers contribute money towards its purse, or a race for which horses are invited by an association to run for a guaranteed purse of \$50,000 or more without payment of stakes. With the exception of stakes races in North America, "stakes race" **excludes[shall exclude]** races not listed by The Jockey Club Information System International Cataloguing Standards, Part One (1).

(80)[(72)] "Starter" means a horse in a race when the starting-gate doors open in front of it at the moment the starter dispatches the horses for a race.

(81)[(73)] "Steward" means a duly appointed racing official with powers and duties specified in 810 KAR 2:040 serving at a current meeting in the Commonwealth.

(82)[(74)] "Subscription" means nomination or entry of a horse in a stakes race.

(83)[(75)] "Takeout" **means "commission" as defined by subsection (17)(b) of this section[is defined in Section 1(17)(b) of this regulation as "Commission."]** means the total amount of money, excluding breakage and any amounts allocated to a seed pool, withheld from each pari-mutuel pool, as authorized by KRS 230.3615 and 810 KAR Chapter 4.;

(84)[(76)] "Terminal" means any self-service totalizator machine or other mechanical equipment used by a patron to place a pari-mutuel wager on a live or historical horse race or races.

(85)[(77)] "Thoroughbred racing" is defined by KRS 230.210[(24)].

(86)[(78)] "Totalizator" means the system, including hardware, software, communications equipment, and electronic devices that accepts and processes the cashing of wagers, calculates the odds and prices of the wagers, and records, displays, and stores pari-mutuel wagering information.

(87)[(79)] "Unplaced" means a horse that finishes a race outside the pari-mutuel payoff.

(88) "Wagering pool" **means "pari-mutuel pool" as defined by subsection (54) of this subsection[is defined in Section 1 of this administrative regulation as pari-mutuel pool].**

(89)[(80)] "Walkover" means a race in which the only starter or all starters represent single ownership.

(90)[(81)] "Weigh in" means the presentation of a jockey to the clerk of scales for weighing after a race.

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(91)(82) "Weigh out" means the presentation of a jockey to the clerk of scales for weighing prior to a race.

(92)(83) "Weight for age" means the standard assignment of pounds to be carried by horses in races at specified distances during specified months of the year, scaled according to the age of the horse as established[set out] in 810 KAR 4:020.

(93)(84) "Workout" means the training exercise of a horse on the training track or main track of an association during which the horse is timed for speed over a specified distance.

(94)(85) "Year" means twelve (12) consecutive months beginning with January and ending with December.

Section 2. Severability. If any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

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

#### 810 KAR 6:010. Exotic wagering.

RELATES TO: KRS 230.300, 230.361, 230.3615, 230.370, 230.398, 230.750

STATUTORY AUTHORITY: KRS 230.210, 230.215, 230.361, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission ~~[(the "commission")]~~ to regulate conditions under which horse racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races under the pari-mutuel system of wagering. This administrative regulation establishes the procedures and regulations governing exotic wagering under KRS Chapter 230 and KAR Title 810.

Section 1. All Pari-mutuel Wagers on a Historical Horse Race or Races Shall be/Are Exotic Wagers. All pari-mutuel wagers other than win, place, or show wagers on a live horse race shall be/are exotic wagers.

Section 2. Exotic Wagers Shall/to be Approved by Commission.

(1) An association shall not offer an exotic wager on any live or historical horse race or races without the prior written approval of the commission.

(2) An association making a request to offer an exotic wager on a live or historical horse race may make an oral presentation to the commission regarding the wager prior to the commission deciding on the request.

(a) The presentation shall be made by the association during a meeting of the commission.

(b) The presentation shall be limited to the information contained in the written request and any supplemental information relevant to the commission's determination of the suitability of the wager.

(c) The commission may require an association to clarify or otherwise respond to questions concerning the written request as a condition of approval for the exotic wager.

(3) The commission may request additional information from an association regarding the exotic wager if the additional information would assist the commission in deciding whether or not to approve it.

(4) In reviewing a written request for an exotic wager, the commission may consider any information, data, reports, findings, or other factors available that the commission/which it

considers important or relevant to its determination regarding/of whether the/ wager approval/should be approved/.

(5) The commission or its designee shall review and test the exotic wager and shall give its approval if it is satisfied that the wager/

(a) Will/The wager does/ not adversely affect the safety or integrity of horse racing or pari-mutuel wagering in the Commonwealth; and

(b) The wager/Complies with KRS Chapter 230 and KAR Title 810.

(6) The commission shall notify the association if the commission/it/ determines that the criteria established/set forth/ in subsection (5) of this section are no longer being met and the commission/it/ intends to withdraw approval of a particular exotic wager.

(7) An association shall not implement any change or modification to the practices, procedures, or representations upon which the approval of the exotic wager was based without the prior written approval of the commission.

#### Section 3. Exotic Wagers on a Live Horse Race or Races.

(1) Except as established/set forth/ in subsection (2) of this section, an association shall submit a written request to the commission for permission to offer any exotic wager on a live horse race or races, which shall include a detailed description of the rules that apply to the pari-mutuel wager and the method of calculating payouts.

(2) If the rules have not been modified since the wager was approved by the commission, an association shall not be required to seek the commission's approval to offer the following previously approved exotic wagers on live horse races: Exacta, Perfecta, Quinella, Trifecta, Superfecta, Double Perfecta, Big Q, Twin Trifecta, Daily Double, Super High 5, Pick-3, Pick-4, and Pick-6.

#### Section 4. Exotic Wagers on a Historical Horse Race or Races.

(1) An association shall submit a written request to the commission for permission to offer any exotic wager on a historical horse race or races, which shall include:

(a) The types, number, and denominations of pari-mutuel wagers to be offered;

(b) A detailed description of the rules that apply to the pari-mutuel wager, the trust account, if applicable, and the player-funded pool or pools, if applicable, as well as the method of calculating payouts;

(c) The days and hours of operation during which wagering on historical horse races will be offered;

(d) A detailed description of the proposed designated area and the terminal or terminals on which the pari-mutuel wagers will be made, including;

1. An architect's rendering of the proposed designated area which describes the size, construction, layout, capacity, number of terminals, and location of surveillance and other security equipment;; and

2. At least one (1) photograph of the designated area once/when/ construction is completed;

(e) The practices and procedures that will ensure the security, safety, and comfort of patrons in the designated area;

(f) The manufacturer, make, and model of the terminal, including a copy of all literature supplied by the manufacturer of the terminal;

(g) The maintenance and repair procedures that will ensure the integrity of the terminals;

(h) A complete list of individuals who are authorized to examine and repair the terminals for any reason; and

(i) A memorandum stating/outlining/ the terms of the agreement established/referenced/ in Section 6(2) of this administrative regulation between the association and one (1) of the following horsemen's organizations, as applicable:

1. For thoroughbred associations operating historical horse racing, the Kentucky Horsemen's Benevolent and Protective Association, the Kentucky Thoroughbred Association/Kentucky Thoroughbred Owners and Breeders, or their successors;

2. For standardbred associations operating historical horse

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racing, the Kentucky Harness Horsemen's Association, the Kentucky Harness Association, or their successors;

3. For quarterhorse associations operating historical horse racing, the Kentucky Quarter Horse Racing Association or its successor;

4. For Arabian associations operating historical horse racing, the Arabian Jockey Club, or its successor; and

5. For appaloosa associations operating historical horse racing, a horsemen's organization representing appaloosa racing.

(2)(a) Except as established[set forth] in paragraph (b) of this subsection, each association that is approved by the commission to offer exotic wagering on historical horse racing shall request, in any application submitted for a license, to conduct live horse racing pursuant to KRS 230.300 and 810 KAR 3:010:

1. No less than 100 percent of the number of racing days initially requested by the association in its application, incorporated by reference in 810 KAR 3:010, to conduct racing for the 2010 racing year; and

2. No less than 100 percent of the number of races initially requested by the association in its application, incorporated by reference in 810 KAR 3:010, to conduct racing for the 2010 racing year.

(b) An association may apply for less than 100 percent of the number of racing days initially applied for by the association in its application to conduct racing for 2010, or the number of races initially applied for by the association in its application to conduct racing for 2010, if written approval is obtained from the commission, and from one (1) of the following horsemen's organizations, as applicable:

1. For thoroughbred associations operating historical horse racing, the Kentucky Horsemen's Benevolent and Protective Association, the Kentucky Thoroughbred Association/Kentucky Thoroughbred Owners and Breeders, or their successors;

2. For standardbred associations operating historical horse racing, the Kentucky Harness Horsemen's Association, the Kentucky Harness Association, or their successors;

3. For quarterhorse associations operating historical horse racing, the Kentucky Quarter Horse Racing Association or its successor;

4. For Arabian associations operating historical horse racing, the Arabian Jockey Club, or its successor; and

5. For appaloosa associations operating historical horse racing, a horsemen's organization representing appaloosa racing.

Section 5. Terminals Used for Wagering on a Historical Horse Race or Races.

(1) Wagering on historical horse races shall be conducted only on terminals approved by the commission as established[set forth] in Section[Sections] 2(5) of this administrative regulation and subsection (2) of this section[5(2) of this administrative regulation]. The commission shall not require any particular make of terminal.

(2)(a) The commission shall require testing of each terminal used for wagering on historical horse races by an independent testing laboratory to ensure the terminal's[its] integrity and proper working order.

(b) The independent testing laboratory shall be chosen by the commission, based on promoting the best interests of racing, and the expense of the testing shall be paid by the association offering the wagering on historical horse races.

(3) Each terminal for wagering on historical horse races shall display odds or pool amounts that the patron will receive for a winning wager on each pari-mutuel wagering pool.

Section 6. Takeout.

(1) Each association conducting exotic wagering on historical horse races shall deduct a takeout, which shall not exceed the percentages established[set forth] in KRS 230.3615 or KRS 230.750, as applicable.

(2)(a) Each association shall enter into an agreement with one (1) of the following horsemen's organizations, as applicable, to establish the allocation of the takeout on all exotic wagers on historical horse races offered by the association:

1. For thoroughbred associations operating historical horse

racing, the Kentucky Horsemen's Benevolent and Protective Association, the Kentucky Thoroughbred Association/Kentucky Thoroughbred Owners and Breeders, or their successors;

2. For standardbred associations operating historical horse racing, the Kentucky Harness Horsemen's Association, the Kentucky Harness Association, or their successors;

3. For quarterhorse associations operating historical horse racing, the Kentucky Quarter Horse Racing Association or its successor;

4. For Arabian associations operating historical horse racing, the Arabian Jockey Club, or its successor; and

5. For appaloosa associations operating historical horse racing, a horsemen's organization representing appaloosa racing.

(b) The agreement shall apply to all exotic wagers on historical horse races offered, or to be offered, by the association during the term of the agreement.

(c)[(b)] The agreement shall include provisions allocating a percentage of the takeout to purses on live races run by the association.

(d)[(e)] Each association shall provide a memorandum outlining the terms of the agreement to the commission.

Section 7. Severability. In the event that any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

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.

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

#### 810 KAR 6:020. Calculation of payouts and distribution of pools.

RELATES TO: KRS 230.210, 230.215, 230.260, 230.361, 230.3615, 230.990

STATUTORY AUTHORITY: KRS 230.215(2), 230.260, 230.361(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the Kentucky Horse Racing Commission [the "commission"] the authority to regulate conditions under which horse racing and pari-mutuel wagering thereon shall be conducted in Kentucky[the Commonwealth]. KRS 230.361(1) requires the commission to promulgate administrative regulations governing wagering under the pari-mutuel system of wagering. This administrative regulation establishes the calculation of payouts and the distribution of pools for pari-mutuel wagering on live horse races.

Section 1. Definitions.

(1) ["Betting interest" means a single horse, or more than one (1) horse joined as a mutuel entry or joined in a mutuel field, on which a single pari-mutuel wager may be placed.

(2) "Breakage" means the net pool minus payout.

(3) "Broken consolation price" means the profit per dollar, plus one (1) dollar, rounded down to the break point.

(2)[(4) "Carryover" means non-distributed pool monies that are retained and added to a corresponding pool in accordance with KAR Title 810.

(5) "Consolation payout" means a payout to individuals who do not correctly choose all of the selections in a multiple-pick wager, or a payout to individuals who wager on a horse in a multiple pick wager that is subsequently scratched.

(3)[(6) "Covered betting interest" means a betting interest or combination of betting interests that has been wagered upon.

(4)[(7) "Dead heat" means a finish of a race in which the noses of two (2) or more horses reach the finish line at the

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same time.

~~(8)]~~ "Gross pool" means the sum of all wagers less refunds.

~~(5)](9)]~~ "Individual" means a natural person, at least eighteen (18) years of age, except does not include any corporation, partnership, limited liability company, trust, or estate.

~~(6)](10)]~~ "Multi-commission pari-mutuel pool" means a pari-mutuel pool where entities accepting wagers use different takeout rates.

~~(7)](11)]~~ "Net pool" means the total amount wagered less refundable wagers and takeout.

~~(12)]~~ "Payout" means the amount of the net pool payable to an individual patron on his or her winning wager.

~~(13)]~~ "Performance" means a specified number of races on a given race day that constitutes a full card of racing.

~~(8)](14)]~~ "Profit" means the net pool less the gross amount wagered if using the standard price calculation procedure and the net pool less the net amount wagered if using the net price calculation procedure.

~~(9)](15)]~~ "Profit split" means to calculate a payout by splitting a pari-mutuel pool equally between each winning combination and dividing each portion by the number of winning tickets.

~~(10)](16)]~~ "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries for the race in conformance with KAR Title 810.

~~(17)]~~ "Single commission pari-mutuel pool" means a pari-mutuel pool where all entities accepting wagers use the same takeout rate.

~~(11)](18)]~~ "Single price pool" means a pari-mutuel pool in which the entire profit is paid to holders of winning tickets after the deduction of the takeout.

~~(12)](19)]~~ "Takeout" is defined in 810 KAR 6:001, Section 1(17)(b) as "Commission." means the total amount of money, excluding breakage, withheld from each pari-mutuel pool, as authorized by KRS 230.3615 and KAR Title 810.]

~~(20)]~~ "Unbroken consolation price" means the profit per dollar plus one (1) dollar.

Section 2. General Requirements for Live Horse Races.

(1) All pari-mutuel pools for live races shall be separately and independently calculated and distributed. The takeout shall be deducted from each gross pool as stipulated by KRS 230.3615. The remainder of the pool shall be the net pool for distribution as payoff on winning pari-mutuel wagers.

(2)(a) Single commission pari-mutuel pools may be calculated using either the standard price calculation procedure or the net price calculation procedure.

(b) Multi-commission pari-mutuel pools shall be calculated using the net price calculation procedure.

(3) The standard price calculation procedure shall be as follows:

(a) Single price pools - Win pool

Gross Pool	=	Sum of Wagers on all Betting Interests - Refunds
Takeout	=	Gross Pool x Percent Takeout
Net Pool	=	Gross Pool - Takeout
Profit	=	Net Pool - Gross Amount Bet on Winner
Profit Per Dollar	=	Profit / Gross Amount Bet on Winner
\$1 Unbroken Price	=	Profit Per Dollar + \$1
\$1 Broken Price	=	\$1 Unbroken Price Rounded Down to the Break Point
Total Payout	=	\$1 Broken Price x Gross Amount Bet on Winner
Total Breakage	=	Net Pool - Total Payout

(b) Profit split - Place pool. Profit shall be net pool less gross amount bet on all place finishers. Finishers shall split profit 1/2 and 1/2 (place profit), then divide by gross amount bet on each place finisher for two (2) unique prices.

(c) Profit split - show pool. Profit shall be net pool less gross amount bet on all show finishers. Finishers shall split profit 1/3 and 1/3 and 1/3 (show profit), then divide by gross amount bet on each show finisher for three (3) unique prices.

(4) The net price calculation procedure shall be as follows:

(a) Single price pool - Win pool

Gross Pool	=	Sum of Wagers on all Betting Interests - Refund
Takeout	=	Gross Pool x Percent Takeout for Each Source
Net Pool	=	Gross Pool - Takeout
Net Bet on Winner	=	Gross Amount Bet on Winner x (1 - Percent Takeout)
Total Net Pool	=	Sum of All Sources Net pools
Total Net Bet on Winner	=	Sum of All Sources Net Bet on Winner
Total Profit	=	Total Net Pool - Total Net Bet on Winner
Profit Per Dollar	=	Total Profit / Total Net Bet on Winner
\$1 Unbroken Base Price	=	Profit Per Dollar + \$1 for each source:
\$1 unbroken price	=	\$1 Unbroken Base Price x (1 - Percent Takeout)
\$1 Broken Price	=	\$1 Unbroken Price Rounded Down to the Break Point
Total Payout	=	\$1 Broken Price x Gross Amount Bet on Winner
Total Breakage	=	Net Pool - Total Payout

(b) Profit split - Place pool. Total profit shall be the total net pool less the total net amount bet on all place finishers. Finishers shall split total profit 1/2 and 1/2 (place profit), then divide by total net amount bet on each place finisher for two (2) unique unbroken base prices.

(c) Profit split - Show pool. Total profit shall be the total net pool less the total net amount bet on all show finishers. Finishers shall split total profit 1/3 and 1/3 and 1/3 (show profit), then divide by total net amount bet on each show finisher for three (3) unique unbroken base prices.

(5) Each association shall disclose the following in its license application, incorporated by reference in 810 KAR 3:010:

(a) Which price calculation method it will use for single commission pari-mutuel pools;

(b) The ticket denominations for each type of pari-mutuel wager;

(c) The procedures for refunds of pari-mutuel wagers;

(d) The takeout for each type of pari-mutuel wager;

(e) Which pari-mutuel wagers will include carryover and consolation pools and the percentages of the net pool assigned to each; and

(f) For each type of pari-mutuel wagering involving more than one (1) live horse race, the procedures to be used if a race is cancelled.

(6) The individual pools described in this administrative regulation may be given alternative names by each association if prior approval is obtained from the commission.

(7) A mutuel entry or a mutuel field in any race shall be a single betting interest for the purpose of each of the wagers described in this administrative regulation and the corresponding pool calculations and payouts. If either horse in a mutuel entry, or any horse in a mutuel field, is a starter in a race, the entry or the field selection shall remain as the designated selection for any of the wagers described in this administrative regulation and the selection shall not be deemed scratched.

Section 3. Pools Dependent Upon Entries for Live Horse Races.

(1) Except as provided in subsection (3) of this section, when pools are opened for wagering all associations may:

(a) Offer win wagering on all races with four (4) or more betting interests;

(b) Offer place wagering on all races with five (5) or more betting interests;

(c) Offer show wagering on all races with six (6) or more betting interests.

(d) Offer Quinella wagering on all races with four (4) or more betting interests;

(e) Offer Exacta wagering on all races with four (4) or more betting interests;



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(f) Offer Trifecta wagering on all races with five (5) or more betting interests;

(g) Offer Superfecta wagering on all races with six (6) or more betting interests;

(h) Offer Big Q wagering on all races with three (3) or more betting interests; and

(i) Offer Super High 5 wagering on all races with seven (7) or more betting interests.

(2) Except as provided in subsection (4) of this section, when pools are opened for wagering, associations shall not offer Twin Trifecta wagering on any races with six (6) or fewer betting interests.

(3) The chief state steward or presiding judge, or his or her designee, may authorize an association to offer a subject wager with less than the number of horses required by this section if:

(a) Requested by the association; and

(b) The integrity of the wager would not be affected by the smaller field.

(4) If a horse is scratched by the judges or stewards after wagering has commenced or a horse is prevented from running in a live horse race because of a failure of the starting gate, and the number of actual starters representing different betting interests is reduced below the requirements in subsection (1) or (2) of this section, the association may cancel the affected wagers and refund the entire affected pools with the approval of the Chief State Steward or Presiding Judge, or his or her designee.

(5) In all cases in which the Chief State Steward or Presiding Judge, or his or her designee, authorizes the changes described in subsection (4) or (5) of this section, the association shall provide a written report to the commission within twenty-four (24) hours of the post time of the race explaining the need to cancel the wagering pool.

### Section 4. Win Pools.

(1) The amount wagered on the betting interest ~~that~~**[which]** finishes first shall be deducted from the net win pool and the balance remaining shall be the profit. The profit shall be divided by the amount wagered on the betting interest finishing first and the result shall be the profit per dollar wagered to win on that betting interest.

(2) The net win pool shall be distributed as a single price pool in the following precedence based upon the official order of finish:

(a) To individuals whose selection finishes first, except if there are not any of those wagers, then;

(b) To individuals whose selection finishes second, except if there are not any of those wagers, then;

(c) To individuals whose selection finishes third, except if there are not any of those wagers, then;

(d) The entire pool shall be refunded on win wagers for that race.

(3)(a) If there is a dead heat for first involving horses representing the same betting interest, the win pool shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for first involving horses representing two (2) or more betting interests, the win pool shall be distributed as a profit split.

### Section 5. Place Pools.

(1) The amounts wagered to place on the first two (2) betting interests to finish shall be deducted from the net pool and the balance remaining shall be the profit. The profit shall be divided into two (2) equal portions, with each portion assigned to each winning betting interest and divided by the dollar amount wagered to place on that betting interest. The result shall be the profit per dollar wagered to place on that betting interest.

(2) The net place pool shall be distributed in the following precedence based upon the official order of finish:

(a) If horses in a mutuel entry or mutuel field finish in the first two (2) places, as a single price pool to individuals who selected the mutuel entry or mutuel field, otherwise;

(b) As a profit split to individuals whose selection is included within the first two (2) finishers, except if there are not any of those wagers on one (1) of those two (2) finishers, then;

(c) As a single price pool to individuals who selected the one (1) covered betting interest included within the first two (2) finishers, except if there are not any of those wagers, then;

(d) As a single price pool to individuals who selected the third-place finisher, except if there are not any of those wagers, then;

(e) The entire pool shall be refunded on place wagers for that race.

(3)(a) If there is a dead heat for first involving horses representing the same betting interest, the place pool shall be distributed as a single price pool.

(b) If there is a dead heat for first involving horses representing two (2) or more betting interests, the place pool shall be distributed as a profit split.

(4)(a) If there is a dead heat for second involving horses representing the same betting interest, the place pool shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for second involving horses representing two (2) or more betting interests, the place pool shall be divided, with one-half (1/2) of the profit distributed to place wagers on the betting interest finishing first and the remainder of the profit distributed equally among place wagers on the betting interests involved in the dead heat for second.

### Section 6. Show Pools.

(1) The amounts wagered to show on the first three (3) betting interests shall be deducted from the net pool and the balance remaining shall be the profit. The profit shall be divided into three (3) equal portions, with each portion assigned to each winning betting interest and divided by the amount wagered to show on that betting interest. The result shall be the profit per dollar wagered to show on that betting interest.

(2) The net show pool shall be distributed in the following precedence based on the official order of finish:

(a) If horses in a mutuel entry or mutuel field finish in the first three (3) places, as a single price pool to individuals who selected the mutuel entry or mutuel field, otherwise;

(b) If horses of a mutuel entry or mutuel field finish as two (2) of the first three (3) finishers, the profit shall be divided with two-thirds (2/3) distributed to individuals who selected the mutuel entry or mutuel field and one-third (1/3) distributed to individuals who selected the other betting interest included within the first three (3) finishers, otherwise;

(c) As a profit split to individuals whose selection shall be included within the first three (3) finishers, except if there are not any of those wagers on one (1) of those three (3) finishers, then;

(d) As a profit split to individuals who selected one (1) of the two (2) covered betting interests included within the first three (3) finishers, except if there are not any of those wagers on two (2) of those three (3) finishers, then;

(e) As a single price pool to individuals who selected the one (1) covered betting interest included within the first three (3) finishers, except if there are not any of those wagers, then;

(f) As a single price pool to individuals who selected the fourth-place finisher, except if there are not any of those wagers, then;

(g) The entire pool shall be refunded on show wagers for that race.

(3)(a) If there is a dead heat for first involving two (2) horses representing the same betting interest, the profit shall be divided with two-thirds (2/3) to individuals who selected the first-place finishers and one-third (1/3) distributed to individuals who selected the betting interest finishing third.

(b) If there is a dead heat for first involving three (3) horses representing a single betting interest, the show pool shall be distributed as a single price pool.

(c) If there is a dead heat for first involving horses representing two (2) or more betting interests, the show pool shall be distributed as a profit split.

(4)(a) If there is a dead heat for second involving horses representing the same betting interest, the profit shall be divided with one-third (1/3) distributed to individuals who selected the betting interest finishing first and two-thirds (2/3) distributed to individuals who selected the second-place finishers.

(b) If there is a dead heat for second involving horses

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representing two (2) betting interests, the show pool shall be distributed as a profit split.

(c) If there is a dead heat for second involving horses representing three (3) betting interests, the show pool shall be divided with one-third (1/3) of the profit distributed to show wagers on the betting interest finishing first and the remainder shall be distributed equally among show wagers on those betting interests involved in the dead heat for second.

(5)(a) If there is a dead heat for third involving horses representing the same betting interest, the show pool shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for third involving horses representing two (2) or more betting interests, the show pool shall be divided with two-thirds (2/3) of the profit distributed to show wagers on the betting interests finishing first and second, and the remainder shall be distributed equally among show wagers on those betting interests involved in the dead heat for third.

### Section 7. Exacta Pools.

(1) The Exacta shall require the selection of the first two (2) finishers, in their exact order, for a single race.

(2) The net Exacta pool shall be distributed in the following precedence based upon the official order of finish:

(a) If horses of a mutuel entry or mutuel field finish as the first two (2) finishers, as a single price pool to individuals selecting the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish, otherwise;

(b) As a single price pool to individuals whose combination finished in the correct sequence as the first two (2) betting interests, except if there are not any of those wagers, then;

(c) As a single price pool to individuals whose combination included the betting interest that finishes first, except if there are not any of those wagers, then;

(d) As a single price pool to individuals whose combination included the betting interest that finished second, except if there are not any of those wagers, then;

(e) The entire pool shall be refunded on Exacta wagers for that race.

(3)(a) If there is a dead heat for first involving horses representing the same betting interest, the Exacta pool shall be distributed as a single price pool to individuals who selected the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish.

(b) If there is a dead heat for first involving horses representing two (2) or more betting interests, the Exacta pool shall be distributed as a profit split.

(4) If there is a dead heat for second involving horses representing the same betting interest, the Exacta shall be distributed as if no dead heat occurred.

(5) If there is a dead heat for second involving horses representing two (2) or more betting interests, the Exacta pool shall be distributed to ticket holders in the following precedence based upon the official order of finish:

(a) As a profit split to individuals combining the first-place betting interest with any of the betting interests involved in the dead heat for second, except if there is only one (1) covered combination, then;

(b) As a single price pool to individuals combining the first-place betting interest with the one (1) covered betting interest involved in the dead heat for second, except if there are not any of those wagers, then;

(c) As a profit split to individuals whose wagers correctly selected the winner for first-place and any of the betting interests which finished in a dead-heat for second-place, except if there are not any of those wagers, then;

(d) The entire pool shall be refunded on Exacta wagers for that race.

### Section 8. Quinella Pools.

(1) The Quinella shall require the selection of the first two (2) finishers, irrespective of order, for a single race.

(2) The net Quinella pool shall be distributed in the following precedence based upon the official order of finish:

(a) If horses of a mutuel entry or mutuel field finish as the first two (2) finishers, as a single price pool to individuals selecting the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish, otherwise;

(b) As a single price pool to individuals whose combination finished as the first two (2) betting interests, except if there are not any of those wagers, then;

(c) As a profit split to individuals whose combination included either the first or second place finisher, except if there are not any of those wagers on one (1) of those two (2) finishers, then;

(d) As a single price pool to individuals whose combination included the one (1) covered betting interest included within the first two (2) finishers, except if there are not any of those wagers, then;

(e) The entire pool shall be refunded on Quinella wagers for that race.

(3)(a) If there is a dead heat for first involving horses representing the same betting interest, the Quinella pool shall be distributed to individuals selecting the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish.

(b) If there is a dead heat for first involving horses representing two (2) betting interests, the Quinella pool shall be distributed as if no dead heat occurred.

(c) If there is a dead heat for first involving horses representing three (3) or more betting interests, the Quinella pool shall be distributed as a profit split.

(4) If there is a dead heat for second involving horses representing the same betting interest, the Quinella pool shall be distributed as if no dead heat occurred.

(5) If there is a dead heat for second involving horses representing two (2) or more betting interests, the Quinella pool shall be distributed to individuals in the following precedence based upon the official order of finish:

(a) As a profit split to individuals combining the winner with any of the betting interests involved in the dead heat for second, except if there is only one (1) covered combination, then;

(b) As a single price pool to individuals combining the winner with the one (1) covered betting interest involved in the dead heat for second, except if there are not any of those wagers, then;

(c) As a profit split to individuals combining the betting interests involved in the dead heat for second, except if there are not any of those wagers, then;

(d) As a profit split to individuals whose combination included the winner and any other betting interest and wagers selecting any of the betting interests involved in the dead heat for second, except if there are not any of those wagers, then;

(e) The entire pool shall be refunded on Quinella wagers for that race.

### Section 9. Trifecta Pools.

(1) The Trifecta shall require selection of the first three (3) finishers, in their exact order, for a single race.

(2) For Trifecta price calculations only, the highest placed finisher of any part of a mutuel entry or mutuel field shall be used, eliminating all other parts of that mutuel entry or mutuel field from consideration regardless of finishing order.

(3) The Trifecta pool shall be distributed in the following precedence based upon the official order of finish:

(a) As a single price pool to individuals whose combination finished in correct sequence as the first three (3) betting interests, except if there are not any of those wagers, then;

(b) As a single price pool to individuals whose combination included, in correct sequence, the first two (2) betting interests, except if there are not any of those wagers, then;

(c) As a single price pool to individuals whose combination correctly selected the first-place betting interest only, except if there are not any of those wagers, then;

(d) The entire pool shall be refunded on Trifecta wagers for that race.

(4)(a) If less than three (3) betting interests finish and the race is declared official, payouts shall be made based upon the order of finish of those betting interests that finish the race.

(b) The balance of any selection beyond the number of betting interests completing the race shall be ignored.

(5)(a) If there is a dead heat for first involving horses representing three (3) or more betting interests, all of the wagering combinations selecting three (3) betting interests that correspond with any of the betting interests involved in the dead heat shall share in a profit split.

(b) If there is a dead heat for first involving horses representing two (2) betting interests, both of the wagering combinations selecting the two (2) betting interests that finish in a dead heat, irrespective of order, along with the third place betting interest shall share in a profit split.

(6) If there is a dead heat for second, all of the combinations correctly selecting the winner combined with any of the betting interests involved in the dead heat for second shall share in a profit split.

(7) If there is a dead heat for third, all wagering combinations correctly selecting the first two (2) finishers, in correct sequence, along with any of the betting interests involved in the dead heat for third shall share in a profit split.

(8)(a) Trifecta wagering shall not be conducted on any race having fewer than five (5) separate betting interests.

(b) If fewer than five (5) horses start due to a late scratch or malfunction of the starting gate, the Trifecta shall be cancelled and the gross pool shall be refunded.

#### Section 10. Superfecta Pools.

(1) The Superfecta shall require selection of the first four (4) finishers, in their exact order, for a single race.

(2) The net Superfecta pool shall be distributed in the following precedence based upon the official order of finish:

(a) As a single price pool to individuals whose combination finished in correct sequence as the first four (4) betting interests, except if there are not any of those wagers, then;

(b) As a single price pool to individuals whose combination included in correct sequence, the first three (3) betting interests, except if there are not any of those wagers, then;

(c) As a single price pool to individuals whose combination included, in correct sequence, the first two (2) betting interests, except if there are not any of those wagers, then;

(d) As a single price pool to individuals whose combination correctly selected the first-place betting interest only, except if there are not any of those wagers, then;

(e) The entire pool shall be refunded on Superfecta wagers for that race.

(3)(a) If less than four (4) betting interests finish and the race is declared official, payouts shall be made based upon the order of finish of those betting interests completing the race.

(b) The balance of any selection beyond the number of betting interests completing the race shall be ignored.

(4)(a) If there is a dead heat for first involving horses representing four (4) or more betting interests, all of the wagering combinations selecting betting interests which correspond with any of the betting interests involved in the dead heat shall share in a profit split.

(b) If there is a dead heat for first involving horses representing three (3) betting interests, all of the wagering combinations selecting the three (3) betting interests that finish in a dead heat, irrespective of order, along with the fourth-place betting interest shall share in a profit split.

(c) If there is a dead heat for first involving horses representing two (2) betting interests, both of the wagering combinations selecting the two (2) dead-heated betting interests, irrespective of order, along with the third-place and fourth-place betting interests shall share in a profit split.

(5)(a) If there is a dead heat for second involving horses representing three (3) or more betting interests, all of the wagering combinations correctly selecting the winner combined with any of the three (3) betting interests involved in the dead heat for second shall share in a profit split.

(b) If there is a dead heat for second involving horses representing two (2) betting interests, all of the wagering combinations correctly selecting the winner, the two (2) dead-

heated betting interests, irrespective of order, and the fourth-place betting interest shall share in a profit split.

(6) If there is a dead heat for third, all wagering combinations correctly selecting the first two (2) finishers, in correct sequence, along with any two (2) of the betting interests involved in the dead heat for third shall share in a profit split.

(7) If there is a dead heat for fourth, all wagering combinations correctly selecting the first three (3) finishers, in correct sequence, along with any interest involved in the dead heat for fourth, shall share in a profit split.

(8) Superfecta wagering shall not be conducted on any race having fewer than six (6) separate betting interests. If fewer than six (6) horses start due to a late scratch or malfunction of the starting gate, Superfecta wagering shall be cancelled and the gross pool shall be refunded.

#### Section 11. Super High-Five Pools.

(1) The Super High-Five shall require selection of the first five (5) finishers, in their exact order, for a single race.

(2) Unless otherwise stated, the net Super High-Five pool shall be distributed as a single-priced pool to those who have selected all five (5) finishers, in exact order, based upon the official order of finish.

(3)(a) Each association shall disclose in its license application whether it intends to schedule Super High-Five wagering and, if so, shall disclose:

1. The percentage of the pool to be retained for the winning wagers; and

2. The designated amount of any cap to be set on the pool to be retained for the winning wagers.

(b) Any subsequent changes to the Super High-Five scheduling shall require prior approval from the commission or its designee.

(4) If there are no winning wagers selecting all five (5) finishers, in exact order, the entire Super High-Five pool shall be added to the carryover.

(5) If due to a late scratch the number of betting interests in the Super High-Five pool is reduced to fewer than seven (7), the Super High-Five pool shall be cancelled and shall be refunded, except not the Super High-Five carryover pool.

(6) If a betting interest in the Super High-Five pool is scratched from the race, there shall not be any more wagers accepted selecting that scratched runner and all tickets previously sold designating that horse shall be refunded and that money shall be deducted from the gross pool.

(7) If any dead-heat occurs in any finishing position, all wagers selecting either of the runners finishing in a dead heat with the correct runners not finishing in a dead heat shall be winners and share the Super High-Five pool. Payouts shall be calculated by splitting the pool equally between each winning combination, then dividing each portion by the number of winning tickets.

(8) On the final day of a meeting, an association shall make a final distribution of all accumulated carryovers along with the net pool of the Super High-Five pool conducted on the final day of the meeting as a single price pool to:

(a) Individuals with tickets selecting the first five (5) finishers, in exact order, for the designated race, or, if there are not any of those wagers, to;

(b) Individuals with tickets selecting the first four (4) finishers, in exact order, for the designated race, or, if there are not any of those wagers, to;

(c) Individuals with tickets selecting the first three (3) finishers, in exact order, for the designated race, or, if there are not any of those wagers, to;

(d) Individuals with tickets selecting the first two (2) finishers, in exact order, for the designated race, or, if there are not any of those wagers, to;

(e) Individuals with tickets selecting the winner for the designated race, or, if there are not any of those wagers;

(f) All money wagered into the Super High-Five pool that day shall be refunded and any carryover shall be retained and added to the Super High -Five pool on the first racing day of the next meeting.

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(9) If, for any reason, the Super High-Five carryover shall be held over to the corresponding Super High-Five pool of a subsequent meeting, the carryover shall be deposited in an interest-bearing account approved by the commission. The Super High-Five carryover plus accrued interest shall then be added to the net Super High-Five pool of the following meeting on a date and performance approved by the commission.

### Section 12. Double Pools.

(1) The double pool shall require the selection of the first-place finisher in each of two (2) specified races.

(2) The net double pool shall be distributed in the following precedence based upon the official order of finish:

(a) As a single price pool to individuals whose selections finished first in each of the two (2) races, except if there are not any of those wagers, then;

(b) As a profit split to individuals who selected the first-place finisher in either of the two (2) races, except if there are not any of those wagers, then;

(c) As a single price pool to individuals who selected the one (1) covered betting interest that finished first in either race, except if there are not any of those wagers, then;

(d) As a single price pool to individuals whose selection finished second in each of the two (2) races, except if there are not any of those wagers, then;

(e) The entire pool shall be refunded on the double wagers for those races.

(3)(a) If there is a dead heat for first in either of the races involving horses representing the same betting interest, the double pool shall be distributed as if no dead heat occurred.

(b) If there is a dead heat for first in either of the races involving horses representing two (2) or more betting interests, the double pool shall be distributed as a profit split if there is more than one (1) covered winning combination.

(4) If a betting interest in the first half of the double is scratched prior to the close of wagering on the first double contest, all money wagered on combinations including the scratched betting interest shall be deducted from the double pool and refunded.

(5) If a betting interest in the second half of the double is scratched prior to the close of wagering on the first double race, all money wagered on the combinations including the scratched betting interest shall be deducted from the double pool and refunded.

(6) If a betting interest in the second half of the double is scratched after the close of wagering on the first double race, all wagers combining the winner of the first race with the scratched betting interest in the second race shall be allocated a consolation payout.

(a) In calculating the consolation payout, the net double pool shall be divided by the total amount wagered on the winner of the first race and an unbroken consolation price obtained.

(b) The broken consolation price shall be multiplied by the dollar value of wagers on the winner of the first race combined with the scratched betting interest to obtain the consolation payout.

(c) Breakage shall not be included in this calculation.

(d) The consolation payout shall be deducted from the net double pool before calculation and distribution of the winning double payout.

(e) Dead heats including separate betting interests in the first race shall result in a consolation payout calculated as a profit split.

(7) If either of the double races is cancelled prior to the first double race, or the first double race is declared "no contest," the entire double pool shall be refunded on double wagers for those races.

(8)(a) If the second double race is cancelled or declared a "no contest" after the conclusion of the first double race, the net double pool shall be distributed as a single price pool to individuals who selected the winner of the first double race.

(b) If there is a dead heat involving separate betting interests, the net double pool shall be distributed as a profit split.

### Section 13. Big Q Pools.

(1) The Big Q shall require selection of the first two (2)

finishers, irrespective of order, in each of two (2) designated races.

(a) Each winning ticket for the first Big Q race shall be exchanged for a free ticket on the second Big Q race in order to remain eligible for the second half Big Q pool.

(b) Exchange tickets shall be exchanged at attended ticket windows prior to the second race comprising the Big Q.

(c) There shall not be a monetary reward for winning the first Big Q race.

(d) Each of the designated Big Q races shall be included in only one (1) Big Q pool.

(2) In the first Big Q race only, winning wagers shall be determined using the following precedence based on the official order of finish for the first Big Q race:

(a) If a mutuel entry or mutuel field finishes as the first two (2) finishers, those who selected the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish shall be winners, otherwise:

(b) Individuals whose combination finished as the first two (2) betting interests shall be winners, except if there are not any of those wagers, then;

(c) Individuals whose combination included either the first- or second-place finisher shall be winners, except if there are not any of those wagers on one (1) of the two (2) finishers, then;

(d) Individuals whose combination included the one (1) covered betting interest included within the first two (2) finishers shall be winners, except if there are not any of those wagers, then;

(e) The entire pool shall be refunded on Big Q wagers for that race.

(3)(a) In the first Big Q race only, if there is a dead heat for first involving horses representing the same betting interest, individuals who selected the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish shall be winners.

(b) In the first Big Q race only, if there is a dead heat for first involving horses representing two (2) betting interests, the winning Big Q wagers shall be determined as if no dead heat occurred.

(c) In the first Big Q race only, if there is a dead heat for first involving horses representing three (3) or more betting interests, individuals whose combination included any two (2) of the betting interests finishing in the dead heat shall be winners.

(4) In the first Big Q race only, if there is a dead heat for second, the winners shall be those who combined the first place finisher with any of the runners involved in the dead heat for second.

(5) In the second Big Q race only, the entire net Big Q pool shall be distributed to individuals in the following precedence based upon the official order of finish for the second Big Q race:

(a) If a mutuel entry or mutuel field finishes as the first two (2) finishers, as a single price pool to individuals who selected the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish, otherwise;

(b) As a single price pool to individuals whose combination finished as the first two (2) betting interests, except if there are not any of those wagers, then;

(c) As a profit split to individuals whose combination included either the first- or second- place finisher, except if there are not any of those wagers on one (1) of those two (2) finishers, then;

(d) As a single price pool to individuals whose combination included one (1) of the covered betting interests included within the first two (2) finishers, except if there are not any of those wagers, then;

(e) As a single price pool to all exchange ticket holders for that race, except if there are not any of those wagers, then;

(f) In accordance with subsection (2) of this section.

(6)(a) In the second Big Q race only, if there is a dead heat for first involving horses representing the same betting interest, the net Big Q pool shall be distributed to individuals selecting the mutuel entry or mutuel field combined with the next separate betting interest in the official order of finish.

(b) In the second Big Q race only, if there is a dead heat for first involving horses representing two (2) betting interests, the net Big Q pool shall be distributed as if no dead heat occurred.

(c) In the second Big Q race only, if there is a dead heat for

first involving horses representing three (3) or more betting interests, the net Big Q pool shall be distributed as a profit split to individuals whose combination included any two (2) of the betting interests finishing in the dead heat.

(7) In the second Big Q race only, if there is a dead heat for second involving horses representing two (2) or more betting interests, the Big Q pool shall be distributed to individuals in the following precedence based upon the official order of finish:

(a) As a profit split to individuals combining the winner with any of the betting interests involved in the dead heat for second, except if there is only one (1) covered combination, then;

(b) As a single price pool to individuals combining the winner with the one (1) covered betting interest involved in the dead heat for second, except if there are not any of those wagers, then;

(c) As a profit split to individuals combining the betting interests involved in the dead heat for second, except if there are not any of those wagers, then;

(d) As a profit split to individuals whose combination included the winner and any other betting interest and wagers selecting any of the betting interests involved in the dead heat for second, then;

(e) As a single price pool to all exchange ticket holders for that race, except if there are not any of those tickets, then;

(f) In accordance with subsection (2) of this section.

(8) If a winning ticket for the first half of the Big Q is not presented for exchange prior to the close of betting on the second half Big Q race, the ticket holder shall forfeit all rights to any distribution of the Big Q pool resulting from the outcome of the second race.

(9) If a betting interest in the first half of the Big Q is scratched, the Big Q wagers including the scratched betting interest shall be refunded.

(10)(a) If a betting interest in the second half of the Big Q is scratched, an immediate public announcement and immediate posting on the association's video monitors and website concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched betting interest.

(b) If tickets have not been exchanged prior to the close of betting for the second Big Q race, the ticket holder shall forfeit all rights to the Big Q pool.

(11) If either of the Big Q races is cancelled prior to the first Big Q race, or the first Big Q race is declared "no contest," the entire Big Q pool shall be refunded on Big Q wagers for that race.

(12) If the second Big Q race is cancelled or declared "no contest" after the conclusion of the first Big Q race, the net Big Q pool shall be distributed as a single price pool to wagers selecting the winning combination in the first Big Q race and all valid exchange tickets. If there are not any of those wagers, the net Big Q pool shall be distributed as described in subsection (2) of this section.

#### Section 14. Pick-(n) Pools.

(1) The Pick-(n) shall require the selection of the first place finisher in each of (n)-specified races designated by the association and approved by the commission where (n) is any number of races greater than 2. Any changes to the Pick-(n) format shall be approved by the commission before implementation.

(2) The Pick-(n) pari-mutuel pool consists of amounts contributed for a win only selection in each of (n) races designated by the association. Each individual placing a Pick-(n) wager shall designate the winning horse in each of (n) races comprising the Pick-(n).

(3) The net Pick-(n) pool shall be apportioned in one the following methods based upon the official order of finish:

(a) Method 1, Pick-(n) with Carryover: The net Pick-(n) pool and carryover, if any, shall be distributed as a single price pool to those who selected the first-place finisher in each of the Pick-(n) contests, based upon the official order of finish. If there are not any of those wagers, then a designated percentage of the net pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick-(n) contests; and the remainder shall be added to the carryover. Where there is no correct selection of the first-place finisher in at least one of the

Pick-(n) contests, based upon the official order of finish, the day's net pool shall be refunded and the previous carryover pool amount, if any, shall be carried over to the next scheduled corresponding pool.

(b) Method 2, Pick-(n) with 100 percent Carryover: The net Pick-(n) pool and carryover, if any, shall be distributed as a single price pool to those who selected the first-place finisher in each of the Pick-(n) contests, based upon the official order of finish. If there are not any of those wagers, then 100 percent of that day's net pool shall be added to the carryover. Where there is no correct selection of the first-place finisher in at least one of the Pick-(n) contests, based upon the official order of finish, the day's net pool shall be refunded and the previous carryover pool amount, if any, shall be carried over to the next scheduled corresponding pool.

(c) Method 3, Pick-(n) with Minor Pool and Carryover: The major share of the net Pick-(n) pool and the carryover, if any, shall be distributed to those who selected the first-place finisher in each of the Pick-(n) contests, based upon the official order of finish. The minor share of the net Pick-(n) pool shall be distributed to those who selected the first place finisher in the second greatest number of Pick-(n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher of all Pick-(n) contests, the minor share of the net Pick-(n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick-(n) contests; and the major share shall be added to the carryover. Where there is no correct selection of the first-place finisher in at least one (1) of the Pick-(n) contests, based upon the official order of finish, the day's net pool shall be refunded and the previous carryover pool amount, if any, shall be carried over to the next scheduled corresponding pool.

(d) Method 4, Pick-(n) with No Minor Pool and No Carryover: The net Pick-(n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick-(n) contests, based upon the official order of finish. If there are no winning wagers, the pool shall be refunded.

(e) Method 5, Pick-(n) with Minor Pool and No Carryover: The major share of the net Pick-(n) pool shall be distributed to those who selected the first place finisher in the greatest number of Pick-(n) contests, based upon the official order of finish. The minor share of the net Pick-(n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of Pick-(n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher in a second greatest number of Pick-(n) contests, the minor share of the net Pick-(n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in the greatest number of Pick-(n) contests. If the greatest number of first-place finishers selected is one (1), the major and minor shares shall be combined for distribution as a single price pool. If there are no winning wagers, the pool shall be refunded.

(f) Method 6, Pick-(n) with Minor Pool and No Carryover: The major share of net Pick-(n) pool shall be distributed to those who selected the first-place finisher in each of the Pick-(n) contests, based upon the official order of finish. The minor share of the net Pick-(n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of Pick-(n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher in all Pick-(n) contests, the entire net Pick-(n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick-(n) contests. If there are no wagers selecting the first-place finisher in a second greatest number of Pick-(n) contests, the minor share of the net Pick-(n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in each of the Pick-(n) contests. If there are no winning wagers, the pool shall be refunded.

(g) Method 7, Pick-(n) with Carryover and "Unique Winning Ticket" Provision: The net Pick-(n) pool and carryover, if any, shall be distributed to the holder of a unique winning ticket that selected the first-place finisher in each of the Pick-(n) contests, based upon the official order of finish. If there are multiple tickets selecting the first-place finisher in each of the Pick-(n) contest(s), a share that

has been declared by the association and approved by the commission, of the net Pick-(n) shall be distributed as a single price pool to those who selected the first-place finisher in each of the Pick-(n) contests and the remaining share shall be added to the carryover. If there are no tickets selecting the first-place finisher in each of the Pick-(n) contests, then; the entire net Pick-(n) pool shall be added to the carryover. Associations may suspend previously approved unique winning ticket wagering with the prior approval of the commission. Any carryover shall be held until the suspended unique winning ticket wagering is reinstated. Where there is no correct selection of the first-place finisher in at least one (1) of the Pick-(n) contests, based upon the official order of finish, the day's net pool shall be refunded and the previous carryover pool amount, if any, shall be carried over to the next scheduled corresponding pool. In obtaining authorization for operating the Pick-(n) pool under this subsection, associations shall clearly identify which definition under subsection (16)(b) of this section will be relied upon for determining the existence of a unique winning ticket.

(4) If there is a dead heat for first place in any of the Pick-(n) races involving contestants representing the same betting interest, the Pick-(n) pool shall be distributed as if no dead heat occurred.

(5) If there is a dead heat for first place in any of the Pick-(n) races involving contestants representing two (2) or more betting interests, the Pick-(n) pool shall be distributed as a single price pool with each winning wager receiving an equal share of the profit.

(6) If a betting interest is scratched or is designated to run for purse money only from any leg of the Pick-(n), the association shall use the actual favorite, as evidenced by total amounts wagered in the Win pool at the host association, for the contest at the close of wagering on that contest, and shall be substituted for the betting interest that was scratched or designated to run for purse money only for all purposes, including pool calculations. If the Win pool total for two (2) or more favorites is identical, the substitute selection shall be the betting interest with the lowest program number. The totalizer shall produce reports showing each of the wagering combinations with substituted betting interests which became winners as a result of the substitution, in addition to the normal winning combination.

(7) If for any reason more than half of the races comprising the Pick-(n) are cancelled or declared a "no contest", and there was no previous carryover amount, wagering on the Pick-(n) shall be cancelled and all wagers shall be refunded.

(8) If for any reason more than half of the races comprising the Pick-(n) are cancelled or declared a "no contest", and a previous carryover amount existed, the carryover amount shall be frozen and added to the next scheduled Pick-(n) event. Wagering on the Pick-(n) for the cancelled Pick-(n) wager races shall be cancelled and all wagers shall be refunded.

(9) If the condition of the turf course warrants a change of racing surface in any races of the Pick-(n), and the change has not been disclosed to the public prior to "off time" of the first race of the Pick-(n), the stewards shall declare the changed races an "all win" race for Pick-(n) wagering purposes only. An "all win" race shall assign the winner of that race to each Pick-(n) ticket holder as their selection for that race.

(10) The Pick-(n) carryover may be capped at a designated level approved by the commission so that if, at the close of any performance, the amount in the Pick-(n) carryover equals or exceeds the designated cap, the Pick-(n) carryover will be frozen until it is won or distributed under other provisions of this rule. After the Pick-(n) carryover is frozen, 100 percent of the net pool, part of which ordinarily would be added to the Pick-(n) carryover, shall be distributed to those whose selection finished first in the greatest number of Pick-(n) contests for that performance.

(11) A written request for permission to distribute the Pick-(n) carryover on a specific performance may be submitted to the commission. The request shall be for a specified date no greater than one (1) year from the date the request is submitted and contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.

(12) If the Pick-(n) carryover is designated for distribution on a specified date and performance in which there are no wagers selecting the first-place finisher in each of the Pick-(n) contests, the entire pool shall be distributed as a single price pool to those whose selection finished first in the greatest number of Pick-(n) contests. The Pick-(n) carryover shall be designated for distribution on a specified date and performance only under the following circumstances:

(a) Upon written approval from the commission as provided in subsection (11) of this section; ~~and~~

(b) Upon written approval from the commission when there is a change in the carryover cap, a change from one (1) type of Pick-(n) wagering to another, or when the Pick-(n) is discontinued; or

(c) On the closing performance of the meet or split meet.

(13) Notwithstanding subsections (10) and (12) of this section, if for any reason the Pick-(n) carryover must be held over to the corresponding Pick-(n) pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the commission. The Pick-(n) carryover plus accrued interest shall then be added to the net Pick-(n) pool of the following meet on a date and performance designated by the association and approved by the commission.

(14) With the written approval of the commission, the association may contribute to the Pick-(n) carryover a sum of money up to the amount of any designated cap.

(15) The association may suspend previously-approved Pick-(n) wagering with the prior approval of the commission. Any carryover shall be held until the suspended Pick-(n) wagering is reinstated. An association may request approval of a Pick-(n) wager or separate wagering pool for specific performances.

(16) As it relates to any distribution method under subsection (3)(g) of this section which contains a unique winning ticket provision:

(a) A written request for permission to distribute the Pick-(n) unique winning ticket carryover on a specific performance may be submitted to the commission. The request shall contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution. If the Pick-(n) unique winning ticket net pool and any applicable carryover is designated for distribution on a specified date and performance in which there is no unique winning ticket, the entire pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick-(n) contests.

(b) Associations shall clearly identify which selection under subparagraphs 1 and 2 of this paragraph will be relied upon for determining the existence of a unique winning ticket:

1. There is one (1) and only one (1) winning ticket that correctly selected the first place finisher in each of the Pick-(n) contests, based upon the official order of finish, to be verified by the unique serial number assigned by the tote company that issued the winning ticket; or

2. The total amount wagered on one (1) and only one (1) winning combination selecting the first-place finisher in each of the Pick-(n) contests, based up on the official order of finish, is equal to the minimum allowable wager.

(17)(a) Each association shall disclose in its license application whether it intends to schedule Pick-(n) races and, if so, shall disclose:

1. The percentage of the pool to be retained for the winning wagers, and

2. The designated amount of any cap to be set on the pool to be retained for the winning wagers.

~~(b)(3.)~~ Any changes to the Pick-(n) scheduling shall require prior approval from the commission or its designee.

(18) An association may request permission from the commission to distribute the Pick-(n) carryover on a specific performance. The request shall contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.

(19) Upon written approval of the commission, a sum of money up to the amount of any designated cap may be contributed to the Pick-(n) carryover by an association. The association may supply information to the general public regarding the winning dollars in

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the Pick-(n) pool. The information shall not be selectively distributed. This shall not prohibit necessary communication between totalizator and pari-mutuel department employees for processing of pool data.

### Section 15. Twin Trifecta Pools.

(1) The Twin Trifecta shall require the selection of the first three (3) finishers, in their exact order, in each of two (2) designated races.

(a) Each winning ticket for the first Twin Trifecta race shall be exchanged for a free ticket on the second Twin Trifecta race in order to remain eligible for the second half Twin Trifecta pool.

(b) The winning tickets may only be exchanged at attended ticket windows prior to the second Twin Trifecta race.

(c) Winning first half Twin Trifecta wagers shall receive both an exchange and a monetary payout.

(d) Both of the designated Twin Trifecta races shall be included in only one (1) Twin Trifecta pool.

(2) After wagering closes for the first half of the Twin Trifecta, and the takeout has been deducted from the pool, the net pool shall then be divided into two (2) separate pools: the first half Twin Trifecta pool and the second half Twin Trifecta pool.

(3) In the first Twin Trifecta race only, winning wagers shall be determined using the following precedence based upon the official order of finish for the first Twin Trifecta race:

(a) As a single price pool to individuals whose combination finished in the correct sequence as the first three (3) betting interests, except if there are not any of those wagers, then;

(b) As a single price pool to individuals whose combination included, in correct sequence, the first two (2) betting interests, except if there are not any of those wagers, then;

(c) As a single price pool to individuals whose combination correctly selected the first-place betting interest only, except if there are not any of those wagers, then;

(d) The entire Twin Trifecta pool shall be refunded on Twin Trifecta wagers for that race and Twin Trifecta wagering on the second half shall be cancelled.

(4) Except as established in subsection (16) of this section, if no first half Twin Trifecta ticket selects the first three (3) finishers of that race in exact order:

(a) Exchange tickets for the second half Twin Trifecta pool shall not be distributed; and

(b) The second half Twin Trifecta pool shall be retained and added to any existing Twin Trifecta carryover pool.

(5)(a) Tickets from the first half of the Twin Trifecta that correctly select the first three (3) finishers shall be exchanged for tickets selecting the first three (3) finishers of the second half of the Twin Trifecta.

(b) The second half Twin Trifecta pool shall be distributed to individuals in the following precedence based upon the official order of finish for the second Twin Trifecta race:

1. As a single price pool, including any existing carryover monies, to individuals whose combination finished in correct sequence as the first three (3) betting interests except if there are not any of those wagers, then;

2. The entire second half Twin Trifecta pool for that race shall be added to any existing carryover monies and retained for the corresponding second half Twin Trifecta pool of the next consecutive performance.

(c) If a winning first half Twin Trifecta ticket is not presented for cashing and exchange prior to the second half Twin Trifecta race, the ticket holder may still collect the monetary value associated with the first half Twin Trifecta pool except the ticket holder shall forfeit all rights to any distribution of the second half Twin Trifecta pool.

(6) Mutuel entries and mutuel fields shall be prohibited in Twin Trifecta races.

(7) If a betting entry in the first half of the Twin Trifecta is scratched, Twin Trifecta wagers including the scratched betting interest shall be refunded.

(8)(a) If a betting interest in the second half of the Twin Trifecta is scratched, an immediate public announcement and immediate posting on the association's video monitors and website concerning the scratch shall be made and a reasonable amount of

time shall be provided for exchange of tickets that include the scratched betting interest.

(b) If tickets have not been exchanged prior to the close of betting for the second Twin Trifecta race, the ticket holder shall forfeit all rights to the second half Twin Trifecta pool.

(9) If, due to a late scratch, the number of betting interests in the second half of the Twin Trifecta is reduced to fewer than the minimum, all exchange tickets and outstanding first half winning tickets shall be entitled to the second half pool for that race, except they shall not be entitled to the Twin Trifecta carryover.

(10)(a) If there is a dead heat or multiple dead heats in either the first or second half of the Twin Trifecta, all Twin Trifecta wagers selecting the correct order of finish, counting a betting interest involved in a dead heat as finishing in any dead-heated position, shall be winning wagers.

(b) If the dead heat occurs in the first half of the Twin Trifecta, the payout shall be calculated as a profit split.

(c) If the dead heat occurs in the second half of the Twin Trifecta, the payout shall be calculated as a single price pool.

(11) If the first Twin Trifecta race is canceled or declared "no contest", the entire Twin Trifecta pool shall be refunded on Twin Trifecta wagers for that race and the second half shall be cancelled.

(12)(a) If the second half Twin Trifecta race is cancelled or declared "no contest", all exchange tickets and outstanding first half winning Twin Trifecta tickets shall be entitled to the net Twin Trifecta pool for that race as a single price pool, except they shall not be entitled to the Twin Trifecta carryover.

(b) If there are no outstanding first half winning Twin Trifecta tickets, the net Twin Trifecta pool shall be distributed as described in subsection (3) of this section.

(13)(a) The Twin Trifecta carryover may be capped at a designated level approved by the commission so that if, at the close of any performance, the amount in the Twin Trifecta carryover equals or exceeds the designated cap, the Twin Trifecta carryover shall be frozen until it is won or distributed under the provisions of this administrative regulation.

(b) After the Twin Trifecta carryover is frozen, 100 percent of the net Twin Trifecta pool for each individual race shall be distributed to winners of the first half of the twin Trifecta pool.

(14) A written request for permission to distribute the Twin Trifecta carryover on a specific performance may be submitted to the commission. The request shall contain:

(a) Justification for the distribution;

(b) An explanation of the benefit to be derived; and

(c) The intended date and performance for the distribution.

(15) If the Twin Trifecta carryover is designated for distribution on a specified date and performance, the following precedence shall be followed in determining winning tickets for the second half of the Twin Trifecta after completion of the first half of the Twin Trifecta:

(a) As a single price pool to individuals whose combination finished in correct sequence as the first three (3) betting interests, except if there are not any of those wagers, then;

(b) As a single price pool to individuals whose combination included, in correct sequence, the first two (2) betting interests, except if there are not any of those wagers, then;

(c) As a single price pool to individuals whose combination correctly selected the first-place betting interest only, except if there are not any of those wagers, then;

(d) As a single price pool to holders of valid exchange tickets, except if there are not any of those wagers, then;

(e) As a single price pool to holders of outstanding first half winning tickets.

(16) For a performance designated to distribute the Twin Trifecta carryover, exchange tickets shall be issued for those combinations selecting the greatest number of betting interests in their correct order of finish for the first half of the twin Trifecta.

(a) If there are no wagers correctly selecting the first-, second-, and third-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first- and second-place finishers.

(b) If there are no wagers correctly selecting the first- and second-place finishers, in their exact order, exchange tickets shall be issued for combinations correctly selecting only the first-place

finisher.

(c) If there are no wagers selecting the first-place finisher only in the first half of the Twin Trifecta, all first half tickets shall be winning tickets and shall be entitled to 100 percent of that performance's net Twin Trifecta pool, and any existing Twin Trifecta carryover.

(17) The Twin Trifecta carryover shall be designated for distribution on a specified date and performance only under the following circumstances:

(a) Upon written approval from the commission as provided in subsection (14) of this section;

(b) Upon written approval from the commission if there is a change in the carryover cap or if the Twin Trifecta is discontinued; or

(c) On the closing performance of the meeting or split meeting.

(18) If, for any reason, the Twin Trifecta carryover shall be held over to the corresponding Twin Trifecta pool of a subsequent meeting, the carryover shall be deposited in an interest-bearing account approved by the commission. The Twin Trifecta carryover plus accrued interest shall then be added to the second half Twin Trifecta pool of the following meeting on a date and performance so approved by the commission.

(19) Associations shall not provide information to any individual regarding covered combinations, the number of tickets sold, or the number of valid exchange tickets. This shall not prohibit necessary communication between totalizator and pari-mutuel department employees from processing of pool data.

(20)(a) Each association shall disclose in its license application whether it intends to schedule Twin-Trifecta wagering and, if so, shall disclose:

1. The percentages of the net pool added to the first half pool and the second half pool; and

2. The amount of any cap to be set on the carryover.

(b) Any subsequent changes to the Twin Trifecta scheduling require prior approval from the commission or its designee.

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

**810 KAR 6:030. Pari-mutuel wagering.**

RELATES TO: KRS 230.300, 230.361, 230.3615, 230.370, 230.380, 230.398, 230.750

STATUTORY AUTHORITY: KRS 230.210, 230.215, 230.361, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission ~~[(the "commission")]~~ to regulate conditions under which horse racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating wagering on horse races under the pari-mutuel system of wagering. This administrative regulation establishes the requirements for the operation of pari-mutuel wagering under KRS Chapter 230 and KAR Title 810, Chapter 6.

**Section 1. Pari-Mutuel System of Wagering Required.**

(1) The only wagering permitted on live or historical horse races shall be under the pari-mutuel system of wagering. All systems of wagering other than pari-mutuel shall be prohibited. Any person participating or attempting to participate in prohibited wagering shall be ejected and excluded from association grounds.

(2) Wagering conducted in conformity with KRS Chapter 230 and KAR Title 810 is pari-mutuel.

**Section 2. Totalizator or Other Approved Equipment Required.**

(1) Pari-mutuel wagering on live and historical horse races

shall only be conducted through the use of a totalizator or other similar mechanical equipment approved by the commission pursuant to KRS 230.361.

(2) The totalizator or other mechanical equipment shall be available for testing under the supervision of the commission upon request by the commission to ensure ~~[its]~~ proper working order.

**Section 3. Wagering on Historical Horse Races Authorized.**

(1) Wagering on historical horse races ~~[is hereby authorized and]~~ may be conducted and, if conducted, shall be in accordance with KRS Chapter 230 and KAR Title 810.

(2) Wagering on historical horse races shall only be conducted by:

(a) An association licensed to conduct a live horse race meet; or

(b) Two (2) or more associations licensed to conduct a live horse race meet:

1. Who form a joint venture; or

2. Pursuant to an agreement between them.

(3) Wagering on historical horse races shall only be permitted in a designated area on the licensed premises of an association licensed to conduct a live horse race meeting. Wagering on historical horse races shall not be offered in any other location.

(4) An association may conduct wagering on historical horse races of any horse breed regardless of the type of breed that primarily races in live meets conducted by the association. An association may conduct wagering on historical horse races on any days and hours approved by the commission, and shall not be limited to times during which the association is conducting a live horse race meeting.

(5) Any wager placed on a historical horse race or races shall be [is] an exotic wager.

(6) Before offering wagering on historical horse races, an association shall first obtain the commission's written approval of all wagers offered as established [set forth] in KAR Title 810.

(7) All wagering on historical horse races shall incorporate the [following] elements established in paragraphs (a) through (f) of this subsection. [;]

(a) A patron may only wager on historical horse races on a terminal approved by the commission pursuant to this subsection and Section 5 of this administrative regulation. [;]

(b) An association shall at all times maintain at least two (2) terminals offering each type of exotic wager on historical horse races. [;]

(c) Once a patron deposits an amount in the terminal offering wagering on historical horse races, one (1) or more historical horse races shall be made available for wagering. [;]

(d) Prior to the patron making his or her wager selections, the terminal shall not display any information that would allow the patron to identify the historical horse race or races on which he or she is wagering, including the location of the race or races, the date on which the race or races was run, the names of the horses in the race or races, or the names of the jockeys or drivers that rode the horses in the race or races. [;]

(e) The terminal shall make available true and accurate past performance information on the historical horse race to the patron prior to making his or her wager selections. The information shall be current as of the day the historical horse race was actually run. The information provided to the patron shall be displayed on the terminal in data or graphical form. [; and]

(f) After a patron finalizes his or her wager selections, the terminal shall display the patron's selections, the official results of each race, and a replay of the race or races, or a portion thereof, whether by digital or animated depiction or by way of a video recording. The identity of each race shall be revealed to the patron after the patron has placed his or her wager.

**Section 4. Payouts through Pari-Mutuel Pools Authorized.**

(1)(a) A wager on a historical horse race or races, less deductions permitted by KRS Chapter 230 or KAR Title 810, shall be placed in pari-mutuel pools approved by the commission based on promoting the best interests of racing.

(b) A payout to a winning patron shall be paid from money



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wagered by patrons and shall not constitute a wager against the association.

(c) An association conducting wagering on historical horse races shall not conduct wagering in ~~[such]a~~ manner that ~~results in~~ patrons ~~[are]~~wagering against the association, or in ~~[such]a~~ manner ~~so~~ that the amount retained by the association as a commission is dependent upon the outcome of any particular race or the success of any particular wager.

(2) An association offering wagering on historical horse races shall operate a pari-mutuel pool or pools in a manner and method approved by the commission. An association offering wagering on historical horse races may operate a player-funded pool or pools in a manner and method approved by the commission for the purpose of ensuring that sufficient funds are at all times available to pay any winning wagers in situations where a pari-mutuel pool becomes a “minus” pool as defined by 810 KAR 6:001. For each wager made, an association may assign a percentage of the wager to a player-funded pool or pools.

(3) If an association chooses to make a deposit into a trust account for the purpose of ensuring that sufficient funds are at all times available to pay any winning wagers in situations ~~in which~~~~[where]~~ a pari-mutuel pool becomes a minus pool, then ~~that trust account shall~~~~[such trust account must]~~ be approved by the commission.

### Section 5. Location of Terminals Used for Wagering on Historical Horse Races.

(1) Terminals offering wagering on historical horse races shall be located within designated areas ~~that~~~~[which]~~ have the prior written approval of the commission. Designated areas shall be established ~~so~~~~[in such a way]~~ as to control access by the general public and prevent entry by any patron who is under eighteen (18) years of age or is otherwise not permitted to place wagers.

(2) Each association shall monitor persons entering and leaving the designated areas and shall prevent access to any patron who is under eighteen (18) years of age or is otherwise not permitted to place wagers on historical horse races.

(3) Each association shall provide terminals that are accessible to handicapped patrons.

### Section 6. Records to be Maintained.

(1) Each association and each simulcast facility authorized under KRS 230.380 shall maintain complete records of all pari-mutuel wagering transactions on live and historical horse races, including the amounts wagered at each betting window, self-service totalizator, mobile pari-mutuel teller, and terminal.

(2) A copy of the wagering records shall be retained and safeguarded for a period of not less than two (2) years and shall not be destroyed ~~after the two (2) year-period~~ without the prior written permission of the commission.

### Section 7. Equipment.

(1) The association and the totalizator provider shall install a primary and secondary device, which activate the stop betting function of the totalizator system. The chief state steward, presiding judge, or his or her designee, shall use the primary device to stop wagering at the start of a live horse race. If wagering is not stopped by the primary device at the start of the race, the totalizator operator shall stop wagering using the secondary device. The secondary device shall be installed in the totalizator room and shall only be used by the totalizator operator.

(2) If there is a complete breakdown of the totalizator or mechanical equipment during the wagering on a live horse race, the wagering on that race shall be declared closed. If the totalizator remains capable of computing payouts, the payouts for that race shall be computed based on the amounts wagered prior to the breakdown. If the totalizator is incapable of computing payouts, then refunds shall be issued for all amounts wagered on that race.

(3) If there is a complete breakdown of a terminal offering wagering on historical horse, the association offering the wager shall make a full refund of the patron's balance on the terminal at the time of the breakdown.

### Section 8. Entries in a Live Horse Race.

(1) The chief state steward or presiding judge shall timely advise an association's pari-mutuel manager, prior to the beginning of wagering on each live horse race, of the horses that will compete in the race.

(2) If two (2) or more horses entered for the same live horse race are determined by the commission to have common ties through ownership or training, they may be joined by the commission as a mutuel entry. The mutuel entry shall become a single betting interest and a wager on one (1) horse in a mutuel entry shall be a wager on all horses in the same mutuel entry. If the number of horses competing in a live horse race exceeds the numbering capacity of the totalizator, the racing secretary shall assign the highest pari-mutuel numbers to horses so that the highest numbered horse within the numbering capacity of the totalizator, together with horses of higher numbers, shall be grouped in the mutuel field as a single betting interest, and a wager on one (1) horse in the mutuel field shall be a wager on all horses in the same mutuel field.

(3) A refund at cost value shall be made to all holders of a purchased ticket bearing the number of a horse in any race that has been scratched or withdrawn before the horse has become a starter, unless the horse is part of a mutuel entry, and one (1) or more of the entry starts.

### Section 9. Sale of Pari-Mutuel Tickets on Live Horse Races.

(1) The following types of pari-mutuel wagering shall be permitted on a live horse race at all licensed associations and simulcast facilities:

(a) Normal win, place, and show wagers on each race;

(b) Any exotic wager previously approved by the commission ~~pursuant to 810 KAR 6:010~~; and

(c) Any new exotic wager approved in writing by the commission pursuant to KAR Title 810.

(2) Pari-mutuel tickets on live horse races shall not be sold except by a licensed association or a simulcast facility authorized by KRS 230.380.

(3) Pari-mutuel tickets on a live horse race shall only be sold at regular ticket windows, self-service totalizator machines, by mobile pari-mutuel tellers with hand-held totalizator devices, or by any other method approved in writing by the commission prior to being offered to the public. At least one (1) regular ticket window shall be made accessible to handicapped patrons.

(4)(a) Pari-mutuel stored value cards or cash vouchers may be offered by an association. The dollar amount on the stored value card or cash voucher may be redeemed at any time at any regular ticket window, or used to fund additional wagers.

(b) Cash vouchers shall be valid for one (1) year after the date of issuance. Failure to present any cash voucher for redemption within one (1) year of issuance shall constitute a waiver of the right to receive payment on the voucher.

(5) A pari-mutuel wager shall not be made on a race after the totalizator has been locked for that race.

(6) Any claim by a patron that he or she has been issued a pari-mutuel ticket other than that ~~[which was]~~requested shall be made before the patron has left the ticket window or before the mobile teller has initiated a transaction with another patron. A claim for an incorrect ticket shall not be honored after the totalizator has been locked.

### Section 10. Payment on Pari-Mutuel Tickets on Live Horse Races.

(1) At the end of each live horse race, the placing judges shall advise the manager of the pari-mutuel department by the use of the totalizator equipment or by telephone of the official placement of the horses, and payouts shall not be made until the receipt of the notice.

(2) Payment of valid pari-mutuel tickets shall be made on the basis of the order of finish as declared "official" by the stewards or judges. A subsequent change in the order of finish or award of purse money that ~~could~~~~[may]~~ result from a subsequent ruling by the stewards, judges, or commission shall not affect the pari-mutuel payout.

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(3) Each association shall deduct from each pari-mutuel pool a commission, not exceeding the commission established[provided] by KRS 230.3615 or KRS 230.750. The remainder of the pari-mutuel pool after the deduction of the commission shall be the net pool for distribution as payouts to ticket holders.

(4) Payment on valid pari-mutuel tickets shall be made only if presented and surrendered within one (1) year following the running of the live horse race on which the wager was made. Failure to present a ticket within one (1) year shall constitute a waiver of the right to receive payment on the ticket.

(5) The association shall be responsible for the correctness of all payout prices posted as "official." If an error is made in posting the payout figures, and ascertained before any tickets are cashed, the posting error shall be corrected, accompanied by a public address announcement, and only the correct amounts shall be used in the payout, irrespective of the initial error.

(6) A mutilated pari-mutuel ticket that is not easily identifiable as being a valid ticket shall not be accepted for payment.

(7) An association shall establish a written procedure for granting patrons an opportunity to file a claim on a lost pari-mutuel ticket and provide a copy to the commission.

(8) Prior to posting payouts, the association's pari-mutuel manager shall require the verification of the winning runners and prices prior to posting official results.

(9)(a) If an error is made in calculating the payout on a winning wager, resulting in overpayment, the association shall be responsible for the amount between the correct payout and the amount paid.

(b) If the error in calculation results in a payout being too low, the amount between the correct payout and the amount paid shall be added to the net pool of the same position in the following race on the same day or, if it is the last race of the day, then it shall be added to the net pool of the same position in the same race on the following day. If an error occurs in computing the daily double pool, the underpayment shall be added to the daily double pool of the following day.

(c) If an error occurs causing underpayment on the last race of the entire racing meeting, the amount of the underpayment shall be paid to the Kentucky Revenue Cabinet.

### Section 11. Minimum Wagers and Payouts.

(1) The minimum wager to be accepted by any licensed association on a live horse race shall be ten (10) cents. The minimum payout on a one (1) dollar wager on a live horse race shall be one (1) dollars and ten (10) cents, unless a minus pool occurs. If a minus pool occurs, the minimum payout for a one (1) dollar wager shall be one (1) dollar and five (5) cents.

(2) The minimum wager to be accepted by an association on an exotic wager based on the outcome of a historical horse race or races shall be ten (10) cents. The minimum payout on any wager shall not be less than the amount wagered.

Section 12. Minors Prohibited from Wagering. A minor shall not be permitted by any licensed association or simulcast facility to purchase or cash a pari-mutuel ticket.

### Section 13. Odds and payouts posted.

(1) Approximate odds for live horse races, based on win pool betting for finishing first for each betting interest, shall be posted on one (1) or more boards or television screens within view of the wagering public at intervals of not more than ninety (90) seconds.

(2) If daily double wagering is conducted on a live horse race, before off-time of the second daily double race, the probable payout for each two (2) dollar daily double wager combining the winner of the first daily double race with every horse or betting interest in the second daily double race shall be posted; except that if a dead heat for first in the first daily double race occurs, or a scheduled starter in the second daily double race is excused so as to cause a consolation daily double pool, then posting of all possible payouts shall not be mandatory, but the association shall make every effort to compute these[such] daily double prices and advise the public by posting or public address announcement as soon as possible and prior to the running of the second daily

double race.

(3) For wagering on historical horse races, approximate odds or payouts for each pari-mutuel pool shall be posted or made available on each terminal for viewing by patrons.

### Section 14. Betting Explanation.

(1) Each association shall publish in the daily race program, for each day of live horse racing, a general explanation of pari-mutuel wagering offered on live horse races and an explanation of each type of pari-mutuel pool offered. The explanation also shall be posted in conspicuous places about the association grounds to adequately inform the public and shall be submitted to the commission prior to publication for approval.

(2) Each association shall post, in conspicuous places in the designated area, a general explanation of pari-mutuel wagering offered on historical horse races and an explanation of each pari-mutuel pool offered. The explanation shall be submitted to the commission for approval prior to its posting.

Section 15. Prior Approval Required for Number of Live Horse Races. Each association desiring to conduct more than nine (9) live horse races on a single day shall first apply in writing to the commission and obtain specific approval, based on promoting the best interests of racing, of the number of live horse races to be offered on a single day.

Section 16. Pari-mutuel Pools Dependent upon Entries for Live Horse Races.

(1) If horses representing five (5) or fewer betting interests qualify to start in a live horse race, the association may prohibit show wagering on that race. If horses representing four (4) or fewer betting interests qualify to start in a live horse race, the association may prohibit both place and show wagering on that race.

(2) If a horse is scratched by the stewards or judges after wagering has commenced, or if a horse is prevented from running in a live horse race because of failure of a starting-gate door to open properly, and the number of actual starters representing different betting interests is:

(a) Reduced to five (5), the association may cancel show wagering on that race and the entire show pool shall be refunded upon presentation and surrender of show tickets; or

(b) Reduced to four (4) or fewer, the association may cancel both place and show wagering on that race and the entire place and show pool shall be refunded upon presentation and surrender of place and show tickets.

Section 17. Emergency Situation. If any emergency arises in connection with the operation of the pari-mutuel department not provided for by this administrative regulation, the pari-mutuel manager shall take immediate corrective action and shall by the quickest means possible notify the chief state steward or presiding judge and render a full report to the commission.

Section 18. Severability. In the event that any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

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CABINET FOR HEALTH AND FAMILY SERVICES  
 Department for Medicaid Services  
 Division of Policy and Operations  
 (As Amended at ARRS, July 8, 2021)

**907 KAR 1:038. Hearing Program coverage provisions and requirements.**

RELATES TO: KRS 205.520, 205.622, 205.8451(9), 334.010(4), (9), 334A.020(5), 334A.030, 42 C.F.R. 400.203, [444-30], [447-53], 457.310, 42 U.S.C. 1396a, b, d, 1396r-6

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid Program provisions and requirements regarding the coverage of audiology services and hearing instruments.

Section 1. Definitions. (1) "Audiologist" is defined by KRS 334A.020(5).

(2) "CPT code" means a code used for reporting procedures and services performed by medical practitioners and published annually by the American Medical Association in Current Procedural Terminology.

(3) "Department" means the Department for Medicaid Services or its designee.

(4) "Enrollee" means a recipient who is enrolled with a managed care organization.

(5) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(6) "Healthcare Common Procedure Coding System" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or items.

(7) "Hearing instrument" is defined by KRS 334.010(4).

(8) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined by ~~by~~ 42 C.F.R. 438.2.

(9) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(10) "Recipient" is defined by KRS 205.8451(9).

(11) "Specialist in hearing instruments" is defined by KRS 334.010(9).

Section 2. General Requirements. (1)(a) For the department to reimburse for a service or item, the service or item shall:

1. Be provided:

a. To a recipient;

(i) Under the age of twenty-one (21) years, including the month in which the recipient becomes twenty-one (21); or

(ii) For evaluation and testing services, not limited by age, by an audiologist, only if the recipient has received a referral from a physician; and

b. By a provider who is:

(i) Enrolled in the Medicaid Program pursuant to 907 KAR 1:672;

(ii) Except as provided by paragraph (b) of this subsection, currently participating in the Medicaid Program pursuant to 907 KAR 1:671; and

(iii) Authorized to provide the service in accordance with this administrative regulation;

2. Be covered in accordance with this administrative regulation;

3. Be medically necessary; and

4. Have a CPT code or HCPCS code that is listed on the most current Department for Medicaid Services Hearing Program Fee Schedule, posted on the department Web site at: <https://chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>. **Any fee**

**schedule posted shall comply with all relevant existing rate methodologies utilized by the department and established by state and federal law. As appropriate and relevant, the department shall utilize the Medicaid Physician Fee Schedule established in 907 KAR 3:010 to inform and populate the Hearing Program Fee Schedule.**

(b) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(2)(a) If a procedure is part of a comprehensive service, the department shall:

1. Not reimburse separately for the procedure; and

2. Reimburse one (1) payment representing reimbursement for the entire comprehensive service.

(b) A provider shall not bill the department multiple procedures or procedural codes if one (1) CPT code or HCPCS code is available to appropriately identify the comprehensive service provided.

(3) A provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(4)(a) If a provider receives any duplicate payment or overpayment from the department, regardless of reason, the provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(c) Nonduplication of payments and third-party liability shall be in accordance with 907 KAR 1:005.

(d) A provider shall comply with KRS 205.622.

(5)(a) An in-state audiologist shall:

1. Maintain a current, unrevoked, and unsuspended license in accordance with KRS Chapter 334A;

2. Before initially enrolling in the Kentucky Medicaid Program, submit proof of the license referenced in subparagraph 1\_ of this paragraph to the department; and

3. Annually submit proof of the license referenced in subparagraph 1\_ of this paragraph to the department.

(b) An out-of-state audiologist shall:

1. Maintain a current, unrevoked, and unsuspended license to practice audiology in the state in which the audiologist is licensed;

2. Before initially enrolling in the Kentucky Medicaid Program, submit proof of the license referenced in subparagraph 1\_ of this paragraph to the department;

3. Annually submit proof of the license referenced in subparagraph 1\_ of this paragraph to the department;

4. Maintain a Certificate of Clinical Competence issued to the audiologist by the American Speech-Language-Hearing Association; and

5. Before enrolling in the Kentucky Medicaid Program, submit proof of having a Certificate of Clinical Competence issued to the audiologist by the American Speech-Language-Hearing Association.

(c) If an audiologist fails to comply with paragraph (a) or (b) of this subsection, as applicable based on if the audiologist is in-state or out-of-state, the:

1. Audiologist shall be ineligible to be a Kentucky Medicaid Program provider; and

2. Department shall not reimburse for any service or item provided by the audiologist effective with the date the audiologist fails or failed to comply.

(6)(a) An in-state specialist in hearing instruments shall:

1. Maintain a current, unrevoked, and unsuspended license issued by the Kentucky Licensing Board for Specialists in Hearing Instruments;

2. Before initially enrolling in the Kentucky Medicaid Program, submit proof of the license referenced in subparagraph 1\_ of this paragraph to the department;

3. Annually submit proof of the license referenced in subparagraph 1\_ of this paragraph to the department;

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4. Maintain a Certificate of Clinical Competence issued to the specialist in hearing instruments by the American Speech-Language-Hearing Association; and

5. Before enrolling in the Kentucky Medicaid Program, submit proof of having a Certificate of Clinical Competence issued to the specialist in hearing instruments by the American Speech-Language-Hearing Association.

(b) An out-of-state specialist in hearing instruments shall:

1. Maintain a current, unrevoked, and unsuspended license issued by the licensing board with jurisdiction over specialists in hearing instruments in the state in which the license is held;

2. Before initially enrolling in the Kentucky Medicaid Program, submit proof of the license referenced in subparagraph 1\_ of this paragraph to the department;

3. Annually submit proof of the license referenced in subparagraph 1\_ of this paragraph to the department;

4. Maintain a Certificate of Clinical Competence issued to the specialist in hearing instruments by the American Speech-Language-Hearing Association; and

5. Before enrolling in the Kentucky Medicaid Program, submit proof of having a Certificate of Clinical Competence issued to the specialist in hearing instruments by the American Speech-Language-Hearing Association.

(c) If a specialist in hearing instruments fails to comply with paragraph (a) or (b) of this subsection, as applicable based on if the specialist in hearing instruments is in-state or out-of-state, the:

1. Specialist in hearing instruments shall be ineligible to be a Kentucky Medicaid Program provider; and

2. Department shall not reimburse for any service or item provided by the specialist in hearing instruments effective with the date the specialist in hearing instruments fails or failed to comply.

Section 3. Audiology Services. (1) Audiology service coverage shall be limited to one (1) complete hearing evaluation per calendar year.

(2) Unless a recipient's health care provider demonstrates, and the department agrees, that an additional hearing instrument evaluation is medically necessary, a hearing instrument evaluation shall:

(a) Include three (3) follow-up visits, which shall be:

1. Within the six (6) month period immediately following the fitting of a hearing instrument; and

2. Related to the proper fit and adjustment of the hearing instrument; and

(b) Include one (1) additional follow-up visit, which shall be:

1. At least six (6) months following the fitting of the hearing instrument; and

2. Related to the proper fit and adjustment of the hearing instrument.

(3)(a) A referral by a physician to an audiologist shall be required for an audiology service.

(b) The department shall not cover an audiology service if a referral from a physician to the audiologist was not made.

(c) An office visit with a physician shall not be required prior to the referral to the audiologist for the audiology service.

Section 4. Hearing Instrument Coverage. Hearing instrument benefit coverage shall:

(1) If the benefit is a hearing instrument model, be for a hearing instrument model that is:

(a) Recommended by an audiologist licensed pursuant to KRS 334A.030; and

(b) Available through a Medicaid-participating specialist in hearing instruments; and

(2) Except as provided by Section 5(3) of this administrative regulation, not exceed \$800 per ear every thirty-six (36) months.

Section 5. Replacement of a Hearing Instrument. (1) The department shall reimburse for the replacement of a hearing instrument if:

(a) A loss of the hearing instrument necessitates replacement;

(b) Extensive damage has occurred necessitating replacement;

or

(c) A medical condition necessitates the replacement of the previously prescribed hearing instrument in order to accommodate a change in hearing loss.

(2) If replacement of a hearing instrument is necessary within twelve (12) months of the original fitting, the replacement hearing instrument shall be fitted upon the signed and dated recommendation from an audiologist.

(3) If replacement of a hearing instrument becomes necessary beyond twelve (12) months from the original fitting:

(a) The recipient shall be examined by a physician with a referral to an audiologist; and

(b) The recipient's hearing loss shall be re-evaluated by an audiologist.

Section 6. Noncovered services. The department shall not reimburse for:

(1) A routine screening of an individual or group of individuals for identification of a hearing problem;

(2) Hearing therapy except as covered through the six (6) month adjustment counseling following the fitting of a hearing instrument;

(3) Lip reading instructions except as covered through the six (6) month adjustment counseling following the fitting of a hearing instrument;

(4) A service for which the recipient has no obligation to pay and for which no other person has a legal obligation to provide or to make payment;

(5) A telephone call;

(6) A service associated with investigational research; or

(7) A replacement of a hearing instrument for the purpose of incorporating a recent improvement or innovation unless the replacement results in appreciable improvement in the recipient's hearing ability as determined by an audiologist.

Section 7. Equipment. (1) Equipment used in the performance of a test shall meet the current standards and specifications established by the American National Standards Institute.

(2)(a) A provider shall ensure that any audiometer used by the provider or provider's staff shall:

1. Be checked at least once per year to ensure proper functioning; and

2. Function properly.

(b) A provider shall:

1. Maintain proof of calibration and any repair, if any repair occurs; and

2. Make the proof of calibration and repair, if any repair occurs, available for departmental review upon the department's request.

Section 8. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 9. Appeal Rights. An appeal of a negative action regarding a Medicaid recipient who is:

(1) Enrolled with a managed care organization shall be in accordance with 907 KAR 17:010; or

(2) Not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.[]

~~Section 10. Incorporation by Reference. (1) The "Department for Medicaid Services Hearing Program Fee Schedule", December 2013, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. or online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.]~~

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**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Protection and Permanency**  
**(As Amended at ARRS, July 8, 2021)**

**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, 27A.090, 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)(9)] "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)(14)] "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.~~

~~(14)] "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(3)(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

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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(4)(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(4)] 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)

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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; or

(c) Fictive kin; and

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

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

(a) Caretaker relative;

(b) Kinship caregiver; or

(c) Fictive kin].

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

(1) KRS 620.050(5); or

(2) The terms and conditions of:

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

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

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

(a) "DPP-157, Background Check Request for Foster or Adoptive Applicants and Adolescent or Adult Household Members [Checks for Applicants or Foster/Adoptive Parents]", 07/21 [06/21] [02/21] [4/18]; [and]

(b) "DPP-159, Background Check Request for Relative and [Caretaker Relatives,] Fictive Kin Caregivers, or Adolescent and Adult Household Members [Checks for Caretaker Relatives, Fictive Kin, or Kinship Caregivers Kinship Caregivers]", 06/21 [02/21];

(c) "DPP-162, Applicant Waiver Agreement and Statement", 07/21 [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] [4/18].

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

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](mailto:CHFSregs@ky.gov).

### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Child Care (As Amended at ARRS, July 8, 2021)

#### 922 KAR 2:300. Emergency child care approval.

RELATES TO: KRS 199.011(3), (4), 199.894, 199.895, 199.896(2), 42 U.S.C. 5122, 42 U.S.C. 9858c(c)(2)(U)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2), 45 C.F.R. 98.16

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations to establish license fees and standards for a child-care center. 45 C.F.R. 98.16(aa) requires a state to demonstrate how it will address the needs of children during a state of emergency. This administrative regulation establishes approval standards and requirements for emergency child care.

Section 1. Definitions. (1) "Applicant" means an individual or entity applying to become an Emergency Child Care (ECC) program.

(2) "Cabinet" is defined by KRS 199.011(3) and 199.894(1).

(3) "Child" is defined by KRS 199.011(4).

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

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

(6) "Emergency Child Care" or "ECC" means a child-care program temporarily established as a result of a localized emergency or declared state of emergency.

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

(8) "Infant" means a child who is less than twelve (12) months of age.

(9) "Premises" means the building and contiguous property in which emergency child care is provided.

Section 2. Application. (1) A child-care center, family child-care home, or new applicant may apply to be an approved ECC.

(2) An applicant to be approved as an ECC shall submit to the cabinet a completed OIG-DRCC-07, Emergency Child Care Application.

(3) The application shall include:

(a) A cleaning and safety plan;

(b) An evacuation plan for use in the event of a fire, natural disaster, or other threatening situation that may pose a health or safety hazard for a child in care in accordance with KRS 199.895 and 42 U.S.C. 9858c(c)(2)(U);

(c) A staffing plan that demonstrates enough staff to adequately supervise the expected number of children;

(d) Guidance and discipline process;



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- (e) A medication policy; and
  - (f) Background check verification for staff.
- (4) Approval as an ECC shall not exceed ninety (90) days with the exception permitted by Section 5(6)(b) of this administrative regulation.

Section 3. On-Site Visit for Approval. (1) For ECC approval of a currently licensed or certified child-care program, an on-site visit shall not be required if:

- (a) The child-care program shall continue to operate with the same capacity and age groupings; and
  - (b) A cabinet surveyor has inspected the facility at least once in the preceding twelve (12) months.
- (2) For all other applicants, a visit by a cabinet surveyor shall be conducted as soon as possible after the receipt of the application. A visit shall occur prior to approval.

Section 4. New Site or Alternative Location Approval. If the child-care program requires a new or an alternative location for its premises:

- (1) The **child-care program shall obtain an inspection by the Kentucky State Fire Marshal of [Kentucky Fire Marshal shall review]** the new location or alternative location to ensure that safety codes are met prior to opening;
- (2) The square footage per child requirement shall meet the requirements of 922 KAR 2:100 or 2:120, respectively, for a family child-care home or center;
- (3) The new location or alternative location shall have access to clean drinking water, restrooms, and sinks for handwashing; and
- (4) Basic equipment shall meet the needs for the ages of children in care.

Section 5. Approval of Application. (1) Upon receipt of a complete, signed OIG-DRCC-07, the cabinet shall conduct an on-site visit in order to determine if the applicant meets the requirements established by this administrative regulation, except as permitted by Section 3(1) of this administrative regulation.

- (2) A child-care program that is currently licensed or certified shall be provided ten (10) business days in which they may operate while pending approval of ECC designation.
- (3) The cabinet shall approve applications to be an ECC based on the need throughout the state or the community experiencing the emergency.
- (4) A child-care program that is currently licensed or certified through the Commonwealth of Kentucky shall be given first consideration for approval.
- (5) If the licensed or certified child-care program, or new applicant, is approved as an ECC, the cabinet shall issue emergency approval to the applicant.
- (6)(a) Except as provided by paragraph (b) of this subsection, ECC approval shall expire after ninety (90) days or at the end of the localized emergency or declared state of emergency, whichever is less.
- (b) ECC approval may be renewed **by[at the discretion of]** the cabinet based on the duration of the emergency situation. The cabinet may conduct a renewal site visit.

Section 6. Suspension or Closure of Emergency Child-Care Programs. (1) During the hours of operation, the cabinet **may[shall have the discretion to]** visit an approved ECC to ensure the health and safety of children and to provide support and resources for the program.

- (2)(a) An ECC that was not previously licensed or certified shall surrender the ECC approval and close within thirty (30) days after the expiration of the approval or the end of the localized emergency or declared state of emergency pursuant to Section 5(6)(a) of this administrative regulation if not renewed by the cabinet pursuant to Section 5(6)(b) of this administrative regulation.**]; and]**
- (b) An ECC shall operate in compliance during the time period established in paragraph (a) of this subsection.
- (3) The cabinet may suspend approval to operate as an ECC by issuing an emergency order if:

(a) The provider interferes with the cabinet's ability to perform an official duty pursuant to Section 5(6) or 6(1) of this administrative regulation;

(b) The cabinet, a representative from another agency with regulatory authority, or a parent or guardian is denied access during operating hours to:

- 1. A child;
- 2. The ECC; or
- 3. ECC staff or volunteers; or

(c)1. A provider, director, staff, volunteer, or any person with supervisory or disciplinary control over, or unsupervised contact with, a child in care fails to meet the requirements of this administrative regulation; and

2. The regulatory violation poses an immediate threat to the health, safety, or welfare of the children in care.

(4) Pursuant to subsection (3) of this section, an emergency order shall:

- (a) Be served on an approved ECC in person; and
  - (b) Specify the regulatory violation that caused the suspension.
- (5) Upon suspension, the cabinet or its designee and the ECC shall make reasonable efforts to:

- (a) Notify a parent or guardian of each child of the program's suspension; and
- (b) Refer a parent or guardian for assistance in locating an alternate child care arrangement.

Section 7. General Requirements. (1) An ECC shall:

(a) Be responsible for operating the child-care program in compliance with:

- 1. This administrative regulation;
- 2. The health and safety requirements established in 922 KAR 2:100 for a family child-care home or 922 KAR 2:120 for a child-care center**]; unless directed otherwise by the cabinet];** and
- 3. 922 KAR 2:280; and

(b) Protect and assure the health, safety, and comfort of each child.

(2) ECC staff shall be:

- (a) Instructed by the program director, if applicable, regarding requirements for operation; and
- (b) Provided with a copy of this administrative regulation, 922 KAR 2:100 or 922 KAR 2:120, and 922 KAR 2:280.

(3) The director of a child-care center approved as an ECC shall meet the requirements of 922 KAR 2:090, Section 10.

(4) If a provider, director, staff, volunteer, or any person with supervisory or disciplinary control over, or unsupervised contact with, a child in care, is named as the alleged perpetrator in a child abuse or neglect report accepted by the cabinet in accordance with 922 KAR 1:330, the individual shall be removed from direct contact with all children in care:

- (a) For the duration of the assessment or investigation; and
- (b) Pending completion of the administrative appeal process for a cabinet substantiation of child abuse or neglect in accordance with 922 KAR 1:320 or 922 KAR 1:480.

(5) An ECC caring for an infant shall have basic equipment needed for infant care including **an individual non-tiered crib that meets Consumer Product Safety Commission standards established in 16 C.F.R. 1219-1220 [a crib that is up to code]** and diaper changing area.

(6) The cabinet may mandate child-care provider training specific to a regional or statewide emergency declaration in order to give specific information regarding the state of emergency. All child-care staff working in an ECC shall be required to complete this training **if[when]** mandated.

(7) ECC staff and volunteers shall not work more than twelve (12) hours during a twenty-four (24) hour time period.

(8) Daily attendance records shall be required in an approved ECC. Documentation shall show when children are moved from one (1) group of care to another.

(9) An ECC shall maintain a written record for each child attending the child-care program that contains:

- (a) Identifying information about the child, which includes, at a minimum, the child's name, address, and date of birth;
- (b) Contact information to enable staff to contact the child's:

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1. Parent or guardian at their home or place of employment;
2. Family physician; and
3. Preferred hospital;

(c) The name of each person who is designated in writing to pick up the child;

(d) The child's general health status and medical history including, if applicable:

1. Allergies; and

2. Restrictions on the child's participation in activities or in the child's diet with specific instructions from the child's parent, guardian, or health professional;

(e) The name and phone number of each person to be contacted in an emergency involving or impacting the child; and

(f) Authorization by the parent or guardian for staff to seek emergency medical care for the child in the parent or guardian's absence.

(10) An ECC shall have at least one (1) staff person on duty and present at all times children are in the facility certified by a cabinet-approved training agency in:

(a) Cardiopulmonary resuscitation (CPR); and

(b) First aid.

(11) An ECC may be required to prioritize the enrollment of the children of emergency responders, essential employees, or other groups designated by the cabinet, depending on the nature and gravity of the emergency.

**Section 8. Authority During a Statewide Emergency.** (1) During a statewide emergency, the Governor or the secretary of the cabinet shall have the ability to issue a statewide mandate for approved ECCs.

(2) If the emergency is limited to a region or a specific city, the mayor or county judge executive of the affected area or areas may also issue a demand for localized approved ECCs.

(3) An individual program experiencing an emergency shall contact the cabinet.

(4) An ECC shall be supervised by the cabinet.

(5) The Division of Child Care shall collaborate with the Division of Regulated Child Care, the Department for Public Health, and the Kentucky Fire Marshal to approve an ECC.

(6) An ECC shall continue to follow the guidelines of the Child Care and Development Block Grant (CCDBG) federal funding source during the emergency.

**Section 9. Incorporation by Reference.** (1) "OIG-DRCC-07, Emergency Child Care Application", 04/21, is incorporated by reference.

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

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.

### **CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (As Amended at ARRS, July 8, 2021)**

**922 KAR 5:020. Batterer [Domestic violence batterer] intervention provider certification standards.**

RELATES TO: KRS Chapter 13B, 202A.011(12)(d), 202A.400, 209.030, Chapter 209A, 222.005, 309.080-309.089, 309.130-309.1399, Chapters 311, 319, 335.080, 335.100, 335.300-335.399, 335.500-335.599, 403.715-403.785, 421.570, Chapters 456, 506, 507, 507A, 508, 509, 510, 511.020-511.040, 511.085, 512.020, Chapters 513, 515, 517.050, Chapter 529, 530.020, 530.060,

530.064, 530.065, 530.070, 531.030, 531.040, 531.300-531.370, 620.030, and 45 C.F.R. Part 46

STATUTORY AUTHORITY: KRS 194A.050(1), 403.7505

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 403.7505 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing certification standards for mental health professionals providing court-ordered treatment services for domestic ~~violence offenders and dating violence and abuse batterers~~. This administrative regulation establishes certification requirements, standards for services, and ~~imposes~~ reporting requirements for a domestic and dating violence and abuse batterer intervention provider.

Section 1. Definitions. (1) "Appellant" means an applicant or a provider who requests:

(a) An informal resolution meeting in accordance with Section 13 of this administrative regulation; or

(b) An administrative hearing in accordance with Section 14 of this administrative regulation.

(2) "Applicant" means an individual applying for certification as a domestic and dating violence and abuse batterer intervention provider.

(3) "Assessment" means an evaluation of a batterer in accordance with Section 9(1) of this administrative regulation.

(4) "Associate provider" means an individual certified by the cabinet to provide domestic and dating violence and abuse batterer intervention services in accordance with Section 4(1) or 5(2) [(3)] of this administrative regulation, only under the direct supervision of an autonomous provider.

(5) "Autonomous provider" means a professional certified by the cabinet in accordance with Section 4(2) or (4) of this administrative regulation for unsupervised clinical practice in a domestic and dating violence and abuse batterer intervention program.

(6) "Batterer" means an individual who:

(a) Has been charged with or convicted of a criminal offense related to domestic or dating violence and abuse;

(b) Is a respondent in a protective order issued by a court pursuant to KRS 403.740, 403.750(1), 456.030, or 508.155(4); or

(c) Is a substantiated perpetrator in a child abuse or neglect investigation with domestic or dating violence and abuse allegations and has been referred by the department [Has been named a domestic violence perpetrator in a substantiation made by the Department for Community Based Services].

(7) "Cabinet" means the Cabinet for Health and Family Services or its designee.

(8) "Client" means a batterer who has been admitted to a program.

(9) "Court" means a district, family, or circuit court of the Commonwealth of Kentucky.

(10) "Court-ordered" means subject to an order entered by a district, family, or circuit court judge for a batterer to be assessed by a provider to determine the batterer's eligibility for admission to a program or to participate in a program.

(11) "Dating violence and abuse" is defined by KRS 456.010(2).

(12) "Department" means the Department for Community Based Services or its designee.

(13)[(42)] "Domestic violence and abuse" is defined by KRS 403.720(1).

(14)[(43)] "Domestic violence shelter" means a program meeting the standards of 922 KAR 5:040.

(15)[(44)] "Intervention" means individual or group counseling and education based upon a core curriculum that focuses on cessation of domestic and dating violence and abuse.

(16)[(45)] "Program" means the services provided in accordance with Sections 5 through 12 of this administrative regulation to batterers who have been referred by a court for

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assessment or intervention related to domestic and dating violence and abuse.

~~(17)~~~~(16)~~ "Provider" means an associate provider or an autonomous provider.

~~(18)~~~~(17)~~ "Sanction" means a compulsory or restrictive action, such as:

- (a) A prohibition, requirement, limitation, or other condition affecting the freedom of a person;
- (b) Withholding of relief;
- (c) Imposition of a penalty or fine;
- (d) Destruction, seizure, or withholding of property;
- (e) Assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees; or
- (f) Revocation or suspension of a license.

~~(19)~~~~(18)~~ "Screening" means the action taken by a provider to determine a batterer's eligibility for admission to the program.

~~(20)~~ "Victim" means a person of any age who is experiencing or has experienced domestic violence and abuse or dating violence and abuse.

~~(21)~~~~(19)~~ "Victim advocate" is defined by KRS 421.570.

Section 2. Certification Procedures. (1) An individual may apply to be certified as an associate provider or an autonomous provider by submitting a DVPR-001, Application for Batterer Intervention Provider Certification, to the department.

(2) If an applicant is not subject to denial or revocation for a reason established in Section 3 of this administrative regulation, the department shall certify the applicant as an:

(a) Associate provider, if the applicant meets the qualifications specified in Section 4(1) of this administrative regulation; or

(b) Autonomous provider, if the applicant meets the qualifications specified in Section 4(2) of this administrative regulation.

(3)(a) No later than sixty (60) days after receiving an application or receiving additional documentation, the department shall notify an applicant in writing if:

1. Certification is granted or denied; or
2. The department is retaining the application in accordance with Section 3(2) of this administrative regulation.

(b) The notice in accordance with paragraph (a) of this subsection shall:

1. Specify the effective date of certification, if applicable;
2. Specify the basis of the denial of the application, if applicable;
3. Specify additional documentation that is required if the department retains the application in accordance with Section 3(2) of this administrative regulation; and
4. Inform the applicant of the right to appeal a denial in accordance with the:

- a. Informal resolution process established in Section 13 of this administrative regulation; and
- b. Administrative hearing process established in Section 14 of this administrative regulation.

(4) Certification as a provider shall be effective for two (2) years.

(5)(a) Unless a provider's certification has been revoked in accordance with Section 3 of this administrative regulation, the department shall renew the certification of a provider upon request.

(b) Completion of sixteen (16) ~~[twelve (12) clock]~~ hours of continuing education related to domestic and dating violence and abuse, pursuant to Section 6(9) of this administrative regulation, shall be required for certification renewal.

(c) The department shall perform a random audit on five (5) percent of the certification renewals to monitor provider compliance with paragraph ~~(b)~~ ~~(a)~~ of this subsection.

(6) The department may solicit references from individuals outside of the department regarding the certification of providers.

Section 3. Denial or Revocation of Certification.

(1) The department shall deny certification to an applicant if:

- (a) The applicant's DVPR-001 is incomplete;
- (b) The documentation of qualifications is insufficient to demonstrate that the applicant meets the applicable requirements

established in Section 4 of this administrative regulation;

(c) The department cannot verify the authenticity of the documentation of qualifications submitted in the application; or

(d) The core curriculum submitted fails to meet the requirements established ~~[specified]~~ in Section 10 of this administrative regulation.

(2) If the department denies certification in accordance with subsection (1)(a) of this section, the department may retain the application and permit the applicant to submit additional documentation in accordance with a notice provided pursuant to Section 2(3)(b)3. ~~(3)~~ of this administrative regulation.

(3) The department shall deny certification to an applicant and shall revoke the certification of a provider any time after the effective date of certification upon the department's ~~[its]~~ determination that the applicant or provider:

(a) Within the past ten (10) years, has been convicted of, pled guilty to, or completed the service of a sentence imposed ~~for~~~~to~~:

1. Criminal homicide pursuant to KRS Chapter 507;
2. Assault or a related offense pursuant to KRS Chapter 508;
3. Kidnapping or a related offense pursuant to KRS Chapter 509;
4. A sexual offense pursuant to KRS Chapter 510;
5. Burglary or a related offense pursuant to KRS 511.020 through 511.040;
6. Domestic violence shelter trespass pursuant to KRS 511.085;

7. Criminal damage to property pursuant to KRS 512.020;

8~~[7]. Robbery pursuant to KRS Chapter 515;~~

9~~[8]. Falsifying business records as defined in KRS 517.050 if the conviction was in relation to the applicant's clinical practice;~~

10~~[9]. Incest as defined in KRS 530.020;~~

11~~[40]. Endangering the welfare of a minor as defined in KRS 530.060;~~

12~~[44]. Unlawful transaction with a minor as defined in KRS 530.064, 530.065, or 530.070;~~

13~~[42]. Sexual exploitation of a minor pursuant to KRS 531.300 to 531.370;~~

14~~[43]. Criminal attempt, as defined in KRS 506.010, to commit an offense identified in this paragraph;~~

15~~[44]. Distribution of obscene materials involving a minor pursuant to KRS 531.030 or 531.040;~~

16 ~~or~~

45. Prostitution or related offense ~~[Promoting prostitution]~~ pursuant to KRS Chapter 529~~[.040]~~;

17~~[46]. Arson as defined in KRS Chapter 513; or~~

18~~[47]. Fetal homicide as defined in KRS Chapter 507A;~~

(b) Has been the subject of a domestic or dating violence and abuse protective order pursuant to KRS 403.740 or an interpersonal protective order pursuant to KRS 456.060 within the five (5) years prior to the date of the application or any time after the effective date of certification;

(c) Has experienced substance use disorder ~~[had an alcohol or other drug abuse problem]~~ as defined in KRS 222.005(12) ~~[222.005(3)]~~ within the two (2) years prior to the date of the application, or engages in alcohol or drug abuse ~~[as defined in KRS 222.005(3)]~~ any time after the effective date of certification; or

(d) Is subject to a current court order restraining or enjoining the applicant from providing a service authorized by licensure or certification; or

~~(e) Has been convicted of an offense described in KRS Chapter 529 within the five (5) years prior to the date of the application or anytime after being certified].~~

(4) Depending on the severity or date of the infraction, the department may deny an application or revoke the certification of a provider who:

(a) Has had a sanction applied against or a revocation of a professional license or certification held by the applicant or provider at any time in the two (2) years prior to the date of an application or any time after being certified;

(b) Currently has a sanction applied against a professional license or certification;

(c) Has provided domestic and dating violence and abuse batterer assessment or intervention services in violation of Section

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5~~(4)~~ or (2) or (3) of this administrative regulation;

(d) Has failed to implement a corrective action plan in accordance with Section 12(6) or (7) of this administrative regulation;

(e) Has failed to follow the curriculum submitted in the application or submitted and approved in accordance with Section 10(11) of this administrative regulation;

(f) Has failed to meet a requirement established in Sections 2 through 11 of this administrative regulation;

(g) Has provided information that the department:

1. Is unable to verify; or
2. Has determined to be incorrect; or

(h) Has failed to meet the data submission requirements established ~~[as specified]~~ in Section 6(10) of this administrative regulation.

(5) The department shall revoke the certification of a provider that fails to meet the continuing education requirement established ~~[specified]~~ in Section 6(9) of this administrative regulation.

(6)(a) If a provider's certification ~~[certifications]~~ is revoked, the department shall notify a provider in writing.

(b) A notice in accordance with paragraph (a) of this section shall:

1. Specify the effective date that certification shall be revoked;
2. Specify the basis of the determination to revoke a certification; and

3. Inform the provider of the right to appeal the revocation in accordance with the:

a. Informal resolution process established in Section 13 of this administrative regulation; and

b. Administrative hearing process established in Section 14 of this administrative regulation.

(7) A provider whose certification is revoked in accordance with subsection (3)(b) ~~[or (e)]~~ of this section shall be ineligible for certification until the fifth anniversary of the effective date of the revocation.

(8) A provider whose certification is revoked in accordance with subsection (3)(c) of this section shall be ineligible for certification until the second anniversary of the effective date of the revocation.

(9) The department shall renew the certification of a provider whose certification has been revoked in accordance with Section 6(9) of this administrative regulation upon the department's receipt of documentation that the provider has met the requirement of Section 2(5) of this administrative regulation.

Section 4. Qualifications of Certified Providers. (1) The qualifications of an associate provider shall be:

(a) A bachelor's degree from an accredited university or college;

(b) Completion of twenty-four (24) ~~[clock]~~ hours of specialty training in domestic and dating violence and abuse including:

1. Characteristics and dynamics of domestic and dating violence and abuse;

2. Clinical profiling of ~~[domestic violence]~~ batterers;

3. Risk assessment and lethality of ~~[domestic violence]~~ batterers;

4. Intervention of batterers;

5. Effective services for victims and child witnesses of domestic and dating violence and abuse;

6. Understanding intersections and barriers to services for vulnerable populations;

7. Safety planning and harm reduction for victims; ~~[and]~~

8~~[7]~~. Criminal sanctions for domestic and dating violence and abuse and legal remedies for victims;

9. Mandatory reporting of suspected abuse, neglect, or dependency; and

10. Reporting and educational requirements established in KRS Chapter 209A;

(c) Two (2) years of full-time post bachelor degree work experience totaling at least 4,000 hours that shall include general clinical experience or direct case experience related to domestic and dating violence and abuse;

(d) A written agreement to receive supervision, which shall include:

1. Case discussion;

2. Review of reading assignments;

3. Skill building; or

4. Review of an audio or video recording of assessment and intervention performed by the associate provider; and

(e) Written recommendations for certification from two (2) victim advocates, at least one (1) of whom works in an agency separate from the applicant.

(2) The qualifications of an autonomous provider shall be:

(a) A Master's degree from an accredited university or college;

(b) Possession of a certificate or license to practice under the laws of the Commonwealth of Kentucky in one (1) of the following disciplines:

1. Psychology in accordance with KRS Chapter 319;

2. Social work in accordance with KRS 335.080 or 335.100;

3. Medicine in accordance with KRS Chapter 311 if board eligible in psychiatry and neurology;

4. Psychiatric nursing in accordance with KRS 202A.011(12)(d);

5. Marriage and family therapy in accordance with KRS 335.300 to 335.399;

6. Professional counseling in accordance with KRS 335.500 to 335.599;

7. Art therapy in accordance with KRS 309.130 to 309.1399; or

8. Alcohol and drug counseling in accordance with KRS 309.080 to 309.089;

(c) 150 hours of clinical experience providing domestic and dating violence and abuse services under the direct supervision of an autonomous provider who is licensed or certified in accordance with paragraph (b) of this subsection of which 120 hours of the time shall have been with batterers and thirty (30) hours with victims;

(d) Documentation certifying completion of a three (3) hour training program in clinical supervision that has been approved by a professional licensing board referenced in paragraph (b) of this subsection;

(e) Completion of the training required by ~~[specified in]~~ subsection (1)(b) of this section;

~~(f)~~~~(e)~~ A written recommendation for certification from the autonomous provider who provided the supervision required by paragraph (c) of this subsection; and

~~(g)~~~~(f)~~ Written recommendations for certification from two (2) victim advocates, at least one (1) of whom works in an agency separate from the applicant.

(3) The cabinet shall grant certification as a [an associate] provider to an applicant from another state;

(a) Meeting or exceeding the standards of subsection (1) or (2) of this section;

~~(b)~~ Holding a current certificate or license from another state; ~~[and]~~

~~(c)~~ Being in good standing with the other state's certifying agency; and

~~(d)~~ Complying with the training and application requirements of subsection (1)(b) of this section.

~~(4)~~ ~~The cabinet shall grant certification as an autonomous provider to an applicant:~~

~~(a)~~ ~~Meeting or exceeding the standards of subsection (2) of this section;~~

~~(b)~~ ~~Holding a current certificate from another state; and~~

~~(c)~~ ~~Being in good standing with the other state's certifying agency.~~

~~(5)~~ The cabinet shall waive the requirements of subsection (2) of this section, if an associate provider applies for certification as an autonomous provider:

(a) After two (2) years' experience and a minimum of 4,000 hours working in a batterer intervention program; and

(b) Upon recommendation of the autonomous provider supervising the associate provider.

Section 5. Scope of Practice and Supervision Requirements.

(1) All providers shall perform and document conflict of interest checks prior to providing any service to a victim and ensure compliance with KRS 209A.070.

(2) Under the supervision of an autonomous provider, an

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associate provider may:

- (a) Screen, assess, plan, and provide batterer intervention;
- (b) Consult with a court, prosecutor, law enforcement official, mental health provider, and others regarding the assessment of and intervention with a client; or
- (c) Contact a victim of a client in accordance with Section 7 of this administrative regulation.

~~(3)~~~~(2)~~ An associate provider who provides a service in accordance with subsection ~~(2)~~~~(1)~~ of this section shall participate in at least one (1) hour per week of clinical supervision pursuant to the written agreement established in Section 4(1)(d) of this administrative regulation.

~~(4)~~~~(3)~~ An autonomous provider may provide screening, assessment, intervention, and consultation independently and supervise an associate provider if an autonomous provider has:

- (a) Participated in a three (3) hour training program in clinical supervision that has been approved by a professional licensing board specified in Section 4(2)(b) of this administrative regulation, or by the cabinet; and
- (b) Practiced batterer intervention for a period of at least one (1) year.

~~(5)~~~~(4)~~ A certified autonomous provider who supervises an associate provider:

- (a) Shall:
  1. Provide the supervision required by subsection (2) of this section; and
  2. Assure that an associate provider performs a service in accordance with Sections 4, ~~5~~~~(1)~~, 6, 7, 8, 9, 10, 11, and 12(7) of this administrative regulation; and
- (b) Shall not supervise more than six (6) associate providers concurrently.

Section 6. General Service Standards. (1) A court-ordered service shall be based on the following premises:

(a) Domestic and dating violence and abuse constitutes a health hazard to a victim who may experience short and long-term effects from the abuse;[-]

(b) Immediate and long-term cessation of the domestic and dating violence and abuse is the priority purpose for batterer intervention;[-]

(c) Domestic and dating violence and abuse in any form are [is] criminal behaviors; [behavior].

(d) Batterer intervention shall be designed to enhance and promote the safety of a victim including a spouse, [a] live-in partner, [a] child, or other family member;[-]

(e) A victim is not responsible for the violent behavior of a batterer and a provider shall not promote the concept of mutual responsibility in explaining domestic and dating violence and abuse;[-]

(f) The batterer is accountable for domestic and dating violence and abuse, which is the product of individual choice and learned traits. The batterer's psychopathology, substance abuse, other disorder, or cultural background is not an explanatory cause of domestic and dating violence and abuse, but can influence the batterer's behavior; and[-]

(g) Cooperation and service coordination between the criminal justice system, the department, a victim's advocate, a domestic violence shelter, and a chemical dependency or mental health professional may be required to assure effective treatment and the safety of a victim or a potential victim.

(2) A provider shall give each [~~batterer and~~] client a written document that explains the complaint process of the program.

(3) A provider shall:

(a) Treat all clients [~~a batterer, a client, or victim~~] with respect and dignity at all times; and

(b) Not discriminate against any client [~~a batterer, a client, or a victim~~] based on race, ethnicity, gender, age, religion, or disability.

(4)(a) A batterer, a client, or a victim shall have the right to complain verbally or in writing to the:

1. Provider;
2. Referring court; or
3. Cabinet.

(b) A provider shall not take adverse action against a batterer,

a client, or a victim who makes a complaint.

(5) A provider shall:

(a) Comply with 45 C.F.R. Part 46, and any applicable state institutional review board pertaining to research with a human subject; and

(b) Protect the privacy of a batterer or a client who gives consent to participate in provider sponsored research.

(6) A provider shall:

(a) Provide a clean and comfortable facility that [which] shall be handicap accessible [~~to the handicapped~~]; and

(b) Meet the requirements of 815 KAR 10:060, relating to standards of fire safety.

(7) The provider shall comply with federal and state law applicable to the confidentiality of a client record.

(8) The provider shall establish an individual record for each client [~~batterer~~] who receives a court-ordered service. The record shall:

(a) Document each service provided to the client [~~batterer~~]; and

(b) Demonstrate that the services meet the requirements of Sections 6 through 11 of this administrative regulation.

(9) A provider shall accrue a minimum of sixteen (16) [~~twelve (12) clock~~] hours of continuing education related to domestic and dating violence and abuse during the two (2) year period for renewal.

(10) Providers certified pursuant to Section 2 of this administrative regulation shall collect and submit information to the department [~~or its designee~~] in accordance with KRS 403.7505.

Section 7. Contact with a Victim. (1) In the provider's professional opinion, if contacting a domestic or dating violence and abuse victim would not increase the risk of harm to the victim or others, a provider may attempt to contact the victim and shall:

(a) Offer the victim an opportunity to participate in the assessment of the batterer by disclosing information about the batterer and the circumstances of the domestic or dating violence and abuse;

(b) Assure the victim the source of the information will not be revealed to the batterer;

(c) Inform the victim that disclosure of child abuse, neglect, or dependency or vulnerable adult abuse, neglect, or exploitation is required to be reported;

(d) Provide the victim information about the program, its possible benefits, the limitations of the program's intervention services, and the degree to which the batterer's participation may result in increased safety for the victim; and

~~(e)~~~~(d)~~ Make reasonable efforts to refer a victim to a domestic violence shelter, victim advocate, or another program designated to provide specialized victim services.

(2) A provider shall document each contact with a victim.

(3) A provider shall not contact a victim in the presence of a batterer.

(4) If a victim does not consent to participate, withdraws consent to participate, or refuses to participate or provide information about a batterer or a client, a provider shall not attempt to coerce or persuade the victim to participate.

(5) If a provider does not contact a victim, the provider shall document the reasons for this decision in the client record.

Section 8. Screening Procedures. (1) A provider shall establish:

(a) Eligibility criteria for participation in a program that [which]:

1. Requires that the[a] batterer sign an authorization to disclose to a victim the batterer's failure to participate in or discharge from the program;

2. May include a batterer's admission of responsibility for a domestic or dating violence and abuse related offense; and

3. Shall not be based solely on the [~~batterer's~~] ability to pay for services;

(b) A procedure to accept a referral from a court following a charge of a domestic or dating violence and abuse related offense [~~or~~] as a condition of a protective order issued pursuant to KRS 403.740, 403.750(1), or 508.155(4);

(c) A procedure to accept a referral from the department; and

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~~(d)~~~~(e)~~ A procedure for notifying the referring court or department, if a batterer is ineligible for the program. The notice shall:

1. Specify the reason a batterer is determined to be ineligible in accordance with the eligibility criteria established by the provider pursuant to paragraph (a) of this subsection;

2. Specify each referral made in accordance with Section 9(3) and (4) of this administrative regulation, if any;

3. Be made no later than five (5) days after the determination is made;

4. Recommend a service more likely to benefit the batterer, in the provider's professional opinion; and

5. Recommend that the court notify a victim pursuant to KRS 403.7505(3)(e) that the batterer is ineligible for the program.

(2) A provider shall inform a batterer of the following information prior to the batterer receiving an assessment or intervention:

(a) The requirement for confidentiality of information and the limit on confidentiality including:

1. The duty of a provider to warn and protect an intended victim of a threat to harm, as required by KRS 202A.400;

2. The requirement to report abuse in accordance with KRS 209.030 and 620.030; and

3. The fact that information disclosed to the provider or to another client may be used against the batterer in a civil or criminal proceeding;

(b) The requirement of a court order, a statute, or an administrative regulation that [which] imposes a duty upon the provider to disclose information or make a report pertaining to the batterer or the client to:

1. A court;

2. A prosecutor;

3. A probation or parole officer;

4. A law enforcement agent;~~;~~~~;~~

5. The victim; or

6. Another person or organization that may be involved in the assessment of the batterer or the intervention of the client;

(c) The information provided in accordance with paragraph (b) of this subsection, which shall include:

1. The name of the person, if known, and the title of the agency or organization to whom information shall be disclosed, or to whom a report shall be made;

2. The basis of the duty to disclose information or to make a report; and

3. The condition under which information shall be disclosed or a report made;

(d) The batterer's responsibility to pay for an assessment or intervention in accordance with KRS 403.7505(3)(g), the cost to the batterer, and the provider's policy regarding failure to pay;

(e) The expected length of intervention and the procedure for voluntary and involuntary discharge from the program;

(f) An explanation of the provisions in Section 6 of this administrative regulation;

(g) A description of the assessment and intervention that shall [will] be provided to the batterer including the requirements for participation;

(h) Notification that, at the discretion of the court, failure to comply with the program may result in a citation for contempt of court; and

(i) An explanation of the procedures for a victim to participate in the program in accordance with Sections 7 and 10(13) of this administrative regulation.

Section 9. Assessment and Admission Procedures. (1)(a) ~~If~~ [if] a batterer is determined to be eligible for a batterer intervention program based on eligibility criteria established in Section 8(1)(a) of this administrative regulation, the provider shall perform an assessment of the batterer.

(b) The assessment conducted in accordance with paragraph (a) of this subsection shall include consideration of the batterer's:

1. History of abusive behavior, including degree of harm and type of violent conduct, that may include information provided by a victim, referral source, or other involved professional;

2. Criminal history;

3. Risk of harm to self and others;

4. Medical history;

5. History of a mental disorder;

6. Current mental status;

7. History or presence of a substance abuse disorder;

8. Characteristics and ability to benefit from the approved program curriculum; and

9. Relevant public records, including a police report and other information about the batterer.

(2) If requirements of Section 7 of this administrative regulation are met, a provider may interview a victim and consider information provided by a victim in the assessment.

(3) If, based on the assessment required by subsection (1) of this section, the provider determines that a batterer is unlikely to benefit from the program, the provider shall document the reasons for the determinations and refer the batterer to a service that [which] is more likely to benefit the batterer in the provider's professional opinion.

(4) A provider may require a batterer to participate in mental health or substance use disorder [abuse] treatment as a prerequisite for admission to or completion of the domestic and dating violence and abuse program.

(5) A provider shall notify the referring court or department whether the batterer is admitted to the program or is referred to another program or service:

(a) No later than five (5) days after making the assessment required by subsection (1) of this section; and

(b) Within seventy-two (72) hours, if the provider chooses not to admit a batterer to a program based on the batterer's lethality or another factor related to the safety of the victim.

(6) A batterer shall be admitted to a program if the batterer:

(a) Meets the eligibility criteria pursuant to Section 8(1)(a) of this administrative regulation;

(b) Signs a written consent for intervention;

(c) Signs a written agreement to comply with the program requirements; and

(d) Signs a written authorization for a provider to disclose information to a party identified in Section 8(2)(b) of this administrative regulation.

Section 10. Intervention Procedures.

(1) A provider shall make individual or group intervention services available to a client at least once weekly.

(2) If a provider offers a group intervention program, the program shall segregate based on gender identity and client safety [male and female batterers] into separate groups.

(3) A group intervention shall include:

(a) Between two (2) and twelve (12) clients, unless two (2) providers are present; and

(b) No more than twenty (20) [~~fifteen (15)~~] clients if two (2) providers are present.

(4) A group intervention session shall require a client to attend for ninety (90) minutes or longer.

(5) A client shall participate in the program for at least thirty (30) [~~twenty-eight (28)~~] weeks.

(6) A person not referred by a court may participate in a group intervention provided for court-referred clients.

(7) A provider shall establish and follow a core curriculum for group participation that includes:

(a) The definition and dynamics of domestic and dating violence, including physical, sexual, psychological, and environmental abuse;

(b) The immediate and long-term effects of domestic and dating violence and abuse on victims and those who witness it, including children, and Adverse Childhood Experiences [Exploration of the effect of domestic violence on a victim and a witness to domestic violence];

(c) Discussion of civil and criminal law related to domestic and dating violence and abuse;

~~(d) [Description of the cycle of violence and other dynamics of domestic violence;~~

~~(e) Instruction about personal responsibility for domestic and~~

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### dating violence and abuse;

~~(e)(4)~~ Confrontation of the client's use of power, control, and coercion in an intimate relationship;

~~(f)(9)~~ Confrontation of rigid sex role stereotyping;

~~(g)(14)~~ Challenge of the client's pattern of aggression in a conflict with a victim;

~~(h)(14)~~ Exploration of the actual and perceived role of alcohol and drug abuse in the domestic and dating violence and abuse;

~~(i)(14)~~ Exploration of a constructive and nonviolent method for resolving conflict in a relationship;

~~(j)~~ Exploration of life experiences and belief systems that have fostered choices for violent behavior;

~~(k)~~ Safety planning and knowledge of domestic and dating violence and abuse resources;

~~(l)(4)~~ Parenting after violence, including education on pediatric abusive head trauma [shaken baby syndrome];

~~(m)(4)~~ Development of a relapse prevention technique; and

~~(n)(14)~~ Promotion of aftercare services and the development of an aftercare plan, if indicated].

(8) At the discretion of the provider's professional opinion, a provider may offer individual intervention to a client if the client would:

(a) Not benefit from a group intervention; or

(b) Be disruptive to a group setting.

(9) If a client participates in individual intervention, the:

(a) Curriculum content of the individual intervention shall contain the core curriculum in accordance with subsection (7) of this section; ~~and~~

(b) Provider shall document a minimum of thirty-two (32) ~~fourteen (14)~~, one (1) hour intervention sessions; and

(c) Provider shall document why individual intervention was preferred.

~~(10)(a)~~ If group intervention is provided to a female client the core curriculum required by subsection (7) of this section shall:

1. Be Amended as specified in subsection (11) of this section; and

2. Include:

~~a. The definition and forms of domestic violence, including physical, sexual, psychological, and environmental abuse;~~

~~b. Exploration of the effect of violence on victims and witnesses to domestic violence;~~

~~c. Discussion of civil and criminal law related to domestic violence;~~

~~d. Instruction about personal responsibility for violence;~~

~~e. Confrontation of the client's use of power, control, and coercion in an intimate relationship;~~

~~f. Challenge of the client's pattern of aggression in a conflict with a victim;~~

~~g. Exploration of the actual and perceived role of alcohol and drug abuse in domestic violence;~~

~~h. Exploration of a constructive and nonviolent method for resolving conflict in a relationship;~~

~~i. Exploration of life experiences and belief systems that have fostered choices for violence behavior;~~

~~j. Parenting after violence, including education on shaken baby syndrome;~~

~~k. Safety planning and knowledge of domestic violence resources; and~~

~~l. Development of an aftercare plan.~~

~~(b)~~ A provider shall document factors, other than the referral source, that [which] make a [female] client eligible for a program based on gender identity.

(11)(a) The department may approve an amendment to a provider's core curriculum[,] if the provider submits to the department:

1. A written request for approval of an amended core curriculum;

2. An explanation of the purpose for the amendment; and

3. The proposed amended core curriculum.

(b) The department shall notify the provider in writing if an amended curriculum is approved or disapproved no later than thirty (30) days after the date that the department receives the request.

(c) The notice provided in accordance with paragraph (b) of

this subsection shall:

1. Specify the effective date of the approval, if granted;

2. Specify which of the requirements of subsection (7) ~~(or (10))~~ of this section that the amended curriculum does not meet, if it is disapproved; and

3. Acknowledge the right to dispute a disapproval in accordance with Sections 13 and 14 of this administrative regulation.

(12) If a client of a program makes a threat of physical violence against a clearly identified or reasonably identifiable person, including a victim, or an actual threat of a specific violent act [towards a victim], a provider shall comply with the warning requirements of KRS 202A.400.

(13) If a client is discharged from a program, a provider shall notify a victim in accordance with Section 7 of this administrative regulation.

(14) A provider shall not offer or provide marital counseling or family therapy to an existing or former client or a victim:

(a) Unless the client:

1. Has successfully completed the program; and

2. Has not demonstrated violence in the the [his] relationship with a victim for at least six (6) months; and

(b) If:

1. There is a foreseeable risk of harm to the victim which may result from the marital services; or

2. The provider believes that the victim may agree to participate because of coercion or threat from the client.

Section 11. Involuntary Discharge from a Program. (1) A provider shall involuntarily discharge a client who:

(a) Fails to attend more than three (3) scheduled appointments;

(b) Fails to actively participate in services or to complete assignments;

(c) Violates a provision of a court order; or

(d) After admission to the program, perpetrates domestic or dating violence and abuse or other behavior that [which], in the provider's professional judgment, is associated with increased risk of harm to the victim.

(2) A provider may involuntarily discharge a client who fails to pay for assessment or intervention:

(a) As agreed; or

(b) As ordered by a court.

(3)(a) A provider shall notify the referring court or department in writing upon the provider's determination that a client shall be discharged in accordance with subsection (1) or (2) of this section.

(b) The notice provided in accordance with paragraph (a) of this subsection shall:

1. Specify the reason for the discharge; and

2.a. Be made no later than five (5) days after the determination; or

b. Be made no [No] later than seventy-two (72) hours if the determination is made in accordance with subsection (1)(d) of this section.

(4) If the discharge is pursuant to subsection (1)(d) of this section, a provider shall:

(a) Immediately attempt to notify the victim in accordance with Section 10(13) of this administrative regulation; and

(b) Document each effort to notify the victim.

(5) A provider may transfer a client [batterer] to another certified provider, if:

(a) The batterer requests;

(b) The reason for the client's [batterer's] request is verifiable;

(c) The batterer is in good standing in the sending program;

(d) The receiving provider accepts the client [batterer] into the receiving program; and

(e) Communication between the sending and receiving providers is documented and includes a mutually agreed upon intervention plan for the batterer.

(6) If a client [batterer] is transferred in accordance with subsection (5) of this section, victim notification shall be made pursuant to Section 7 of this administrative regulation.

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### Section 12. Monitoring.

(1) The cabinet shall investigate a signed written or verbal complaint ~~that~~ ~~[which]~~ alleges that a:

(a) Provider has failed to adhere to the requirements in Section 2 through 11 of this administrative regulation; or

(b) Provider's practice may endanger a client or victim.

(2) The cabinet may conduct periodic provider reviews to:

(a) Determine if a provider is in compliance with the requirements established in the requirements in Sections 2 through 11 of this administrative regulation; and

(b) Evaluate overall quality of services provided.

(3) A cabinet's review or an investigation of a provider shall consist of one (1) or more of the following:

(a) An interview with a certified provider or other employee of the agency;

(b) A review of administrative records;

(c) A review of client records;

(d) Off-site monitoring by cabinet staff using data submitted in accordance with Section 6(10) of this administrative regulation;

(e) Observation of an assessment or intervention, unless a batterer ~~or client~~ objects to being observed;

(f) Interviews with one (1) or more of the following:

1. A batterer ~~or client~~ who consents to an interview;

2. A victim who consents to an interview;

3. A judge or other personnel of the referring court or agency;

4. A probation or parole officer;

5. A case worker for the cabinet; or

6. Personnel from any other agency who:

a. May make a referral for ~~court-ordered~~ ~~[court-order]~~ domestic and dating violence and abuse batterer intervention services;

b. Interacts with a provider; or

c. Has knowledge about the provider's practice;

(g) Physical inspection of a provider's facility; or

(h) The review of other materials necessary to determine compliance with Sections 2 through 11 of this administrative regulation and KRS 403.7505.

(4) The cabinet shall refer an allegation with any indication that a provider may have violated a requirement of a professional licensure or certification board to a board ~~or entity that~~ ~~[which]~~ has jurisdiction ~~over~~ ~~[to regulate]~~ the provider.

(5) Based on the information obtained in accordance with subsection (1), (2), or (3) of this section, the cabinet may determine that a program:

(a) Does or does not meet the requirements of Sections 2 through 11 of this administrative regulation; and

(b) Is endangering a client or a victim.

(6)(a) If the cabinet determines that a certified provider has failed to meet the requirements of Sections 2 through 11 of this administrative regulation or is endangering a client or a victim, the cabinet shall notify the provider in writing of its determination.

(b) Based upon findings of an investigation or provider review, the cabinet may:

1. Require the provider to submit a corrective action plan;

2. Impose a corrective action plan upon the provider; or

3. Revoke a provider's certification in accordance with Section 3(3) or (4) of this administrative regulation.

(7) If the cabinet determines that the associate provider has failed to meet a requirement specified in Section 5(3)~~[(4)(b)]~~ of this administrative regulation, the:

(a) Cabinet shall notify an autonomous provider who supervises an associate provider; and

(b) Autonomous provider shall be responsible to assure that corrective action is taken.

(8) A review or investigation conducted by ~~the~~ cabinet shall include precautions to avoid risk or harm to a client or a domestic and dating violence and abuse victim.

### Section 13. Informal Resolution of Disputes Prior to Hearing.

(1) An applicant or provider may request an informal resolution meeting if the applicant or provider wishes to appeal:

(a) The denial of an application;

(b) The revocation of certification;

(c) A determination made in accordance with Section 12(5) of

this administrative regulation; or

(d) A determination, which is specified in a notice, provided in accordance with Section 10(11)(b) of this administrative regulation.

(2) A request for an informal resolution meeting shall:

(a) Identify the disputed determination or action;

(b) State the basis on which the department's action is believed to be unwarranted or erroneous;

(c) Summarize the appellant's position;

(d) Provide the name, address, and telephone number of each individual who is expected to attend an informal resolution meeting on the appellant's behalf, if a meeting is held; and

(e) Include documentary evidence that the appellant wishes the department to consider in relation to the dispute.

(3) A request for an informal resolution meeting shall not be considered a request for an administrative hearing.

(4) The department shall, within thirty (30) days of receipt of a request made in accordance with subsection (1) of this section, notify the appellant in writing of the following:

(a) The time and place at which the informal resolution meeting shall be held;

(b) The name and title of the department's representative who is expected to attend the meeting;

(c) The provisions of subsections (3) and (9) of this section; and

(d) The provisions of Section 14(1) of this administrative regulation.

(5) The informal resolution meeting shall be scheduled for a date no later than sixty (60) days after receipt of a request submitted in accordance with subsection (1) of this section.

(6) Prior to an informal resolution meeting, the department may rescind the disputed action or determination based on the contents of the request.

(7) The department shall cancel an informal resolution meeting if:

(a) It rescinds the disputed action or determination in accordance with subsection (6) of this section;

(b) It informs the appellant of the decision to rescind the disputed determination or action at least three (3) business days prior to the scheduled date of the meeting; and

(c) The appellant agrees to cancellation of the meeting.

(8) The department shall document the actions taken in accordance with subsection (7) of this section.

(9) If an informal resolution meeting is held, the department shall notify the appellant in writing no later than thirty (30) days after the meeting if it shall rescind, modify, or enforce the disputed action, and the facts upon which its decision is based.

(10) An appellant may request an administrative hearing in accordance with Section 14(1) of this administrative regulation at any time during the informal resolution process established in this section.

Section 14. Administrative Hearing Process. (1) A completed DPP-154 [DVPR-002], Protection and Permanency Service Appeal Request, incorporated in 922 KAR 1:320, [Form] requesting an administrative hearing shall be received by the department no later than thirty (30) calendar days after the date of notice of a determination or a resolution decision, whichever is later. The request shall be sent to the Batterer [Batter] Intervention Program Administrator, Department for Community Based Services, Division of Protection and Permanency [Violence Prevention Resources], 275 East Main Street, Frankfort, Kentucky 40621.

(2) An administrative hearing shall be conducted by a hearing officer who is knowledgeable of cabinet policy. The secretary of the cabinet~~[-in accordance with KRS 13B.030,]~~ shall appoint the hearing officer pursuant to KRS 13B.030.

(3) The department shall forward to the hearing officer an administrative record, which shall include:

(a) A copy of the notice of action taken;

(b) A copy of the request for an informal resolution meeting, if applicable;

(c) The documentation required by Section 13(8) of this administrative regulation if applicable;

(d) A copy of the notice provided by the department in



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accordance with Section 13(9) of this administrative regulation; and  
(e) Documentary evidence provided by the appellant to the department.

(4) The hearing officer shall provide notice of a hearing in accordance with KRS 13B.050.

(5) A prehearing conference may be held at least seven (7) calendar days in advance of the hearing date. Conduct of the prehearing conference shall comply with KRS 13B.070. Each party shall disclose the evidence that the party intends to introduce at the hearing, including documentary evidence and identification of witnesses.

(6) A request for a hearing shall be considered to be abandoned, if the appellant does not appear at the hearing on the scheduled date and the hearing has not been previously rescheduled. A hearing request shall be withdrawn only under the following circumstances:

(a) The hearing officer receives a written statement from the appellant stating that the request is withdrawn; or

(b) The appellant states on the record at the hearing that the request is withdrawn.

(7) Documentary evidence to be used at the hearing shall be made available in accordance with KRS 13B.090.

(8) The hearing officer shall conduct the hearing in accordance with KRS 13B.080.

(9) The hearing officer shall consider the facts as presented at the hearing, including supplementary material, if requested, and prepare a recommendation in accordance with KRS 13B.110.

(10) The hearing officer's recommendation shall be submitted to the secretary of the cabinet and to the department. The department and the appellant shall have fifteen (15) calendar days within which to file with the secretary exceptions to the hearing officer's recommendation in accordance with KRS 13B.110(4). The secretary shall make the final decision of the cabinet pursuant to KRS 13B.120, supported by findings of fact and conclusions of law.

(11) In the correspondence transmitting the decision, clear reference shall be made to the availability of judicial review pursuant to KRS 13B.140 and 13B.150.

(12) The department shall maintain an official record of the hearing in compliance with KRS 13B.130.

Section 15. Incorporation by Reference. (1) ~~The following material is incorporated by reference:~~

~~(a) "DVPR-001, Application for Batterer Intervention Provider Certification", 07/2021~~04/2021~~, is incorporated by reference~~~~edition September 2008; and~~

~~(b) "DVPR-002, Service Appeal Form", edition September 2008].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 E. Main Street, [100 Fair Oaks Lane], Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dcbs/Pages/default.aspx>.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email [CHFSregs@ky.gov](mailto:CHFSregs@ky.gov).

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE  
SYSTEM  
Kentucky Board of Emergency Medical Services  
(Amended After Comments)

202 KAR 7:201. Emergency Medical Responders [First responders].

RELATES TO: KRS 311A.010, 311A.025, 311A.030, 311A.060, 311A.095[, 311A.110] 311A.140, 311A.145, 311A.160

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.020 requires the board to promulgate administrative regulations relating to emergency medical [first] responders. KRS 311A.025 and ~~[KRS]~~ 311A.160 require the board to establish standards relating to emergency medical[first] responders. This administrative regulation establishes the standards relating to emergency medical responders.

Section 1. Emergency Medical Responder [First Responder] Student Eligibility. (1) Individuals shall be eligible to enroll ~~[as a student]~~ in an Emergency Medical Responder [first responder] training program if the applicant:

(a) Is at least fifteen (15) years of age; and  
(b) [1-] Is currently enrolled in grades 9-12 with a minimum GPA of 2.0; or

(c) [2-] Holds a high school diploma, high school equivalency diploma [or GED], or home school diploma.

(2) The student applicant shall:

(a) [Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(b) Not currently be subject to disciplinary action pursuant to KRS Chapter 311A that would prevent certification; [and]

(b) Pass a criminal background check through the Kentucky Administrative Office of the Courts (AOC) meeting the requirements of KRS 311A.050; and

(c) Meet all additional requirements established by the EMS Training and Educational Institution (TEI) [EMS-TEI].

Section 2. Certification Requirements. (1) Individuals desiring initial certification as an Emergency Medical Responder [first responder] shall:

(a) [Meet all of the requirements of Section 1 of this administrative regulation;

(b) Be at least sixteen (16) years of age;]

(c) ~~Be currently enrolled as a student in grades 9-12 with a minimum GPA of 2.0 or hold a high school diploma or GED;~~

(d) (b) Successfully complete a board approved training program that [which] conforms to the United States Department of Transportation, National Highway Traffic Safety Administration, National Emergency Medical Services Educational Standards-Instructional Guidelines for the Emergency Medical Responder, except that the education curriculum shall not be satisfied by the completion of refresher or transition courses alone; [1995-National Standard Curriculum, NREMT-FR as the curriculum for education, which shall not be satisfied by the completion of refresher or transition courses alone;]

(c) Meet all educational standards established in 202 KAR 7:601;

(d) [(e)] Obtain certification [NREMT's registration] as a(n) NREMT-Emergency Medical Responder [NREMT-FR];

(e) [(f)] Submit a completed application for EMR Initial in KEMSIS [and signed "First Responder Initial Certification Application"];

(f) [(g)] Present written evidence of completion of current HIV/AIDS training required by KRS 311A.110;

(h) Pay the fee required for certification pursuant to [by] 202

KAR 7:030; [and

(i) Present written evidence of completion of current training in CPR that:

1. ~~Shall be taught by an individual who holds instructor certification at an appropriate level from:~~

a. The American Red Cross;

b. The AHA;

c. The National Safety Council;

d. The ASHL; or

e. Another board approved organization; [and

2. ~~Shall provide instruction and testing in:~~

a. One (1) rescuer CPR;

b. Two (2) rescuer CPR;

c. ~~Techniques of changing from one (1) to two (2) rescuers during the performance of CPR;~~

d. ~~Techniques of changing rescuers during the performance of two (2) rescuer CPR;~~

e. ~~Techniques for relief of obstruction of the airway;~~

f. ~~CPR of infants and small children;~~

g. ~~Barrier to mouth, barrier to nose, or barrier to stoma resuscitation for adults, small children, and infants;~~

h. ~~Use of oral and nasal airways;~~

i. ~~Use of bag-valve-mask or other ventilation device;~~

j. ~~Use of supplemental oxygen; and~~

k. ~~Use and operation of an AED.~~

(2) ~~An applicant for certification as a first responder shall successfully complete all NREMT testing and become Kentucky certified within two (2) years after the completion date of the first responder course.]~~

(g) Undergo a background check pursuant to KRS 311A.050 and 311A.100, which shall be:

1. National in scope for an applicant not currently certified at any level in Kentucky;

2. Statewide in scope for an applicant with current certification in Kentucky;

3. Less than six (6) months old when the applicant submits to the board all requirements for certification;

4. Provided by a vendor that has been contracted through the board; and

5. Submitted to the board by the company that conducts the background check; and

(h) Be a citizen of the United States, a permanent resident of the United States, or otherwise lawfully present in the United States, as evidenced by submission to the board of:

1. A Social Security card;

2. Birth certificate;

3. A United States Citizenship and Immigration Services (U.S.C.IS) Permanent Resident Card (form I-551/Green Card); or

4. Other legal authorization to live and work in the United States.

Section 3. Renewal of Certification [Recertification] and Continuing Education Requirements. (1) An Emergency Medical Responder [first responder] shall be eligible for certification renewal [recertification] if:

(a) The applicant submits a [signed and] completed ["Universal] EMR Certification Renewal Application [for] in KEMSIS [Recertification/Relicensure];

(b) [The applicant maintains written evidence of current completion of training in CPR meeting the requirements as outlined in Section 2 of this administrative regulation;] The applicant maintains written evidence of:

1. HIV/AIDS training required by KRS 311A.120;

2. Pediatric Abusive Head Trauma training required by KRS 311A.120; and

3. Awareness of Sexual Violence Training required by KRS 311A.120;]

(c) The applicant maintains written evidence of completion of current HIV/AIDS training required by KRS 311A.110;]

(c) [(d)] The applicant pays the fee pursuant to [established in]

202 KAR 7:030; and

(d) ~~(e)~~ The applicant maintains evidence of ~~(either):~~

1. Current certification by the NREMT as an Emergency Medical Responder, except that if this option is used~~;~~ the board may request, though a continuing education audit, proof of continuing education to verify compliance with the requirements of this section ~~[Current registration by the NREMT as an NREMT-FR];~~ or

2. Successful completion of the NREMT Emergency Medical Responder National Continued Competency Program for Continuing Education, which shall be validated by entities authorized to conduct continuing education pursuant to 202 KAR 7:601. ~~[Successful completion of continuing education that:~~

a. Includes seventeen (17) contact hours of continuing education, of which:

(i) One (1) shall be in disaster management or mass casualty incidents; and

(ii) Two (2) may be in HIV/AIDS; and

b. Shall be validated by:

(i) The instructor, medical director, training officer, course coordinator, or provider of the continuing education offering; or

(ii) A medical director, service director, or training officer of the first responder's ambulance service, first response agency, fire department, or rescue squad.]

(2) An application for certification renewal ~~[recertification]~~ shall be denied if:

(a) Prior to the certification expiration date, the ~~[first responder]~~ applicant has not met the applicable requirements of ~~[Section 3 of]~~ this section ~~[administrative regulation];~~ or

(b) The a[A] applicant has been subjected to disciplinary action that prevents certification renewal ~~[recertification]~~ at the time of application.

(3) A certified Emergency Medical Responder ~~[first responder]~~, in good standing, who is a member of a National Guard or ~~[a]~~ military reserve unit ~~[who is]~~ called to active duty by presidential order pursuant to 10 U.S.C. §§ 121 and 673b, shall be renewed according to KRS 12.355 upon submission of the Military Extension Application ~~[may be given a one (1) year extension following release from active duty to meet the applicable requirements for recertification listed in this Administrative Regulation. The first responder shall submit a written request for this extension within sixty (60) days of release from active duty].~~

(4) The board ~~[KBEMS]~~ office may audit an Emergency Medical Responder's ~~[first responder's]~~ continuing education and continuing education records. The Emergency Medical Responder shall submit the documentation requested within ten (10) business days of receipt of the board's request.

(5) The Emergency Medical Responder ~~[first responder]~~ shall maintain documentation of all continuing education for three (3) ~~[four (4)]~~ years from the date of completion.

(6) If documentation of continuing education hours consistent with this administrative regulation are not received using the board-approved submission process within ten (10) business days of receipt of the board's request, the Emergency Medical Responder certification for the individual shall be summarily revoked and the individual shall reapply for certification through Reinstatement, if eligible.

(7) The ten (10) business days for submission shall not apply to investigations pursuant to KRS Chapter 311A.

Section 4. Reinstatement of Certification. (1) An Emergency Medical Responder whose certification has lapsed may reinstate his or her certificate by submitting to the board:

(a) A completed EMR Reinstatement Certification Application in KEMSIS;

(b) Evidence of previous certification as an Emergency Medical Responder in the Commonwealth of Kentucky;

(c) Proof of current training in:

1. Pediatric Abusive Head Trauma as required by KRS 311A.120;

2. Awareness of Sexual Violence Training required by KRS 311A.120; and

3. HIV/AIDS training required by KRS 311A.120; and

(d) Evidence of successful completion of the NREMT Emergency Medical Responder National Continued Competency Program for Continuing Education within twelve (12) months preceding his or her application for reinstatement of Emergency Medical Responder; ~~and~~

~~(e) Evidence of current skills by completing and submitting validation of those skills on the Kentucky Emergency Medical Responder Skills Verification Report prior to beginning work for a licensed agency in Kentucky. The verification report shall be completed by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.]~~

(2) The applicant shall pay the fee required for reinstatement pursuant to 202 KAR 7:030.

(3) The applicant shall undergo a national background check provided by a vendor that has been contracted through the board. The applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check.

(4) Background checks that are older than six (6) months shall not be considered current, and the applicant shall undergo another national background check prior to approval of reinstatement of certification.

(5) The applicant for reinstatement of certification shall bear the burden of proof of previous certification in Kentucky if the previous certification is in issue or dispute.

(6) An applicant who is ineligible for certification pursuant to KRS 311A.050 through 311A.090 shall be ineligible for reinstatement.

Section 5. Emergency Medical ~~[First]~~ Responder Reciprocity.

(1) An individual who is ~~[A person]~~ certified in ~~[another state]~~ a contiguous state to the Commonwealth of Kentucky or ~~[territory of the United States or member of the United States military who is registered]~~ by the NREMT as ~~[a(n)]~~ NREMT-Emergency Medical Responder~~[FR;]~~ or any member of the United States Armed Forces, or veteran who has transitioned within the past six (6) years from the United States Armed Forces, and has been registered by the National Registry as a NREMT-Emergency Medical Responder or EMT, shall be eligible for ~~[direct]~~ reciprocity for ~~[initial]~~ Kentucky certification as an Emergency Medical Responder ~~[first responder]~~ if the applicant submits ~~[individual]:~~

(a) A completed EMR Reciprocity Application in KEMSIS ~~[is at least sixteen (16) years of age];~~ ~~and~~

(b) Proof of the applicant's current ~~[Holds current]~~ unrestricted certification ~~[registration]~~ as a NREMT-Emergency Medical Responder or current Emergency Medical Responder certification in a contiguous state to the Commonwealth of Kentucky, or proof of completing a board-approved United States Armed Forces medical training course which included NREMT-Emergency Medical Technician certification; and ~~[FR;]~~ and

~~(c) 1. Is currently enrolled in grades 9-12 with a minimum GPA of 2.0; or~~

2. Holds a high school diploma or GED.

(2) The individual shall:

(a) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(b) Have successfully completed a training program, which utilized the United States Department of Transportation, National Highway Traffic Safety Administration, 1995 National Standard Curriculum, Emergency Medical Technician-First Responder as the curriculum for education if any individual initially certified after January 1, 1986. An earlier edition of the National Standard Curriculum which has been supplemented by the completion of the First Responder Transition Course shall be considered to meet this requirement, which shall not be satisfied by the completion of refresher or transition courses alone;

(c) Submit a completed and signed "First Responder Initial Certification Application";

(d) Present written evidence of completion of current HIV/AIDS training required by KRS 311A.110;

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(e) Present written evidence of completion of current training in CPR that meets the requirements of Section 2(1)(i) of this administrative regulation;

(f) Pay the fee required by 202 KAR 7:030;

(g) Not have been convicted of, entered a guilty plea or Alford plea to a felony offense, or have completed a diversion program for a felony offense; and

(h) Not have been subjected to discipline that would prevent reciprocity at the time of application.]

(c) Proof of current training in:

1. HIV/AIDS training required by KRS 311A.120;

2. Pediatric Abusive Head Trauma as required by KRS 311A.120; **and**

3. Awareness of Sexual Violence Training required by KRS 311A.120.

(2) An applicant shall pay the fee required for reciprocity pursuant to 202 KAR 7:030.

(3) An applicant for Emergency Medical Responder reciprocity shall undergo a national background check provided by a vendor that has been contracted through the board.

(a) An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check.]; **and**

(b) Background checks that are older than six (6) months shall not be considered current, and the applicant shall undergo another national background check prior to approval of certification through reciprocity.

(4) An applicant shall not have been convicted of offenses described in KRS 311A.050.

(5) An applicant shall not have been subjected to discipline that would prevent reciprocity at the time of application.

(6) An Emergency Medical Responder certified pursuant to **[Section 2 of]** this administrative regulation shall not perform any procedures or skill on which the Emergency Medical Responder has not been trained. An Emergency Medical Responder who performs a skill for which the Emergency Medical Responder does not have documented training shall have exceeded the scope of practice and shall be in violation of KRS 311A.050.

(7) An Emergency Medical Responder certified pursuant to this section shall complete the Kentucky supplemental Emergency Medical Responder curricula for the procedures listed in 202 KAR 7:701 prior to beginning work for a licensed agency in Kentucky.

(a) Kentucky supplemental Emergency Medical Responder curricula consistent with 202 KAR 7:701 shall be provided during employee orientation, or by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.

(b) Verification of competency on the supplemental curricula procedures in 202 KAR 7:701 shall be maintained by the Emergency Medical Responder for a minimum of three (3) years. Failure to submit the EMR Supplemental Curriculum Training Verification Report upon request shall result in revocation of the Emergency Medical Responder certification.

(c) If an Emergency Medical Responder certified pursuant to this section fails to supply verification of competency as required by subsection (7) of this section, the Emergency Medical Responder shall be ineligible to apply for and receive Emergency Medical Responder reciprocity certification until the applicant has submitted the EMR Supplemental Curriculum Training Verification Report as required by 202 KAR 7:701, and shall reapply for Reciprocity through the process listed in this section.

**Section 6. Scope of Practice.** (1) An Emergency Medical Responder shall provide emergency medical services consistent with the skills and procedures in the National EMS Scope of Practice Model and 202 KAR 7:701.

**Section 7. Expiration of Certification.** (1) Certification periods and expiration dates shall be pursuant to KRS 311A.095.

(2) If an Emergency Medical Responder's certification lapses or expires, the Emergency Medical Responder shall cease provision of emergency medical services.

(3) An Emergency Medical Responder who has allowed his or

her certification to lapse or expire shall reinstate certification pursuant to Section 4 **[6]** of this administrative regulation.

**Section 8. Surrender of Certification.** (1) An Emergency Medical Responder surrendering certification shall:

(a) Submit a completed Application for EMR Surrender of Certification in KEMSIS; and

(b) Pay the fee pursuant to 202 KAR 7:030.

(2) The applicant shall notify the board's licensed service director~~(s)~~ with whom the applicant is affiliated immediately upon surrendering his or her certification.

**Section 9. Reporting Requirements.** (1) An Emergency Medical Responder shall maintain current demographic information in KEMSIS including:

(a) Legal name:

1. Any changes to an Emergency Medical Responder's legal name shall be submitted using the Name Change application in KEMSIS; and

2. One (1) of the following documents as verification of name change:

a. Social Security card;

b. Driver's license; or

c. Passport;

(b) Mailing address;

(c) Email address; and

(d) Phone number.

(2) An Emergency Medical Responder who does not comply with this section shall be subject to disciplinary action pursuant to KRS Chapter 311A.

**Section 10. [Section 5-] Exemptions from Emergency Medical [First] Responder Administrative Regulations.** (1) [The Kentucky] Certification requirements for an Emergency Medical Responder [first responder] shall not apply to:

(a) [(4)] United States military personnel or state National Guard or employees of the United States government while providing services on a United States government-owned or operated facility, while engaged in the performance of their official duties under federal law, or while providing assistance in a mass casualty or disaster type situation; or

(b) [(2)] An Emergency Medical Responder [first responder] certified in another state or territory of the United States who:

1. [(a)] Comes into Kentucky to transport a patient from another state into Kentucky; or

2. [(b)] Is transporting a patient through the state of Kentucky to an out-of-Kentucky location.[]

**Section 6. Reinstatement of Certification.** (1) A first responder whose certification has lapsed for a period not exceeding five (5) years, may reinstate their certificate by submitting to the board:

(a) A completed and signed "First Responder Certification Reinstatement Application";

(b) Written evidence of current completion of training in CPR meeting the requirements as outlined in Section 2(1)(i) of this administrative regulation;

(c) Written evidence of completion of current HIV/AIDS training required by KRS 311A.110;

(d) Payment of the fee established in 202 KAR 7:030;

(e) Evidence of previous certification as a first responder in Kentucky;

(f) Evidence of successful completion of continuing education within twelve (12) months preceding their application for reinstatement that includes seventeen (17) contact hours of continuing education, of which:

1. One (1) shall be in disaster management or mass casualty incidents; and

2. Two (2) may be in HIV/AIDS; and

(g) Evidence of successful completion of the National Standard Curriculum for EMT-First Responder Refresher Course within twelve (12) months preceding their application for reinstatement or continuing education hours that meet the requirements of the curriculum.

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(2) A first responder, whose certification has lapsed for a period that exceeds five (5) years, may reinstate their certificate by complying with Sections 1 and 2 of this administrative regulation.

(3) An application for reinstatement of certification shall not be considered if:

(a) The applicant is subject to disciplinary action pursuant to KRS Chapter 311A;

(b) The applicant is an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense; or

(c) The applicant has been subjected to discipline that would prevent reinstatement at the time of application.]

Section 11 [7]. Public Notice of Negative Action. (1) The board office shall cause to be published on the board website the name of an Emergency Medical Responder who:

(a) Is fined;

(b) Is placed on probationary status;

(c) Is placed on restricted status;

(d) Is suspended; or

(e) Has had his or her certification revoked. [The KBEMS office shall cause to be published, in the KBEMS News or similar publication of the board, or otherwise disseminate the name of a first responder that is fined, is placed on probationary status, is placed on a restricted status, is suspended, or has had their certification revoked.

Section 8. Temporary Certificate. (1) KBEMS staff may issue a temporary certificate to an individual who:

(a) Submits a completed "Application for Temporary Certificate";

(b) Is at least sixteen (16) years of age;

(c) Understands, reads, speaks, and writes the English language with a comprehension and performance level equal to at least the 9th grade of education, otherwise known as Level 4, verified by testing as necessary;

(d) Provides proof of being currently certified or licensed in another state or territory of the United States or is currently registered by the NREMT;

(e) Presents written evidence of completion of current HIV/AIDS training required by KRS 311A.110;

(f) Presents written evidence of completion of current training in CPR that meets the requirements of Section 2 of this administrative regulation;

(g) Pays the fee required by 202 KAR 7:030;

(h) Provides the board with a copy of a statewide criminal background check from their state of residence;

(i) Is not an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense; and

(j) Has not been disciplined by or has action pending against or had a certificate or license in the field of health care denied, limited, suspended, or probated by a certifying or licensing entity in Kentucky or other state or territory under the jurisdiction of the United States.

(2) A temporary certificate may be issued for a period which shall not exceed six (6) months and shall not be reissued or renewed.]

Section 12 [9]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "National Emergency Medical Services Education Standards-Emergency Medical Responder Instructional Guidelines", The United States Department of Transportation, National Highway Traffic Safety Administration, DOT HS 811 077B, January 2009 ["First Responder Initial Certification Application" (June 2003)];

(b) "EMR Initial Certification Application" in KEMSIS, July 2019 ["Universal Application for Recertification/Relicensure" (June 2003)];

(c) "EMR Certification Renewal Application" in KEMSIS, July 2019; ["First Responder Certification Reinstatement Application" (June 2003); and]

(d) "EMR Reciprocity Certification Application" in KEMSIS, July 2019; [The United States Department of Transportation, National Highway Traffic Safety Administration, 1995 National Standard Curriculum, Emergency Medical Technician-First Responder.]

(e) "EMR Reinstatement Certification Application" in KEMSIS, July 2019;

(f) "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 810 657, February 2007;

(g) "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 812 666, February 2019;]

~~(h) "EMR Skills Verification Report", July 2019;]~~

~~(h)(i) "EMR Supplemental Curriculum Training Verification Report", July 2019;~~

~~(i)(i) "EMR Certification Surrender Application" in KEMSIS, July 2019;~~

~~(j)(k) "National Registry of Emergency Medical Technicians National Continued Competency Program EMR", October 2016;]~~

~~(l) "American Heart Association Guidelines for CPR and Emergency Cardiovascular Care", November 2018;]~~

~~(k)(m) "National Registry of Emergency Medical Technicians Emergency Medical Responder Psychomotor Examination Users Guide", September 2016;~~

~~(l)(n) "Name Change Application" in KEMSIS, July 2019;~~

~~(m)(e) "Military Extension Application" in KEMSIS, July 2019; and~~

~~(n)(p) "United States Citizenship and Immigration Services (U.S.C.I.S) Permanent Resident Card (form I-551/Green Card)", July 2019.~~

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509, by appointment, [2545 Lawrenceburg Road, Frankfort, Kentucky 40601,] Monday through Friday, 8 a.m. to 4:30 p.m.

PHILIP DIETZ, Chairman

APPROVED BY AGENCY: July 14, 2021

FILED WITH LRC: July 15, 2021 at 10:45 a.m.

CONTACT PERSON: Chuck O'Neal, Deputy Executive Director of Administration, Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509, phone (859) 256-3587, email chuck.oneal@kctcs.edu.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chuck O'Neal

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 311A.020 requires the board to promulgate administrative regulations relating to first responders. KRS 311A.025 and KRS 311A.160 require the board to establish standards relating to emergency medical responders. This administrative regulation establishes standards relating to emergency medical responders.

(b) The necessity of this administrative regulation: KRS 311A.020 requires the board to promulgate administrative regulations relating to first responders. KRS 311A.025 and KRS 311A.160 require the board to establish standards relating to emergency medical responders. This administrative regulation establishes standards relating to emergency medical responders. The amendment provides terminology updates such as the categorization change from "First Responder" to "Emergency Medical Responder." Additionally, these amendments are necessary to allow Kentucky Emergency Medical Responders the opportunity to become certified and maintain certification to protect the citizens of the Commonwealth of Kentucky. Educational and certification processes are streamlined, and unnecessary or repetitive language across other administrative regulations have been removed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.020, KRS 311A.025 and KRS 311A.160 by establishing standards relating to emergency medical responders.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.020

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requires the board to promulgate administrative regulations relating to first responders. KRS 311A.025 and KRS 311A.160 require the board to establish standards relating to emergency medical responders. This administrative regulation will effectively establish the standards relating to emergency medical responders. This administrative regulation will assist Emergency Medical Responders in becoming certified utilizing more simplistic guidelines and processes and provides additional guidance on educational requirements, and will allow the board to provide more effective customer service to applicants for certification.

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

(a) How the amendment will change this existing administrative regulation: This amendment streamlines certification application processes for Emergency Medical Responders and provides additional guidance on application processes and responsibilities of the Emergency Medical Responder. Additionally, unnecessary and dated requirements and terminology have been removed.

(b) The necessity of the amendment to this administrative regulation: The amendment provides terminology updates such as the categorization change from "First Responder" to "Emergency Medical Responder." Additionally, these amendments are necessary to allow Kentucky Emergency Medical Responders the opportunity to become certified and maintain certification to protect the citizens of the Commonwealth of Kentucky. Educational and certification processes are streamlined, and unnecessary or repetitive language across other administrative regulations have been removed.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.020, KRS 311A.025 and KRS 311A.160 by establishing standards relating to emergency medical responders.

(d) How the amendment will assist in the effective administration of the statutes: KRS 311A.020 requires the board to promulgate administrative regulations relating to first responders. KRS 311A.025 and KRS 311A.160 require the board to establish standards relating to emergency medical responders. This administrative regulation establishes standards relating to emergency medical responders. This administrative regulation amendment streamlines processes for administrative body processing and removes barriers to certification for the Emergency Medical Responder. Streamlined processes allow the administrative body to more effectively and efficiently certify applicants.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Emergency Medical Services, its members, and staff, emergency medical services providers, emergency medical responders, and local governments will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Kentucky Board of Emergency Medical Services, its members, and staff, emergency medical services providers, emergency medical responders, and local governments shall implement and satisfy the standards and requirements of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to any entity identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants seeking certification as an Emergency Medical Responder will benefit from decreased certification requirements and processing time.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no cost to the administrative body to implement this administrative regulation.

(a) Initially: There will be no cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the administrative body to implement this administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because this amendment applies equally to all licensed agencies.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Emergency Medical Services, its members, and staff, emergency medical services providers, emergency medical responders, and local governments will be affected by this administrative regulation.

(2) Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.020 requires the board to promulgate administrative regulations relating to first responders. KRS 311A.025 and KRS 311A.160 require the board to establish standards relating to emergency medical responders. This administrative regulation establishes standards relating to emergency medical responders.

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not impose any costs on state or local government.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not impose any costs on state or local government.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not impose any costs.

Other Explanation:

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE  
SYSTEM

Kentucky Board of Emergency Medical Services  
(Amended After Comments)

202 KAR 7:301. Emergency Medical Technician [EMT].

RELATES TO: KRS 311A.010, 311A.025, 311A.060, 311A.095, [311A.110,] 311A.130, 311A.140, 311A.145, 311A.165

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.140, [311A.110,] 311A.165

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.025 requires the board to promulgate administrative regulations relating to Emergency Medical Technicians[EMTs]. This administrative regulation establishes requirements for Emergency Medical Technicians[EMTs].

Section 1. Emergency Medical Technician [EMT] Student Eligibility. (1) Individuals shall be eligible to enroll ~~[as a student]~~ in an Emergency Medical Technician [EMT] education and training program if the applicant:

(a) Is at least ~~seventeen (17)~~ [sixteen (16)] years of age; and  
(b) [1-] Is currently enrolled in grades 9-12 with a minimum GPA of 2.0; or

~~(c) [2-] Holds a high school diploma, high school equivalency diploma [or GED], or home school diploma.~~

(2) The student applicant shall:

~~(a) [Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;~~

~~(b) Not currently be subject to disciplinary action pursuant to KRS Chapter 311A that would prevent certification;~~

~~(b) Pass a criminal background check through the Kentucky Administrative Office of the Courts (AOC) meeting the requirements of KRS 311A.050; and~~

~~(c) Meet all additional requirements established by the EMS Training and Educational Institution (EMS-TEI). [EMS-TEI]; and~~

~~(d) Hold a valid motor vehicle operator's license or learners permit from a state or territory in the United States.]~~

Section 2. Certification Requirements. (1) Individuals desiring initial certification as an Emergency Medical Technician [EMT] shall:

~~(a) [Meet all of the requirements of Section 1 of this administrative regulation;~~

~~(b) Be at least eighteen (18) years of age;]~~

~~(c) Hold a high school diploma or GED;~~

~~(d) [b] Successfully complete a[n] board approved education and training program that conforms to the curriculum of the United States Department of Transportation, National Highway Traffic Safety Administration National Emergency Medical Services Educational Standards-Instructional Guidelines for the Emergency Medical Technician, except that the educational curriculum shall not be satisfied by the completion of refresher or transition courses alone [, 1994 National Standard Curriculum for Emergency Medical Technician-Basic, which shall not be satisfied by the completion of refresher or transition courses alone];~~

~~(c) Meet all educational standards established by 202 KAR 7:601;~~

~~(d) [(e)] Obtain certification [NREMT registration] as a[n] NREMT-Emergency Medical Technician [NREMT-B];~~

~~(e) [(f)] Submit a completed EMT Initial Certification Application in KEMSIS; [and signed "Emergency Medical Technician-Initial Certification Application,;"~~

~~(f) [(g)] Present written evidence of completion of current HIV/AIDS training required by KRS 311A.110;~~

~~(h) Pay the fee required for certification pursuant to [by] 202 KAR 7:030 [and];~~

~~(g) Undergo a background check pursuant to KRS 311A.050 and 311A.100, which shall be:~~

~~1. National in scope for an applicant not currently certified at any level in Kentucky;~~

~~2. Statewide in scope for an applicant with current certification in Kentucky;~~

~~3. Less than six (6) months old when the applicant submits to the board all requirements for certification;~~

~~4. Provided by a vendor that has been contracted through the board; and~~

~~5. Submitted to the board by the company that conducts the background check; and~~

~~(h) Be a citizen of the United States, a permanent resident of the United States, or otherwise lawfully present in the United States, as evidenced by submission to the board of:~~

~~1. A Social Security card;~~

~~2. Birth certificate;~~

~~3. A United States Citizenship and Immigration Services (U.S.C.I.S) Permanent Resident Card (form I-551/Green Card); or~~

~~4. Other legal authorization to live and work in the United States.]~~

~~(i) Present written evidence of completion of current training in CPR that:~~

~~1. Shall be taught by an individual who holds instructor certification at an appropriate level from:~~

~~a. The American Red Cross;~~

~~b. The AHA;~~

~~c. The National Safety Council;~~

~~d. The ASHI; or~~

~~e. Another board approved organization; and~~

~~2. Provides instruction and testing in:~~

~~a. One (1) rescuer CPR;~~

~~b. Two (2) rescuer CPR;~~

~~c. Techniques of changing from one (1) to two (2) rescuers during the performance of CPR;~~

~~d. Techniques of changing rescuers during the performance of two (2) rescuer CPR;~~

~~e. Techniques for relief of obstruction of the airway;~~

~~f. CPR of infants and small children;~~

~~g. Barrier to mouth, barrier to nose, or barrier to stoma resuscitation for adults, small children, and infants;~~

~~h. Use of oral and nasal airways;~~

~~i. Use of bag-valve-mask or other ventilation device;~~

~~j. Use of supplemental oxygen; and~~

~~k. Use and operation of an AED.~~

~~(2) An applicant for certification as an EMT shall successfully complete all NREMT testing and become Kentucky certified within two (2) years after the completion date of their EMT course.]~~

Section 3. Renewal of Certification [Recertification] and Continuing Education Requirements. (1) An Emergency Medical Technician [EMT] shall be eligible for certification renewal [recertification] if:

(a) The applicant submits a completed EMT Certification Renewal Application in KEMSIS [and signed "Universal Application for Recertification/Relicensure"];

(b) The applicant maintains written evidence of: [current completion of training in CPR meeting the requirements as outlined in Section 2(1)(i) of this administrative regulation;]

~~1. HIV/AIDS training required by KRS 311A.120;~~

~~2. Pediatric Abusive Head Trauma required by KRS 311A.120; and~~

~~3. Awareness of Sexual Violence Training required by KRS 311A.120.~~

~~(c) [The applicant maintains written evidence of completion of current HIV/AIDS training required by KRS 311A.110;~~

~~(d) The applicant pays the fee required for renewal pursuant to [established in] 202 KAR 7:030; and~~

~~(d) [(e)] The applicant maintains evidence of [either]:~~

~~1. Current certification [registration] by the NREMT as an Emergency Medical Technician, except that if this option is used[,] the board may request, through a continuing education audit, proof of continuing education to verify compliance with the requirements of this section; or [NREMT-B; or]~~

~~2. Successful completion of the NREMT Emergency Medical Technician National Continued Competency Program National Component for Continuing Education, which shall be validated by~~

entities authorized to conduct continuing education pursuant to 202 KAR 7:601. [~~“EMT—Basic—Minimum—Continuing—Education Requirement” that:~~

a. ~~Includes twenty-four (24) structured contact hours of continuing education, of which sixteen (16) hours shall be within mandatory topic areas and eight (8) hours may be electives to include the following minimum contact hours and topics:~~

- ~~(i) One (1) in disaster management or mass casualty incidents;~~
- ~~(ii) Two (2) in airway management;~~
- ~~(iii) Three (3) in patient assessment;~~
- ~~(iv) Four (4) in medical or behavioral emergencies;~~
- ~~(v) Four (4) in trauma; and~~
- ~~(vi) Two (2) in obstetrics or gynecology, infants and children;~~

and

b. ~~Shall be validated by:~~

~~(i) The instructor, medical director, training officer, course coordinator, or provider of the continuing education offering; or~~

~~(ii) A medical director, service director, or training officer of the EMT’s ambulance service, first response agency, fire department, rescue squad or other medical employer.]~~

~~(2) An application for [renewal of] certification renewal shall be denied if:~~

~~(a) Prior to the certification expiration date, the [EMT] applicant has not met the applicable requirements of this section; or~~

~~(b) The applicant has been subjected to disciplinary action that prevents certification renewal [recertification] at the time of application.~~

~~(3) A certified Emergency Medical Technician [EMT], in good standing, who is a member of a National Guard or [a] military reserve unit [and is] called to active duty by presidential order pursuant to 10 U.S.C. §§ 121 and 673b, shall be renewed according to KRS 12.355 upon submission of the Military Extension Application. [may be given a one (1) year extension following release from active duty to meet the applicable requirements for recertification listed in this administrative regulation. The EMT shall submit a written request for this extension within sixty (60) days of release from active duty.]~~

~~(4) The board [KBEMS] office may audit an Emergency Medical Technician’s [EMT’s] continuing education and continuing education records. The Emergency Medical Technician shall submit the documentation requested within ten (10) business days of receipt of the board’s request.~~

~~(5) If documentation of continuing education hours consistent with this administrative regulation are not received using the board-approved submission process within ten (10) business days of receipt of the board’s request, the Emergency Medical Technician certification for the individual shall be summarily revoked and the individual shall reapply for certification through reinstatement if eligible.~~

~~(6) The ten (10) business days for submission shall not apply to investigations pursuant to KRS Chapter 311A.~~

~~(7) The Emergency Medical Technician [EMT] shall maintain documentation of all continuing education for three (3) [four (4)] years from the date of completion.~~

Section 4. Reinstatement of Certification. (1) An Emergency Medical Technician whose certification has lapsed may reinstate his or her certificate by submitting to the board:

(a) A completed EMT Reinstatement Certification Application in KEMSIS;

(b) Evidence of previous certification as an Emergency Medical Technician in the Commonwealth of Kentucky;

(c) Current training in:

1. Pediatric Abusive Head Trauma as required by KRS 311A.120;

2. Awareness of Sexual Violence Training required by KRS 311A.120; and

3. HIV/AIDS training required by KRS 311A.120; and

(d) Payment of the fee pursuant to 202 KAR 7:030.

(2) The applicant for reinstatement of certification shall undergo a national background check provided by a vendor that has been contracted through the board.

(a) An applicant shall not directly submit a background check

to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check. [; and]

(b) Background checks that are older than six (6) months shall not be considered current, and the applicant shall undergo another national background check prior to approval of reinstatement of certification.

(3) An applicant for reinstatement of certification shall submit to the board evidence of successful completion of the NREMT Emergency Medical Technician National Continued Competency Program for Continuing Education within twelve (12) months preceding his or her application for reinstatement of the Emergency Medical Technician.

(4) The applicant for reinstatement of certification shall bear the burden of proof of previous certification in Kentucky if the previous certification is in issue or dispute.]

**(5) An applicant for reinstatement of a lapsed certification shall provide evidence of current skills by completing and submitting validation of those skills on the Kentucky Emergency Medical Technician Skills Verification Report. The verification report shall be completed by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.]**

~~(5)[(6)] An applicant who is ineligible for certification pursuant to KRS 311A.050 through 311A.090 shall be ineligible for reinstatement.~~

Section 5 [4]. Emergency Medical Technician [EMT] Reciprocity. (1) An individual who is [A person] certified in [another state] a contiguous state to the Commonwealth of Kentucky or [territory of the United States or member of the United States military who is registered] by the NREMT as an Emergency Medical Technician [NREMT-B] or any member of the United States Armed Forces, or veteran who has transitioned within the past six (6) years from the United States Armed Forces, and has been registered by the National Registry as a NREMT-Emergency Medical Technician shall be eligible for [direct] reciprocity for [initial] Kentucky certification as an Emergency Medical Technician if the applicant submits a completed EMT Reciprocity Certification Application in KEMSIS and proof of: [EMT if the individual]

(a) [Is at least eighteen (18) years of age;

(b) The applicant’s current [Holds current] unrestricted certification [registration] as a NREMT- Emergency Medical Technician or current Emergency Medical Technician certification in a contiguous state to the Commonwealth of Kentucky, or proof of completing a board-approved United States Armed Forces medical training course which included NREMT-Emergency Medical Technician certification; and [NREMT-B)];]

(b) Current training in:

1. HIV/AIDS training required by KRS 311A.120;

2. Pediatric Abusive Head Trauma as required by KRS 311A.120; and

3. Awareness of Sexual Violence Training required by KRS 311A.120.]

(c) Completes a training program that conforms to the curriculum of the United States Department of Transportation, National Highway Traffic Safety Administration, 1994 National Standard Curriculum for Emergency Medical Technician-Basic, which shall not be satisfied by the completion of refresher or transition courses alone;

(d) Holds a high school diploma or GED; and

(e) Holds a valid motor vehicle operators license from a state or territory in the United States.

(2) The individual shall:

(a) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(b) Submit a completed and signed "Emergency Medical Technician Initial Certification Application";

(c) Present written evidence of completion of current HIV/AIDS training required by KRS 311A.110;

(d) Present written evidence of completion of current training in CPR that meets the requirements of Section 2(1)(i) of this



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administrative regulation;

~~(e) (2) An applicant shall pay the fee required for certification through reciprocity pursuant to [by] 202 KAR 7:030. [;~~

~~(f) Not have been convicted of, entered a guilty plea or Alford plea to a felony offense, or have completed a diversion program for a felony offense.];~~

~~(3) An applicant for Emergency Medical Technician reciprocity shall undergo a national background check provided by a vendor that has been contracted through the board.~~

~~(a) An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check. [; and]~~

~~(b) Background checks that are older than six (6) months shall not be considered current, and the applicant shall undergo another national background check prior to approval of certification through reciprocity.~~

~~(4) An applicant shall not have been convicted of offenses described in KRS 311A.050. [~~

~~(g) (5) An applicant shall not have been subjected to discipline that would prevent reciprocity at the time of application. [; and]~~

~~(6) An Emergency Medical Technician certified pursuant to [Section 2 of] this administrative regulation shall not perform any procedures or skill on which the Emergency Medical Technician has not been trained. An Emergency Medical Technician who performs a skill for which the Emergency Medical Technician does not have documented training shall have exceeded the scope of practice and shall be in violation of KRS 311A.050.~~

~~(7) An Emergency Medical Technician certified pursuant to this section shall complete the Kentucky supplemental Emergency Medical Technician curricula for the procedures listed in 202 KAR 7:701 prior to beginning work for a licensed agency in Kentucky.~~

~~(a) Kentucky supplemental Emergency Medical Technician curricula consistent with 202 KAR 7:701 shall be provided during employee orientation, or by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.~~

~~(b) Verification of competency on the supplemental curricula procedures in 202 KAR 7:701 shall be maintained by the Emergency Medical Technician for a minimum of three (3) years. Failure to submit the EMT Supplemental Curriculum Training Verification Report upon request shall result in revocation of the Emergency Medical Technician certification.~~

~~(c) If an Emergency Medical Technician certified pursuant to this section fails to supply verification of competency as required by subsection (7) of this section, the Emergency Medical Technician shall be ineligible to apply for and receive Emergency Medical Technician reciprocity certification until the applicant has submitted the EMT Supplemental Curriculum Training Verification Report as required by 202 KAR 7:701, and shall reapply for reciprocity through the process listed in this section. [~~

~~(h) Have successfully completed a training program, which utilized the United States Department of Transportation, National Highway Traffic Safety Administration, 1994 National Standard Curriculum, Emergency Medical Technician-Basic as the curriculum for education if any individual initially certified after January 1, 1986. An earlier edition of the National Standard Curriculum which has been supplemented by the completion of the EMT -Basic transition course shall be considered to meet this requirement.]~~

Section 6. Scope of Practice. (1) An Emergency Medical Technician shall provide emergency medical services consistent with the skills and procedures in the National EMS Scope of Practice Model and 202 KAR 7:701.

Section 7. Expiration of Certification. (1) Certification periods and expiration dates shall be pursuant to KRS 311A.095.

(2) If an Emergency Medical Technician's certification lapses or expires, the Emergency Medical Technician shall cease provision of emergency medical services.

(3) An Emergency Medical Technician who has allowed his or her certification to lapse or expire shall be required to reinstate certification pursuant to Section 4 [6] of this administrative

regulation.

Section 8. Downgrading Certification. (1) An Emergency Medical Technician currently certified as an Emergency Medical Technician by the board shall be eligible for certification downgrade if:

(a) The certification is in good standing with no pending disciplinary action;

(b) The applicant submits a completed EMT Certification Downgrade Application in KEMSIS; and

(c) The applicant pays the fee pursuant to 202 KAR 7:030. [;]

(2) An Emergency Medical Technician shall only be eligible to downgrade his or her certification to an Emergency Medical Responder certification.

(3) Certification periods and expiration dates shall be pursuant to KRS 311A.095.

(4) An applicant shall undergo a background check pursuant to KRS 311A.050 and 311A.100. The background check shall be:

(a) Statewide in scope for an applicant with current certification in Kentucky;

(b) Less than six (6) months old when the applicant submits to the board all requirements for certification; and

(c) Provided by a vendor that has been contracted through the board.

(5) The applicant shall provide proof of:

(a) Current certification by the NREMT as an Emergency Medical Technician; or

(b) Successful completion of the NREMT Emergency Medical Technician National Continued Competency Program for Continuing Education, which shall be validated by entities authorized to conduct continuing education pursuant to 202 KAR 7:601; and

(c) Current training in:

1. Pediatric Abusive Head Trauma required by KRS 311A.120; and

2. Awareness of Sexual Violence Training required by KRS 311A.120.

(6) Downgrade shall be denied if the applicant has not met the requirements of this section or has been subject to disciplinary action that prevents certification at the time of application.

(7) The applicant shall be responsible for meeting the renewal requirements of the downgraded certification level issued prior to expiration of that certification.

(8) To reinstate the certification or license that was previously held, the applicant shall meet the regulatory requirements for that level of certification or licensure.

(9) The applicant shall notify the board's licensed service director[s] with whom the applicant is affiliated immediately upon downgrading his or her certification.

(10) Once the applicant has downgraded his or her certification or license, the applicant shall no longer be permitted to provide emergency medical services at the previous certification or license level held.

(11) An applicant applying for downgrade who does not comply with this section [of the administrative regulation] shall be subject to disciplinary action pursuant to KRS Chapter 311A.

(12) All endorsements, certifications, or licenses held at the previous certification or license level shall be void at the completion of the downgrade.

Section 9. Surrender of Certification. (1) An Emergency Medical Technician surrendering certification shall:

(a) Submit a completed EMT Certification Surrender Application in KEMSIS; and

(b) Pay the fee pursuant to 202 KAR 7:030.

(2) The applicant shall notify the board's licensed service director[s] with whom the applicant is affiliated immediately upon surrendering his or her certification.

Section 10. Reporting Requirements. (1) An Emergency Medical Technician shall maintain current demographic information in KEMSIS including:

(a) Legal name;

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1. Any changes to an Emergency Medical Technician's legal name shall be submitted using the Name Change application in KEMSIS; and

2. One (1) of the following documents as verification of name change:

- a. Social Security card;
- b. Driver's license; or
- c. Passport;
- (b) Mailing address;
- (c) Email address; and
- (d) Phone number.

(2) An Emergency Medical Technician who does not comply with this section shall be subject to disciplinary action pursuant to KRS Chapter 311A.

Section 11 [5]. Exemptions from Emergency Medical Technician [EMT] Administrative Regulations. Certification requirements for an Emergency Medical Technician [EMT] shall not apply to:

(1) United States military personnel or state National Guard or employees of the United States government while providing services on a United States government owned or operated facility, while engaged in the performance of their official duties under federal law, or while providing assistance in a mass casualty or disaster type situation; or

(2) An Emergency Medical Technician [EMT] certified in another state or territory of the United States who:

- (a) Comes into Kentucky to transport a patient from another state into Kentucky; or
- (b) Is transporting a patient through the state of Kentucky to an out-of-Kentucky location.]

Section 6. Reinstatement of Certification. (1) An EMT whose certification has lapsed for a period not exceeding five (5) years, may reinstate their certificate by submitting:

(a) A completed and signed "Emergency Medical Technician Certification Reinstatement Application";

(b) Written evidence of current completion of training in CPR meeting the requirements as outlined in Section 2(1)(i) of this administrative regulation;

(c) Written evidence of completion of current HIV/AIDS training required by KRS 311A.110;

(d) Payment of the fee established in 202 KAR 7:030;

(e) Evidence of previous certification as an EMT in Kentucky;

(f) Evidence of additional successful completion within twelve (12) months preceding their application for reinstatement of the "EMT Basic Minimum Continuing Education Requirement" that includes twenty-four (24) structured contact hours of continuing education, of which sixteen (16) hours shall be within mandatory topic areas and eight (8) hours may be electives to include the following minimum contact hours and topics:

1. One (1) in disaster management or mass casualty incidents;
2. Two (2) in airway management;
3. Three (3) in patient assessment;
4. Four (4) in medical or behavioral emergencies;
5. Four (4) in trauma; and
6. Two (2) in obstetrics or gynecology, infants and children;

(g) Evidence of successful completion of the National Standard Curriculum for Emergency Medical Technician Refresher Course or continuing education hours that meet the requirements of the Curriculum; and

(h) Evidence of validation of skills maintenance by completing the EMT Recertification Report.

(2) An EMT, whose certification has lapsed for a period that exceeds five (5) years, may reinstate their certificate by complying with Sections 1 and 2 of this administrative regulation.

(3) An application for reinstatement of certification shall not be considered if:

(a) The applicant is subject to disciplinary action pursuant to KRS Chapter 311A;

(b) The applicant is an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense; or

(c) The applicant has been subjected to discipline that would prevent reinstatement at the time of application.}]

Section 12 [7]. Public Notice of Negative Action. (1) The board [KBEMS] office shall cause to be published[.] on the board Web site [in the KBEMS News or similar publication of the board, or otherwise disseminate] the name of an Emergency Medical Technician who [EMT that]:

(a) Is fined;

(b) Is placed on probationary status;

(c) Is placed on restricted status;

(d) Is suspended; or

(e) Has had his or her certification revoked.[is fined, is placed

on probationary status, is placed on a restricted status, is suspended, or has had their certification revoked.

Section 8. Temporary Certificate. (1) KBEMS staff may issue a temporary certificate to an individual who:

(a) Submits a completed "Application for Temporary Certificate";

(b) Is at least eighteen (18) years of age;

(c) Understands, reads, speaks, and writes the English language with a comprehension and performance level equal to at least the 9th grade of education, otherwise known as Level 4, verified by testing as necessary;

(d) Provides proof of being currently certified or licensed in another state or territory of the United States or is currently registered by the NREMT;

(e) Presents written evidence of completion of current HIV/AIDS training required by KRS 311A.110;

(f) Presents written evidence of completion of current training in CPR that meets the requirements of Section 2 of this administrative regulation;

(g) Pays the fee required by 202 KAR 7:030;

(h) Provides the board with a copy of a statewide criminal background check from their state of residence;

(i) Is not an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense; and

(j) Has not been disciplined by or has action pending against or had a certificate or license in the field of health care denied, limited, suspended, or probated by a certifying or licensing entity in Kentucky or other state or territory under the jurisdiction of the United States.

(2) A temporary certificate may be issued for a period which shall not exceed six (6) months and shall not be reissued or renewed.}]

Section 13[12][9]. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "National Emergency Medical Services Education Standards-Emergency Medical Technician Instructional Guidelines", The United States Department of Transportation, National Highway Traffic Safety Administration, DOT HS 811 077C, January 2009; [The United States Department of Transportation, National Highway Traffic Safety Administration, "1994 National Standard Curriculum, Emergency Medical Technician" (1994 Edition);]

(b) "EMT Initial Certification Application" in KEMSIS, July 2019; [The "Emergency Medical Technician Initial Certification Application" (June 2003);]

(c) "EMT Certification Renewal Application" in KEMSIS, July 2019; [The "Universal Application Recertification/Relicensure" (June 2003);]

(d) "EMT Reciprocity Certification Application" in KEMSIS July 2019;]

(e) "The Kentucky Board of Emergency Medical Services Emergency Medical Technician Minimum Continuing Education Requirements. Total Contact Hours" (June 2003); and]

(f) "EMT Reinstatement Certification Application" in KEMSIS, July 2019; [The "Emergency Medical Technician Reinstatement Application" (June 2003).]

(f) "National EMS Scope of Practice Model", National Highway

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Traffic Safety Administration, DOT HS 810 657, February 2007:

(g) “National EMS Scope of Practice Model”, National Highway Traffic Safety Administration, DOT HS 812 666, February 2019;[

(h) “EMT Skills Verification Report”, July 2019;]

(i)(4) “EMT Supplemental Curriculum Training Verification Report”, July 2019;

(j)(4) “EMT Certification Downgrade Application” in KEMSIS, July 2019;

(k)(4) “EMT Certification Surrender Application” in KEMSIS, July 2019;

(l)(4) “National Registry of Emergency Medical Technicians National Continued Competency Program EMT”, October 2016;[

(m) “American Heart Association Guidelines for CPR and Emergency Cardiovascular Care”, November 2018;]

(n)(4) “National Registry of Emergency Medical Technicians Emergency Medical Technician Psychomotor Examination Users Guide”, September 2016;

(o)(4) “Name Change Application” in KEMSIS, July 2019;

(p)(4) “Military Extension Application” in KEMSIS, July 2019;  
and

(q)(4) “United States Citizenship and Immigration Services (U.S.C.I.S) Permanent Resident Card (form I-551/Green Card)”, July 2019.

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509, by appointment, [2545 Lawrenceburg Road, Frankfort, Kentucky 40601,] Monday through Friday, 8 a.m. to 4:30 p.m.

PHILIP DIETZ, Chairman

APPROVED BY AGENCY: July 14, 2021

FILED WITH LRC: July 15, 2021 at 10:45 a.m.

CONTACT PERSON: Chuck O’Neal, Deputy Executive Director of Administration, Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509, phone (859) 256-3587, email chuck.oneal@kctcs.edu.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chuck O’Neal

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 311A.025 requires the board to promulgate administrative regulations relating to Emergency Medical Technicians. This administrative regulation establishes requirements for Emergency Medical Technicians.

(b) The necessity of this administrative regulation: KRS 311A.025 requires the board to promulgate administrative regulations relating to Emergency Medical Technicians. This administrative regulation establishes requirements for Emergency Medical Technicians. These amendments are necessary to allow Kentucky Emergency Medical Technicians the opportunity to become certified and maintain certification to protect the citizens of the Commonwealth of Kentucky. Educational and certification processes are streamlined, and unnecessary or repetitive language across other administrative regulations have been removed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.025 by establishing requirements for Emergency Medical Technicians

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.025 requires the board to promulgate administrative regulations relating to Emergency Medical Technicians. This administrative regulation establishes requirements for Emergency Medical Technicians. This administrative regulation will assist Emergency Medical Technicians in becoming certified utilizing more simplistic guidelines and processes and provides additional guidance on educational requirements, and will allow the board to provide more effective customer service to applicants for certification.

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

(a) How the amendment will change this existing administrative regulation: This amendment streamlines certification application processes for Emergency Medical Technicians and provides additional guidance on application processes and responsibilities of the Emergency Medical Technician. Additionally, unnecessary and dated requirements and terminology have been removed.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to allow Kentucky Emergency Medical Technicians the opportunity to become certified and maintain certification to protect the citizens of the Commonwealth of Kentucky. Educational and certification processes are streamlined, and unnecessary or repetitive language across other administrative regulations have been removed.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 311A.025 by establishing requirements for Emergency Medical Technicians.

(d) How the amendment will assist in the effective administration of the statutes: KRS 311A.025 requires the board to promulgate administrative regulations relating to Emergency Medical Technicians. This administrative regulation establishes requirements for Emergency Medical Technicians. This amendment streamlines processes for administrative body processing and removes barriers to certification for the Emergency Medical Technician. Streamlined processes allow the board to certify applicants more effectively and efficiently.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Emergency Medical Services, its members, and staff, local governments, emergency medical services providers, and Emergency Medical Technicians will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Kentucky Board of Emergency Medical Services, its members, staff, and licensed agencies shall implement the standards relating to Emergency Medical Technicians pursuant to this administrative regulation and shall execute their duties consistent with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to any entity identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants seeking certification as an Emergency Medical Technician will benefit from decreased certification requirements and processing time.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no cost to the administrative body to implement this administrative regulation.

(a) Initially: There will be no cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the administrative body to implement this administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because this amendment applies equally

to all licensed agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Emergency Medical Services, its members, and staff, local governments, emergency medical services providers, and Emergency Medical Technicians will be affected by this administrative regulation.

(2) Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.025 requires the board to promulgate administrative regulations relating to Emergency Medical Technicians. This administrative regulation establishes requirements for Emergency Medical Technicians.

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not impose any costs on state or local government.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not impose any costs on state or local government.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not impose any costs.

Other Explanation:

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Kentucky Board of Emergency Medical Services (Amended After Comments)

**202 KAR 7:330. Advanced Emergency Medical Technician [Requirements for examination, certification, and recertification of the advanced emergency medical technician]**

RELATES TO: KRS Chapter 39, 38.030, 39A.050, 311A.010, 311A.020, 311A.025, 311A.050, 311A.090, 311A.095, 311A.100, ~~311A.110, 311A.127,~~ 311A.140, 311A.145, 311A.150, 311A.195, 10 U.S.C. 121, 672(b)

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.025(2) requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations relating to the standards for training, education, examination, certification, practice, and recertification of the Advanced Emergency Medical Technician (AEMT). This administrative regulation establishes requirements for Advanced Emergency Medical Technician [examination, certification, and recertification of the AEMT].

Section 1. Advanced Emergency Medical Technician Student

Eligibility. (1) Individuals shall be eligible to enroll [as a student] in an Advanced Emergency Medical Technician education and training program if the applicant:

(a) Is at least eighteen (18) years of age;

(b) Holds a high school diploma, high school equivalency diploma, or home school diploma; and

(c) Is currently certified at a minimum of an Emergency Medical Technician by the board or the NREMT.

(2) The student applicant shall:

(a) Not currently be subject to disciplinary action pursuant to KRS Chapter 311A that would prevent certification;

(b) Pass a criminal background check through the Kentucky Administrative Office of the Courts (AOC) meeting the requirements of KRS 311A.050; and

(c) Meet all additional requirements established by the EMS Training and Educational Institution (EMS-TEI).

Section 2 [4]. Certification Requirements. (1) Individuals desiring initial certification as an Advanced Emergency Medical Technician shall: [An applicant for initial certification as an AEMT shall complete an educational course that:]

(a) Successfully complete a board approved education and training program that conforms to the curriculum of the United States Department of Transportation, National Highway Traffic Safety Administration National Emergency Medical Services Educational Standards-Instructional Guidelines for the Advanced Emergency Medical Technician, except that the educational curriculum shall not be satisfied by the completion of refresher or transition courses alone; [Meets or exceeds the National Emergency Medical Services Educational Standards Instructional Guidelines for an AEMT; and]

(b) Meet[s] all educational standards established in 202 KAR 7:601.1-1]

(c) Obtain certification as a NREMT-Advanced Emergency Medical Technician;

(d) Be a citizen of the United States, a permanent resident of the United States, or otherwise lawfully present in the United States, as evidenced by submission to the board of:

1. A social security card;

2. Birth certificate;

3. A United States Citizenship and Immigration Services (U.S.C.IS) Permanent Resident Card (form I-551/Green Card); or

4. Other legal authorization to live and work in the United States.

(e) Submit a completed AEMT Initial Certification Application in KEMSIS; and

(f) Pay the fee pursuant to 202 KAR 7:030 for certification as an Advanced Emergency Medical Technician.]

~~(2) An applicant for initial certification as an AEMT in Kentucky shall pass the examination required to obtain the National Registry of Emergency Medical Technicians certification for an AEMT.~~

~~(3) An applicant for initial certification as an AEMT shall provide proof that the applicant has:~~

~~(a) Completed a college degree; or~~

~~(b) 1. Obtained a high school diploma; or~~

~~2. Successfully taken the General Educational Development (GED) test.~~

~~(4) An applicant for AEMT shall complete and submit a signed EMS Responder Application.~~

~~(5) An applicant for AEMT shall submit valid evidence of completion of the following courses:~~

~~(a) HIV/AIDS training required by KRS 311A.110; and~~

~~(b) Pediatric Abusive Head Trauma required by KRS 311A.127.~~

~~(6) An applicant for AEMT shall pay to KBEMS the fee established in 202 KAR 7:030 for certification as an AEMT.~~

~~(7) An applicant for AEMT shall submit to KBEMS an unexpired cardiopulmonary resuscitation (CPR) card or other current evidence of completion of a CPR course that:~~

~~(a) Meets all standards of the American Heart Association Basic Life Support for Healthcare Provider course; and~~

~~(b) Includes a psychomotor examination component and a cognitive assessment.~~

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~~(8)~~ (2) An applicant shall undergo a background check pursuant to KRS 311A.050 and 311A.100. The background check [required] shall be:

(a) National in scope for an applicant not currently certified at any level in Kentucky;

(b) Statewide in scope for an applicant with current certification in Kentucky;

(c) Less than six (6) months old when the applicant submits to the board [KBEMS] all requirements for certification; and

(d) Provided by a vendor that has been contracted through the board [KBEMS or an official federal entity].

(3) ~~(9)~~ An applicant shall not directly submit a background check. The background check shall be submitted to the board [Kentucky Board of Emergency Medical Services] by the company [or federal entity] that conducts the background check.[]

~~(10)~~ An applicant shall have two (2) years from the completion date appearing on the course completion form for the applicant's AEMT course to:

(a) Pass the National Registry exam for AEMT certification; and

(b) Fulfill all requirements for certification as an AEMT established in this section.[]

Section 3. Renewal of Certification and Continuing Education Requirements. (1) An Advanced Emergency Medical Technician shall be eligible for certification renewal if:

(a) The applicant submits a completed AEMT Certification Renewal Application in KEMSIS;

(b) The applicant maintains written evidence of:

1. HIV/AIDS training required by KRS 311A.120;

2. Pediatric Abusive Head Trauma as required by KRS 311A.120; and

3. Awareness of Sexual Violence Training required by KRS 311A.120;

(b) The applicant pays the fee required for renewal pursuant to 202 KAR 7:030; and

(3) The applicant maintains evidence of:

(a) Current certification by the National Registry of Emergency Medical Technicians as an Advanced Emergency Medical Technician, except that if this option is used[,] the board may request, through a continuing education audit, proof of continuing education to verify compliance with the continuing education requirements of this section; or

(b) Successful completion of the NREMT Advanced Emergency Medical Technician National Continued Competency Program, for Continuing Education which shall be validated by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.

(4) An application for certification renewal shall be denied if:

(a) Prior to the certification expiration date, the applicant has not met the applicable requirements of this section;[or]

(b) The applicant has been subjected to disciplinary action that prevents certification renewal at the time of application; or;[]

~~(5) An applicant who is subject to pending administrative action pursuant to KRS 311A.050 through 311A.090 shall be eligible to renew certification unless the applicant:~~

~~(a) Is temporarily suspended pursuant to KRS 311A.075;~~

~~(b) Has failed to perform an action ordered by the board pursuant to KRS 311A.055 or 311A.060; or]~~

(c) The applicant is [is] delinquent on fines or fees owed to the board pursuant to KRS 311A.055, 311A.060, or 202 KAR 7:030.

~~(5)~~(6) A certified Advanced Emergency Medical Technician, in good standing, who is a member of a branch of the United States National Guard or a military reserve unit called to active duty by presidential order pursuant to 10 U.S.C. §§ 121 and 673b, shall be renewed in accordance with KRS 12.355 upon submission of the Military Extension Application.

~~(6)~~(7) The board office may audit an Advanced Emergency Medical Technician's continuing education and continuing education records.

~~(7)~~(8) The Advanced Emergency Medical Technician shall submit the documentation requested within ten (10) business days

of receipt of the board's request. If documentation of continuing education hours consistent with this administrative regulation are not received using the board-approved submission process within ten (10) business days of receipt of the board's request, the Advanced Emergency Medical Technician certification for the individual shall be summarily revoked and the individual shall reapply for certification through Reinstatement if eligible.

~~(8)~~(9) The ten (10) business days for submission shall not apply to investigations pursuant to KRS Chapter 311A.

~~(9)~~(10) The Advanced Emergency Medical Technician shall maintain documentation of all continuing education for three (3) years from the date of completion.

Section 4. Reinstatement of Certification. (1) An Advanced Emergency Medical Technician whose Kentucky certification has lapsed shall be eligible for reinstatement of certification if the applicant submits:

(a) A completed AEMT Reinstatement Certification Application in KEMSIS; and

(b) Evidence of:

1. Previous certification as an Advanced Emergency Medical Technician in the Commonwealth of Kentucky;

2. Current training in:

a. Pediatric Abusive Head Trauma as required by KRS 311A.120; [and]

b. Awareness of Sexual Violence Training required by KRS 311A.120; and

c. HIV/AIDS training required by KRS 311A.120.

(2) The applicant shall pay the fee pursuant to 202 KAR 7:030.

(3) The applicant for reinstatement of certification shall undergo a national background check provided by a vendor that has been contracted through the board.

(a) An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check.[]; and]

(b) Background checks that are older than six (6) months shall not be considered current, and the applicant shall undergo another national background check prior to approval of reinstatement of certification.

(4) The applicant for reinstatement of certification shall bear the burden of proof of previous certification in Kentucky if the previous certification is in issue or dispute.

(5) An applicant for reinstatement of an Advanced Emergency Medical Technician certification shall submit to the board **evidence of successful completion of the NREMT Advanced Emergency Medical Technician National Continued Competency Program for Continuing Education [evidence of formal completion of continuing education hours as required in Section 3 of this administrative regulation. Completion of the hours shall have occurred]** within the twelve (12) months preceding application for reinstatement of the Advanced Emergency Medical Technician.[]

~~(6) An applicant for reinstatement of a lapsed certification shall provide evidence of current skills by completing and submitting validation of those skills on the Kentucky Advanced Emergency Medical Technician Skills Verification Report. The Advanced Emergency Medical Technician Skills Verification Report shall be completed by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.[]~~

~~(6)~~(7) An applicant who is ineligible for certification pursuant to KRS 311A.050 through 311A.090 shall be ineligible for reinstatement.

Section 5. Advanced Emergency Medical Technician Reciprocity. (1) An individual who is certified in a contiguous state to the Commonwealth of Kentucky or by the NREMT as an Advanced Emergency Medical Technician or any member of the United States Armed Forces, or veteran who has transitioned within the past six (6) years from the United States Armed Forces, and has been registered by the National Registry as an Advanced Emergency Medical Technician or EMT and has successfully completed a board-approved United States Armed Forces

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medical training course [the Army 68 Whiskey course] shall be eligible for reciprocity for certification as an Advanced Emergency Medical Technician in Kentucky if the applicant submits:

(a) A completed AEMT Reciprocity Certification Application in KEMSIS;

(b) Proof of the applicant's **current** unrestricted NREMT certification as an Advanced Emergency Medical Technician or **current** Advanced Emergency Medical Technician certification in a contiguous state to the Commonwealth of Kentucky or **proof of completing a board-approved United States Armed Forces medical training course which included NREMT-Emergency Medical Technician certification**; and

(c) Completion of current training in:

1. HIV/AIDS training required by KRS 311A.120;

2. Pediatric Abusive Head Trauma training required by KRS 311A.120; and

3. Awareness of Sexual Violence Training required by KRS 311A.120.

(2) An applicant shall pay the fee required for certification through reciprocity pursuant to 202 KAR 7:030.

(3) An applicant for Advanced Emergency Medical Technician reciprocity shall undergo a national background check provided by a vendor that has been contracted through the board. An applicant shall not directly submit a background check. The background check shall be submitted to the board by the company that conducts the background check. Background checks that are older than six (6) months shall not be considered current, and the applicant shall undergo another national background check prior to approval of certification through reciprocity.

(4) An applicant shall not have been convicted of offenses described in KRS 311A.050.

(5) An applicant shall not have been subjected to discipline that would prevent reciprocity at the time of application.

(6) An Advanced Emergency Medical Technician certified pursuant to Section 2 of this administrative regulation shall not perform any procedures or skill on which the Advanced Emergency Medical Technician has not been trained. An Advanced Emergency Medical Technician who performs a skill for which the Advanced Emergency Medical Technician does not have documented training shall have exceeded the scope of practice and shall be in violation of KRS 311A.050.

(7) An Advanced Emergency Medical Technician certified pursuant to this section shall complete the Kentucky supplemental Advanced Emergency Medical Technician curricula for the procedures listed in 202 KAR 7:701 prior to beginning work for a licensed agency in Kentucky.

(8) Kentucky supplemental Advanced Emergency Medical Technician curricula consistent with 202 KAR 7:701 shall be provided during employee orientation, or by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.

(9) Verification of competency on the supplemental curricula procedures in 202 KAR 7:701 shall be maintained by the Advanced Emergency Medical Technician for a minimum of three (3) years. Failure to submit the AEMT Supplemental Curriculum Training Verification Report shall result in revocation of Advanced Emergency Medical Technician certification.

(10) If an Advanced Emergency Medical Technician certified pursuant to this section fails to supply verification of competency as required by subsection (7) of this section the Advanced Emergency Medical Technician shall be ineligible to apply for and receive Advanced Emergency Medical Technician reciprocity certification until the applicant has submitted the AEMT Supplemental Curriculum Training Verification Report as required pursuant to 202 KAR 7:701, and shall reapply for Reciprocity through the process set forth in this section.

Section 6[2]. Scope of Practice. ~~[(1)]~~ An Advanced Emergency Medical Technician [AEMT] shall provide emergency medical services consistent with the skills and procedures in the National EMS Scope of Practice Model and 202 KAR 7:701.

~~(2) In addition to the skills and procedures in the National EMS Scope of Practice Model, the scope of practice of a Kentucky AEMT shall include the following procedures:~~

~~(a) Quantitative and qualitative capnography and capnometry;~~  
~~(b) Bilevel Positive Airway Pressure and Continuous Positive Airway Pressure (BIPAP/CPAP) devices;~~

~~(c) End tidal Carbon Dioxide (ETCO<sub>2</sub>) Detection;~~

~~(d) Acquisition of a non-interpretive twelve (12) lead electrocardiogram (ECG);~~

~~(e) Transmission of a non-interpretive twelve (12) lead electrocardiogram (ECG); and~~

~~(f) Establish and maintain adult intraosseous infusion.~~

~~(3) Eligibility to perform the supplemental procedures shall require an AEMT to complete education on and training for the skill performed. The supplemental curriculum required shall consist of:~~

~~(a) Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using a noninvasive monitoring device— Application of 12 lead electrocardiogram electrodes and monitor;~~

~~(b) Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using a noninvasive monitoring device— Application and interpretation of quantitative capnography and end tidal carbon dioxide monitoring;~~

~~(c) Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using Bilevel Positive Airway Pressure and Continuous Positive Airway Pressure Devices; and~~

~~(d) Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using intraosseous infusion in the adult.~~

~~(4) An AEMT shall adhere to the protocols the employing service's medical director submitted to KBEMS for approval. Deviation from the protocols shall only occur if:~~

~~(a) The AEMT's medical director or designated on-line medical control orders otherwise;~~

~~(b) Compliance with approved protocols is not in the patient's medical best interest; or~~

~~(c) The AEMT does not have the equipment or medication to adhere to the protocol.~~

~~(5) An AEMT shall document deviation from an approved protocol as part of the patient care report.~~

~~(6) If providing emergency medical services during a disaster or emergency that qualifies as part of the Emergency Management Assistance Compact, pursuant to KRS 39A.050, or if acting pursuant to another agreement made pursuant to KRS Chapter 39, an AEMT certified in another state may perform the skills and procedures approved by the certifying state.]~~

Section 7 [3]. Expiration of Certification. (1) Certification periods and expiration dates shall be pursuant to KRS 311A.095.

(2) If an Advanced Emergency Medical Technician's [AEMT's] certification lapses or expires, the Advanced Emergency Medical Technician [AEMT] shall cease provision of emergency medical services.

(3) If the AEMT has chosen to maintain certification at the EMT level, the AEMT shall apply for renewal of EMT certification prior to the expiration date.

(4) An Advanced Emergency Medical Technician [AEMT] who has allowed his or her [all levels of] certification to lapse or expire shall be required to reinstate certification pursuant to Section 4 [7] of this administrative regulation.[]

Section 4. Renewal of Certification and Continuing Education Requirements. (1) To be eligible for renewal of certification, an AEMT shall submit to the board:

~~(a) A completed and signed EMS Responder Application; and~~

~~(b) The fee established in 202 KAR 7:030.~~

~~(2) The applicant shall maintain written evidence of:~~

~~(a) Current training in HIV/AIDS treatment and recognition required by Section 1(5)(a) of this administrative regulation; and~~

~~(b) Current training in Pediatric Abusive Head Trauma as required by KRS 311A.127.~~

~~(3) An applicant for renewal of certification as an AEMT shall maintain evidence of:~~

~~(a) Current certification by the National Registry of Emergency Medical Technicians as an AEMT; or~~

~~(b) Completion of the AEMT continuing education requirement of forty-eight (48) total instructional hours. The forty-eight (48) instructional hours shall be composed of twelve (12) elective hours~~

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in-subject areas chosen by the AEMT and thirty-six (36) hours that include the following minimum contact hours for the following subject areas:

1. Twelve (12) hours in airway, breathing, and cardiology, with a minimum of one (1) hour in each topic;
2. Six (6) hours in medical emergencies, excluding cardiology;
3. Five (5) hours in trauma;
4. Six (6) hours in obstetrics;
5. Six (6) hours in pediatrics; and
6. One (1) hour in disaster management.

(c) The twelve (12) elective hours required for an AEMT to recertify shall not include more than four (4) hours in a single category in the list provided in paragraph (b)1. through 6. of this subsection.

(4) To be used for renewal of certification, the AEMT's continuing education hours shall be certified as valid by:

(a) The course's instructor, medical director, training officer, coordinator, or provider that offered the hours; or

(b) A medical director, service director, or training officer of the AEMT's ambulance service, first response agency, fire department, rescue squad, or other medical employer.

(5) An applicant for AEMT shall not be eligible for renewal of certification if the applicant does not complete all hours required by the end of the AEMT's certification period.

(6) An applicant's certification that is based upon completion of continuing education hours that are subsequently proven untrue, inaccurate, or fraudulent through a board audit shall be invalid pursuant to [KRS 311A.140(4) and] 311A.050(2)(b).

(7) An applicant who is subject to pending administrative action pursuant to KRS 311A.050 through 311A.090 shall be eligible to renew certification unless the applicant:

(a) Is temporarily suspended pursuant to KRS 311A.075;

(b) Has failed to perform an action ordered by the board pursuant to KRS 311A.055 or 311A.060; or

(c) Is delinquent on fines or fees owed to the board pursuant to KRS 311A.055, 311A.060, or 202 KAR 7:030.

(8) A certified AEMT who is not undergoing disciplinary action with the board and who is a member of a branch of the United States military or a National Guard or military reserve unit shall be eligible for an extension of the time limit to renew certification if the AEMT:

(a)1. Is called to federal active duty by presidential order pursuant to 10 U.S.C. 121 and 673b during the current certification period; or

2. Is called to state active duty for an extended period of time by order of the governor pursuant to KRS 38.030;

(b) Because of the call to active duty, is unable to complete the continuing education hours required for renewal of certification; and

(c) Submits a written request for an extension within thirty (30) days prior to or sixty (60) days after release from active duty.

(9) The extension granted pursuant to subsection (8) of this administrative regulation shall not exceed one (1) year beyond the effective date of release from active duty for the AEMT. The AEMT shall be required to provide a DD 214 or other relevant federal documents as proof of the release date.

(10) If asked by the office of the board to provide the documentation of continuing education hours an AEMT used as a basis for renewal of certification, the AEMT shall submit the documentation within ten (10) business days of receipt of the board's request.

(11) The ten (10) business days for submission shall not apply to investigations pursuant to KRS Chapter 311A.

**Section 5. AEMT Reciprocity.** (1) An individual who is certified by the NREMT as an AEMT shall be eligible for direct reciprocity for initial certification as an AEMT in Kentucky if the applicant submits a completed and signed EMS Responder Application and proof of:

(a) The applicant's unrestricted NREMT certification as an AEMT; and

(b) Completion of current training in:

1. HIV/AIDS training required by KRS 311A.110;

2. Pediatric Abusive Head Trauma training required by KRS 311A.127; and

3. CPR that meets the requirements of Section 1(7) of this administrative regulation; and

(c) Submission of the Kentucky Required Mandatory Supplemental Curriculum for AEMT Initial Training Verification Report.

(2) An applicant shall pay the fee required for initial certification through reciprocity pursuant to 202 KAR 7:030.

(3) An applicant for AEMT direct reciprocity shall undergo a national background check and have the results submitted to the board. Background checks that are older than six (6) months shall not be considered current, and the applicant shall be required to undergo another national background check prior to approval of certification through reciprocity.

(4) An AEMT certified pursuant to Section 1 of this administrative regulation shall not perform any procedures or skill on which the AEMT has not been trained. An AEMT who performs a skill for which the AEMT does not have documented training shall have exceeded the scope of practice and shall be in violation of KRS 311A.060.

(5) An AEMT certified pursuant to Section 1 of this administrative regulation shall complete the Kentucky supplemental AEMT curricula for the procedures listed in Section 2(3) of this administrative regulation within six (6) months of receiving certification through direct reciprocity.

(6) Verification of competency on the supplemental curricula procedures in Section 2(3) of this administrative regulation shall be submitted to the board within six (6) months of receiving certification. Failure to submit verification shall result in revocation of AEMT certification and the board shall issue a new certificate at the level of EMT for the remaining certification period.

(7) If an AEMT certified pursuant to this section fails to supply verification of competency as required by subsection (7) of this section and the AEMT's certificate is reissued at the EMT level of certification, the AEMT shall be ineligible to apply for and receive AEMT reciprocity certification until the applicant has submitted verification of competency in the supplemental procedures in Section 2(3) of this administrative regulation.]

**Section 8. Downgrading Certification.** (1) An Advanced Emergency Medical Technician currently certified as an Advanced Emergency Medical Technician by the board shall be eligible for certification downgrade if:

(a) The certification is in good standing with no pending disciplinary action;

(b) The applicant submits a completed AEMT Certification Downgrade Application in KEMSIS; and

(c) The applicant pays the fee established in 202 KAR 7:030.

(2) An Advanced Emergency Medical Technician is only eligible to downgrade his or her certification to an Emergency Medical Technician or Emergency Medical Responder certification.

(3) Certification periods and expiration dates shall be pursuant to KRS 311A.095.

(4) An applicant shall undergo a background check pursuant to KRS 311A.050 and 311A.100. The background check shall be:

(a) Statewide in scope for an applicant with current certification in Kentucky;

(b) Less than six (6) months old when the applicant submits to the board all requirements for certification; and

(c) Provided by a vendor that has been contracted through the board.

(5) The applicant shall provide proof of:

(a) Current certification by the NREMT as an Advanced Emergency Medical Technician; or

(b) Successful completion of the NREMT Advanced Emergency Medical Technician National Continued Competency Program for Continuing Education, which shall be validated by entities authorized to conduct continuing education pursuant to 202 KAR 7:601; and

(c) Current training in:

1. Pediatric Abusive Head Trauma required by KRS 311A.120; and

2. Awareness of Sexual Violence Training required by KRS 311A.120.

(6) Downgrade shall be denied if the applicant has not met the requirements of this section or has been subject to disciplinary action that prevents certification at the time of application.

(7) The applicant shall be responsible for meeting the renewal requirements of the downgraded certification level issued prior to expiration of that certification.

(8) To reinstate the certification or license that was previously held, the applicant shall meet the regulatory requirements for that level of certification or licensure.

(9) The applicant shall notify the board's licensed service director~~[(s)]~~ with whom the applicant is affiliated immediately upon downgrading his or her certification.

(10) Once the applicant has downgraded his or her certification or license, the applicant is no longer permitted to provide emergency medical services at the previous certification or license level held.

(11) An applicant applying for downgrade who does not comply with this section shall be subject to disciplinary action pursuant to KRS Chapter 311A.

(12) All endorsements, certifications, or licenses held at the previous certification or license level shall be void at the completion of the downgrade.

Section 9. Surrender of Certification. (1) An Advanced Emergency Medical Technician surrendering certification shall:

(a) Submit a completed AEMT Certification Surrender Application in KEMSIS; and

(b) Pay the fee established in 202 KAR 7:030.

(2) The applicant shall notify the board's licensed service director~~[(s)]~~ with whom the applicant is affiliated immediately upon surrendering his or her certification.

Section 10. Reporting Requirements. (1) An Advanced Emergency Medical Technician shall maintain current demographic information in KEMSIS including:

(a) Legal name;

1. Any changes to an AMET's legal name shall be submitted using the Name Change application in KEMSIS; and

2. One of the following documents as verification of name change:

a. Social Security card;

b. Driver's license; or

c. Passport;

(b) Mailing address;

(c) Email address; and

(d) Phone number.

(2) An Advanced Emergency Medical Technician who does not comply with this section shall be subject to disciplinary action pursuant to KRS Chapter 311A.

Section 11 [6]. Exemptions from Advanced Emergency Medical Technician [AEMT] Administrative Regulations. Certification requirements for an Advanced Emergency Medical Technician [AEMT] shall not apply to:

(1) United States military members, state National Guard personnel, or employees of the United States government if the individual provides emergency medical services:

(a) [4-] On land owned by the United States government; [or]

(b) [2-] In facilities owned by the United States government; [or]

(c) [(b)4-] In the performance of official duties under federal law; or [or]

(d) [2-] As part of assistance for a mass casualty or disaster incident pursuant to federal law or official state assistance request; or

(2) An Advanced Emergency Medical Technician [AEMT] certified in another state or territory of the United States who:

(a) Enters Kentucky with a patient being transported to a medical facility or other final destination in Kentucky; or

(b) Travels through Kentucky during the course of a patient transport from an out-of-state location to a destination outside of Kentucky.

Section 7. Reinstatement of Certification. (1) An AEMT whose Kentucky certification has lapsed shall be eligible for reinstatement of certification if:

(a) The lapse in certification has not exceeded a period of three (3) years; and

(b) The applicant submits:

1. A completed and signed EMS Responder Application; and

2. Evidence of:

a. Current certification at the AEMT level or higher with the National Registry; or

b. Current training in:

(i) HIV/AIDS training required by KRS 311A.110;

(ii) Pediatric Abusive Head Trauma as required by KRS 311A.127; and

(iii) Healthcare CPR as required by Section 1(7) of this administrative regulation.

(2) The applicant shall pay the fee pursuant to 202 KAR 7:030.

(3) The applicant shall undergo a national background check and have the results presented to the office of the board. If the background check is older than six (6) months, the applicant shall be required to undergo and have new results submitted to the board.

(4) The applicant for reinstatement of certification shall bear the burden of proof of previous certification in Kentucky if the previous certification is in issue or dispute.

(5) An applicant for reinstatement of an AEMT certification shall submit evidence of formal completion of continuing education hours as required in Section 4 of this administrative regulation. Completion of the hours shall have occurred within the twelve (12) months preceding application for reinstatement of the AEMT.

(6) An applicant for reinstatement of a lapsed certification shall provide evidence of current skills by completing and submitting validation of those skills on the Kentucky Advanced EMT Skills Verification Report.

(7) An AEMT whose certification has lapsed for longer than three (3) years shall not be eligible for reinstatement but shall be considered an initial certification and shall meet all requirements in Section 1 of this administrative regulation.

(8) An applicant ineligible for certification pursuant to KRS 311A.050 through 311A.090 shall be ineligible for reinstatement.]

Section 12. Public Notice of Negative Action. (1) The board office shall cause to be published on the board website the name of an Advanced Emergency Medical Technician who:

(a) Is fined;

(b) Is placed on probationary status;

(c) Is placed on restricted status;

(d) Is suspended; or

(e) Has had his or her certification revoked.]

Section 8. AEMT certification through previous pilot projects.

(1) An AEMT who obtained certification as an AEMT through training in a pilot project previously approved by the board shall maintain certification until the end of the current certification period without the completion of additional requirements.

(2) An AEMT certified through a previously approved pilot project who applies for renewal at the end of the current certification period shall meet all requirements for renewal of certification in Section 4 of this administrative regulation.

(3) An applicant certified as an AEMT in a previously approved pilot project and who meets the requirements for renewal of certification as an AEMT in Section 4 of this administrative regulation shall not be limited to the geographic boundaries established in the original pilot project but shall be considered fully certified and geographically unrestricted to practice as an AEMT in the state of Kentucky.

Section 9.]Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "National Emergency Medical Services Education Standards-Advanced Emergency Medical Technician Instructional Guidelines", The United States Department of Transportation, National Highway Traffic Safety Administration, DOT HS 811



~~077D, January 2009 [National Highway Traffic Safety Administration, DOT HS 811-077A, January 2009];~~

~~(b) "AEMT Initial Certification Application" in KEMSIS, July 2019 ["EMS Responder Application", KBEMS E-1, September 2012];~~

~~(c) "AEMT Certification Renewal Application" in KEMSIS, July 2019 ["American Heart Association's Basic Life Support for Healthcare Providers Course", American Heart Association, 2014];~~

~~(d) "AEMT Reciprocity Certification Application" in KEMSIS, July 2019 ["National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 810-657, February 2007];~~

~~(e) "AEMT Reinstatement Certification Application" in KEMSIS, July 2019 ["Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using a noninvasive monitoring device— Application of 12 lead electrocardiogram electrodes and monitor", KBEMS E-29, March 2013];~~

~~(f) "AEMT Supplemental Curriculum Training Verification Report", July 2019;[~~

~~**(g)** "AEMT Skills Verification Report", July 2019;]~~

~~**(g)(h)** "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 810 657, February 2007;~~

~~**(h)(i)** "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 812 666, February 2019;~~

~~**(i)(j)** "AEMT Certification Downgrade Application" in KEMSIS, July 2019;~~

~~**(j)(k)** "AEMT Certification Surrender Application" in KEMSIS, July 2019;~~

~~**(k)(l)** "National Registry of Emergency Medical Technicians National Continued Competency Program AEMT", October 2016;[~~

~~**(m)** "American Heart Association Guidelines for CPR and Emergency Cardiovascular Care", November 2018;]~~

~~**(l)(n)** "National Registry of Emergency Medical Technicians Advanced Emergency Medical Technician Psychomotor Examination Users Guide", September 2016;~~

~~**(m)(o)** "Name Change Application" in KEMSIS, July 2019;~~

~~**(n)(p)** "Military Extension Application" in KEMSIS, July 2019; and~~

~~**(o)(q)** "United States Citizenship and Immigration Services (U.S.C.IS) Permanent Resident Card (form I-551/Green Card)", July 2019;["Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using a noninvasive monitoring device— Application and interpretation of quantitative capnography and end tidal carbon dioxide monitoring", KBEMS E-30, March 2013;~~

~~(g) "Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using Bilevel Positive Airway Pressure and Continuous Positive Airway Pressure Devices", KBEMS E-32, March 2013;~~

~~(h) "Kentucky Ambulance Service Specific Supplemental Curriculum for the AEMT using intraosseous infusion in the adult", KBEMS E-31, March 2013;~~

~~(i) "Kentucky Required Mandatory Supplemental Curriculum for AEMT Initial Training Verification Report", KBEMS E-26, March 2013; and~~

~~(j) "Kentucky Advanced EMT Skills Verification Report", KBEMS E-28, March 2013.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509, by appointment, [KCTCS, 300-N. Main Street, Versailles, Kentucky 40383] Monday through Friday, 8 a.m. to 4:30 p.m.

PHILIP DIETZ, Chairman

APPROVED BY AGENCY: July 14, 2021

FILED WITH LRC: July 15, 2021 at 10:45 a.m.

CONTACT PERSON: Chuck O'Neal, Deputy Executive Director of Administration, Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509, phone (859) 256-3587, email chuck.oneal@kctcs.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chuck O'Neal

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 311A.025(2) requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations relating to the standards for training, education, examination, certification, practice, and recertification of the advanced emergency medical technician (AEMT). This administrative regulation establishes requirements for Advanced Emergency Medical Technicians.

(b) The necessity of this administrative regulation: KRS 311A.025(2) requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations relating to the standards for training, education, examination, certification, practice, and recertification of the advanced emergency medical technician (AEMT). This administrative regulation establishes requirements for Advanced Emergency Medical Technicians. These amendments are necessary to allow Kentucky Advanced Emergency Medical Technicians the opportunity to become certified and maintain certification to protect the citizens of the Commonwealth of Kentucky. Educational and certification processes are streamlined, and unnecessary or repetitive language across other administrative regulations have been removed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.025 by establishing the requirements for Advanced Emergency Medical Technicians.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.025(2) requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations relating to the standards for training, education, examination, certification, practice, and recertification of the advanced emergency medical technician (AEMT). This administrative regulation establishes requirements for Advanced Emergency Medical Technician. This administrative regulation will assist Advanced Emergency Medical Technicians in becoming certified utilizing more simplistic guidelines and processes and provides additional guidance on educational requirements and will allow the board to provide more effective customer service to applicants for certification.

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

(a) How the amendment will change this existing administrative regulation: This amendment streamlines certification application processes for Advanced Emergency Medical Technicians and provides additional guidance on application processes and responsibilities of the Advanced Emergency Medical Technician. Additionally, unnecessary and dated requirements and terminology have been removed.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to allow Kentucky Advanced Emergency Medical Technicians the opportunity to become certified and maintain certification to protect the citizens of the Commonwealth of Kentucky. Educational and certification processes are streamlined, and unnecessary or repetitive language across other administrative regulations have been removed.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 311A.025(2) requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations relating to the standards for training, education, examination, certification, practice, and recertification of the advanced emergency medical technician (AEMT). This administrative regulation establishes requirements for Advanced Emergency Medical Technician.

(d) How the amendment will assist in the effective administration of the statutes: KRS 311A.025(2) requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations relating to the standards for training, education, examination, certification, practice, and recertification of the advanced emergency medical technician (AEMT). This

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administrative regulation establishes requirements for Advanced Emergency Medical Technician. This administrative regulation amendment streamlines processes for administrative body processing and removes barriers to certification for the Advanced Emergency Medical Technician. Streamlined processes allow the administrative body to certify applicants more effectively and efficiently.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Emergency Medical Services, its members, staff, and licensed agencies will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Kentucky Board of Emergency Medical Services, its members, staff, and licensed agencies shall implement the standards relating to Advanced Emergency Medical Technicians pursuant to this administrative regulation and shall execute their duties consistent with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to any entity identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants seeking certification as an Advanced Emergency Medical Technician will benefit from decreased certification requirements and processing time.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no cost to the administrative body to implement this administrative regulation.

(a) Initially: There will be no cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the administrative body to implement this administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because this amendment applies equally to all licensed agencies.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Emergency Medical Services, its members, staff, and licensed agencies will be affected by this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.025 requires the board to promulgate administrative regulations relating to Advanced Emergency Medical Technicians. This administrative regulation establishes requirements for Advanced Emergency Medical Technicians.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for the first year? This administrative regulation will generate no revenue for the first year.

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not impose any costs on state or local government.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not impose any costs on state or local government.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not impose any costs.

Other Explanation:

### KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM Kentucky Board of Emergency Medical Services (Amended After Comments)

#### 202 KAR 7:401. Paramedics.

RELATES TO: KRS 12.355, 72.020, 311A.025, 311A.030, 311A.050-311A.100, 311A.120 [~~311A.080~~] [~~311A.110~~], 311A.135, 311A.142, 311A.170, 311A.185, 311A.190, 446.400

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.120 [~~311A.115~~], 311A.125, 311A.135, 311A.170

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.025 requires the board to promulgate administrative regulations relating to requirements and procedures for licensure, relicensure, and reciprocity for paramedics. This administrative regulation establishes those requirements and procedures.

Section 1. Paramedic Student Eligibility. Individuals shall be eligible to enroll as a student in a paramedic education and training program if the applicant:

(1) Is at least eighteen (18) years of age;

(2) Holds a high school diploma, high school equivalency diploma [or GED], or home school diploma;

(3) [~~Understands, reads, speaks, and writes the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;~~

(4) Holds current unrestricted certification as an Emergency Medical Technician or Advanced Emergency Medical Technician [EMT] in Kentucky or holds current unrestricted certification [registration] with the National Registry of Emergency Medical Technicians (NREMT) as an Emergency Medical Technician or Advanced Emergency Medical Technician [NREMT-B];

(4) [(5)] Is not currently subject to disciplinary action pursuant to KRS Chapter 311A that would prevent licensure; and]

(5) [(6)] Meets all additional requirements established by the EMS Training and Educational Institution (EMS-TEI). [~~EMS-TEI~~; and

(7) ~~Holds a valid motor vehicle operators license from a state or territory of the United States.]~~

Section 2. Licensure Requirements. (1) Individuals desiring initial licensure as a paramedic shall:

(a) Successfully complete a board approved education and training program that conforms to the curriculum of the United States Department of Transportation, National Highway Traffic Safety Administration, National Emergency Medical Services Education [Educational] Standards- Paramedic Instructional

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Guidelines; [Meet all of the requirements contained in Section 4 of this administrative regulation;]

(b) Successfully complete, within thirty (30) months of the beginning of the course, all EMS Training and Educational Institute (EMS-TEI) [TEI] requirements for the education or training program which:

1. Meet or exceed the National Emergency Medical Services Educational Standards- Paramedic Instructional Guidelines [Utilize the United States Department of Transportation, National Highway Traffic Safety Administration, 1998 National Standard Curriculum for Emergency Medical Technician-Paramedic], which shall not be satisfied by the completion of refresher or transition courses alone; and [and]

2. Meet all educational standards established in 202 KAR 7:601; [Shall not contain less than the median number of didactic, practical laboratory, and clinical and field internship hours for each subject and skill as contained in the "Field and Pilot Test Didactic and Practical Laboratory Hours Report" and "Field and Pilot Test Clinical Report" of the United States Department of Transportation, National Highway Traffic Administration, 1998 National Standard Curriculum for Emergency Medical Technician-Paramedic;]

(c) Present evidence of completion of education and training regarding determination of death and preservation of evidence as required by KRS 311A.185;

(d) Obtain certification as a paramedic by the National Registry of Emergency Medical Technicians [NREMT registration as a NREMT-P];

(e) Submit a completed Paramedic Initial Licensure [License] Application in the Kentucky Emergency Management Information System (KEMSIS) [KEMSIS] [signed "Application for Paramedic Examination and Licensure"];

(f) [Present written evidence of completion of current HIV/AIDS education or training required by KRS 311A.110; and

(g) Pay the fee pursuant to [required by] 202 KAR 7:030;.]

(g) Undergo a background check pursuant to KRS 311A.050 and 311A.100;:]

1. The background check shall be:

a. National in scope for an applicant not currently certified at any level in Kentucky;

b. Statewide in scope for an applicant with current certification in Kentucky;

c. Less than six (6) months old when the applicant submits to the board all requirements for licensure; and

d. Provided by a vendor that has been contracted through the board; and

2. An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check; and

(h) Be a citizen of the United States, a permanent resident of the United States, or otherwise lawfully present in the United States, as evidenced by submission to the board of:

1. A social security card;

2. Birth certificate;

3. A United States Citizenship and Immigration Services (U.S.C.IS) Permanent Resident Card (form I-551/Green Card); or

4. Other legal authorization to live and work in the United States.:]

(2) (a) A paramedic licensed pursuant to this section shall complete training regarding determination of death and preservation of evidence as required by KRS 311A.185 prior to beginning work for a licensed agency in Kentucky.

(b) Training in determination of death and preservation of evidence as required by KRS 311A.185 shall be provided during employee orientation, or by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.]

(2) An applicant for licensure as a paramedic shall successfully complete all NREMT testing and become Kentucky licensed within two (2) years after fulfilling all of the requirements of their paramedic education or training program, including the completion of the field summative evaluation.]

Section 3. Renewal of Licensure [Relicensure] and Continuing

Education Requirements. (1) A paramedic shall be eligible for license renewal [relicensure] if:

(a) The applicant submits [to the KBEMS office a signed,] a completed Paramedic License Renewal Application in KEMSIS ["Universal Application for Recertification/Relicensure"];

(b) The applicant maintains written evidence of:

1. HIV/AIDS training required by KRS 311A.120;

2. Pediatric Abusive Head Trauma as required by KRS

311A.120; and

3. Awareness of Sexual Violence Training required by KRS

311A.120; and

4. Training regarding determination of death and preservation of evidence as required by KRS 311A.185;] [completion of current education or training in CPR that:

1. Shall be taught by an individual who holds instructor certification at an appropriate level from:

a. The American Red Cross;

b. The AHA;

c. The National Safety Council;

d. The ASHL; or

e. Another board approved organization; and

2. Shall provide instruction and testing in:

a. One (1) rescuer CPR;

b. Two (2) rescuer CPR;

c. Techniques of changing from one (1) to two (2) rescuers during the performance of CPR;

d. Techniques of changing rescuers during the performance of two (2) rescuer CPR;

e. Techniques for relief of obstruction of the airway;

f. CPR of infants and small children;

g. Barrier to mouth, barrier to nose, or barrier to stoma resuscitation for adults, small children, and infants;

h. Use of oral and nasal airways;

i. Use of bag-valve-mask or other ventilation device;

j. Use of supplemental oxygen; and

k. Use and operation of an AED;

(c) The applicant maintains written evidence of completion of current HIV/AIDS training required by KRS 311A.110;]

(c) [(d)] The applicant pays the fee pursuant to [established in] 202 KAR 7:030; and

(d) [(e)] The applicant maintains evidence of [any of the following]:

1. Current certification [registration] by the NREMT as a [n] paramedic [NREMT-P;], and if this option is used the board may request, through a continuing education audit, proof of continuing education to verify compliance with the continuing education requirements of this section; or

2. NREMT Paramedic National Continued Competency Program Paramedic for Continuing Education.[Successful completion of the University of Maryland Baltimore Campus Critical Care Emergency Medical Transport Program; or

3. Successful completion of sixty (60) hours of continuing education of which:

a. A maximum of sixteen (16) hours per course may be claimed for obtaining, maintaining, or instructing provider certification in:

(i) ACLS;

(ii) PALS;

(iii) BTLS;

(iv) PHTLS; or

(v) PEPP; and

b. Thirty (30) of the required sixty (60) hours shall be obtained in the following areas:

(i) Two (2) in preparatory;

(ii) Four (4) in airway management;

(iii) Five (5) in cardiac management;

(iv) Four (4) in medical or behavioral emergencies;

(v) Five (5) in trauma;

(vi) Two (2) in obstetrics or gynecology;

(vii) Five (5) in pediatrics; and

(viii) Three (3) in operations.

(2) All applicants for relicensure shall complete a minimum of one (1) hour in disaster management or mass casualty incidents

education or training.

(3) Each applicant shall provide evidence of current certification in ACLS through either the AHA or ASHI at the time of application.

(2) [(4)] All continuing education shall be validated by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.:

(a) The instructor, medical director, training officer, course coordinator, or provider of the continuing education offering; or

(b) A medical director, service director, or training officer of the ambulance service, first response agency, fire department, rescue squad or other medical employer.:

(3) [(5)] An application for renewal of licensure shall be denied if:

(a) Prior to the licensure expiration date, the paramedic applicant has not met the applicable requirements of this administrative regulation; or

(b) The applicant has been subjected to disciplinary action that prevents relicensure at the time of application.

(4) [(6)] A licensed paramedic, in good standing, who is a member of a National Guard or a military reserve unit [and is] called to active duty by presidential order pursuant to 10 U.S.C. [SS] 121 and 12304 [673b] shall be renewed in accordance with KRS 12.355 upon submission of the Military Extension Application. [may be given a one (1) year extension following release from active duty to meet the applicable requirements for relicensure listed in this section. The paramedic shall submit a written request for this extension within sixty (60) days of release from active duty.]

(5) [(7)] The board [KBEMS] office may audit a paramedic's continuing education and continuing education records. The paramedic shall submit the documentation requested within ten (10) business days of receipt of the board's request.

(6) If documentation of continuing education hours consistent with this administrative regulation are not received using the board-approved submission process within ten (10) business days of receipt of the board's request, the paramedic license for the individual shall be summarily revoked and the individual shall reapply for licensure through reinstatement if eligible.

(7) The ten (10) business days for submission shall not apply to investigations pursuant to KRS Chapter 311A.

(8) [(8)] The paramedic shall maintain documentation of all continuing education for three (3) [four (4)] years from the date of completion.

Section 4. Reinstatement of License. (1) A paramedic whose Kentucky license has lapsed may reinstate their license if the applicant submits:

(a) A completed Paramedic Reinstatement License Application in KEMSIS;

(b) Evidence of previous licensure as a paramedic in the Commonwealth of Kentucky;

(c) Evidence of current training in:

1. Pediatric Abusive Head Trauma as required by KRS 311A.120;

2. Awareness of Sexual Violence Training required by KRS 311A.120; **[and]**

3. Training regarding determination of death and preservation of evidence as required by KRS 311A.185; **and**

4. HIV/AIDS training required by KRS 311A.120; **and**;

(d) Payment of the fee pursuant to 202 KAR 7:030.;

(2)(a) [(e)] The applicant for reinstatement of license shall undergo a national background check provided by a vendor that has been contracted through the board.;

(b) [1-] An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check.;

(c) [2-] Background checks that are older than six (6) months shall not be considered current, and the applicant shall undergo another national background check prior to approval of reinstatement of license.;

(3) [(f)] The applicant for reinstatement of licensure shall bear the burden of proof of previous licensure in Kentucky if the

previous paramedic license is in issue or dispute.

(4) [(2)] An applicant shall provide evidence of successful completion of the NREMT-Paramedic national continued competency program for continuing education within the twelve (12) months preceding application for reinstatement of the paramedic license.;

(3) **An applicant shall provide evidence of current skills competency by completing and submitting validation of those skills on the Kentucky Paramedic Skills Verification Report. The verification report shall be completed by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.**

(5) [(4)] An applicant ineligible for licensure pursuant to KRS 311A.050 through 311A.090 shall be ineligible for reinstatement.

Section 5[4]. Paramedic Reciprocity. (1) Pursuant to KRS 311A.142, an individual who is certified or licensed [A person certified or licensed] in a contiguous state to the Commonwealth of Kentucky or [another state or territory of the United States or registered] by the NREMT as a[n] paramedic, [NREMT-P] or any member of the United States Armed Forces, or veteran, who has transitioned within the past six (6) years from the United States Armed Forces, and has been registered by the National Registry as a paramedic or has obtained National Registry as a paramedic by successfully completing a board-approved United States Armed Forces medical training course [bridge course to transition from the Army 68 Whiskey course to Paramedic] that meets the National Emergency Medical Services Education Standards for Paramedic, shall be eligible for [direct] reciprocity for [initial] Kentucky licensure as a paramedic if the applicant submits [individual]:

(a) A completed Paramedic Reciprocity Licensure [License] Application in KEMSIS; **[and]** [Is at least eighteen (18) years of age;]

(b) Proof of the applicant's [Holds current] **current unrestricted certification as an NREMT-Paramedic, or current paramedic license in a contiguous state to the Commonwealth of Kentucky, or proof of completing a board-approved United States Armed Forces medical training course which included NREMT-Emergency Medical Technician certification and completion of a board-approved bridge course; and [unrestricted certification] [registration] [as a][an] [NREMT-Paramedic or paramedic certification or license in a contiguous state to the Commonwealth of Kentucky] [NREMT-P] [;]**

(c) Completion of current training in:

1. HIV/AIDS training required by KRS 311A.120;

2. Pediatric Abusive Head Trauma training required by KRS 311A.120;

3. Awareness of Sexual Violence Training required by KRS 311A.120; **and**

4. Training regarding determination of death and preservation of evidence as required by KRS 311A.185.;

(e) Holds a high school diploma or GED; **and**

(d) Holds a valid motor vehicle operators license from a state or territory of the United States.;

(2) An applicant shall pay the fee required for licensure through reciprocity pursuant to 202 KAR 7:030. [The individual shall:

(a) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(b) Not have been found guilty of, entered a guilty plea or Alford plea to a felony offense or have completed a diversion program for a felony offense;

(c) Not have been subjected to discipline that would prevent reciprocity at the time of application;

(d) Submit an "Out-Of-State Paramedic Application" signed by the applicant;

(e) Submit written evidence of completion of current HIV/AIDS training required by KRS 311A.110;

(f) Present evidence of completion of training regarding the protocol governing the discontinuance of resuscitation,

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determination of death and preservation of evidence;

(g) Pay the fee required by 202 KAR 7:030; and

(h) Have successfully completed a training program, which utilized the United States Department of Transportation, National Highway Traffic Safety Administration, 1998 National Standard Curriculum, Emergency Medical Technician-Paramedic as the curriculum for education if any individual initially certified or licensed after January 1, 1985. An earlier edition of the National Standard Curriculum which was in effect in at the time of initial certification or licensure shall be considered to meet this requirement.]

(3) An applicant for paramedic reciprocity shall undergo a national background check **provided by a vendor that has been contracted through the board. An applicant shall not directly submit a background check. The background check shall be submitted to the board by the company that conducts the background check. [and have the results submitted to the board.]** Background checks that are older than six (6) months shall not be considered current, and the applicant shall undergo another national background check prior to approval of licensure through reciprocity.

(4) An applicant shall not have been convicted of offenses described in KRS 311A.050.

(5) An applicant shall not have been subjected to discipline that would prevent reciprocity at the time of application.

(6) A paramedic licensed pursuant to this section shall not perform any procedures or skill on which the paramedic has not been trained. A paramedic who performs a skill for which the paramedic does not have documented training shall have exceeded the scope of practice and shall be in violation of KRS 311A.050.

(7) A paramedic licensed pursuant to this section shall complete training regarding determination of death and preservation of evidence as required by KRS 311A.185 prior to beginning work for a licensed agency in Kentucky.

(a) Training in determination of death and preservation of evidence as required by KRS 311A.185 shall be provided during employee orientation, or by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.

(b) Kentucky supplemental paramedic curricula consistent with 202 KAR 7:701 shall be provided during employee orientation, or by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.

(c) Verification of competency on the supplemental curricula procedures in 202 KAR 7:701 shall be maintained by the paramedic for a minimum of three (3) years. Failure to submit the Paramedic Supplemental Curriculum Training Verification Report upon request shall result in revocation of the paramedic license.

(8) If a paramedic licensed pursuant to this section fails to supply verification of competency as required by subsection (7) of this section, the paramedic shall be ineligible to apply for and receive paramedic reciprocity license until the applicant has submitted the Paramedic Supplemental Curriculum Training Verification Report as required by 202 KAR 7:701 and shall reapply for reciprocity through the process listed in this section.

**Section 6. Scope of Practice.** A paramedic shall provide emergency medical services consistent with the skills and procedures in the National EMS Scope of Practice Model and 202 KAR 7:701.

**Section 7. Expiration of Licensure.** (1) Licensure periods and expiration dates shall be pursuant to KRS 311A.095.

(2) If a paramedic license lapses or expires, the paramedic shall cease provision of emergency medical services.

(3) A paramedic who has allowed his or her license to lapse or expire shall be required to reinstate his or her licensure pursuant to Section 4 [6] of this administrative regulation.

**Section 8. Downgrading Licensure.** (1) A paramedic currently licensed as a paramedic by the board shall be eligible for licensure downgrade if:

(a) The license is in good standing with no pending disciplinary

action:

(b) The applicant submits a completed Paramedic License Downgrade Application in KEMSIS; and

(c) The applicant pays the fee pursuant to 202 KAR 7:030;

(2) A paramedic shall **[is] only be eligible to downgrade his or her [their] license to an Advanced Emergency Medical Technician, Emergency Medical Technician, or Emergency Medical Responder certification.**

(3) Certification periods and expiration dates shall be pursuant to KRS 311A.095.

(4) The applicant shall undergo a background check pursuant to KRS 311A.050 and 311A.100. The background check shall be:

(a) Statewide in scope for an applicant with current certification in Kentucky;

(b) Less than six (6) months old when the applicant submits to the board all requirements for certification; and

(c) Provided by a vendor that has been contracted through the board.

(5) The applicant shall provide proof of:

(a) 1. Current certification by the NREMT as a paramedic; or

2. **[(b)] Successful completion of the NREMT Paramedic National Continued Competency Program Paramedic for Continuing Education which shall be validated by entities authorized to conduct continuing education pursuant to 202 KAR 7:601; and**

(b) **[(e)] Completion of training in:**

1. Pediatric Abusive Head Trauma required by KRS 311A.120; and

2. Awareness of Sexual Violence Training required by KRS 311A.120.

(6) Downgrade shall be denied if the applicant has not met the requirements of this section or has been subject to disciplinary action that prevents certification at the time of application.

(7) The applicant shall be responsible for meeting the renewal requirements of the downgraded certification level issued prior to expiration of that certification.

(8) To reinstate the certification or license that was previously held, the applicant shall meet the regulatory requirements for that level of certification or licensure.

(9) The applicant shall notify the board's licensed service **director [director(s)]** with whom the applicant is affiliated immediately upon downgrading his or her license.

(10) Once the applicant has downgraded his or her certification or license, the applicant shall not provide emergency medical services at the previous certification or license level held.

(11) An applicant applying for downgrade that does not comply with this section shall be subject to disciplinary action pursuant to KRS Chapter 311A.

(12) All endorsements, certifications, or licenses held at the previous certification or license level shall be void at the completion of the downgrade.

**Section 9. Surrender of License.** (1) A paramedic surrendering licensure shall:

(a) Submit a completed Paramedic License Surrender Application in KEMSIS; and

(b) Pay the fee pursuant to 202 KAR 7:030.

(2) The applicant shall notify the board's licensed service **director [director(s)]** with whom the applicant is affiliated immediately upon surrendering his or her license.

**Section 10. Reporting Requirements.** (1) A paramedic shall maintain current demographic information in KEMSIS including:

(a) Legal name;

1. Any changes to the paramedic's legal name shall be submitted using the Name Change application in KEMSIS; and

2. One (1) of the following documents as verification of name change:

a. Social Security card;

b. Driver's license; or

c. Passport;

(b) Mailing address;

(c) Email address; and

(d) Phone number.

(2) A paramedic that does not comply with this section shall be subject to disciplinary action pursuant to KRS Chapter 311A.

Section 11. Determination of Death Protocol. (1) The paramedic shall determine and document that the following signs of death are present:

(a) Unresponsiveness;

(b) Apnea;

(c) Absence of a palpable pulse at the carotid site;

(d) Bilaterally fixed and dilated pupils; and

(e) Except in a case of trauma, asystole determined in two (2) leads on an electrocardiograph.

(2) The paramedic shall determine that one (1) of the following factors or conditions exist:

(a) Lividity of any degree;

(b) Rigor mortis of any degree;

(c) Presence of venous pooling in the body;

(d) Damage or destruction of the body which is incompatible with life;

(e) A copy of the Kentucky Emergency Medical Services Do Not Resuscitate (DNR) Order or identification bracelet or other means of identification evidencing a patient's desire not to be resuscitated in accordance with KRS 311A.170; or

(f) A properly executed Kentucky Medical Orders for Scope of Treatment (MOST) form.

(3) If a paramedic has determined and documented that the conditions of subsections (1) and (2) of this section exist, the paramedic may, subject to the provisions of this administrative regulation, declare the patient dead.

(4) The paramedic may contact medical control or other licensed physician, if authorized in writing by the medical director, for advice and assistance in making a determination required by this administrative regulation.

(5) If a paramedic determines a patient to be dead, the paramedic shall remain on the scene unless the paramedic's personal safety is jeopardized, until the arrival of the coroner, deputy coroner, or law enforcement officer from that jurisdiction.

Section 12. Discontinuance of Resuscitative Efforts. (1) A paramedic may discontinue resuscitation if:

(a) The patient has suffered cardiac arrest prior to arrival at the hospital;

(b) The paramedic has performed the resuscitative efforts required in the resuscitation protocol of the ambulance service medical director;

(c) The resuscitative efforts were unsuccessful; and

(d) The patient meets the criteria established in Section 11(1) of this administrative regulation.

(2) A paramedic may also discontinue resuscitation:

(a) If the safety of the paramedic is at risk; or

(b) At mass casualty incidents.

(3) A paramedic may discontinue resuscitation initiated by someone other than a paramedic if:

(a) The patient has suffered cardiac arrest;

(b) The resuscitative efforts required in the resuscitation protocol of the ambulance service medical director have been performed and documented;

(c) The resuscitative efforts were unsuccessful; and

(d) The patient meets the criteria established in Section 11(1) of this administrative regulation.

(4) If a paramedic discontinues resuscitation on a patient prior to transport of the patient to a medical facility, the paramedic shall make the notifications required by KRS 72.020 and at least one (1) member of the ambulance crew shall remain on the scene until the arrival of a coroner, deputy coroner, or law enforcement officer.

(5) If a paramedic discontinues resuscitation on a patient during transport to a medical facility, the paramedic shall make the notifications required by KRS 72.020 to the officials of the county in which the paramedic discontinued resuscitation. Upon making the notification, the paramedic shall determine from the coroner whether to remain at that location, to return the deceased to a facility within the primary service area of the ambulance provider,

or to continue on to the medical facility with the deceased.

(6) A paramedic shall discontinue resuscitation efforts if presented with a properly executed Kentucky Emergency Medical Services Do Not Resuscitate (DNR) Order, or properly executed Kentucky Medical Orders for Scope of Treatment (MOST) form.

Section 13. Training of Paramedics in Determination of Death and Preservation of Evidence.

(1) The training program shall not be less than one (1) hour in length and, at a minimum, shall include:

(a) Information on and a copy of KRS 311A.170;

(b) Information on and a copy of this administrative regulation;

(c) Information on and a copy of KRS 72.020;

(d) Information on and a copy of KRS 446.400;

(e) Information on the duties of and role of the coroner and state medical examiner; and

(f) Information on preservation of evidence at the scene of a death.

(2) The training shall be:

(a) Provided as part of a paramedic training course conducted by an approved EMS-TEI via:

1. Classroom instruction;

2. Video conferencing or other distance learning media; or

3. Video presentation or computer based learning; and

(b) Conducted under the supervision of a medical director.

(3) The medical director of the ambulance service or EMS provider conducting the training shall request the coroner of the county in which the training is provided to attend and participate in the training.

(4) The EMS-TEI or the medical director providing the training shall maintain the following records:

(a) A copy of the course outline used in the training to verify that the training has been conducted in accordance with the requirements of this administrative regulation;

(b) A sign-in sheet with the printed and signed names and certification or license numbers and state of license of all paramedics who successfully completed the training, including the signature of the educator supervising the education program; and

(c) Curriculum vitae for each member of the course faculty.

(5) A certificate or letter of certification shall be provided to each participant in the program at the conclusion of the training.

(6) The board office shall maintain an approved curriculum, **Prehospital Determination of Death**, that may be used by entities providing training specified by this administrative regulation.

Section 14. Critical Care Endorsement. (1) A paramedic licensed by the board may be granted a critical care endorsement upon completion of the Application for Paramedic Critical Care Endorsement, payment of the fee pursuant to 202 KAR 7:030, and completion of a training program that minimally meets the objectives of the University of Maryland Baltimore Campus CCEMTP Program. The ambulance service director and EMS medical director shall validate verification of the program having met the specified training standards;

(2) The critical care endorsement shall be valid if the paramedic maintains current licensure as a paramedic by the board.

(3) A paramedic with a critical care endorsement may perform the skills and procedures included in the paramedic's education and training subject to authorization by the medical director through established protocols.

Section 15 [5]. Exemptions from Paramedic Administrative Regulations. The Kentucky licensure requirements for a paramedic shall not apply to:

(1) United States military members, [personnel or state] National Guard personnel, or employees of the United States government if the individual provides emergency medical services:

(a) On land owned by the United States government;

(b) In facilities owned by the United States government;

(c) In the performance of official duties under federal law; or

(d) As part of assistance for a mass casualty or disaster incident pursuant to federal law or official state assistance request;

or

(2) A paramedic licensed in another state or territory of the United States who:

(a) Enters Kentucky with a patient being transported to a medical facility or other final destination in Kentucky; or

(b) Travels through Kentucky during the course of a patient transport from an out-of-state location to a destination outside of Kentucky, [while providing services on a United States government-owned or operated facility, while engaged in the performance of their official duties under federal law, or while providing assistance in mass casualty or disaster type situation; or

(2) A paramedic licensed or certified in another state or territory of the United States who:

(a) Comes into Kentucky to transport a patient from another state into Kentucky; or

(b) Is transporting a patient through the state of Kentucky to an out-of-Kentucky location.

Section 6. Reinstatement of License. (1) A paramedic whose license has lapsed for a period not exceeding five (5) years, may reinstate their license by submitting:

(a) A signed "Universal Reinstatement Application";

(b) Written evidence of current completion of training in CPR meeting the requirements as outlined in Section 3(1) (b) of this administrative regulation;

(c) Written evidence of completion of current HIV/AIDS training required by KRS 311A.110;

(d) Payment of the fee established in 202 KAR 7:030;

(e) Evidence of previous certification or licensure as a paramedic in Kentucky; and

(f) Evidence of successful completion within twelve (12) months preceding their application for reinstatement of the National Standard Curriculum for EMT Paramedic Refresher Course or continuing education hours that meet the requirements of the curriculum.

(2) A paramedic, whose license has lapsed for a period that exceeds five (5) years, may reinstate their license by complying with Sections 1 and 2 of this administrative regulation.

(3) An application for reinstatement of licensure shall not be considered if:

(a) The applicant is subject to disciplinary action pursuant to KRS Chapter 311A;

(b) The applicant is an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense; or

(c) The applicant has been subjected to discipline that would prevent reinstatement at the time of application.

Section 7. Demonstration of Competency. A paramedic applying for relicensing or reinstatement shall demonstrate continuing competency of skills by:

(1) Written verification of competency as evidenced by signature on the relicensing or reinstatement application of a medical director, ambulance service director or ambulance service training director; or

(2) Submission of evidence of current registration as a:

(a) NREMT-P; or

(b) Completion of:

1. ACLS;

2. PALS or PEPP; and

3. BTLS, PHTLS, or CCEMTP.

Section 8. Critical Care Endorsement. (1) A paramedic licensed by the board may be granted a critical care endorsement MTP upon presentation of a board approved application and completion of a training program that minimally meets the objectives of the University of Maryland Baltimore Campus CCEMTP Program. The ambulance service director and EMS medical director shall validate verification of the program having met the specified training standards.

(2) The critical care endorsement shall be valid so long as the paramedic maintains:

(a) Current licensure as a paramedic by the board; and

(b) Current certification as a CCEMTP or verification of continued clinical competence by the paramedic's EMS medical director.

(3) A paramedic with a critical care endorsement shall be authorized to perform the skills and procedures included in their education and training subject to authorization by the medical director through established protocols.

(4) A licensed paramedic with a critical care endorsement shall be responsible for providing the KBEMS office with copies of their current CCEMTP credentials.]

Section 16 [9]. Public Notice of Negative Action. The board [KBEMS] office shall cause to be published[,] on the board website the name of a paramedic that:

(1) Is fined;

(2) Is placed on probationary status;

(3) Is placed on restricted status;

(4) Is suspended; or

(5) Has had his or her certification revoked [in the KBEMS News or similar publication of the board, or otherwise disseminate the name of a paramedic that is fined, is placed on probationary status, is placed on a restricted status, is suspended, or has had their license revoked.

Section 10. Temporary Certificate. (1) KBEMS staff may issue a temporary certificate to an individual who:

(a) Submits a completed "Application for Temporary Certificate";

(b) Is at least eighteen (18) years of age;

(c) Understands, reads, speaks, and writes the English language with a comprehension and performance level equal to at least the 9th grade of education, otherwise known as Level 4, verified by testing as necessary;

(d) Provides proof of being currently certified or licensed as a paramedic in another state or territory of the United States or is currently registered by the NREMT as a paramedic;

(e) Presents written evidence of completion of current HIV/AIDS training required by KRS 311A.110;

(f) Presents written evidence of completion of current training in CPR that meets the requirements of Section 2 of this administrative regulation;

(g) Pays the fee required by 202 KAR 7:030;

(h) Provides the board with a copy of a statewide criminal background check from their state of residence;

(i) Is not an individual who has been convicted of, entered a guilty plea or Alford plea to a felony offense, or has completed a diversion program for a felony offense; and

(j) Has not been disciplined by or has action pending against or had a certificate or license in the field of health care denied, limited, suspended, or probated by a certifying or licensing entity in Kentucky or other state or territory under the jurisdiction of the United States.

(2) A temporary certificate may be issued for a period which shall not exceed six (6) months and shall not be reissued or renewed.

Section 11. Determination of Death Protocol. (1) The paramedic shall determine and document that the following signs of death are present:

(a) Unresponsiveness;

(b) Apnea;

(c) Absence of a palpable pulse at the carotid site;

(d) Bilaterally fixed and dilated pupils; and

(e) Except in a case of trauma, asystole determined in two (2) leads on an electrocardiograph.

(2) The paramedic shall determine that one (1) of the following factors or conditions exist:

(a) Lividity of any degree;

(b) Rigor mortis of any degree;

(c) Presence of venous pooling in the body;

(d) Damage or destruction of the body which is incompatible with life; or

(e) A copy of the EMS "Do Not Resuscitate (DNR) Form" or

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identification bracelet or other means of identification evidencing a patient's desire not to be resuscitated in accordance with KRS 311A.170.

(3) If a paramedic has determined and documented that the conditions of subsections (1) and (2) of this section exist, the paramedic may, subject to the provisions of this administrative regulation, declare the patient dead.

(4) The paramedic may contact medical control or other licensed physician, if authorized in writing by the medical director, for advice and assistance in making a determination required by this administrative regulation.

(5) If a paramedic determines a patient to be dead, the paramedic shall remain on the scene unless their personal safety is jeopardized, until the arrival of the coroner, deputy coroner, or law enforcement officer from that jurisdiction.

**Section 12. Discontinuance of Resuscitative Efforts.** (1) A paramedic may discontinue resuscitation if:

(a) The patient has suffered cardiac arrest prior to arrival at the hospital;

(b) The paramedic has performed the resuscitative efforts required in the resuscitation protocol of the ambulance service medical director;

(c) The resuscitative efforts were unsuccessful; and

(d) The patient meets the criteria established in Section 11(1) of this administrative regulation.

(2) A paramedic may also discontinue resuscitation:

(a) If the safety of the paramedic is at risk; or

(b) At mass casualty incidents.

(3) A paramedic may discontinue resuscitation initiated by someone other than a paramedic if:

(a) The patient has suffered cardiac arrest;

(b) The resuscitative efforts required in the resuscitation protocol of the ambulance service medical director have been performed and documented;

(c) The resuscitative efforts were unsuccessful; and

(d) The patient meets the criteria established in Section 11(1) of this administrative regulation.

(4) If a paramedic discontinues resuscitation on a patient prior to transport of the patient to a medical facility, the paramedic shall make the notifications required by KRS 72.020 and at least one (1) member of the ambulance crew shall remain on the scene until the arrival of a coroner, deputy coroner or law enforcement officer.

(5) If a paramedic discontinues resuscitation on a patient during transport to a medical facility, the paramedic shall make the notifications required by KRS 72.020 to the officials of the county in which the paramedic discontinued resuscitation. Upon making the notification, the paramedic shall determine from the coroner whether to remain at that location, to return the deceased to a facility within the primary service area of the ambulance provider, or to continue on to the medical facility with the deceased.

(6) A paramedic shall discontinue resuscitation efforts if presented with a properly executed EMS DNR Form.]

**Section 17 [43].** The paramedic shall document all items required by Sections 11 and 12 of this administrative regulation on the Patient Care Report [Ambulance Run Form] required by KRS 311A.190.[]

**Section 14. Training of Paramedics in Determination of Death and Preservation of Evidence.**

(1) The training program shall not be less than one (1) hour in length and, at a minimum, shall include:

(a) Information on and a copy of KRS 311A.170;

(b) Information on and a copy of this administrative regulation;

(c) Information on and a copy of KRS 72.020;

(d) Information on and a copy of KRS 446.400;

(e) Information on the duties of and role of the coroner and state medical examiner; and

(f) Information on preservation of evidence at the scene of a death.

(2) The training shall be:

(a) Provided as part of a paramedic training course conducted

by an approved EMS-TEI via:

1. Classroom instruction;

2. Video conferencing or other distance learning media; or

3. Video taped presentation or computer based learning; and

(b) Conducted under the supervision of a medical director.

(3) The medical director of the ambulance service or EMS provider conducting the training shall request the coroner of the county in which the training is provided to attend and participate in the training.

(4) The EMS-TEI or the medical director providing the training shall maintain the following records:

(a) A copy of the course outline used in the training to verify that the training has been conducted in accordance with the requirements of this administrative regulation;

(b) A sign-in sheet with the printed and signed names and certification or license numbers and state of license of all paramedics who successfully completed the training, including the signature of the educator supervising the education program; and

(c) Curriculum vitae for each member of the course faculty.

(5) A certificate or letter of certification shall be provided to each participant in the program at the conclusion of the training.

(6) The KBEMS office shall maintain an approved curriculum that may be used by entities providing training specified by this administrative regulation.]

**Section 18 [45]. Incorporation by Reference.** (1) The following material is incorporated by reference:

(a) "National Emergency Medical Services Education Standards-Paramedic Instructional Guidelines", The United States Department of Transportation, National Highway Traffic Safety Administration, DOT HS 811 077E, January 2009;

(b) "Paramedic Initial License [License] Application" in KEMSIS, **April 2021 [July 2019]**;

(c) "Paramedic License Renewal Application" in KEMSIS, **April 2021 [July 2019]**;

(d) "Paramedic Reciprocity License [License] Application" in KEMSIS, **April 2021 [July 2019]**]; [The United States Department of Transportation, National Highway Traffic Administration, "1998 National Standard Curriculum, Emergency Medical Technician-Paramedic" (1998 Edition);

(b) Field and Pilot Test Didactic and Practical Laboratory Hours Report of the United States Department of Transportation, National Highway Traffic Administration, 1998 National Standard Curriculum for Emergency Medical Technician-Paramedic;

(c) Field and Pilot Test Clinical Report of the United States Department of Transportation, National Highway Traffic Administration, 1998 National Standard Curriculum for Emergency Medical Technician-Paramedic;

(d) "Application For Paramedic Examination and License" (June 2003);

(e) "Out Of State Paramedic Application" (June 2003);

(f) "Application for Paramedic License Reinstatement" (June 2003);

(g) (e) Kentucky Board of Emergency Medical Services, **Prehospital [Pre-Hospital]—Determination of Death [and Preservation of Evidence]** Training Curriculum (05-02); and  
(f) "Paramedic Reinstatement License Application" in KEMSIS, **April 2021 [July 2019]**;

(g) [(h)] "Kentucky Emergency Medical Services Do Not Resuscitate (DNR) Order", **April 2021 [July 2019]**]; [-]

(h) "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 810 657, February 2007;

(i) "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 812 666, February 2019;

(j) "Kentucky Medical Orders for Scope of Treatment (MOST) Form", **April 2021 [July 2019]**;

(k) "Application for Paramedic Critical Care Endorsement" in KEMSIS, **April 2021 [July 2019]**]; [

(l) "Paramedic Skills Verification Report", **July 2019**]; [

(l) [(m)] "Paramedic License Downgrade Application" in KEMSIS, **April 2021 [July 2019]**]; [

(m) [(n)] "Paramedic License Surrender Application", in KEMSIS **April 2021 [July 2019]**]; [



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(n) [(e)] “National Registry of Emergency Medical Technicians National Continued Competency Program Paramedic”, October 2016;

(p) “American Heart Association Guidelines for CPR and Emergency Cardiovascular Care”, November 2018;

(o) [(g)] “National Registry of Emergency Medical Technicians Advanced Level Examination Coordinator Manual”, November 1, [Paramedic Psychomotor Examination Users Guide”, September] 2016;

(p) [(f)] “Name Change Application” in KEMSIS, April 2021 [July 2019];

(q) [(s)] “Military Extension Application” in KEMSIS, April 2021 [July 2019]; and

(r) [(t)] “United States Citizenship and Immigration Services (U.S.C.IS) Permanent Resident Card (form I-551/Green Card)”, April 2021 [July 2019].

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509, by appointment [2545 Lawrenceburg Road, Frankfort, Kentucky 40601], Monday through Friday, 8 a.m. to 4:30 p.m.

**(3) This material is also available on the board’s Web site at: <https://kbems.kctcs.edu>.**

PHILIP DIETZ, Chairman

APPROVED BY AGENCY: July 14, 2021

FILED WITH LRC: July 15, 2021 at 10:45 a.m.

CONTACT PERSON: Chuck O’Neal, Deputy Executive Director of Administration, Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509, phone (859) 256-3587, email [chuck.oneal@kctcs.edu](mailto:chuck.oneal@kctcs.edu).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chuck O’Neal

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 311A.025 requires the board to promulgate administrative regulations relating to requirements and procedures for licensure, relicensure and reciprocity for paramedics. This administrative regulation establishes those requirements and procedures.

(b) The necessity of this administrative regulation: KRS 311A.025 requires the board to promulgate administrative regulations relating to requirements and procedures for licensure, relicensure and reciprocity for paramedics. This administrative regulation establishes those requirements and procedures. These amendments are necessary to allow Kentucky Paramedics the opportunity to become licensed and maintain licensure to protect the citizens of the Commonwealth of Kentucky. Educational and licensure processes are streamlined, and unnecessary or repetitive language across other administrative regulations have been removed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.025 by establishing the requirements and procedures for licensure, relicensure, and reciprocity for paramedics.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.025 requires the board to promulgate administrative regulations relating to requirements and procedures for licensure, relicensure and reciprocity for paramedics. This administrative regulation establishes those requirements and procedures. This administrative regulation will assist Paramedics in becoming licensed utilizing more simplistic guidelines and processes and provides additional guidance on educational requirements and will allow the board to provide more effective customer service to applicants for licensure.

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

(a) How the amendment will change this existing administrative regulation: This amendment streamlines licensure application processes for Paramedics and provides additional guidance on application processes and responsibilities of the Paramedic.

Additionally, unnecessary and dated requirements and terminology have been removed.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to allow Paramedics the opportunity to become licensed and maintain licensure to protect the citizens of the Commonwealth of Kentucky. Educational and licensure processes are streamlined, and unnecessary or repetitive language across other administrative regulations have been removed.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.025 by establishing the requirements and procedures for licensure, relicensure, and reciprocity for paramedics.

(d) How the amendment will assist in the effective administration of the statutes: KRS 311A.025 requires the board to promulgate administrative regulations relating to requirements and procedures for licensure, relicensure and reciprocity for paramedics. This administrative regulation establishes those requirements and procedures.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Emergency Medical Services, its members, and staff, local governments, emergency medical services providers, and paramedics will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Kentucky Board of Emergency Medical Services, its members, staff, and licensed agencies shall implement the standards relating to Emergency Medical Technicians pursuant to this administrative regulation and shall execute their duties consistent with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to any entity identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants seeking licensure as a Paramedic will benefit from decreased licensure requirements and processing time.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no cost to the administrative body to implement this administrative regulation.

(a) Initially: There will be no cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the administrative body to implement this administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because this amendment applies equally to all licensed agencies.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Emergency Medical Services, its members, and staff, local

governments, emergency medical services providers, and paramedics will be affected by this administrative regulation.

(2) Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.025 requires the board to promulgate administrative regulations relating to requirements and procedures for licensure, relicensure and reciprocity for paramedics. This administrative regulation establishes those requirements and procedures.

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not impose any costs on state or local government.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not impose any costs on state or local government.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not impose any costs.

Other Explanation:

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM  
Kentucky Board of Emergency Medical Services  
(Amended After Comments)**

**202 KAR 7:540. Emergency Medical Services data collection, management, and compliance.**

RELATES TO: KRS 311A.020, 311A.035, 311A.045, 311A.060, 311A.155, 311A.190, 23 U.S.C. 403(b)(1)(A)(iv), 405(c)(3)(C), 42 U.S.C. 300d-4(b)(1)

STATUTORY AUTHORITY: KRS 311A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.190 authorizes the Kentucky Board of Emergency Medical Services to promulgate administrative regulations concerning EMS information that ambulance services shall furnish to the board and authorizes the Kentucky Board of Emergency Medical Services to require collection and submission of EMS data that will allow for analysis of the state's needs for provision of EMS and that will allow the state to participate in the National Emergency Medical Services Information System (NEMSIS), a multi-partnered project that is funded by the National Highway Traffic Safety Administration, the Health Resources and Services Administration, the Centers for Disease Control and Prevention, the Federal Emergency Management Administration, and HRSA's Office of Rural Health Policy. This administrative regulation establishes standards and criteria for data collection, submission, and compliance.

Section 1. Data Collection and Statewide Compliance Plan. (1) The board shall require each licensed ambulance service to collect and submit run report data that aids in identifying patient care needs in the Commonwealth of Kentucky.

(2) The board shall collect, maintain, and use data provided by licensed ground and air ambulance services to assist the board and other state and federal agencies relevant to emergency

management or public health.

(3) The information and data collected shall be used at a minimum to determine demographic trends and other emerging situations involving the provision of EMS to and the medical transport of individuals within the state.

(4) The board shall collect and use the submitted data to develop and adopt a statewide plan for EMS Information and Analysis.

Section 2. Data Management Committee. (1) A Data Management Committee shall be established by this section.

(2) The Data Management Committee shall consist of seven (7) members appointed by the board chair in the manner established in 202 KAR 7:020.

(3) Any office of the board staff member specifically employed through or designated by the Kentucky Community and Technical College System (KCTCS) for the purpose of EMS data collection and analysis shall serve as the staff liaison for the Data Management Committee.

(4) The Data Management Committee shall be responsible for the following:

(a) The development of a statewide plan for data collection and compliance;

(b) Identification of information initiatives for EMS in Kentucky;

(c) Identification and research of funding sources tied to EMS data collection;

(d) Assistance to licensed services with questions or other needs associated with this administrative regulation, KRS Chapter 311A, and other issues associated with the board's statutory authority to require data collection and submission; and

(e) Matters identified by board members, the chair, or the executive director that involve data collection, data submission, or information use.

(5) The Data Management Committee shall be conducted in accordance with 202 KAR 7:020 and the board bylaws.

(6) The Data Management Committee shall schedule on an annual basis at least six (6) regular meetings.

Section 3. Data Collection and Submission. (1) Each licensed ground and air ambulance service shall collect data relevant to patient care in Kentucky.

(2) Each service shall collect data at a rate that allows the service to submit the required data elements to the board on a schedule established by Section 5 of this administrative regulation.

(3) Each service shall ensure data is collected and electronically entered only by the certified or licensed EMS professional involved in the delivery of care for the incident reported.

(4) Clinical data entry by individuals unaffiliated with the incident shall ~~is~~ not be permitted and may subject the agency to discipline in accordance with KRS Chapter 311A.

Section 4. (1) The most recent version of the National EMS Information System (NEMSIS) data dictionary, US Department of Transportation National Highway Traffic Safety Administration (NHTSA), Office of Emergency Medical Services, NEMSIS Data Dictionary, NHTSA v3.5.0, EMS Data Standard [Uniform Pre-Hospital Emergency Medical Services (EMS) Dataset] found at [www.nemsis.org](http://www.nemsis.org) shall be Kentucky's standard for required data elements.

(2) The board may specify additional mandatory, required, recommended, or optional NEMSIS data elements be documented and submitted to the board as determined by the needs of the data program, EMS system, or research projects. [~~shall not require information that is not contained within the most recent version of the NEMSIS data dictionary found at [www.nemsis.org](http://www.nemsis.org).~~]

(3) The required data set shall be known as the Kentucky State Ambulance Reporting System (KSTARS) [~~Emergency Medical Services Information System (KEMSIS)~~] project.

(4) Modifications to the state required data elements may be received by the Data Management Committee continuously and evaluated not more than bi-annually or as determined by the Committee Chair at regularly scheduled or **special**

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called meetings of the Committee.

(a) The Data Management Committee shall evaluate the requested state data standard modification and vote to recommend modification or to take no action on the request. [;]

(b) Recommendations on modification to the state data standard from the Data Management Committee shall then be forwarded to the board for action. [;]

(c) If approved by the board, the office of the board shall initiate coordination of system and process modifications with applicable software vendors within fourteen (14) days. [;]

(d) 1. Licensed Kentucky EMS agencies shall coordinate with software vendors to implement modifications to applicable agency software within 120 days of notice.

2. Licensed Kentucky EMS agencies retain ultimate responsibility for data submission as required by this administrative regulation.

Section 5. Compliance; Manner and Rate of Submission. (1) Each licensed service shall submit data electronically upon the full implementation of KSTARS [KEMISIS].

(2) Data shall be provided electronically to the board [KBEMS] no later than 120 [seventy-two (72)] hours after incident completion for ninety (90) percent of responses per calendar month. [the fifteenth day of the month following the last day of the prior reporting month. (Example: The day of submission for data collected in January shall be February 15.)]

(3) Failure to timely submit collected data at the rate required by subsection (2) of this section shall subject a service to disciplinary action pursuant to KRS Chapter 311A and late fees pursuant to 202 KAR 7:030.

Section 6. Quality of Data Determined by Completeness [and Accuracy]. (1) The board shall determine a service's compliance with data collection requirements by the quality of data submitted.

(2) The quality of a service's data shall be determined by the completeness [and the accuracy] of the submitted data using incident validation scores. [

~~(3) A service shall submit data that meets both components of compliance.]~~

~~(4) The board shall determine data completeness by comparing a service's number of submitted records with the number of the service's submitted records that contain fully incomplete or partially incomplete fields.~~

~~(5) The accuracy of data shall be determined by comparing the total number of fields in a service's submitted records with the total number of a service's fields completed correctly.]~~

~~(3) [(4)] [(6)]~~ The board shall impose on a service a plan of correction pursuant to KRS 311A.060 and 202 KAR 7:501 if a service's rate of [accuracy,] completeness[, or both] falls below ninety (90) percent for three (3) consecutive months. [

~~(7) The eligibility of a service to receive block grant funds pursuant to 202 KAR 7:520 shall be dependent on compliance with the data collection requirements in this administrative regulation.]~~

~~(4) [(5)] [(8)]~~ Failure to comply with a plan of correction shall subject a service to disciplinary action pursuant to KRS 311A.060.

~~(5) [(6)] [(9)]~~ The board staff shall report to the Data Management Committee a determination of incomplete [or inaccurate] data submission that results in a plan of correction.

Section 7. Run Reports. (1) Each ambulance service shall provide a copy of the completed run report, or its electronic equivalent, to the receiving medical facility prior to departure.

(2) A service that cannot leave a copy of the completed run report, or its electronic equivalent, with the receiving medical facility prior to departure shall leave a continuation of care form that contains at least the following data elements for the patient:

- First name;
- Last Name;
- Date of birth;
- Complaint;
- Duration of complaint;
- Time units of duration of complaint;
- Provider's primary impression;

- Current medications;
- Medical and [s]urgical history;
- Medication allergies;
- SBP (Systolic Blood Pressure);
- DBP (Diastolic Blood Pressure);
- Heart rate;
- Respiratory rate;
- Date and [t]ime medication administered;
- Medication given;
- Condition of patient at destination;
- Unit notified by dispatch date and [t]ime;
- EMS agency name; and
- EMS provider name.

(3) If a service provides the receiving hospital or other healthcare facility with a continuation of care form that meets the requirements of subsection (2) of this section, the service shall have twenty-four (24) hours to provide the full patient care report.

(4) The twenty-four (24) hour timeframe for delivery of the full patient care report shall not apply to situations involving mass disaster, mass casualty, or other documented emergency of similar scope.

Section 8. Data Use and Confidentiality. (1) Unless otherwise required by law, the board shall not release information of a confidential or private nature or any information protected by local, state, or federal non-disclosure laws.

(2) The board may release information of a statistical nature that does not reveal or contain personal information.

(3) The board may share information with research, state, and other organizations that have a shared interest in the promotion of EMS or patient care.

(4) Unless otherwise required by law, the board shall not release information for purely commercial uses.

Section 9. Incorporation by Reference. (1) "National Highway Traffic Safety Administration, Office of Emergency Medical Services, NEMSIS Data Dictionary, NHTSA v3.5.0, EMS Data Standard", 2019 ["US Department of Transportation National Highway Traffic Safety Administration (NHTSA) Uniform Pre-Hospital Emergency Medical Services (EMS) Dataset" 2005, www.nemsis.org/theProject/historyofNemsis.html], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509. [Kentucky Community and Technical College System Office, 300 North Main Street, Versailles, Kentucky 40383], Monday through Friday, 8:30 a.m. to 4:30 p.m.

(3) This material may also be obtained at [https://nemsis.org/media/nemsis\\_v3/release-3.5.0/DataDictionary/PDFHTML/EMSDSTATE/NEMSISDataDictionary.pdf](https://nemsis.org/media/nemsis_v3/release-3.5.0/DataDictionary/PDFHTML/EMSDSTATE/NEMSISDataDictionary.pdf) <https://nemsis.org/what-is-nemsis/history-of-nemsis/>.

PHILIP DIETZ, Chairman

APPROVED BY AGENCY: July 14, 2021

FILED WITH LRC: July 15, 2021 at 10:45 a.m.

CONTACT PERSON: Chuck O'Neal, Deputy Executive Director of Administration, Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509, phone (859) 256-3587, email [chuck.oneal@kctcs.edu](mailto:chuck.oneal@kctcs.edu).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chuck O'Neal

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards and criteria for EMS data collection, submission, and compliance.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards and criteria for EMS data collection, submission, and compliance as authorized by KRS 311A.190.

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(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311A.190 authorizes the board to promulgate administrative regulations concerning EMS information that ambulance services shall furnish to the board and authorizes the board to require collection and submission of EMS data that will allow for analysis of the state's needs for provision of EMS and that will allow the state to participate in the National Emergency Medical Services Information System (NEMSIS), a multi-partnered project that is funded by the National Highway Traffic Safety Administration, the Health Resources and Services Administration, the Centers for Disease Control and Prevention, the Federal Emergency Management Administration, and HRSA's Office of Rural Health Policy. This administrative regulation establishes standards and criteria for data collection, submission, and compliance.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists, and will assist, in the effective administrative of KRS 311A.190 by establishing standards and criteria for EMS data collection, submission, and compliance.

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

(a) How the amendment will change this existing administrative regulation: This amendment modifies and clarifies existing reporting requirements, establishes procedures for modifying the state data standard, and removes unnecessary requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update Kentucky EMS data reporting to be consistent with national requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 311A.190 authorizes the board to promulgate administrative regulations concerning EMS information that ambulance services shall furnish to the board and authorizes the board to require collection and submission of EMS data that will allow for analysis of the state's needs for provision of EMS and that will allow the state to participate in the National Emergency Medical Services Information System (NEMSIS). The amendment conforms to KRS 311A.190 by establishing standards and criteria for EMS data collection, submission, and compliance.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administrative of KRS 311A.190 by establishing standards and criteria for EMS data collection, submission, and compliance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky EMS agencies will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To comply with this amendment, all EMS agencies must satisfy the requirements and follow the data reporting procedures set forth in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment imposes no additional costs on EMS agencies.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All Kentucky EMS agencies and personnel will benefit from up-to-date data reporting requirements and the establishment of procedures to modify the state data standard.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no cost to the administrative body to implement this administrative regulation.

(a) Initially: There will be no cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the administrative body to implement this administrative regulation.

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

implementation and enforcement of this administrative regulation: No funding source is necessary to implement and enforce this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because this amendment applies to all Kentucky EMS agencies.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The administrative regulation will impact all Kentucky EMS agencies.

(2) Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.190 authorizes the board to promulgate administrative regulations concerning EMS information that ambulance services shall furnish to the board and authorizes the board to require collection and submission of EMS data that will allow for analysis of the state's needs for provision of EMS and that will allow the state to participate in the National Emergency Medical Services Information System (NEMSIS), a multi-partnered project that is funded by the National Highway Traffic Safety Administration, the Health Resources and Services Administration, the Centers for Disease Control and Prevention, the Federal Emergency Management Administration, and HRSA's Office of Rural Health Policy. This administrative regulation establishes standards and criteria for data collection, submission, and compliance.

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not impose any costs on state or local government.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not impose any costs on state or local government.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not impose any costs.

Other Explanation:

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE  
SYSTEM

Kentucky Board of Emergency Medical Services  
(Amended After Comments)

202 KAR 7:601. Training, education, and continuing education.

RELATES TO: KRS ~~[Chapter 271, KRS]~~ 311A.050, ~~[311A.110, 311A.115,]~~ 311A.120, 311A.130, KRS Chapter 362, ~~[and]~~ Chapter 365

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.060, ~~[311A.110, 311A.115,]~~ 311A.120, 311A.125, ~~[and]~~ 311A.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS ~~[311A.110, 311A.115,]~~ 311A.120[,] and 311A.125 require the board to promulgate administrative regulations establishing standards related to the training and education of emergency medical services personnel. KRS 311A.130 requires proper in-service and in-house in-service training and education. KRS 311A.025 requires the board to establish levels of certification. This administrative regulation establishes requirements for an organization to be approved by the board as an Emergency Medical Service Training and Education Institute (EMS-TEI) and also establishes standards for the certification and recertification of emergency medical services[EMS] educators and providers.

Section 1. Education Committee. (1) The board shall create and recognize a standing committee on EMS Education.

(2) The Education Committee shall consist of seven (7) voting members representative of EMS Educators in the Commonwealth [state] of Kentucky. The Education Committee shall consist of:

- (a) One (1) voting member of the board;
- (b) One (1) director, coordinator or lead instructor affiliated with a board-certified EMS-TEI 4;[;]
- (c) One (1) director, coordinator, or lead instructor affiliated with a board-certified EMS-TEI 3;[;]
- (d) One (1) director, coordinator, or lead instructor affiliated with a board-certified EMS-TEI 2;[;]
- (e) One (1) director, coordinator, or lead instructor affiliated with a board-certified EMS-TEI CE;[;]
- (f) Two (2) EMS educators at large affiliated with a board-certified EMS-TEI.[; At least one (1) voting member of the Education Committee shall also be a member of the Kentucky Board of Emergency Medical Services.]

(3) The Education Committee shall schedule on an annual basis at least six (6) regular meetings of the committee.

(4) The purpose and charge of the Education Committee shall be to:

- (a) Assist the board in developing a strategic plan for EMS education in the [state of Kentucky] Commonwealth of Kentucky;
- (b) Act as a resource for EMS educators and EMS-TEIs in the Commonwealth of Kentucky; and
- (c) Assume the lead role in formulating, drafting, and sending to the board for approval and subsequent promulgation of all administrative regulations that set the standards and requirements for EMS education and EMS provider certification in the Commonwealth of Kentucky.

Section 2. EMS-TEI Certification. (1) Only an entity certified by the board as an EMS-TEI may [shall be authorized to] conduct training and education programs in the Commonwealth of Kentucky that lead to certification or licensure by the board [Kentucky Board of Emergency Medical Services (KBEMS)]. Training shall include:

- (a) In person, online, or hybrid; and[
- (b) Online or hybrid; and]
- (b) [(c)] Laboratory, clinical, or field internship if required by this administrative regulation.

(2) An applicant for certification as an EMS-TEI in the Commonwealth of Kentucky may be certified at the following levels:

- (a) EMS-TEI 1, which includes EMR and continuing education;

(b) EMS-TEI 2, which includes EMR, ~~[and]~~ EMT, and continuing education;

(c) EMS-TEI 3, which includes EMR, EMT, ~~[and]~~ AEMT, and continuing education;

(d) EMS-TEI 4, which ~~includes[include]~~ EMR, EMT, AEMT, ~~[and EMT-P,]~~ Paramedic, and continuing education; or

(e) EMS-TEI CE, which includes continuing education only.

(3) An applicant may seek one (1) ~~[or multiple]~~ level[levels] of certification during the two (2) year certification term. A single applicant, ~~[agency, or business]~~ shall not hold more than one (1) identical TEI certification simultaneously.

(4) An applicant for a level of EMS-TEI certification shall meet all requirements ~~[of]~~ for that level.

(5) An applicant for certification as an EMS-TEI shall electronically submit a completed Training and Educational Institution (TEI) Application, the appropriate EMS-TEI pre-inspection worksheet (Level 1-4 or CE Only), and upload all required documentation listed in the EMS-TEI pre-inspection worksheet to the EMS-TEI KEMSIS account. [An applicant for certification at a level of EMS-TEI shall submit a completed Training and Educational Institution (TEI), KBEMS-E14, with the Kentucky Board of Emergency Medical Services (KBEMS).]

(6) An applicant shall submit a nonrefundable fee pursuant to 202 KAR 7:030 with the Training and Education Institution (TEI) Application. [An applicant shall submit fees as required by 202 KAR 7:030 with the Training and Education Institution (TEI), KBEMS-E14.]

(7) An applicant applying for an EMS-TEI certification shall meet all requirements for that level within sixty (60) days of submitting the Training and Education Institution (TEI) Application for certification. An applicant that exceeds the sixty (60) day requirement shall reapply and resubmit all required fees.

(8) An Emergency Medical Services (EMS) training and educational entity not residing in the Commonwealth of Kentucky but seeking to do business in Kentucky as an EMS-TEI, shall obtain EMS-TEI certification with the board before teaching any EMS courses that lead to certification or licensure by the board.

(a) These [Such] courses include:

- 1. [(a)] Initial EMS certification or licensure courses; and
- 2. [(b)] EMS continuing education courses.

(b) [1-] This does not include continuing education courses covered in Section 13(1) of this administrative regulation.

(9) An EMS-TEI that had its certification revoked shall be eligible to apply for certification as an EMS-TEI two (2) years after the date of revocation. This shall [will] be enforced by name of entity holding the EMS-TEI certification and name of owner or operator listed on the TEI Application and official business license or licenses [license(s)] filed by the entity, owner or operator with local, county and state officials.

(10) An EMS-TEI may surrender its certification prior to the end of a certification period by notifying the board in writing of the intent to do so thirty (30) days prior to the intended effective date of the surrender.

(a) An EMS-TEI surrendering its certification while classes are underway shall notify the students impacted by the closure in writing at least thirty (30) days prior to the intended effective date of closure.

(b) An EMS-TEI surrendering its certification while courses are underway shall complete the courses underway before surrendering its EMS-TEI certification or fully refund all tuition and fees paid by the students in the courses underway that are impacted by the EMS-TEI closure.

(11) An EMS-TEI that does not comply with subsection [Section 2](10) of this section [administrative regulation] shall not be eligible to reapply for EMS-TEI certification for a period of five (5) years from the date of closure. This administrative regulation shall not preclude civil action against the TEI Owner, Director, or business.

Section 3. ~~[Initial]~~ Certification Requirements for EMS-TEIs. (1) If an applicant ~~[is organized as a business entity and]~~ is required ~~[pursuant to KRS Chapters 271, 362, and 365]~~ to file as a business entity with Kentucky's Secretary of State, the applicant for EMS-

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TEI certification shall provide proof of registration with the Kentucky Secretary of State to the board that the EMS-TEI is legally able to conduct business in the Commonwealth of [state] Kentucky. The applicant shall provide documentation of exemption status if not registered with the Kentucky Secretary of State and proof of registration with local, county or state officials as an individual operator or a Doing Business As (DBA).

(2) If an applicant is required to notify, obtain permission, or obtain a license from another regulatory entity in the Commonwealth of Kentucky to operate as an educational entity, it shall be the responsibility of the applicant to make the appropriate notifications, obtain permission, or obtain license to legally operate in the Commonwealth of Kentucky. [

(a) An EMS-TEI that fails to comply with subsection (1) of this section or this subsection [Section 3(1) or (2) of this administrative regulation] shall be subject to disciplinary action by the board pursuant to KRS Chapter 311A.

(3) Facilities. [

(a) Facilities where EMS-TEI courses are conducted shall be:

(a) Maintained [maintained] and operated in compliance with the safety and health requirements pursuant to local, city, and county ordinances and federal and state laws;

(b) and

1. Sponsored or approved by a sponsoring agency;

(c) Offered with an enrollment that [2- Enrollment] shall not exceed the design characteristics of the facilities;

(d) Offered in a controlled [

3- Controlled] environment, including:

1. [a.] Temperature;

2. [b.] Humidity; and

3. [c.] Lighting; and

(e) Instruction [

4- Adequate and appropriate for instruction] in classrooms and laboratories shall:

1. [(b)] Provide appropriate space for students to participate in classroom activities, kinematic learning and practice activities;

2. [(e)] Provide appropriate space for instructor preparation; and

3. Provide adequate [

(d) Adequate] and secure storage for instructional materials.

(4) [(2)] An applicant shall provide the board with an organizational chart indicating, at a minimum:

(a) The names, contact information, and addresses of the owner, operator, chief administrative officer, and other personnel necessary for operation of the entity as an EMS-TEI;

(b) The name[names] and [addresses] contact information of the EMS-TEI's [designated agent for receiving service] director;

(c) The name and [address] contact information of the EMS-TEI's medical director;

(d) Proof [proof] that the medical director is qualified pursuant to 202 KAR 7:801;

(e) A Memorandum [and a] [document] [memorandum] of understanding or contract executed between the owner of the EMS-TEI and the medical director outlining the relationship, duties, and requirements of a medical director for an EMS-TEI. The memorandum of understanding or contract shall include at a minimum that:

1. The medical director shall be responsible for medical oversight of the program;

2. The medical director shall review and approve the educational content of the program curriculum;

3. The medical director shall review and approve the instruments and processes used to evaluate students in didactic, laboratory, clinical, and field internship;

4. The medical director shall review the progress of each student throughout the program, and assist in the determination of appropriate corrective measures, if [when] necessary;

5. The medical director shall engage in cooperative involvement with the program director; and

6. The medical director's interaction shall be in a variety of settings, such as lecture, laboratory, clinical, field internship. Interaction may be by synchronous electronic methods.

(f) [(e)] The name and [address] contact information of the

EMS-TEI's program coordinator[-]; and

(g) [(e)] The names and contact information of all EMS-TEI Instructors.

(5) EMS training courses that require accreditation by the National Registry of EMT's (NREMT) shall submit current accreditation to the board upon request. [

(3) Beginning January 1, 2013, if the EMS-TEI will be offering courses leading to certification or licensure for EMS personnel in Kentucky that is dependent on EMS-TEI accreditation, the applicant for EMS-TEI shall submit proof of accreditation.]

(a) An accreditation letter of review is acceptable in the interim for newly formed EMS-TEIs that are required by the NREMT to obtain accreditation for testing purposes. This does not apply to out of state applicants. Out of state applicants that are required by the NREMT to obtain accreditation for testing purposes shall [must] provide documentation of full accreditation prior to receiving EMS-TEI certification by the board.

(b) Continuous accreditation status shall [must] be maintained by the EMS-TEI as required by this administrative regulation. Failure to maintain continuous accreditation status by the TEI shall be grounds for summary revocation of the TEI certification.

(6) EMS-TEIs shall obtain and maintain professional liability malpractice insurance of a minimum of \$1 million. The EMS-TEI shall provide proof of professional liability malpractice insurance upon initial certification, certification renewal, and upon application for certification upgrade.

Section 4. Certification Periods and Inspections. (1) An EMS-TEI shall display the current certificate issued through the board; [Kentucky Board of Emergency Medical Services]

(a) In a prominent place in the EMS-TEI's business;

(b) In the classroom if classes are being conducted away from the primary business location; and

(c) Provided electronically to the student if the classes are being conducted online.

(2) Certification of an EMS-TEI shall be valid for a period of two (2) years unless limited by disciplinary action.

(3) Prior to expiration of the two (2) years certification period, an EMS-TEI may apply for recertification for a subsequent two (2) year period.

(4) Upon application for recertification, an applicant shall electronically [re]submit;

(a) A [an] [a] Training and Educational Institution (TEI), [KBEMS-E44] Certification Renewal Application through the EMS-TEI KEMSIS account with the board;[-] [and;]

(b) [(a)] The appropriate EMS-TEI pre-inspection worksheet (Level 1-4 or CE Only); and

(c) Upload [upload] all required documentation listed in the EMS-TEI pre-inspection worksheet (Level 1-4 or CE Only) to the EMS-TEI KEMSIS account.[;]

(5) An EMS-TEI seeking certification renewal [recertification] shall pay all applicable nonrefundable fees upon application. Failure to pay fees or subsequent rejection of a payment method shall result in denial of the Training and Educational Institution (TEI) Application[,-][KBEMS-E14].

(6) An applicant for EMS-TEI renewal shall meet all renewal requirements prior to the expiration date of the TEI certification.

(a) A TEI that does not comply with all renewal requirements prior to the certification expiration date shall expire.

(b) A TEI that allows the TEI certification to expire shall be required to apply as an initial EMS TEI.

(7) [(6)] An [A newly certified] EMS-TEI applying for initial or certification upgrade shall undergo an inspection prior to offering [the EMS-TEI's first] classes. The type of inspection, on-site or virtual, shall be determined by the office of the board and the EMS-TEI shall be responsible for establishing the virtual connection at their facility if necessary. [Failure to submit to the inspection shall result in immediate revocation of the certification.]

(8) [(7)] Each inspection shall ensure that the EMS-TEI has met all applicable requirements [in Section 5] of this administrative regulation. If the board's inspection finds that the EMS-TEI has failed to meet a requirement, the EMS-TEI shall correct all deficiencies prior to offering a class and receiving subsequent

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certification as an EMS-TEI. [

(8) The board shall inspect an EMS-TEI upon submission of the EMS-TEI's notice of intent to upgrade the level of courses offered.]

(9) The board may conduct inspections of EMS-TEIs for initial, renewal, certification upgrade, or to monitor compliance with statutory and regulatory requirements for TEIs. Inspections may be scheduled or unscheduled. [The board may inspect an EMS-TEI upon submission of the Training and Educational Institution (TEI), KBEMS-E14, to renew certification as an EMS-TEI.]

(10) The office of the board shall conduct an application review of required documentation and inspection of the EMS-TEI applicant no later than sixty (60) days following the submission of the Training and Educational Institution (TEI) Application by the EMS-TEI applicant for initial certification and upgrades. [The board shall conduct the inspection of an EMS-TEI no more than ninety (90) days following KBEMS' receipt of notice of intent to upgrade.]

(11) Approval of notice of intent to upgrade shall not extend the two (2) year EMS-TEI certification period.

(12) An EMS-TEI requesting a name change or change in ownership shall notify the board in KEMSIS no later than thirty (30) days prior to the name change or change in ownership by completing:

(a) A new Training and Educational Institution (TEI) Application electronically through the EMS-TEI KEMSIS account;

(b) Legal documentation reflecting the legal name or ownership change or registration with the Kentucky Secretary of State Office reflecting the change which shall be uploaded with the TEI application in KEMSIS; and

(c) Payment of the application fee pursuant to 202 KAR 7:030 in KEMSIS.

### Section 5. EMS-TEI Operating Requirements.

(1) Each EMS-TEI shall maintain files for a period of ~~three (3)~~ [seven (7)] years beyond the end date of each EMS Course program that contain the following documentation:

(a) For courses requiring accreditation, all documents necessary for the EMS-TEI to have met the accrediting agency's standards, policies, and guidelines;

(b) A copy of the last accreditation self-study and letter of accreditation

(c) ~~[(b)]~~ The student attendance sign-in sheets for each course taught, including:

1. Lectures;
2. Practical skills lessons; and
3. Clinical and field rotations;

(d) ~~[(c)]~~ A master copy of each set of [written] examinations administered and answer keys for the exams;

(e) ~~[(d)]~~ A master copy of practical skills examination forms;

(f) ~~[(e)]~~ A master copy of each course syllabus;

(g) ~~[(f)]~~ Current, written affiliation agreements executed between hospitals or EMS agencies and the EMS-TEI;

(h) ~~[(g)]~~ Health records for students as may be required by the EMS-TEI or as expressly required in written affiliation agreements and determined necessary for students to complete clinical assignments, field-internships, or summative field evaluations;

(i) ~~[(h)]~~ Records of all disciplinary actions taken against a student, if applicable. Records shall include notification to students of the complaint; responses, if applicable, made by or on behalf of the student; and actions taken as a result of a complaint or other documented incident, grievance, or deficiency;

(j) ~~[(i)]~~ For students requiring remediation, documentation of specific activities or procedures requiring remediation and actions taken in response to deficiencies, including how the specific remediation was accomplished and ~~[(j)]~~ the success or failure of remediation;

(k) ~~[(j)]~~ A master file of the objectives and competencies to be achieved by students during each educational program; and

(l) ~~[(k)]~~ Documentation of ~~other~~ [another] requirements that the EMS-TEI has established as part of the offered courses.

(2) Failure of an EMS-TEI to maintain records required by the board shall result in disciplinary action against an EMS-TEI.

(3) The board [KBEMS] shall require an EMS-TEI to submit a

copy of the EMS-TEI's annual accreditation report ~~electronically~~ through the EMS-TEI's KEMSIS account if accreditation is necessary for licensure or certification of the students taking the EMS-TEI's offered course.

(4) EMS-TEIs shall conduct an annual review and revision of all courses and programs to ensure the EMS-TEI has complied with necessary updates to courses, programs, and accepted educational standards. The participants involved with the annual review shall include:

(a) The program director;

(b) Course [Program] coordinator;

(c) Medical director;

(d) An instructor or a faculty member that was actively involved in teaching courses during the preceding twelve (12) months of the annual review; and

(e) A student that successfully completed a course offered through the EMS-TEI during the preceding twelve (12) months of the annual review.

(5) An EMS-TEI shall document in writing the required annual review and updates resulting from the annual assessment.

(6) Documentation of the annual review shall be in writing, signed by the program director, ~~[owner or]~~ program coordinator, and medical director. The annual review shall be maintained in the course or TEI program files and submitted to the board electronically with the [annual] TEI renewal application.

(7) An EMS-TEI shall assure that all physical resources required by the curriculum, including classrooms, skill practice areas, notices of where to purchase or access textbooks, instructional aides, equipment, and supplies shall be:

(a) Available at each class session where skills are taught or practiced;

(b) Adequate in number to allow for practice by students enrolled; and

(c) In good working order and well-maintained.

(8) An EMS-TEI shall maintain and protect the privacy of all records pertaining to the health and safety of patients, students, and faculty members that are obtained or developed through or as a result of participation in training and educational activities with the EMS-TEIs.

(9) The EMS-TEI shall be responsible for knowing and following all federal and state laws ~~[and requirements established in 202 KAR Chapter 7]~~ relevant to safeguarding privacy of records, including educational and health records.

(10) The EMS-TEI shall develop and make available to all prospective students a clearly defined admissions policy ~~[and procedure]~~.

(11) An EMS-TEI's admission policy shall include specific requirements for students to gain admission, maintain enrollment, and all academic requirements necessary to successfully complete the offered course or program. The admission policy shall be provided to the student at the start of the course and a verified receipt by signature shall be kept in the student's file including any changes to the admission policy while the student is enrolled in the course. Admissions policies ~~[and procedures]~~ shall include at a minimum:

(a) Tuition rates and fees associated with the training and education program;

(b) Fees and other costs associated with remediation;

(c) A descriptive synopsis of the curriculum for each type of course taught;

(d) Course educational objectives;

(e) Classroom lecture and skills practice schedules;

(f) Clinical or field rotation locations with ~~[tentative]~~ beginning and ending dates;

(g) Participation requirements for each clinical or field rotation site;

(h) Continued course competency and course completion requirements; and

(i) ~~[(h)]~~ Citations to and language of prohibited actions pursuant to KRS [Chapter] 311A.050 that provide grounds for sanctions against or denial of individuals making application for certification or licensure by the board.

(12) EMS-TEIs shall establish written policies that provide for:

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(a) The creation and use of course or program advertising that accurately portrays the course or program content as offered by the EMS-TEI;

(b) A uniform process for filing, investigating, and resolving complaints or grievances by applicants, students, preceptor sites, patients, members of the general public, or faculty members;

(c) A procedure for a student to withdraw from a course and a clear statement of refund policies and the steps necessary for a student to obtain a refund of tuition or fees already paid;

(d) Faculty to acquire or develop examinations for each course offered;

(e) The establishment of and adherence to examination procedures and policies;

(f) The requirements for a student to take and pass examinations in courses the EMS-TEI offers including requirements that shall be met during the course for the student to be eligible to take the National Registry of EMTs certification exam; and

(g) Public disclosure, using [both in print and] Web-based materials, concerning the EMS-TEI student cumulative pass rate on the NREMT certification exam for the calendar year. The disclosure shall be updated by January 31 of each year and shall include at a minimum:

1. All provider levels tested;
2. Date range for which the report was calculated;
3. EMS-TEI name, number, and physical address;
4. Number of students that took the exam; and
5. Cumulative pass rate calculated by percentage.

[Notification to all students and prospective students of their right to ask for and obtain the pass – fail rates of past students who have taken the National Registry Exam or other board approved certification test. The pass – fail rate shall be calculated for courses given within the last two (2) years.]

(13) An EMS-TEI shall assure that each student, while participating in a clinical or field rotation, is clearly identified as a student [and by first and last name]. Identification shall be accomplished by use of:

- (a) [A]Nameplate;
- (b) A uniform; or
- (c) Other publicly apparent means.

(14) A student or a faculty member shall maintain proper personal and professional conduct during classroom, clinical, and field internship activities.

(15) [(14)] EMS-TEIs shall have [include] a program director [chief administrative officer (CAO) or designee] who shall be responsible for:

(a) All aspects of the program, including administration, organization, and supervision of the educational program [Administer and oversee the EMS-TEI];

(b) Assuring[Assure] the quality and credentials of the program coordinator, EMS educators, EMS educator adjuncts, and students accepted into the EMS-TEI's programs or courses;

(c) Assuring[Assure] the security of examination results and materials;

(d) Monitoring[Monitor] the activities of the EMS-TEI's faculty and students; [and]

(e) Maintaining[Maintain] records and documents and submit reports[-];

(f) Continuously reviewing the quality and improvement of the educational program;

(g) Long range planning and ongoing development of the program;

(h) The orientation, training, and supervision of clinical and field internship preceptors; and

(i) The effectiveness and quality of fulfillment of responsibilities delegated to another qualified individual.

(16) [(15)] EMS-TEIs shall include faculty and instructional staff who shall be responsible for:

(a) Didactic, clinical instruction, or supervised practice in each location where students are assigned; and

(b) Coordination, supervision, and frequent assessment of the students' progress in achieving acceptable program requirements.[If applicable, an EMS-TEI shall have a Paramedic

Course Coordinator for paramedic training and education courses. The Paramedic Course Coordinator shall maintain a Level III EMS Educator status in the Commonwealth of Kentucky.]

(17) [(16)] A certified EMS-TEI shall maintain an ongoing level of competence, evidenced by a minimum [annual] pass rate for each level of instruction of seventy (70) [fifty–(50)] percent calculated [based] upon a [third–attempt] cumulative [measurement] pass rate of students who have taken the National Registry of EMTs and other board-approved exam(s) [for the first time] within the twenty-four (24) [twelve (12)] [twenty-four (24)] months immediately preceding the EMS-TEI's renewal date.

(a) The minimum [annual] pass rate shall be calculated, and compliance determined by, the office of the board.

(b) An EMS-TEI that fails to maintain a seventy (70) percent pass rate for each level of instruction as required by this subsection [section] shall notify all students enrolled in courses offered by the EMS-TEI that the EMS-TEI is not in compliance with testing standards.

(17) An EMS-TEI's competency shall also be demonstrated by compliance with KRS Chapter 311A and 202 KAR Chapter 7, and the EMS-TEI's process for remediating students who take but fail to pass the board approved test.]

(18) If an EMS-TEI fails to meet an ongoing level of competence determined according to this administrative regulation and demonstrated by compliance with KRS Chapter 311A and 202 KAR Chapter 7 [section], the EMS-TEI shall be subject to a plan of correction mediated through the office of the board.]

(19) An EMS-TEI that cannot maintain an ongoing level of competence may be subject to discipline pursuant to KRS Chapter 311A.

(19) If requested by the office of the board, the EMS-TEI shall submit graduate data to the Kentucky Center for Education and Workforce Statistics including:

- (a) Student's name;
- (b) Date of birth;
- (c) Social Security number;
- (d) Gender;
- (e) Ethnicity;
- (f) Residency at point of graduation; and
- (g) The Classification of Instructional Programs (CIP) code, if applicable.

(20) The EMS-TEI director shall keep the EMS-TEI KEMSIS account information updated, including:

- (a) The EMS-TEI demographics;
- (b) The EMS-TEI personnel roster; and
- (c) The EMS-TEI policy and procedures required by this administrative regulation.

(21)(a) The program director of EMS-TEIs offering initial certification courses shall create and maintain, with current information, a National Registry of EMTs educational program account.

(b) The EMS education program name, director name, address, and contact information listed with NREMT shall match the EMS-TEI program information listed in KEMSIS.[An EMS-TEI that cannot maintain an ongoing level of competence may be subject to discipline pursuant to KRS 311A.]

Section 6. Disciplinary Action. (1) As certified entities under the board's jurisdiction, all EMS-TEIs shall be subject to the disciplinary procedures and sanctions established in KRS Chapter 311A.

(2) Discipline of an EMS-TEI as a certified entity shall not prevent the board from taking disciplinary action against a certified or licensed individual associated with the EMS-TEI at any level of certification or licensure applicable.

Section 7. Reporting Requirements for EMS-TEI. (1) An EMS-TEI shall submit electronically to the board [KBEMS] the documents as required by [subsection (2) of] this section for all EMS courses or psychomotor testing that lead to certification by The National Registry of EMTs [licensure] or certification or licensure by the board.

(2) An EMS-TEI shall submit the following documents to the



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board office:

(a) Course Notification Application submitted no less than fourteen (14) days prior to the course start date; and

1. An EMS-TEI shall notify the board within **fourteen (14) [seven (7)]** days of any changes to a board approved class or psychomotor testing start and end date using Course Change Notification Application.

**2. The start and end date shall only be changed once and cannot exceed ninety (90) days from the original start and end date.**

**2. [3.]** A course or psychomotor test shall have a start date within the **twelve (12) months from the date on [in the same calendar year in]** which the course or psychomotor testing number is issued.

(b) An Initial Educational Institution Course Roster submitted within **no less than** fourteen (14) days of [prior to] the course start date listed on the Course Notification Application;

(c) If applicable, the Comprehensive Skills Evaluation Report within thirty (30) days of the course completion date listed on the Course Notification Application;

(d) A Final Educational Course Roster within thirty (30) days of course completion date listed on the Course Notification Application;

(e) 1. A Psychomotor Exam Application submitted no less than fourteen (14) days prior to the psychomotor exam start date; and,

2. Psychomotor examinations leading to board certification or licensure shall be conducted using board approved psychomotor examination procedures.

(3) Upon submission of all documents required by [subsection (2) of] this section for courses or psychomotor testing that lead to certification by The National Registry of EMTs and licensure or certification by [the office of] the board, the TEI shall be assigned [assign] a course or psychomotor testing number or other identifier [to the course].

(4) An EMS-TEI that fails to provide documents as required by subsection (2) of this section shall be subject to disciplinary action pursuant to KRS Chapter 311A up to and including revocation of the TEI. [An EMS-TEI shall notify the board office thirty (30) days prior to the start of a course. Failure to notify KBEMS shall violate this section of this administrative regulation may subject the EMS-TEI to disciplinary action under KRS 311A.]

(5) A course [class] or psychomotor testing shall not commence until the EMS-TEI has obtained an identification code and notified the board as required in this section.

(6) A course or psychomotor testing that does not meet all requirements of this administrative regulation may [shall] not lead to certification or licensure for the EMS students enrolled in the course or psychomotor testing.

(7) An EMS-TEI shall notify the board within seven (7) days of any changes to the lead instructor of an initial course that leads to certification or licensure by the board.

(8)(a) An EMS-TEI shall notify the board within seven (7) days of cancellation of an initial certification or licensure course.

(b) An EMS-TEI that cancels an initial certification or licensure course that is underway or planned shall fully refund all tuition and fees paid by the students in the course that are impacted by the course cancellation.

Section 8. Requirements for All Training and Education Courses. (1) All EMS educational programs in Kentucky that lead to EMS Provider certification by The National Registry of Emergency Medical Technicians (NREMT) and certification or licensure by the board shall: [All EMS training and education courses that lead to certification or licensure by KBEMS shall:]

(a) Comply with this administrative regulation;

(b) Not begin [commence] until the EMS-TEI has filed all documents required pursuant to Section 7 [(2)] of this administrative regulation;

(c) Not begin until the EMS-TEI has paid all fees required pursuant to 202 KAR 7:030;

(d) Use the National Emergency Medical Services Education Standards [Instructional Guidelines] that are appropriate for the level of EMS provider course being offered;

(e) Teach students the Kentucky and National EMS Scope of Practice Models;

(f) Meet the course administrative and faculty requirements in this administrative regulation, if applicable, [and] as established by the NREMT [board] approved accrediting agency; and

(g) Use educators [lead instructors] certified by the board [KBEMS] as EMS educators who are minimally certified or licensed at the level of the offered course.

(h) 1. An EMS-TEI shall ensure that all student course work including lectures, practical skills lessons, and clinical or field rotations for courses that lead to certification by the National Registry of EMTs and certification and licensure by the board be completed within **sixty (60) [thirty (30)]** days of the course completion date listed on the Course Notification Application.

**2.]** The board shall not accept any changes made to course completion documents listed in Section 7 of this administrative regulation if submitted **more than sixty (60) days after [less than thirty (30) days of]** the course completion date as listed on the Course Notification Application.

3. In exceptional circumstances, the EMS-TEI may submit a Final Course Roster of students approved by the EMS-TEI program director and medical director for course work extension required in Section 5 of this administrative regulation.

(i) The EMS-TEI director shall approve all students to test with the National Registry of EMTs within seven (7) days of successful completion of an initial certification course and completion of all necessary documents and applications by the student.

(2) The EMS-TEI may use an assistant instructor who is not a board-certified educator to instruct no more than twenty-five (25) percent of the classroom education time [adjunct faculty] for initial certification or licensure courses, [if the adjunct faculty:

(a) Meets one (1) of the requirements established in Section 13 of this administrative regulation; and

(b) Teach for no more than five (5) percent of the classroom education time for each EMS course without the supervision of the program coordinator or certified instructor present and available in the classroom.]

(3) The EMS-TEI shall maintain an instructor to student ratio of no more than 1:15 for [shall have additional skills educators for] classroom sessions where skills are practiced. These sessions shall not proceed without the presence of:

(a) A certified educator for the first **fifteen (15) [ten (10)]** students; and

(b) An additional educator or adjunct faculty for each one (1) to **fifteen (15) [ten (10)]** additional students. Additional adjunct faculty used shall:

1. Not be required to be certified as an EMS educator but shall be certified by the board as an EMS provider at or above the level for the course being taught; or

2. Be a Registered Nurse (RN), Advanced Practice Registered Nurse (APRN), Physician (DO or MD), or Physician Assistant (PA); and

(4) The EMS-TEI program director and medical director shall approve any assistant instructor or adjunct faculty before the individual may assist in instruction. [and shall meet at least one (1) requirement established in Section 13 of this administrative regulation.]

(5) [(4)] The EMS-TEI shall have a medical director qualified pursuant to 202 KAR 7:801, who shall:

(a) Be employed by or under memorandum of understanding or a written contract with the EMS-TEI to serve as the medical director of the program;

(b) Be routinely available to the EMS-TEI to provide consultation regarding issues related to the training and education program;

(c) Participate in the approval of the didactic clinical and evaluation material and student progress review;

(d) Meets the applicable accrediting agency standards, policies, and guidelines;

(e) Provide medical consultation and guidance to the course faculty; and

(f) Certify [Certifies] the skills of all [of the] EMS-TEI [EMS-TEI's] students who are enrolled in courses leading to EMS Provider

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certification by The National Registry of Emergency Medical Technicians (NREMT) or certification or licensure by the board.

~~(6) [(5)]~~ An EMS-TEI shall maintain a written contractual affiliation agreement or memorandum of understanding [agreement] with each clinical rotation site that outlines, at a minimum, the responsibilities of each entity and reporting requirements for students involved in clinical and field training and education.

~~(7) [(6)]~~ An EMS-TEI shall provide faculty from the EMS-TEI training and education program, clinical coordinators, or designees under contract with the EMS-TEI to oversee student activity while in the clinical or field internship setting.

~~(8) The EMS-TEI shall provide clinical or field preceptor training to all clinical or field preceptors overseeing students during clinical or field internship rotations.~~

Section 9. Emergency Medical Responder Training and Education Course Requirements. [Each Emergency Medical Responder (EMR) training and education course shall follow:]

~~(1) Each Emergency Medical Responder (EMR) training and education course shall:~~

~~(a) Include all training and education requirements established in KRS Chapter 311A, 202 KAR 7:201, and 202 KAR 7:701;~~

~~(b) Use the National Emergency Medical Services Education Standards – Emergency Medical Responder Instructional Guidelines for the duration of course including individual class segments; and~~

~~(c) Ensure student competency throughout the course by a validated examination measuring process.~~

~~(2) To be eligible for certification as an EMR, a student shall also receive instruction covering the National and Kentucky EMS Scope of Practice for an EMR.~~

~~(3) EMR candidates shall meet all student eligibility requirements pursuant to 202 KAR 7:201. [All training and education requirements established in KRS Chapter 311A and 202 KAR 7:201; and~~

~~(2) The National Emergency Medical Services Education Standards – Instructional Guidelines for duration of course and individual class segments.]~~

Section 10. Emergency Medical Technician Training and Education Course Requirements. (1) Each Emergency Medical Technician (EMT) training and education course shall:

(a) Include all training and education requirements established in KRS Chapter 311A, [and] 202 KAR 7:301, and 202 KAR 7:701; [and]

(b) Use the National Emergency Medical Services Education Standards – Emergency Medical Technician Instructional Guidelines for duration of course and individual class segments; and

(c) Ensure student competency throughout the course by a validated examination measuring process.

(2) To be eligible for certification as an EMT[EMTs], a student shall receive instruction covering the National and Kentucky EMS Scope of Practice for an EMT.

(3) Each student shall complete [a] clinical [or] and field rotation that meets the requirements for EMT education as determined by this administrative regulation, [and] including the National and Kentucky EMS Scope of Practice for an EMT student as approved by the applicable accrediting agency's minimum requirements.

~~(4) [(3)]~~ The minimum requirements of clinical or field rotations for EMTs shall include [minimally]:

(a) [A] Clinical [or] and field rotations [consisting of at least twenty-four (24) hours] conducted at a [in a hospital emergency department, public health department, urgent treatment center, physician's office,] licensed ambulance service or other licensed health care facility selected by the EMS-TEI director and medical director that, if applicable, meets nationally accepted accreditation standards;

(b) Interviews and assessments [of] on a minimum of ten (10) patients with at least five (5) interviews and assessments conducted in a pre-hospital ambulance service setting; and

(c) Recording the patient history and [completing] assessment on a [prehospital] care report form for each of the ten (10) patients required in paragraph (b) of this subsection.

~~(5) [(4)]~~ If a student fails to achieve the [a] goals[goal] established by [for] the EMS-TEI for the EMT education program, the EMS-TEI [CAO Officer or] program director and medical director shall require the student to repeat the failed portion of the EMT education program. [a clinical or field rotation experience.]

~~(6) [(5)]~~ If a student is required to repeat a portion of the EMT education program, [a clinical or field rotation experience,] the [CAO or] program director and medical director shall have a written procedure for remediation that ensures the student shall be provided with adequate due process protections that include at a minimum:

(a) Notification of allegations or academic issues;

(b) A right for the student to be heard on the subject of the allegations or academic issues; [and]

(c) A right for the student to appeal the decision of the EMS-TEI to the director and medical director about the allegations or academic issues[.]; and

(d) The notification to the student shall be in writing and signed by:

**1. The student;**

**2. The TEI Administrator;**

**3. The Medical Director; and**

**4. The Course Coordinator [and dated by all witnesses].**

~~(6) If additional time is required, the notification to the student shall be signed and dated by the student.]~~

~~(7) EMT candidates shall meet all student eligibility requirements pursuant to 202 KAR 7:301.~~

~~(8) EMT students shall meet health and immunization standards as required through established TEI policy, or policies established by contracted TEI clinical sites.~~

Section 11. Advanced-Emergency Medical Technician Training and Education Programs.

(1) Advanced-Emergency Medical Technician (A[-]EMT) training and education course requirements. Each AEMT training and education course shall:

(a) Include all training and education [as required] pursuant to KRS Chapter 311A, 202 KAR 7:330, and 202 KAR 7:701; [and]

(b) Use the National Emergency Medical Services Education Standards – Advanced Emergency Medical Technician Instructional Guidelines for duration of course and individual class segments; and [Follow the National Emergency Medical Services Education Standards – Instructional Guidelines.]

(c) Ensure student competency throughout the course by a validated examination measuring process.

(2) To be eligible for certification as an A[-]EMT[s], a student shall complete a clinical and [or] field rotation that meets the requirements for A[-]EMT education as determined by this administrative regulation [and] including the National and Kentucky EMS Scope of Practice for an A[-]EMT student as approved by the applicable accrediting agency's minimum requirements.

(3) The minimum requirements of clinical and [or] field rotations for A[-]EMTs shall include:

(a) Clinicals or field rotations [that shall be] conducted at a licensed [occur in a hospital emergency department, public health department, urgent treatment center, physician's office, licensed advanced life support] ambulance service, or other licensed [advanced] health care facility[.]; selected by the EMS-TEI director and medical director that, if applicable, meets nationally accepted accreditation standards;

(b) Interviews and assessments on [of] a minimum of twenty (20) [thirty-five (35)] patients, including at least ten (10) [fifteen (15)] interviews and assessments while the student is actively in the role of team leader with a licensed ambulance service; and

(c) Record of patient history and assessment on a [prehospital] care report form for each of the twenty (20) [thirty-five (35)] patients required in paragraph (b) of this subsection.

(4) If a student fails to achieve the [a] goals[goal] established by the EMS-TEI for the A[-]EMT education program, the EMS-TEI [chief administrative officer or] program director and medical

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director shall require the student to repeat the failed portion of the AEMT education program. [a-clinical-or-field-rotation-experience.]

(5) If a student is required to repeat a portion of the AEMT education program, [a-clinical-or-field-rotation-experience,] the [CAO-or] program director and medical director shall have a written procedure for remediation that ensures the student shall be provided with adequate due process protections that include at a minimum:

- (a) Notification of allegations or academic issues;
- (b) A right for the student to be heard on the subject of the allegations or academic issues; [and]
- (c) A right for the student to appeal the decision of the EMS-TEI to the director and medical director about the allegations or academic issues~~[-]; and~~
- (d) The notification to the student shall be in writing and signed and dated by the:

1. Student;
2. TEI Administrator;
3. Medical Director; and
4. Course Coordinator.

(6) AEMT candidates shall meet all student eligibility requirements pursuant to 202 KAR 7:330. [If the EMS-TEI requires the student to complete additional ride time, the EMS-TEI shall give the student written notification for the student to sign and date.]

(7) AEMT students shall meet health and immunization standards as required through established TEI policy, or policies established by contracted TEI clinical sites.

Section 12. Paramedic Training and Education Programs. Paramedic training and education course requirements. (1) Each Paramedic training and education course shall:

- (a) Include all training and education as required by this administrative regulation, KRS Chapter 311A, 202 KAR 7:401, 202 KAR 7:701, and any other Kentucky statutes or administrative regulations that place mandates upon paramedic students; [and]
- (b) Use the National Emergency Medical Services Education Standards – Paramedic Instructional Guidelines for duration of course and individual class segments; and
- (c) Ensure student competency throughout the course by a validated examination measuring process.

(2) To be eligible for licensure as a paramedic, a student shall complete a clinical or field rotation that meets the requirements for paramedic education as determined by this administrative regulation [and] including the National and Kentucky EMS Scope of Practice for a Paramedic student as approved by the applicable accrediting agency's minimum requirements.

(3) The minimum requirements of clinical or field rotations for paramedics shall include:

(a) Clinicals or field rotations [that shall be] conducted at [in] a [hospital-emergency department, public health department, urgent treatment center, physician's office,] licensed [advanced-life support] ambulance service[-], or other licensed [advanced] health care facility selected by the EMS-TEI director and medical director that, if applicable, meets nationally accepted accreditation standards;

(b) [Interviews and assessments of a minimum of seventy-five (75) patients, including at least fifty (50) interviews and assessments while the student is actively in the role of team leader with a licensed ambulance service; and

(c) Record of patient history and assessment on a prehospital care report form for each of the [seventy-five (75)] patients required in [subsection (3)(b) of] this section.

(4) If a student fails to achieve the [a] goals[goal] established by [for] the EMS-TEI for the EMS education program, the EMS-TEI [chief-administrative-officer-or] program director and medical director shall require the student to repeat the failed portion of the paramedic education program. [a-clinical-or-field-rotation-experience.]

(5) If a student is required to repeat a portion of the paramedic education program [a-clinical-or-field-rotation-experience], the [CAO or] program director and medical director shall have a written procedure for remediation that ensures the student shall be

provided with adequate due process protections that include at a minimum:

- (a) Notification of allegations or academic issues;
- (b) A right for the student to be heard on the subject of the allegations or academic issues; [and]
- (c) A right for the student to appeal the decision of the EMS-TEI to the director and medical director about the allegations or academic issues~~[-]; and~~
- (d) The notification to the student shall be in writing and signed and dated by the:

1. Student;
2. TEI Administrator;
3. Medical Director; and
4. Course Coordinator.

(6) Paramedic candidates shall meet all student eligibility requirements pursuant to 202 KAR 7:401. [If additional time is required to be completed for remediation, the EMS-TEI shall provide written notification of the additional time required and shall obtain a dated signature from the student.]

(7) Paramedic students shall meet health and immunization standards as required through established TEI policy, or policies established by contracted TEI clinical sites.

Section 13. Continuing Education. (1) Training and education courses provided to individuals [outside the roster of a licensed service and] that fulfill the continuing education requirements necessary to receive [recertify-or-renew] a certification or licensure from the board shall be provided by:

- (a) An entity certified by the board [KBEMS] as an EMS-TEI;
- (b) An agency or department having contractual agreements with a board [KBEMS] certified EMS-TEI that is in good standing and not subject to disciplinary action;
- (c) A board [KBEMS] approved symposia, state, national, or international school;
- (d) A board [KBEMS] approved or nationally accredited online [on-line] or distance education provider, but which shall not provide more than ninety (90) [fifty (50)] percent of the total continuing education hours to fulfill the continuing education [CE] requirements for renewal pursuant to KRS Chapter 311A or 202 KAR Chapter 7; or
- (e) One (1) or more of the approved continuing education entities listed below:

1. The Commission on Accreditation for Pre-Hospital Continuing Education (CAPCE);
2. Kentucky Board of Nursing;
3. Kentucky Board of Medical Licensure;
4. Kentucky Board of Respiratory Care;
5. Department of Homeland Security and all department components;
6. U.S. Fire Administration and all department components;
7. Kentucky Department of Criminal Justice (DOCJT);
8. Kentucky Cabinet for Health and Family Services; or
9. Courses approved by any State EMS Office that are offered and or completed outside the Commonwealth of Kentucky. [

(e) A course that has been accredited by the board-approved accrediting agency for continuing education.]

- (2) Continuing education courses shall:
  - (a) Contain material relevant to the job specifications and professional development of EMS personnel; and
  - (b) Be conducted at an EMS level appropriate for the discipline of the participants.

(3) EMS-TEIs that provide continuing education shall provide course completion documentation by hardcopy or electronically to all participants that successfully complete the continuing education course. The course completion documentation shall contain at a minimum the following items:

- (a) Official name of the EMS-TEI as listed in the EMS-TEI KEMSIS account and certification number of the EMS-TEI issued by the board;
- (b) Name of primary instructor and state EMS office EMS provider number;
- (c) Name of course;
- (d) Breakdown of completed hours and subject categories

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instructed that meet the continuing education requirements established by 202 KAR 7:201, 202 KAR 7:301, 202 KAR 7:330, and 202 KAR 7:401; and

(e) Signature of one (1) of the following EMS-TEI representatives:

1. Director;
2. Course coordinator; or
3. Course instructor.

Section 14. Continuing Education Instructor Requirements. (1) The following persons shall be qualified to conduct continuing education courses for persons certified or licensed by the board [KBEMS]:

(a) An EMS provider [paramedic licensed by the board or] licensed or certified by the board that holds a **CE Educator [continuing education educator] credential** [in another state];

(b) A physician (DO or MD) or Physician Assistant (PA) licensed in Kentucky or another state, who has specific expertise in an area of a prehospital discipline;

(c) A registered nurse (RN) or Advanced Practice Registered Nurse (APRN) licensed in Kentucky or another state, who has specific expertise in an area of a prehospital discipline;

(d) An EMS Educator certified in Kentucky; or

(e) An individual who is at least one (1) of the following and who shall be limited to teaching the specific subject approved by the EMS-TEI director and medical director:

1. Certified by a state or federal agency to teach or perform subject matter relevant to the National Emergency Medical Services Education Standards [—Instructional Guidelines] and National and Kentucky EMS Scope of Practice for a prehospital discipline;

2. Certified by a nationally recognized entity to provide EMS related training and education;

3. A presenter at a National or State Symposium accredited by an agency or other board [KBEMS] approved entity; or

4. A presenter approved by an EMS medical director who has specific expertise in an area of a prehospital discipline. [as uniquely qualified by experience or education; or

5. A presenter approved as being uniquely qualified by an emergency response agency's chief administrative officer.]

(2) The EMS-TEI or other approved contractual department or agency providing continuing education shall be required to:

(a) Maintain a roster, objectives, and outline for every continuing education course taught on file for a period of **three (3) [seven (7)]** years beyond the end date of each EMS **course [Course]**; [and]

(b) Maintain all documentation to have met the applicable accreditation agency standards, policies, and guidelines established in this administrative regulation; and [-]

(c) Meet the requirements of this administrative regulation.

(3) If requested by the board, the EMS-TEI shall submit to the board [KBEMS] the required documents for EMS continuing education courses taught within the preceding **three (3) [seven (7)]** years that lead to re-certification or re-licensure by the board [KBEMS], including:

(a) Contractual agreements;

(b) The continuing education **instructor [educator's]** curriculum vitae or resume that includes at a minimum the educator's name, address, phone number, email address, education history, and employment history documenting the qualifications listed in **subsection (1) of this section [Section 14(1)]** have been met;

(c) A completed Continuing Education [at Institution] Course Student Roster. The course roster shall include the participants name, signature or digital equivalent, participant KEMSIS number, and board EMS credential held. If rosters are created or stored electronically, there shall be a verification of attendance component that **may [can]** be verified by the board if requested; and

(d) Objectives, syllabi [and], outline, and a list of instructor resources used for each continuing education course.

Section 15. Pilot Programs. (1) A board certified TEI that is in good standing may apply for an Educational Pilot Program. [A

licensed EMS provider agency may apply to KBEMS for authorization to perform a pilot program.

(2) A pilot program shall involve specialized training and education, as well as associated procedures not otherwise provided for in 202 KAR Chapter 7.

(3) Educational Pilot Programs shall be subject to the provisions of 202 KAR 7: [565]. [A licensed EMS provider agency seeking authorization for a pilot program shall submit a written request to the board.

(4) An authorized entity approved by the board to conduct a pilot program shall agree in writing:

(a) To submit periodic reports related to the progress of the pilot program; and

(b) To abide by the board established requirements for the pilot program.

(5) An individual otherwise certified or licensed by the board who successfully completes an approved pilot program shall perform the procedures relevant to the training and education received in the pilot program subject to protocols established by the medical director for the pilot program.

(6) The board may establish pilot program limitations on:

(a) The geographic area or service location where the procedure may be performed; and

(b) The performance of the procedure subject to a:

1. Specific and defined event;

2. Disaster; or

3. Designated directive.

(7) The board may authorize the use of physicians or other medical professionals to supervise and monitor the training and education of students involved in a pilot program.

(8) The board may restrict or limit actions that involve the performance of an invasive procedure or the administration of medication subject to:

(a) Required physician or medical director oversight; or

(b) The use of protocols that have been submitted to the board for review and approved by the state medical advisor and the board.]

Section 16. EMS Educators. (1) An EMS Educator may be certified at the following levels:

(a) EMR Educator, which certifies the individual to teach EMR initial certification and continuing education courses [Level I — EMR Educator, which certifies the individual to teach EMR courses or EMR continuing education];

(b) EMT Educator, which certifies the individual to teach EMR and EMT initial certification and continuing education courses; [Level II — EMT Educator, which certifies the individual to teach EMT and EMR courses or EMT and EMR continuing education; or]

(c) AEMT Educator, which certifies the individual to teach EMR, EMT, and AEMT initial certification and continuing education courses; [Level III — Advanced Educator, which certifies the individual to teach EMR, EMT, A-EMT, and paramedic courses or continuing education.]

(d) Paramedic Educator, which certifies the individual to teach EMR, EMT, AEMT, and Paramedic initial certification and continuing education courses; or [Level III-R — Registered nurses and physicians who are not currently certified as an EMT, A-EMT, or paramedic shall only be certified as Level III instructors who teach A-EMTs or paramedics.]

(e) CE Educator, which certifies the individual to teach continuing education courses at or below the level of EMS provider certification or license issued by the board.

(2) Depending on the level of certification sought, an applicant for certification as a Kentucky EMS educator shall:

(a) Already hold a certificate or license in Kentucky as an Emergency Medical Responder (EMR), an Emergency Medical Technician (EMT), an Advanced Emergency Medical Technician (AEMT), or a paramedic; or

(b) 1. Hold a license in Kentucky or another state as a Registered Nurse (RN), Advanced Practice Registered Nurse (APRN), Physician (DO or MD), or Physician Assistant (PA);

2. A Registered Nurse (RN), Advanced Practice Registered Nurse (APRN), Physician (DO or MD), or Physician Assistant (PA)

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shall be considered an advanced EMS provider at the paramedic level only for the purpose of credentialing the individual as an EMS educator;

(c) [(b)] Not be issued a certificate as an EMS educator for a level of instruction higher than his or her [their] EMS provider certification or license;[-]

(d) [(e)] Have successfully completed: [

~~1. The National Association of EMS Educators Emergency Medical Services Education Standards] [-Instructional Guidelines] [for Educating EMS Instructors] [educators] [course];]~~

~~1. A board-approved [~~

~~2. An] [KBEMS] [approved] EMS educator course that meets the objectives of the [National Highway Traffic Safety Administration (NHTSA)] National Highway Traffic Safety Administration National Guidelines for Educating EMS Instructors and the National Emergency Medical Services Education Standards which [and] is designed to represent a common core for teaching knowledge and skills to assist in the education of adult learners; or [or] [~~

~~3. One of the following EMS educator courses: [A Bachelor's Degree or higher in education]~~

~~a. International Fire Service Training Association (IFSTA) Fire Instructor Course;~~

~~b. Eastern Kentucky University's EMC 440 EMS Instruction Course;~~

~~c. An instructor course that is equivalent to the EMS educator course objectives found in the U.S. Department of Transportation/National Highway Traffic Safety; or]~~

~~2. [4.] Holds an unrestricted and current license or certification as a teacher or educator through a state board of education in the United States;~~

~~(e) [(d)] Have been certified or licensed for a minimum of four (4) years as an EMS provider at the same level or at a higher level for which the applicant seeks to become an EMS educator; [~~

~~(e) Provide documentation that two (2) years of the four (4) years' experience required in this section is experience providing care with an EMS organization that complies with the requirements of KRS Chapter 311A or 202 KAR Chapter 7.~~

~~(f) Provide documentation using the KBEMS Lecture and Skill Verification Form that the applicant has assisted with a course that meets the following requirements:~~

~~1. The board has approved the course as leading to certification or licensure;~~

~~2. Assistance with the course has been under the supervision of a board-certified EMS educator through a board-certified EMS-TEI with the approval of the program director and medical director [who attests using the board-approved Certified Educator form that the educator has served as a course coordinator or lead educator for at least three (3) separate courses and who has not been subject to disciplinary action or reprimand by the board pursuant to KRS Chapter 311A within the past thirty-six (36) months]; and~~

~~3. The courses in which the applicant may [can] [will] assist to meet the requirements of subsection (3) of this section shall be in a board-approved initial course at or below the level of educator the applicant is seeking. [is at the same level of EMS educator the applicant is seeking;]~~

~~4. Continuing education courses shall not be accepted to meet the requirements of this section; [~~

~~(g) Provide evidence of completion of a board-sponsored orientation program;]~~

~~(f) [(h)] Submit a completed; [EMS Responder Application and pay all established fees]~~

~~1. CE Educator Initial Application;~~

~~2. EMR Educator Initial Application;~~

~~3. EMT Educator Initial Application;~~

~~4. AEMT Educator Initial Application; or~~

~~5. Paramedic Educator Initial Application;~~

~~(g) Pay all fees pursuant to 202 KAR 7:030; and~~

~~(h) Undergo a background check pursuant to KRS 311A.050 and 311A.100.~~

~~1. The background check shall be:~~

~~a. National in scope for an applicant not currently certified or licensed at any level in Kentucky;~~

~~b. Statewide in scope for an applicant with current certification or licensure in Kentucky;~~

~~c. Less than six (6) months old when the applicant submits to the board all requirements for Educator certification; and~~

~~d. Provided by a vendor that has been contracted through the board.~~

~~2. An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check.~~

~~(3) [If applying to become a Level I or II] Applicants applying for EMR, EMT, AEMT, or Paramedic Educator certification shall:~~

~~(a) Be certified minimally as an EMT to teach EMTs or EMRs and minimally certified as an EMR to teach only EMRs;~~

~~(b) Submit documented proof on the Lecture and Skills Verification Form that the applicant:~~

~~(a)[4.] Completed a minimum of five (5) presentations meeting the objectives of the National Emergency Medical Services Education Standards for Educating EMS Instructors [-Instructional Guidelines and EMS Scope of Practice Model National education [for EMT or EMR] as applicable for level of certification]; and~~

~~(b)[2.] Demonstrated skills from at least five (5) subjects meeting the objectives of the National Emergency Medical Services Education Standards for Educating EMS Instructors. [-Instructional Guidelines and EMS Scope of Practice Model National education for EMT-EMT or EMR as applicable for level of certification;~~

~~3. Completed all presentations and all skills demonstrations on different topics for a total of ten (10) separate topics; and~~

~~4. Attended a minimum of fifty (50) percent of clock hours of the course; and]~~

~~(4) Applicants applying for CE [If applying to become a Level III] Educator shall present [:~~

~~(a) [Be certified as a paramedic or higher; and~~

~~(b) [Present] documented proof of completing a nationally recognized or EMS-TEI instructor course. [instruction in [a minimum of fifty (50) classroom clock hours in a minimum of five (5) different subject areas that shall include instruction in pharmacology, cardiac emergencies, and traumatic injuries,] meeting the objectives of the National Emergency Medical Services Education Standards Instructional Guidelines and EMS Scope of Practice Model for paramedic education.]~~

~~(5) The expiration date of an EMS educator certification shall correspond to those established in KRS Chapter 311A and 202 KAR Chapter 7. [~~

~~(6) Documented proof of the educator's experience shall be submitted on the Educator Practical Requirements form.]~~

Section 17. Renewal of EMS Educator Certification. (1) An EMS educator shall be eligible to renew the EMS educator certification if the applicant for renewal:

(a) Has maintained state certification or licensure as an EMS provider or as a Registered Nurse (RN), Advanced Practice Registered Nurse (APRN), Physician (DO or MD), or Physician Assistant (PA) at a level equal to or greater than the level at which they are certified as an EMS educator;

(b) Retains [Has submitted to the board written] evidence of completing [completion of] all training and education pursuant to [as required by] KRS Chapter 311A;

(c) During the preceding two (2) years, has been actively engaged in instruction and obtained [a minimum of fifty-two (52) contact hours that include] at least four (4) [eight (8)] hours [contact hours] on topics related to methods of instruction (MOI);[-] [The eight (8) relevant to MOI:

1. May include a board-approved and required educator update; and

2. The chief administrative officer of the EMS-TEI employing the instructor shall provide proof of the courses or contact hours if requested to do so in an audit by the board;]

(d) Is not subject to discipline pursuant to KRS Chapter 311A;

(e) Has paid fees pursuant to [required by] 202 KAR 7:030;

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and

(f) Has submitted to the board a completed Educator Renewal [and signed EMS Responder] Application.

(2) The EMS educator shall maintain all training and education documentation outlined in this administrative regulation for three (3) [four (4)] years from the date of completion.

(3) The board [KBEMS] office may audit an EMS educator's continuing education and EMS provider continuing education records.

Section 18. EMS Educator reinstatement. [(1)] An EMS Educator whose certification has lapsed [for a period not exceeding five (5) years] may reinstate [his certificate]. To reinstate a certificate, the EMS educator shall [submit]:

(1) [(a)] Submit a [A] completed; [EMS Responder Application;]

(a) Application for CE Educator Reinstatement [Application];

(b) Application for EMR Educator Reinstatement [Application];

(c) Application for EMT Educator Reinstatement [Application];

(d) Application for AEMT Educator Reinstatement [Application]; or

(e) Application for Paramedic Educator Reinstatement [Application];

(2) [(b)] Submit evidence of at least four (4) [sixteen (16)] hours of training in methodology of instruction (MOI);

(3) [(c)] Written evidence of completion of a board-sponsored EMS Educator orientation course; and

(d) Pay [Payment of] the reinstatement fee pursuant to [as established in] 202 KAR 7:030;[-]

(4) Submit evidence of previous certification as an EMS Educator in Kentucky; and

(5) Undergo a background check pursuant to KRS 311A.050 and 311A.100.

(a) The background check shall be:

1. National in scope for an applicant not currently certified or licensed at any level in Kentucky;

2. Statewide in scope for an applicant with current certification or licensure in Kentucky;

3. Less than six (6) months old when the applicant submits to the board all requirements for Educator certification; and

4. Provided by a vendor that has been contracted through the board.

(b) An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check.

(2) An EMS Educator whose certification has lapsed for a period exceeding five (5) years shall seek certification as an initial applicant.

Section 19. Transition for Currently Certified Educators. An educator certified prior to the effective date of this administrative regulation [after October 2012] shall be transitioned as follows:

(1) Level I Educator shall be certified as an EMR Educator [EMS instructors shall be certified as Level I educators];

(2) Level II Educator shall be certified as an EMT Educator or AEMT Educator [Instructors shall be certified as Level II Educators];

(3) Level III Educator shall be certified as a Paramedic Educator; and [Currently certified Level III Instructors shall be certified as Level III educators;]

(4) [Level I and Level II shall be certified as Level I and Level II educators]; and

(5) Level III instructors currently licensed as paramedics shall be certified as Level I, Level II, and Level III educators; and

(6) Level III R Educator shall be certified as a Paramedic [Level III] Educator. [III instructors currently licensed as RNs or physicians shall be certified as Level III R educators.]

Section 20. EMS Educator Reciprocity. [(1)] A person certified as an EMS Educator [instructor] in another state or United States [US] territory shall be eligible for Kentucky EMS Educator

[instructor] certification upon [demonstrating]:

(1) Evidence of certification or licensure as an EMS provider for a minimum of four (4) years at the same level or at a higher level for which they are applying to be a Kentucky EMS educator;

(2) Proof of four (4) years' educational experience in another state or territory;

(3) (1) Submission of a completed; [EMS Responder Application];

(a) Application for CE Educator Reciprocity [Application];

(b) Application for EMR Educator Reciprocity [Application];

(c) Application for EMT Educator Reciprocity [Application];

(d) Application for AEMT Educator Reciprocity [Application];

or

(e) Application for Paramedic Educator Reciprocity [Application];

(4) Evidence of at least sixteen (16) board-approved hours of training in methodology of instruction (MOI);

(5) Written evidence of completion of a board-sponsored EMS Educator orientation course; and

(2) [(6)] Payment of the educator fee pursuant to [as established in] 202 KAR 7:030;

(3) (a) Submission of proof that the applicant is certified as an EMS educator or certified as a teacher or educator through a state board of education in another state or United States territory;

(b) The applicant may only apply for educator certification at the same level of Educator certification currently held in another state or United States [U.S.] territory;

(4) Submission of certification or license by the board as an EMS provider or license as a Registered Nurse (RN), Advanced Practice Registered Nurse (APRN), Physician (DO or MD), or Physician Assistant (PA); and

(5) Submission to a background check pursuant to KRS 311A.050 and 311A.100.

(a) The background check shall be:

1. National in scope for an applicant not currently certified or licensed at any level in Kentucky;

2. Statewide in scope for an applicant with current certification or licensure in Kentucky;

3. Less than six (6) months old when the applicant submits to the board all requirements for Educator certification; and

4. Provided by a vendor that has been contracted through the board.

(b) An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check.

Section 21. EMS Educator Temporary Certification.

(1) An EMS educator applicant holding EMS educator certification or licensure from another state or US territory may be granted a temporary certification in Kentucky upon submission of the EMS Responder Application.

(2) A temporary card shall not be valid for more than one (1) year.

(3) At the end of one (1) year, an applicant for reciprocity who has not completed the requirements established in Section 18 of this administrative regulation shall not be eligible for an extension or renewal of the temporary certification period.

(4) An Applicant failing to meet the time limit for obtaining certification through reciprocity shall seek certification as a Kentucky EMS Educator by completing all requirements for initial certification.

Section 22. EMS Evaluator.

(1) An applicant for certification as an EMS evaluator shall:

(a) 1. Be currently certified as a Level I, Level II, or Level III EMS educator; or

2. Hold current unrestricted licensure in a state as a physician; (b) Have completed a board-approved evaluator training program;

(c) Have a minimum of two (2) years' patient care experience prior to serving as an evaluator;

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- (d) Submit a completed EMS Responder Application; and
- (e) Have paid all fees required by 202 KAR 7:030.

(2) The certification period of an EMS evaluator shall be contemporaneous with the expiration date of a certificate or license issued by the board, the KBN or KBML, or the state that issues his or her license.

- (3) An EMS evaluator shall be certified as:

(a) Level I, which qualifies the evaluator to assess EMR candidates for certification;

(b) Level II, which certifies the evaluator to assess EMT and EMR candidates for certification; or

(c) Level III, which certifies the individual to evaluate paramedic, EMT, AEMT, and EMR candidates for certification or licensure. A licensed physician or registered nurse who is not also a licensed or certified EMS provider shall evaluate paramedics only. A person certified as an AEMT may evaluate AEMTs, EMTs, and EMRs.

(4) An individual shall not be endorsed as an EMS evaluator at a level greater than the level at which certified or licensed as an EMS educator.

Section 23. Renewal of EMS Evaluator Endorsement. A person who holds an endorsement as an EMS evaluator shall be eligible to renew the EMS evaluator endorsement if the individual:

(1) Maintains current state certification or licensure as a provider;

(2) During the certification period, participates in a minimum of two (2) separate evaluations (on two (2) separate dates) or attends a board-sponsored evaluator class;

(3) Is not subject to discipline pursuant to KRS Chapter 311A;

(4) Submits to the board a completed EMS Responder Application; and

(5) Pays all fees required by 202 KAR 7:030.].

Section 21 [24]. Educator [and Evaluator] Oversight. The board [KBEMS] may conduct unscheduled [or, if part of an official investigation, unscheduled] visits to an EMS educator's classroom or to an EMS psychomotor examination [evaluation] site to verify compliance with KRS Chapter 311A and 202 KAR Chapter 7, instructional quality, and evaluative standards required by [in] this administrative regulation.

Section 22 [25]. Incorporation by reference. (1) The following material is incorporated by reference:

(a) "Training and Educational Institution (TEI) Application in KEMSIS", 2019 [KBEMS-E14, July 2012];

(b) "Course Notification Application in KEMSIS", July 2019 [KBEMS-E22, September 2012];

(c) "Initial Educational [Institution] Course Roster", **September 2012** [July 2019] [KBEMS-E23, September 2012];

(d) "National Emergency Medical Services Education Standards [Instructional Guidelines]", National Highway Traffic Safety Administration [Association], DOT HS 811 077A, January 2009;

1. "National Emergency Medical Services Education Standards-Emergency Medical Responder Instructional Guidelines", National Highway Traffic Safety Administration, DOT HS 811 077B, January 2009;

2. "National Emergency Medical Services Education Standards-Emergency Medical Technician Instructional Guidelines", National Highway Traffic Safety Administration, DOT HS 811 077C, January 2009;

3. "National Emergency Medical Services Education Standards-Advanced Emergency Medical Technician Instructional Guidelines", National Highway Traffic Safety Administration, DOT HS 811 077D, January 2009;

4. "National Emergency Medical Services Education Standards-Paramedic Instructional Guidelines", National Highway Traffic Safety Administration, DOT HS 811 077E, January 2009.

(e) "National EMS Scope of Practice Model **2007**", National Highway Traffic Safety Administration [Association], DOT HS 810 657, February 2007;

(f) "National EMS Scope of Practice Model **2019**", National

Highway Traffic Safety Administration, DOT HS 812 666, February 2019 ["EMS Responder Application", KBEMS-E1, September 2012];

(g) "**2002 National Guidelines for Educating EMS Instructors**", National Highway Traffic Safety Administration, August 2002 ["Certified Educator", KBEMS-E24, September 2012]; [and]

(h) CoAEMSP Interpretations of the **CAAHEP 2015 Standards and Guidelines for the Accreditation of Educational Programs in the EMS Professions**", February 2019 ["Educator Practical Requirements", KBEMS-E20, July 2012.];

(i) "Lecture and Skills Verification Form", July 2019;

(j) "Final Educational Course Roster", **September 2012** [July 2019];

(k) "Continuing Education Course Student Roster", **September 2012** [July 2019];

(l) "Course Change Notification Application" in KEMSIS, July 2019;

(m) "Psychomotor Exam Application" in KEMSIS, July 2019;

(n) "Comprehensive Skill Evaluation Report", July 2019;

(o) "CE Educator Initial Application" in KEMSIS, **February 2013** [July 2019];

(p) "EMR Educator Initial Application" in KEMSIS, July 2019;

(q) "EMT Educator Initial Application" in KEMSIS, July 2019;

(r) "AEMT Educator Initial Application" in KEMSIS, July 2019;

(s) "Paramedic Educator Initial Application" in KEMSIS, July 2019;

(t) "**Application for CE Educator Reciprocity [Application]**" in KEMSIS, July 2019;

(u) "**Application for EMR Educator Reciprocity [Application]**" in KEMSIS, July 2019;

(v) "**Application for EMT Educator Reciprocity [Application]**" in KEMSIS, July 2019;

(w) "**Application for AEMT Educator Reciprocity [Application]**" in KEMSIS, July 2019;

(x) "**Application for Paramedic Educator Reciprocity [Application]**" in KEMSIS, July 2019;

(y) "**Application for CE Educator Reinstatement [Application]**" in KEMSIS, July 2019;

(z) "**Application for EMR Educator Reinstatement [Application]**" in KEMSIS, July 2019;

(aa) "**Application for EMT Educator Reinstatement [Application]**" in KEMSIS, July 2019;

(bb) "**Application for AEMT Educator Reinstatement [Application]**" in KEMSIS, July 2019;

(cc) "**Application for Paramedic Educator Reinstatement [Application]**" in KEMSIS, July 2019; and

(dd) "**Application for Educator Renewal [Application]**" in KEMSIS, July 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the [Kentucky Community and Technical College] Office for [of] the Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509, by appointment [300 North Main Street, Versailles, Kentucky 40383], Monday through Friday, 8:00[8:30] a.m. to 4:30 p.m.

**(3) This material is also available on the board's Web site at: <https://kbems.kctcs.edu>.**

PHILIP DIETZ, Chairman

APPROVED BY AGENCY: July 14, 2021

FILED WITH LRC: July 15, 2021 at 10:45 a.m.

CONTACT PERSON: Chuck O'Neal, Deputy Executive Director of Administration, Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509, phone (859) 256-3587, email [chuck.oneal@kctcs.edu](mailto:chuck.oneal@kctcs.edu).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chuck O'Neal

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 311A.110, KRS 311A.115, KRS 311A.120, and KRS 311A.125 require the board to promulgate administrative regulations establishing

standards related to the training and education of emergency medical services personnel. KRS 311A.130 requires proper in-service and in-house in-service training and education. KRS 311A.025 requires the board to establish levels of certification. This administrative regulation establishes requirements for an organization to be approved by the board as an Emergency Medical Service Training and Education Institute (EMS-TEI) and also establishes standards for the certification and recertification of emergency medical services educators and providers.

(b) The necessity of this administrative regulation: KRS 311A.110, KRS 311A.115, KRS 311A.120, and KRS 311A.125 require the board to promulgate administrative regulations establishing standards related to the training and education of emergency medical services personnel. KRS 311A.130 requires proper in-service and in-house in-service training and education. KRS 311A.025 requires the board to establish levels of certification. This administrative regulation is necessary to establish requirements for an organization to be approved by the board as an Emergency Medical Service Training and Education Institute (EMS-TEI) and establish standards for the certification and recertification of emergency medical services educators and providers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311A.110, KRS 311A.115, KRS 311A.120, and KRS 311A.125 require the board to promulgate administrative regulations establishing standards related to the training and education of emergency medical services personnel. KRS 311A.130 requires proper in-service and in-house in-service training and education. KRS 311A.025 requires the board to establish levels of certification. This administrative regulation conforms to the content of these statutes by establishing requirements for an organization to be approved by the board as an Emergency Medical Service Training and Education Institute (EMS-TEI) and establishing standards for the certification and recertification of emergency medical services educators and providers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.110, KRS 311A.115, KRS 311A.120, and KRS 311A.125 require the board to promulgate administrative regulations establishing standards related to the training and education of emergency medical services personnel. KRS 311A.130 requires proper in-service and in-house in-service training and education. KRS 311A.025 requires the board to establish levels of certification. This administrative regulation will assist in the effective administration of these statutes by establishing requirements for an organization to be approved by the board as an Emergency Medical Service Training and Education Institute (EMS-TEI) and establishing standards for the certification and recertification of emergency medical services educators and providers.

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

(a) How the amendment will change this existing administrative regulation: This amendment will modify and update educational mandates for all levels of EMS professionals entering the field, as well as regulatory requirements for EMS training and educational institutions, educators, and renewal requirements for educators and training and educational institutions.

(b) The necessity of the amendment to this administrative regulation: Educational standards for the EMS professions have been updated across the nation over the last few years. The amendments to this administrative regulation align with nationally accepted educational standards and training center requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.025, KRS 311A.110, KRS 311A.115, KRS 311A.120, KRS 311A.125, KRS 311A.130 by establishing requirements for an organization to be approved by the board as an Emergency Medical Service Training and Education Institute (EMS-TEI) and establishing standards for the certification and recertification of emergency medical services educators and providers.

(d) How the amendment will assist in the effective administration of the statutes: KRS 311A.020 requires the board to establish procedures and processes for committees and subcommittees. This administrative regulation will assist in the effective administration of KRS 311A.025, KRS 311A.110, KRS 311A.115, KRS 311A.120, KRS 311A.125, KRS 311A.130 by establishing requirements for an organization to be approved by the board as an Emergency Medical Service Training and Education Institute (EMS-TEI) and establishing standards for the certification and recertification of emergency medical services educators and providers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Emergency Medical Services, its members, and staff, local governments, emergency medical services providers, emergency medical services educators, and emergency medical services personnel will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Kentucky Board of Emergency Medical Services, its members, staff, and licensed agencies shall conform to the procedures and standards established by this administrative regulation regarding approval as an Emergency Medical Service Training and Education Institute (EMS-TEI) and certification and recertification as emergency medical services educators and providers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to any entity identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All entities will benefit from enhanced educational delivery guidance.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no cost to the administrative body to implement this administrative regulation.

(a) Initially: There will be no cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the administrative body to implement this administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because this amendment applies equally to all licensed agencies.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Emergency Medical Services, its members, and staff, local governments, emergency medical services providers, emergency medical services educators, and emergency medical services personnel will be affected by this administrative regulation.

(2) Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.110, KRS 311A.115, KRS 311A.120, and KRS 311A.125



require the board to promulgate administrative regulations establishing standards related to the training and education of emergency medical services personnel. KRS 311A.130 requires proper in-service and in-house in-service training and education. KRS 311A.025 requires the board to establish levels of certification. This administrative regulation establishes requirements for an organization to be approved by the board as an Emergency Medical Service Training and Education Institute (EMS-TEI) and also establishes standards for the certification and recertification of emergency medical services educators and providers.

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not impose any costs on state or local government.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not impose any costs on state or local government.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not impose any costs.

Other Explanation:

**TRANSPORTATION CABINET**  
**Department of Vehicle Regulation**  
**Division of Driver Licensing**  
**(Amended After Comments)**

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

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

STATUTORY AUTHORITY: KRS 189A.350

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(18) "Month" means calendar month.

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

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

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

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

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

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

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

(a) Diagnostic trouble shooting;

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

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

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

(27) "Service facility inspection" means the process for determining that a service facility and the service facility's

technicians are qualified and approved to provide ignition interlock services within the Commonwealth of Kentucky.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(16) Subject to recalculation of day-for-day credit, as established in Section 9 of this administrative regulation, a participant may voluntarily have the device removed and reinstalled onto a different motor vehicle pursuant to subsection ~~(11)~~~~(12)~~ of this section and upon payment of the appropriate fees to the device provider.

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

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

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

(19) A participant not participating in the KIIP and with a license suspension period exceeding twelve (12) months shall be subject to retesting requirements prior to the issuance of a new license pursuant to KRS 186.480.

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

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

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

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

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

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

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

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

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

1. An agreement is in place between device providers; or
2. The purpose of replacing a participant's device due to the initial device provider's insolvency or business interruption.

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

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

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

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

Section 4. Certification of Ignition Interlock Devices, Device Providers, and Service Providers. (1) The Transportation Cabinet shall issue an RFQ to device providers in order to certify providers eligible to provide ignition interlock services and commodities required for the implementation and maintenance of the state's

ignition interlock program.

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

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

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

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

**(d) An application fee pursuant to KRS 189A.350(5)(a).**

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

(a) Submit:

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

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

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

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

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

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

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

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

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

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

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

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

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

(m) Provide a complete list of any contractual fees that the participant may be required or requested to pay; and

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

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

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

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

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

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

(c) The compliance period shall begin **on the date the ignition interlock restricted license is issued [either ninety (90) days prior to the conclusion of the identified incentive period if a participant has incurred a first DUI offense within a ten (10) year period or one hundred twenty (120) days prior to conclusion of the identified incentive period if a participant has incurred any subsequent DUI offenses within a ten (10) year period].**

(d)1. Violations of the ninety (90) or one hundred twenty (120) consecutive day requirement shall be as established in KRS 189A.340(4)(b)2.b.

2. Violations that constitute a misdemeanor offense shall be established in KRS 189A.345.

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

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

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

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

(a) Photo identification;

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

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

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

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

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

calibrating-units-breath-alcohol-testers.

(5) An ignition interlock device provider shall ensure that technicians installing the device:

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

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

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

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

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

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

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

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

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

(10) The cabinet shall:

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

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

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

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

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

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

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

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

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

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

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

(d) There are defects in design, materials, or workmanship

causing repeated failures of a device;

(e) A device provider fails to fully correct an identified service facility deficiency within thirty (30) days after having been notified by the cabinet or its designee to do so;

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

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

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

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

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

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

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

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

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

(a) Providing notice to participants; and

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

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

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

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

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

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

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

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

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

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

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

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

of business the second working day after the request is received.

(3) Upon receipt of a court order impounding a license plate pursuant to KRS 189A.085, the cabinet shall suspend the motor vehicle registration. The cabinet shall not suspend the registration of any motor vehicle pursuant to KRS 189A.085 unless a court order has been received.

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

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

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

(b) If the suspended license plate has expired, the registration shall be issued as a renewal registration pursuant to KRS 186.050.

Section 8. Suspensions and Compliance Periods. As established in KRS 189A.070 and this administrative regulation, the incentive and compliance-based review periods that correspond with the license suspension period shall be established in the table in this section.

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

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

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

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

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

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

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

(b) Notify law enforcement in the county where the offense is

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alleged to have occurred; and

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

(6) If the cabinet discovers evidence or information that a participant or others have committed an offense in violation of KRS 189A.345, the cabinet shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. through 4:30 p.m. This material is also available at Transportation Cabinet Regional Field Offices, on the cabinet's web site at <http://drive.ky.gov>, and on the cabinet's Administrative Regulations Filings web site at <https://transportation.ky.gov/LegalServices/Pages/Filings.aspx>.

JIM GRAY, Secretary

MATT COLE, Acting Commissioner

APPROVED BY AGENCY: July 13, 2021

FILED WITH LRC: July 13, 2021 at 8:46 a.m.

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

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jon Johnson

(1) Provide a brief summary of:

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

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

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

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

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

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

(b) The necessity of the amendment to this administrative regulation: KRS 189A.350 requires that the Transportation Cabinet promulgate administration regulations in order to administer this program.

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

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

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

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Companies desiring to provide ignition interlock devices and services will apply to the cabinet for device certification and authorization; defendants will

apply for both the ignition interlock device and authorization to operate with an ignition interlock license pursuant to court order or conviction pursuant to KRS Chapter 189A; divisions within the department will approve and process the application forms; and ignition interlock licenses will be issued by the appropriate authority.

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

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

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

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

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? KYTC Department of Vehicle Regulation, Division of Driver Licensing, Office of Highway Safety; circuit clerks, Administrative Office of the Courts, county attorneys, law enforcement.

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

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. For local government, costs should be minimal as the process is administratively driven and the regulatory actions will be performed within the context of DUI prosecutions.

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

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

(c) How much will it cost to administer this program for the first

year? Up to approximately \$525,000.

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

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

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

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

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

LABOR CABINET  
Department of Workers' Claims  
(Amended After Comments)

803 KAR 25:190. Utilization review -- Medical Bill Audit --  
Medical Director -- Appeal of Utilization Review Decisions.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.035(5) and (6), 342.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260

provides that the Commissioner [~~Executive Director~~] of the Department [~~Office~~] of Workers' Claims shall promulgate administrative regulations necessary to carry on the work of the Department [~~Office~~] of Workers' Claims, and the commissioner [~~executive director~~] may promulgate administrative regulations not inconsistent with the provisions of KRS Chapter 342. KRS 342.035(5) provides that the commissioner [~~Executive Director~~] of the Department [~~Office~~] of Workers' Claims shall promulgate administrative regulations that require each insurance carrier, group self-insurer and individual self-insured employer to certify to the commissioner [~~executive director~~] the program it has adopted to insure compliance with the medical fee schedule provisions of KRS 342.035(1) and (4). KRS 342.035(5) also requires the commissioner [~~executive director~~] to promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, group self-insurer or self-insured employer pursuant to KRS Chapter 342. KRS 342.035(6) allows the commissioner to promulgate regulations incorporating managed care or other concepts intended to reduce costs or to speed the delivery of payment of medical services to employees receiving medical and related benefits under KRS Chapter 342. This administrative regulation insures that insurance carriers, group self-insurers, and individual self-insured employers implement a utilization review and audit program and establishes a medical director to speed the delivery of payment of medical services to employees receiving medical and related benefits under this chapter. This administrative regulation does not abrogate the right, as provided in KRS 342.020, of an injured employee to choose his treating physician, or an employer to participate in a managed health care system.

Section 1. Definitions. (1) "Business day" means any day except Saturday, Sunday or any day which is a legal holiday.

(2) "Calendar day" means all days in a month, including Saturday, Sunday and any day which is a legal holiday.

(3) "Carrier" is defined by KRS 342.0011(6).

(4) [(2)] "Commissioner[~~Executive director~~]" is defined by KRS 342.0011(9).

(5) [(3)] "Denial" means a determination by the utilization reviewer that the medical treatment, proposed treatment, service, or medication [~~or service~~] under review is not medically necessary or appropriate and, therefore, payment is not recommended.

(6) "Department" means the Kentucky Department of Workers' Claims.

(7) [(4)] "Medical bill audit" means the review of medical bills

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for services which have been provided to assure compliance with adopted fee schedules.

(8) "Medical Director" means the Medical Director of the Department of Workers' Claims appointed by the Secretary.

(9) "Medically necessary" or "medical necessity" is defined in 803 KAR 25:260(12).

(10) "Medical provider" is defined in 803 KAR 25:260 Section 1(11).

(11) "Physician" is defined by KRS 342.0011(32).

(12) ~~(5)~~ "Preauthorization" is defined in 803 KAR 25:260(14), means a process whereby payment for a medical service or course of treatment is assured in advance by a carrier.

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

(14) ~~(6)~~ "Utilization review" means a review of the medical necessity and appropriateness of medical care and services for purposes of recommending payments for a compensable injury or disease.

(15) ~~(7)~~ "Utilization review and medical bill audit plan" means the written plan submitted to the commissioner [executive director] by each carrier describing the procedures governing utilization review and medical bill audit activities.

(16) ~~(8)~~ "Vendor" means a person or entity which implements a utilization review and medical bill audit program for purposes of offering those services to carriers.

Section 2. Implementation. (1) The requirements established in Sections 3 through 9 of this administrative regulation shall apply to all utilization reviews and medical bill audits conducted before June [January] 1, 2022.

(2) The requirements established in Sections 10 through 18 of this administrative regulation shall apply to all utilization reviews and medical bill audits conducted on or after June [January] 1, 2022.

Section 3 [2]. Utilization Review and Medical Bill Audit Program. (1) The utilization review program shall assure that:

(a) A utilization reviewer is appropriately qualified;

(b) Treatment rendered to an injured worker is medically necessary and appropriate; and

(c) Necessary medical services are not withheld or unreasonably delayed.

(2) The medical bill audit program shall assure that:

(a) A statement or payment for medical goods and services and charges for a deposition, report, or photocopy complies with KRS Chapter 342 and applicable administrative regulations;

(b) A medical bill auditor is appropriately qualified; and

(c) A statement for medical services is not disputed without reasonable grounds.

Section 4 [3]. Utilization Review and Medical Bill Audit Plan Approval. (1) A carrier shall fully implement and maintain a utilization review and medical bill audit program.

(2) A carrier shall provide to the commissioner [executive director] a written plan describing the utilization re-view and medical bill audit program. The commissioner [executive director] shall approve each utilization review and medical bill audit plan which complies with the requirements of this administrative regulation and KRS Chapter 342.

(3) A vendor shall submit to the commissioner [executive director] for approval a written plan describing the utilization review and medical bill audit program. Upon approval, the vendor shall receive written notice from the commissioner [executive director].

(4) A carrier who contracts with an approved vendor for utilization review or medical bill audit services shall notify the commissioner [executive director] of the contractual arrangement. The contractual arrangement may provide for separate utilization review and medical bill audit vendors.

(5) A plan shall be approved for a period of four (4) years [–or until December 31, 2000, whichever is later].

(a) At least ninety (90) calendar days prior to the expiration of the period of approval, a carrier or its approved vendor shall apply for renewal of the approval.

(b) During the term of an approved plan, the commissioner [executive director] shall be notified as soon as practicable of a material change in the approved plan or a change in the selection of a vendor.

Section 5 [4]. Utilization Review and Medical Bill Audit Written Plan Requirements. The written utilization review and medical bill audit plan submitted to the commissioner [executive director] shall include the following elements:

(1) A description of the process, policies and procedures whereby decisions shall be made;

(2) A description of the specific criteria utilized in the decision making process, including a description of the specific medical guidelines used as the resource to confirm the medical diagnosis and to provide consistent criteria and practice standards against which care quality and related costs are measured;

(3) A description of the criteria by which claims, medical services and medical bills shall be selected for review;

(4) A description of the qualifications of internal and consulting personnel who shall conduct utilization review and medical bill audit and the manner in which the personnel shall be involved in the review process;

(5) A description of the process to assure that a treatment plan shall be obtained for review by qualified medical personnel if a treatment plan is required by 803 KAR 25:096;

(6) A description of the process to assure that a physician shall be designated by each injured employee as required under 803 KAR 25:096;

(7) A description of the process for rendering and promptly notifying the medical provider and employee of the initial utilization review decision;

(8) A description of the reconsideration process within the structure of the utilization review and medical bill audit program;

(9) An assurance that a database shall be maintained, which shall:

(a) Record:

1. Each instance of utilization review;

2. Each instance of medical bill audit;

3. The name of the reviewer;

4. The extent of the review;

5. The conclusions of the reviewer; and

6. The action, if any, taken as the result of the review;

(b) Be maintained for a period of at least two (2) years; and

(c) Be subject to audit by the commissioner [executive director], or his agent, pursuant to KRS 342.035(5)(b);

(10) An assurance that a toll free line shall be provided for an employee or medical provider to contact the utilization reviewer. The reviewer or a representative of the reviewer shall be reasonably accessible to an interested party at least five (5) days per week, forty (40) hours per week during normal business hours;

(11) A description of the policies and procedures that shall be implemented to protect the confidentiality of patient information; and

(12) An assurance that medical treatment guidelines adopted by the commissioner pursuant to KRS 342.035 (8)(a) shall be incorporated in the plan as the standard for utilization review medical decision making. [An assurance that the acute low back pain practice parameter adopted by the executive director pursuant to KRS 342.035(8)(a) shall be incorporated in the plan as the standard for evaluating an applicable low back claim. Additional medical guidelines which may be adopted by the executive director pursuant to KRS 342.035(8)(a) shall be incorporated in a utilization review plan.]

Section 6 [5]. Claim Selection Criteria. (1) Unless the carrier, in good faith, denies the claim as noncompensable, medical services reasonably related to the claim shall be subject to utilization review if:

(a) A medical provider requests preauthorization of a medical treatment or procedure;

(b) Notification of a surgical procedure or resident placement pursuant to an 803 KAR 25:096 treatment plan is received;

(c) The total medical costs cumulatively exceed \$3000;



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(d) The total lost work days cumulatively exceed thirty (30) days; or

(e) An arbitrator or administrative law judge orders a review.

(2) If applicable, utilization review shall commence when the carrier has notice that a claims selection criteria has been met.

(a) The following requirements shall apply if preauthorization has been requested:

1. The initial utilization review decision shall be communicated to the medical provider and employee within two (2) business [working] days of the initiation of the utilization review process, unless additional information is required. If additional information is required, tender of a single request shall be made within two (2) additional business [working] days.

2. The requested information shall be tendered by the medical provider within ten (10) business [working] days.

3. The initial utilization review decision shall be rendered within two (2) business [working] days following receipt of the requested information.

(b) The following requirements shall apply if retrospective utilization review occurs:

1. The initial utilization review decision shall be communicated to the medical provider and employee within ten (10) calendar days of the initiation of the utilization review process, unless additional information is required. If additional information is required, tender of a single request shall be made within two (2) additional business [working] days.

2. The requested information shall be tendered by the medical provider within ten (10) business [working] days.

3. The initial utilization review decision shall be rendered within two (2) business [working] days following receipt of the requested information.

(3) A medical provider may request an expedited utilization review determination for proposed medical treatment or services, the lack of which could reasonably be expected to lead to serious physical or mental disability or death. The expedited utilization review determination shall be provided within twenty-four (24) hours following a request for expedited review.

(4) Initiation of utilization review shall toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(1). The thirty (30) day period shall commence on the date of the final utilization review decision.

(5) Each medical bill audit shall be initiated within seven (7) calendar days of receipt to assure:

(a) Compliance with applicable fee schedules;

(b) Accuracy; and

(c) That a physician has been designated in accordance with 803 KAR 25:096.

(6) A medical bill audit shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(1).

Section 7 [6]. Utilization Review and Medical Bill Audit Personnel Qualifications. (1) Utilization review personnel shall have education, training, and experience necessary for evaluating the clinical issues and services under review. A physician, registered nurse, licensed practical nurse, medical records technician or other personnel, who through training and experience is qualified to issue decisions on medical necessity or appropriateness, shall issue the initial utilization review approval.

(2) A physician shall issue an initial utilization review denial. A physician shall supervise utilization review personnel in making utilization review recommendations. Personnel shall hold the license required by the jurisdiction in which they are employed.

(3) Personnel conducting a medical bill audit shall have the education, training or experience necessary for evaluating medical bills and statements.

Section 8 [7]. Written Notice of Denial. (1) Following initial review, a written notice of denial shall:

(a) Be issued to both the medical provider and the employee in a timely manner but no more than ten (10) calendar days from the initiation of the utilization review process;

(b) Be clearly entitled "UTILIZATION REVIEW - NOTICE OF

DENIAL"; and

(c) Contain:

1. A statement of the medical reasons for denial;

2. The name, state of licensure and medical license number of the reviewer; and

3. An explanation of utilization review reconsideration rights.

(2) Payment for medical services shall not be denied on the basis of lack of information absent documentation of a good faith effort to obtain the necessary information.

Section 9 [8]. Reconsideration. (1) A reconsideration process to appeal an initial decision shall be provided within the structure of utilization review.

(a) A request for reconsideration of the initial utilization review decision shall be made by an aggrieved party within fourteen (14) calendar days of receipt of a written notice of denial.

(b) Reconsideration of the initial utilization review decision shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer.

(c) A written reconsideration decision shall be rendered within ten (10) calendar days of receipt of a request for reconsideration. The written decision shall be clearly entitled "UTILIZATION REVIEW - RECONSIDERATION DECISION". If the reconsideration decision is made by an appropriate specialist or subspecialist, the written decision shall further be entitled "FINAL UTILIZATION REVIEW DECISION".

(d) Those portions of the medical record that are relevant to the reconsideration, if authorized by the patient and in accordance with state or federal law, shall be considered and providers shall be given the opportunity to present additional information.

(2)(a) If a utilization review denial is upheld upon reconsideration and a board eligible or certified physician in the appropriate specialty or subspecialty area, or a chiropractor qualified pursuant to KRS 312.200(3) and 201 KAR 21:095 has not previously reviewed the matter, an aggrieved party may request further review by:

1. A board eligible or certified physician in the appropriate specialty or subspecialty; or

2. A chiropractor qualified pursuant to KRS 312.200(3) and 201 KAR 21:095.

(b) A written decision shall be rendered within ten (10) calendar days of the request for specialty reconsideration. The specialty decision shall be clearly entitled "FINAL UTILIZATION REVIEW DECISION".

(3) A reconsideration process to appeal an initial decision shall be provided within the structure of medical bill audit.

(a) A request for reconsideration of the medical bill audit decision shall be made by an aggrieved party within fourteen (14) calendar days of receipt of that decision.

(b) Reconsideration shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer.

(c) A written decision shall be rendered within ten (10) calendar days of receipt of a request for reconsideration. The written decision shall be clearly entitled "MEDICAL BILL AUDIT RECONSIDERATION DECISION".

(d) A request for reconsideration of the medical bill audit decision shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(1).

Section 10. Utilization Review and Medical Bill Audit Program.

(1) The utilization review program shall assure that:

(a) A utilization reviewer is appropriately qualified;

(b) Treatment rendered to an injured worker is medically necessary and appropriate; and

(c) Necessary medical services are not withheld or unreasonably delayed.

(2) The medical bill audit program shall assure that:

(a) A statement or payment for medical goods and services and charges for a deposition, report, or photocopy complies with KRS Chapter 342 and applicable administrative regulations;

(b) A medical bill auditor is appropriately qualified; and

(c) A statement for medical services is not disputed without reasonable grounds.

Section 11. Utilization Review and Medical Bill Audit Plan Approval. (1) A carrier shall fully implement and maintain a utilization review and medical bill audit program.

(2) A carrier shall provide to the commissioner a written plan describing the utilization review and medical bill audit program. The commissioner shall approve each utilization review and medical bill audit plan which complies with the requirements of this administrative regulation and KRS Chapter 342.

(3) A vendor shall submit to the commissioner for approval a written plan describing the utilization review and medical bill audit program. Upon approval, the vendor shall receive written notice from the commissioner.

(4) A carrier who contracts with an approved vendor for utilization review or medical bill audit services shall notify the commissioner of the contractual arrangement. The contractual arrangement may provide for separate utilization review and medical bill audit vendors.

(5) A plan shall be approved for a period of four (4) years.

(a) At least ninety (90) calendar days prior to the expiration of the period of approval, a carrier or its approved vendor shall apply for renewal of the approval.

(b) During the term of an approved plan, the commissioner shall be notified as soon as practicable of a material change in the approved plan or a change in the selection of a vendor.

(6) A carrier, who contracts with an approved vendor for utilization review services, shall provide annually to the commissioner summaries of the number of utilizations reviews, waivers per KRS 342.035(5)(c), utilization review approvals for treatment, utilization review denials for treatment and appeals to the medical director. Such annual reports of the approved vendor shall be filed with the Department by August 1 for the preceding fiscal year ending June 30.

Section 12. Utilization Review and Medical Bill Audit Written Plan Requirements. The written utilization review and medical bill audit plan submitted to the commissioner shall include the following elements:

(1) A description of the process, policies and procedures whereby decisions shall be made;

(2) A description of the specific criteria utilized in the decision making process, including a description of the specific medical guidelines used as the resource to confirm the medical diagnosis and to provide consistent criteria and practice standards against which care quality and related costs are measured;

(3) A description of the criteria by which claims, medical services and medical bills shall be selected for review;

(4) A description of the qualifications of internal and consulting personnel who shall conduct utilization review and medical bill audit and the manner in which the personnel shall be involved in the review process;

(5) A description of the process to assure that a treatment plan shall be obtained for review by qualified medical personnel if a treatment plan is required by 803 KAR 25:096;

(6) A description of the process to assure that a physician shall be designated by each injured employee as required under 803 KAR 25:096;

(7) A description of the process for rendering and promptly notifying the medical provider and employee of the initial utilization review decision;

(8) A description of the reconsideration process within the structure of the utilization review and medical bill audit program;

(9) An assurance that a database shall be maintained, which shall:

(a) Record:

1. Each instance of utilization review;

2. Each instance of medical bill audit;

3. The name of the reviewer;

4. The extent of the review;

5. The conclusions of the reviewer; and

6. The action, if any, taken as the result of the review;

(b) Be maintained for a period of at least two (2) years; and

(c) Be subject to audit by the commissioner, or his agent,

pursuant to KRS 342.035(5)(b);

(10) An assurance that a toll free line shall be provided for an employee or medical provider to contact the utilization reviewer. The reviewer or a representative of the reviewer shall be reasonably accessible to an interested party at least five (5) days per week, forty (40) hours per week during normal business hours;

(11) A description of the policies and procedures that shall be implemented to protect the confidentiality of patient information; and

(12) An assurance that medical treatment guidelines adopted by the commissioner pursuant to KRS 342.035 (8)(a) shall be incorporated in the plan as the standard for utilization review medical decision making.

Section 13. Claim Selection Criteria and Process.

(1) Unless the medical payment obligor, in good faith, denies the claim as noncompensable or waives utilization review pursuant to KRS 342.035 (5)(c), medical services reasonably related or asserted to be related to the claim shall be subject to utilization review if:

(a) A medical provider requests preauthorization of a medical treatment or procedure;

(b) Notification of a surgical procedure or resident placement pursuant to an 803 KAR 25:096 treatment plan is received;

(c) The total medical costs cumulatively exceed \$1000; or

(d) The total lost work days cumulatively exceed fifteen (15) days.

(2) Utilization review shall commence when the medical payment obligor has notice that a claims selection criteria has been met. The medical payment obligor may waive utilization review pursuant to KRS 342.035(5)(c) within two (2) business days of such notice. Failure by the medical payment obligor to waive and communicate its waiver to the employee and medical provider or initiate its utilization review process within two (2) business days shall result in the medical payment obligor paying for the subject medical services pursuant to the appropriate fee schedules.

(a) The following requirements shall apply if preauthorization has been requested and utilization review has not been waived:

1. The utilization review decision shall be rendered and communicated to the medical provider and employee, **and the employee's attorney if represented**, within two (2) business days of the initiation of the utilization review process, unless additional information is required. If additional information is required, tender of a single request shall be made within two (2) additional business days.

2. The requested information shall be tendered by the medical provider within five (5) business days.

3. The utilization review decision shall be rendered and communicated within two (2) business days following receipt of the requested information.

(b) The following requirements shall apply if retrospective utilization review occurs:

1. The utilization review decision shall be rendered and communicated to the medical provider and employee, **and the employee's attorney if represented**, within five (5) business days of the initiation of the utilization review process, unless additional information is required. If additional information is required, tender of a single request shall be made within two (2) additional business days.

2. The requested information shall be tendered by the medical provider within five (5) business days.

3. The utilization review decision shall be rendered and communicated within two (2) business days following receipt of the requested information.

(3) A medical provider may request an expedited utilization review determination for proposed medical treatment or services, the lack of which could reasonably be expected to lead to serious physical or mental disability or death. The expedited utilization review determination shall be rendered and communicated within twenty-four (24) hours following a request for expedited review.

(4) Initiation of utilization review shall toll the thirty (30) day period for paying medical expenses pursuant to KRS 342.020(4). The thirty (30) day period for paying medical expenses shall commence on the date of the utilization review decision.

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(5) Each medical bill audit shall be initiated within seven (7) calendar days of receipt to assure:

(a) Compliance with applicable fee schedules;

(b) Accuracy; and

(c) That a physician has been designated in accordance with 803 KAR 25:096.

(6) A medical bill audit shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(4).

### Section 14. Utilization Review and Medical Bill Audit Personnel Qualifications.

(1) Utilization review personnel shall have education, training, and experience necessary for evaluating the clinical issues and services under review. A physician, registered nurse, licensed practical nurse, medical records technician or other personnel, who through training and experience is qualified to issue decisions on medical necessity or appropriateness, shall issue the initial utilization review approval.

(2) A physician shall issue an initial utilization review denial. A physician shall supervise utilization review personnel in making utilization review recommendations. Personnel shall hold the license required by the jurisdiction in which they are employed.

(3) Personnel conducting a medical bill audit shall have the education, training or experience necessary for evaluating medical bills and statements.

### Section 15. Written Notice of Denial.

(1) Following utilization review, a written notice of denial shall:

(a) Be clearly entitled "UTILIZATION REVIEW - NOTICE OF DENIAL"; and

(b) Contain:

1. A statement of the medical reasons for denial;

2. The name, state of licensure and medical license number of the reviewer; and

3. An explanation of utilization appeal rights with instructions on how to proceed with an appeal.

(2) The Department shall develop and provide a form on its website that a medical payment obligor may use to comply with Section 15 (1) above.

(3) A copy of the written notice of denial along with the mailing address, telephone number, and, if known, the email address of the employee, the employee's attorney if represented, and medical provider whose treatment, recommended treatment, or prescribed medication is being denied shall be sent by electronic mail to the medical director on the same day that the notice of denial is rendered and communicated to that medical provider and employee. The medical director shall then immediately notify the employee, the employee's attorney if represented, and that medical provider of the actions required to appeal the utilization review denial at no cost to the employee.

(4) Payment for medical services shall not be denied on the basis of lack of information absent documentation of a good faith effort to obtain the necessary information.

### Section 16. Medical Director.

(1) After consultation with the Commissioner, the [The] Secretary shall appoint a medical director to:

(a) process appeals of utilization review decisions and medical bill audit decisions rendered pursuant to this regulation, and

(b) at least annually, review and advise the commissioner and the Secretary on the effectiveness of the Medical Fee Schedule for Physicians, the Treatment Guidelines and the Pharmaceutical Formulary in reducing costs and speeding the delivery of medical services to employees receiving medical benefits under KRS Chapter 342.

(2) The medical director shall be a Kentucky licensed physician in good standing with the Kentucky Board of Medical Licensure.

(3) The medical director may, when appropriate, seek the assistance of other physicians to assist or perform any tasks outlined within this regulation. **When the treatment under appeal is chiropractic treatment, the medical director shall seek the assistance of a chiropractor qualified pursuant to KRS**

### 312.200(3) and 201 KAR 21:095.

(4) The medical director shall chair a Workers' Compensation Medical Advisory Committee to provide advice on issues related to the medical treatment of injured workers. The medical director may request the committee to advise on the medical aspects of the Department's various programs in advancing the goal of ensuring that all injured employees receive superior quality and cost efficient treatment to facilitate recovery from injury and a swift, safe return to the workforce.

(a) In addition to the medical director serving as chair, the commissioner shall serve on the Workers' Compensation Medical Advisory Committee and may appoint the following to the Workers' Compensation Medical Advisory Committee: deputy commissioner, and a representative for employers, employees, labor unions, insurance, self-insured, occupational medicine, chiropractic, orthopedics, neurosurgery, psychiatric, pain management rehabilitation, pain management, emergency medicine, **a hospital representative and a pharmacy representative.**

(b) No less than annually, the Workers' Compensation Medical Advisory Committee shall provide the commissioner and Secretary with a report concerning the activity, effectiveness and impact of the medical director and the utilization review programs on the delivery of payment of medical services to injured employees.

### Section 17. Appeals of Utilization Review Decisions.

(1) Upon receipt of a written notice of denial of treatment subject to utilization review, the employee or medical provider whose treatment, recommended treatment, or prescribed medication, is being denied may appeal the utilization review decision to the medical director.

(2) The employee or medical provider whose treatment, recommended treatment, or prescribed medication is being denied shall have **forty-five (45) [thirty (30)]** calendar days from receipt of the written notice of denial to appeal the utilization review decision to the medical director. The medical director may extend the time to appeal for good cause.

(3) Failure to appeal to the medical director shall result in the utilization review decision having preclusive effect as to the reasonableness and necessity of the treatment.

(4) An appeal to the medical director shall toll the thirty (30) day period for paying medical expenses pursuant to KRS 342.020(4). The thirty (30) day period to pay the approved medical expenses shall commence on the date of the medical director's written determination or the date on which the parties reach agreement regarding disputed treatment.

(5) The Department shall charge a fee of \$400.00 for each appeal submitted to the medical director. The fee shall be paid by the medical payment obligor no later than fifteen (15) calendar days following the date of the appeal to the medical director. Failure to pay the fee shall constitute a failure to complete a necessary step in the administrative review process and be construed as an admission by the employer that the denial was in error and the medical director should find accordingly. Failure to pay the fee may also result in assessment of a civil penalty pursuant to KRS 342.990(7)(e).

(6) Within five (5) calendar days of the appeal to the medical director, the medical payment obligor may cause the appeal to be dismissed by providing notice to the medical director, medical provider whose treatment, recommended treatment, or prescribed medication is being denied and employee. With such a dismissal, the medical payment obligor shall authorize the payment of the questioned services pursuant to the appropriate fee schedule. If such dismissal occurs, no fee as required by this regulation shall be due, or if paid, the fee shall be refunded to the medical payment obligor.

(7) Upon receipt of an appeal request by an employee or medical provider whose treatment or recommended treatment is being denied:

(a) The medical director shall conduct the utilization review appeal.

(b) The medical director may contact the medical provider whose treatment, recommended treatment, or prescribed medication is being denied for the purpose of obtaining any

necessary missing information. Necessary information shall be considered missing until the medical director has obtained:

1. All of the records reviewed by the physician that issued the utilization review denial; and

2. All medical treatment records from the date of the injury or for the two year period preceding the date of the utilization review, whichever is shorter, for the injury or occupational disease giving rise to the treatment, recommended treatment, or prescribed medication for which the utilization review denial was issued.

(c) Within seven (7) calendar days from receipt of the appeal, the [The] medical director shall set a date on which all relevant information shall be due to the medical director.

(d) The medical director shall determine the medical necessity of the treatment, recommended treatment, or prescribed medication within fourteen (14) calendar days after receipt of all necessary information by the medical director.

(e) Upon determination that any or all of the treatment, recommended treatment, or prescribed medication is reasonable and necessary, the medical director shall plainly state the reasons for each approval in a written determination.

(f) Upon determination that any or all of the treatment, recommended treatment, or prescribed medication is not reasonable and necessary, the medical director shall plainly state the reasons for each denial in a written determination.

(g) No later than two (2) days after the medical director has made a determination, the [The] medical director shall transmit the written determination to the medical provider whose treatment, recommended treatment, or prescribed medication, is being denied, the employee, the employee's attorney if represented, the employer and the medical payment obligor by facsimile, electronic mail or the United States Postal Service [within fourteen (14) calendar days after receipt of all necessary information by the medical director].

(h) Additionally, upon a determination by the medical director that there was no reasonable basis upon which to deny the treatment, recommended treatment, or prescribed medication, or that the medical payment obligor failed to follow the required utilization review procedure, the medical director shall request that sanctions be imposed on the medical payment obligor by directing the employee's or physician's costs of the appeal, including reasonable attorney's fees, be paid by the medical payment obligor. Whether or not to impose the aforementioned sanctions is within the discretion of the commissioner or administrative law judge to whom the request for sanctions was addressed.

(i) If at any time during the appeal with the medical director, the medical payment obligor raises work relatedness, causation or non-compensability issues, the parties shall be advised by the medical director that resolution of these issues requires a filing of an application for adjustment of claim or Form 112, Medical Dispute, whichever is appropriate. The medical director, however, shall continue with the appeal and issue a written determination of the reasonableness and necessity of the proposed medical treatment consistent with this regulation.

(8) A determination by the medical director of the reasonableness and necessity of the treatment, recommended treatment, or prescribed medication shall remain effective for six (6) months from the date of the written determination of the medical director, unless a change in condition is shown by objective medical findings.

(9) If the medical director's determination is to approve the medical treatment, the medical payment obligor shall pay for the treatment, recommended treatment, or prescribed medication within the thirty (30) day time period set forth in KRS 342.020(4) unless a Form 112, Medical Dispute, is timely filed.

(10) If a party disagrees with the medical director's written determination, the aggrieved party may file a Form 112, Medical Dispute, and proceed in accordance with 803 KAR 25:012.

(11) The filing of a Form 112, Medical Dispute, shall toll the thirty (30) day period for paying medical expenses pursuant to KRS 342.020(4) until such time as the reasonableness and necessity of the proposed medical treatment is decided by an administrative law judge.

(12) Failure to file a Form 112, Medical Dispute, within fourteen (14) calendar days shall result in the written determination of the medical director having preclusive effect as to the reasonableness and necessity of the treatment that is the subject of the medical director's determination.

Section 18. Reconsideration and Appeals of Medical Bill Audit Decisions. A reconsideration process to appeal an initial decision shall be provided within the structure of medical bill audit.

(a) A request for reconsideration of the medical bill audit decision shall be made by an ag-grieved party within fourteen (14) calendar days of receipt of that decision.

(b) Reconsideration shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer.

(c) A written decision shall be rendered within ten (10) calendar days of receipt of a request for reconsideration. The written decision shall be clearly entitled "MEDICAL BILL AUDIT-RECONSIDERATION DECISION".

(d) A request for reconsideration of the medical bill audit decision shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(1). [

~~(e) Any party may appeal the "MEDICAL BILL AUDIT RECONSIDERATION DECISION" to the medical director pursuant to Section 17 of this regulation.]~~

This is to certify that the commissioner has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 342.260 and 342.035.

ROBERT WALKER, Interim Commissioner

APPROVED BY AGENCY: July 13, 2021

FILED WITH LRC: July 14, 2021 at 1:43 p.m.

CONTACT PERSON: B. Dale Hamblin, Jr., Assistant General Counsel, Department of Workers' Claims, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-4404, fax (502) 564-0681, email Dale.Hamblin@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: B. Dale Hamblin, Jr

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation insures that insurance carriers, group self-insurers, and individual self-insured employers implement a utilization review and audit program and establishes a medical director to speed the delivery of payment of medical services to employees receiving medical and related benefits under this chapter. This administrative regulation does not abrogate the right, as provided in KRS 342.020, of an injured employee to choose his treating physician, or an employer to participate in a managed health care system.

(b) The necessity of this administrative regulation: To provide guidance to insurance carriers, group self-insurers, and individual self-insured employers with respect to utilization review, medical billing, and appeals to the medical director.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 342.260 provides that the Commissioner of the Department of Workers' Claims shall promulgate administrative regulations necessary to carry on the work of the Department of Workers' Claims, and the commissioner may promulgate administrative regulations not inconsistent with the provisions of KRS Chapter 342. KRS 342.035(5) provides that the commissioner of the Department of Workers' Claims shall promulgate administrative regulations that require each insurance carrier, group self-insurer and individual self-insured employer to certify to the commissioner the program it has adopted to insure compliance with the medical fee schedule provisions of KRS 342.035(1) and (4). KRS 342.035(5) also requires the commissioner to promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, group self-insurer or self-insured employer pursuant to KRS Chapter 342. KRS 342.035(6) allows the

commissioner to promulgate regulations incorporating managed care or other concepts intended to reduce costs or to speed the delivery of payment of medical services to employees receiving medical and related benefits under KRS Chapter 342.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation helps to ensure timely benefits to employees through the use of utilization review. If the employee or medical provider disagrees with a utilization review decision, they are afforded the opportunity for a review by a neutral third party, the medical director. Because the medical director will be the one to decide appealed medical disputes, the resolution of appeals will be more consistent and the delivery of medical benefits more efficient.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds a new position and amends the method by which utilization review appeals are adjudicated.

(b) The necessity of the amendment to this administrative regulation: The medical director will more effectively assist the department in fulfilling its medical-related responsibilities. Further, the amendment to this administrative regulation creates a medical advisory committee, which includes stakeholders from the various medical disciplines, to provide input on medical matters.

(c) How the amendment conforms to the content of the authorizing statutes: The commissioner is required to promulgate administrative regulations necessary to govern the medical provider utilization review activities conducted by insurance carriers, self-insured groups, and self-insured employers. The amendment to this administrative regulation adds a person with medical expertise to help assure injured employees receive timely and appropriate medical benefits.

(d) How the amendment will assist in the effective administration of the statutes: The addition of a medical director will help streamline medical decisions and help assure injured employees receive reasonable and necessary medical treatment in a timely fashion.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Insurance carriers, self-insured groups, and self-insured employers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to the administrative regulation directs the path taken by a utilization review appeal when appealed to the medical director.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The medical payment obligor will pay \$400 for each appeal taken to the medical director.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Payment obligors will no longer be required to perform an in-house review of the requested medical treatment, which required the hiring of an independent physician to perform the review. The employee and medical provider will be afforded an independent review of requested medical treatment.

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

(a) Initially: \$350,000.

(b) On a continuing basis: \$350,000 per year.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal budget is the source of funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The

Department anticipates the fees will offset implementation costs.

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

(9) TIERING: Is tiering applied? Tiering is not applied; the administrative regulation applies 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? Those governmental agencies constituting a medical payment obligor for the purpose of workers' compensation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.035(5) and (6), 342.260.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Without knowing the number of utilization review appeals that will occur, it is impossible to estimate the effect on expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is anticipated that approximately \$400,000 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? It is anticipated that approximately \$400,000 will be generated in subsequent years.

(c) How much will it cost to administer this program for the first year? Approximately \$350,000.

(d) How much will it cost to administer this program for subsequent years? Approximately \$350,000 per 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: It is anticipated that the costs to administer the medical director appeal process will be offset by the fees generated so that the overall impact will be revenue neutral.

#### **CABINET FOR HEALTH AND FAMILY SERVICES Department for Behavioral Health, Developmental and Intellectual Disabilities Division of Behavioral Health (Amended After Comments)**

#### **908 KAR 1:390. Voluntary Employer Substance Use Program (VESUP).**

RELATES TO: KRS 222.215

STATUTORY AUTHORITY: KRS 222.215

NECESSITY, FUNCTION, AND CONFORMITY: KRS 222.215 requires the cabinet to promulgate administrative regulations to implement employer-facilitated access to substance use disorder treatment for employees who screen positive during an employment-related drug screening. This administrative regulation establishes a voluntary program in which employers may facilitate employee access to substance use disorder treatment, rather than terminate or refuse hire, and sets criteria for that program.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Health and Family Services.

(2) "Employer" means any employer that agrees to participate in the Voluntary Employer Substance Use Program.

Section 2. Voluntary Employer Substance Use Program (VESUP) policy. (1) An employer that elects to participate in

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VESUP shall have the following elements written in their workplace drug and alcohol policy:

- (a) Policy rationale and goals that include:
    1. Reason for policy;
    2. Intended outcomes of the policy; and
    3. How and with whom the policy was developed;
  - (b) Expectations and compliance elements that include:
    1. When and where the policy applies;
    2. Employee positions the policy applies to;
    3. Expected employee behavior; and
    4. Prohibited behaviors and substances;
  - (c) Drug screening procedures and guidelines, including:
    1. A list of screened substances;
    2. Screening facilities approved by the cabinet;
    3. Number of times an employee shall be screened, including minimums and maximums; and
    4. Screening confidentiality and privacy protocols;
  - (d) Resources for evidence-based substance use disorder prevention; and
  - (e) A process for identifying licensed substance use disorder treatment providers.
- (2) An employer's VESUP policy shall be accessible upon request to all employees and the cabinet.
- (3) Employee compliance with the employer's VESUP policy shall be a condition of employment.

Section 3. Employee Participation in Substance Use Disorder Treatment.

- (1) Employers participating in the VESUP shall require employee participation in licensed substance use disorder treatment services as a condition of employment to work within their area of expertise or professional licensure as applicable if:
  - (a) An employee screens positive during an employment-related drug screening; and
  - (b) A biopsychosocial clinical assessment performed by a licensed substance use disorder treatment provider determines the need for substance use treatment.
- (2) If a licensed substance use disorder treatment provider determines via biopsychosocial clinical assessment that substance use disorder treatment is not necessary, the employee shall comply with the recommendations deemed appropriate by the clinical assessment as a condition of employment.
- (3) An employee identified in subsection (1) of this section shall follow the treatment plan as written by the licensed substance use disorder treatment provider.

Section 4. Employer Participation in Substance Use Disorder Treatment.

- (1) An employer shall agree to allow the employee to follow the treatment plan written by a licensed substance use disorder treatment provider as described in Section 3(3) of this administrative regulation.
- (2) An employer shall not penalize an employee for compliance with the treatment plan described in Section 3(3) of this administrative regulation.

Section 5. Records. (1) An employer shall secure all records and information concerning an employee's substance use screening and treatment.

- (2) Records as specified in subsection (1) of this section shall include:
  - (a) Results of employee drug screens;
  - (b) Documentation of employee participation and compliance in substance use disorder treatment services.
  - (3) Records specified in this section shall be maintained;
    - (a) Separately [separately]** from the employee's personnel file;
    - (b) In a secure location; and**
    - (c) Disposed of in accordance with all state and federal laws regarding protected health information.**
- (4) Records specified in this section shall be disclosed in accordance with KRS 222.215(6)(e).

Section 6. Program Requirements. (1) An employee that violates the employer workplace drug and alcohol policy by screening positive during an employment-related drug screening, rather than being terminated or refusing hire, shall have the option to receive services from a licensed substance use disorder treatment provider for:

- (a) An initial comprehensive biopsychosocial clinical assessment using a multidimensional assessment tool, that complies with the most current edition of the American Society of Addiction Medicine (ASAM) criteria to determine the appropriate level of care in accordance with 908 KAR 1:370, Section 18; and
  - (b) If deemed appropriate, creation of a written treatment plan pursuant to 908 KAR 1:370, Section 19.
- (2) Employees specified in subsection (1) of this section, that elect to participate in this program, shall provide their employer with signed consent authorizing the employer to receive documentation confirming employee participation and compliance with recommendations of the clinical assessment.
- (3) Employees specified in subsection (1) of this section, shall be informed of all FDA-approved options to treat substance use disorder from the employer or the cabinet when referred by the employer.

Section 7. Referral Information. Employers may find the following information at <http://dbhdid.ky.gov/>:

- (1) A list of some of the licensed substance use disorder treatment providers available;
- (2) Employer education on addressing substance use in the workplace; and
- (3) Screening facilities approved by the cabinet.

WENDY T. MORRIS, Commissioner  
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 9, 2021

FILED WITH LRC: July 13, 2021 at 12:25 p.m.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091, email [CHFSregs@ky.gov](mailto:CHFSregs@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Justin Dearing or Krista Quarles

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation establishes a voluntary program in which employers may facilitate employee access to substance use disorder treatment, rather than terminate or refuse hire, and sets criteria for that program.
  - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a voluntary program in which employers may facilitate employee access to substance use disorder treatment to comply with KRS 222.215.
  - (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 a voluntary program in which employers may facilitate employee access to substance use disorder treatment to comply with KRS 222.215.
  - (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 establishing a voluntary program in which employers may facilitate employee access to substance use disorder treatment, rather than terminate or refuse hire, and sets criteria for that program.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
  - (a) How the amendment will change this existing administrative regulation: This 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

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authorizing statutes: This is a new administrative regulation.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect any employer who volunteers for the program and all of their employees. This administrative regulation will also affect the Department for Behavioral Health, Developmental and Intellectual Disabilities.

(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: Employers who volunteer for this program will have to allow access to substance use disorder treatment for employees who test positive for a drug screen. Employers will also have to abide by certain privacy restrictions, have written plans of operation, and drug screening procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will create no new or additional costs to regulated entities. The Department for Behavioral Health, Developmental and Intellectual Disabilities would incur additional costs to implement SB 191 to cover staffing, training, promotional material, and resource material development and dissemination. While it is difficult to assess how many employers might take advantage of the provisions of the bill, based on implementation of similar legislation in other states, we estimate the provision of at least one part-time (.5 FTE) BHDID/Program Administrator to help develop regulations, review employers' programs; provide technical assistance; and provide ongoing assessment of the programs' continued fidelity. Using a salary between minimum and midpoint for the required staff (in order to acquire experienced staff) with a fringe rate of 120%, estimated costs of the part-time (.5 FTE) BHDID Program Administrator would be \$66,000. An additional \$6,000 of operating would be required to meet the equipment, space, and travel needs of the Program Administrator. Lastly, due to staffing and time constraints, the development and dissemination of resource and training materials would be procured through contract at the estimated cost of \$260,000. This contract can be supported by time-limited federal funding through 9/30/2021. In total, the estimated annual impact would be \$332,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation allows for the potential treatment of employees with a substance use disorder, increasing employee retention and decreasing employee turnover. In addition, employers in this program reduce their liability for civil actions in accordance with KRS 222.215(8).

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

(a) Initially: It will cost this administrative body \$332,000 initially to implement this administrative regulation.

(b) On a continuing basis: There will be a continual cost of \$332,000 annually to administer this administrative regulation from this administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds will be used for the implementation and enforcement of this administrative regulation after 9/30/2021. Time-limited-federal funding will be used to pay for the contracts before 9/30/2021.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The administrative regulation 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:

The administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? The administrative regulation does not apply tiering. The standards are applicable in a like manner statewide.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 222.215

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

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

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

(c) How much will it cost to administer this program for the first year? It will cost this administrative body \$332,000 initially to administer this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There will be a continual cost of \$332,000 annually to implement this administrative regulation from this administrative body.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS

Public comment periods 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](#).

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Education Professional Standards Board  
(Amendment)**

**16 KAR 2:180. One (1) year conditional certificate.**

RELATES TO: KRS 161.020, 161.028, 161.030, 161.1211  
STATUTORY AUTHORITY: KRS 161.030(3)(b)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.030(3)(b) establishes a one (1) year conditional certificate for persons who have completed an approved teacher preparation program but have taken and failed to successfully complete the appropriate assessments selected by the Education Professional Standards Board (EPSB). KRS 161.030(3)(b) also requires the EPSB[board] to promulgate an administrative regulation to establish the standards and procedures for issuance of the conditional certificate. This administrative regulation establishes the standards and procedures for issuance of the one (1) year conditional certificate.

Section 1. A teacher applicant for the one (1) year conditional certificate shall have:

- (1) Taken all of the appropriate assessments established in 16 KAR 6:010 corresponding to the approved teacher preparation program completed by the teacher applicant; and
- (2) Failed at least one (1) of the assessments required by subsection (1) of this section.

Section 2. (1) A superintendent, on behalf of the employing local board of education, shall be responsible for requesting the one (1) year conditional certificate.

(2) Application shall be made to the EPSB [on Form TC-4].

(a) The teacher applicant shall meet the requirements of 16 KAR 2:010, Section 3(1)[complete sections I and III of Form TC-4].

(b) The certification officer of the teacher applicant's approved teacher preparation program shall submit documentation to the EPSB[complete section IV of Form TC-4]:

1. Indicating that the teacher applicant has completed all required coursework of the teacher preparation program corresponding to each grade level and specialization for which certification is requested; and

2. Recommending the teacher applicant for the one-year conditional certificate.

(3)(a) The teacher applicant shall submit an official college transcript from each college or university attended.

(b) The teacher applicant shall have at least a bachelor's degree with:

1. A cumulative grade point average of 2.75[2.50] on a 4.0 scale; or

2. A grade point average of 3.00 on a 4.0 scale on the last thirty (30)[~~sixty (60)~~] hours of credit completed, including undergraduate and graduate coursework.

(4) The employing school district shall submit the following materials to the EPSB[with Form TC-4]:

(a) A plan for providing technical assistance and mentoring to the conditionally-certified teacher to:

1. Offer support during in-class and out-of-class time to assist the conditionally-certified teacher in meeting the teacher's instructional responsibilities; and

2. Assist the conditionally-certified teacher in passing each appropriate assessment required by 16 KAR 6:010; and

(b) The name, contact person, and role for the collaborating teacher education institution.

(5) The employing school district shall be responsible for all costs associated with providing the technical assistance and mentoring to the conditionally-certified teacher.

Section 3. (1)(a) The conditional certificate shall be issued for a validity period not to exceed one (1) year.

(b) The one (1) year conditional certificate shall not be reissued or renewed.

(2) The one (1) year conditional certificate shall be:

(a) Issued in accordance with a grade level and specialization established in 16 KAR 2:010; and

(b) Valid for each grade level and specialization listed on the face of the certificate.

(3)(a) The one (1) year conditional certificate shall be issued at the rank corresponding to the degree held by the teacher applicant.

(b) Advanced degrees shall be considered in accordance with the requirements established in 16 KAR 8:020.[

~~Section 4. Incorporation by Reference. (1) Form TC-1, rev. 7/2004, Education Professional Standards Board, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

LISA RUDZINSKI, Board Chair

APPROVED BY AGENCY: July 19, 2021

FILED WITH LRC: June 24, 2021

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 23, 2021, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards and procedures for issuance of the one (1) year conditional certificate established in KRS 161.030(3)(b).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the standards and procedures for issuance of the one (1) year conditional certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.030(b) creates a one (1) year conditional certificate. If an applicant for teacher certification has completed the approved teacher preparation program and has taken but failed to successfully complete the appropriate assessments selected by the Education Professional Standards Board, a conditional certificate may be issued for a period not to exceed one (1) year, if the employing school district, in collaboration with the teacher education institution, agrees to provide technical assistance



and mentoring support to the conditionally certified teacher. This administrative regulation sets the standards and procedures for issuance of that certificate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the requirements for issuance of the one (1) year conditional certificate.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes the reference to an outdated application and updates the required grade point average to align with other certificates.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the required grade point average and remove the outdated application.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.030 creates a one (1) year conditional certificate and this amendment updates the standards and procedures for the issuance of that certificate. This amendment updates the standards for issuance of that certificate.

(d) How the amendment will assist in the effective administration of the statutes: The amendment removes the reference to an outdated application and updates the grade point average required for issuance to align with other certificates.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 172 Kentucky school districts, 30 educator preparation program providers, and educators seeking the one (1) year conditional certificate.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action will be required from districts or educator preparation providers. Applicants for the one (1) year certificate will have to ensure that they have the requisite grade point average.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The educators issued the one (1) year conditional certificate will have the grade point average required for issuance of the full professional certificate.

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

(a) Initially: None

(b) On a continuing basis: None

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Certification fees are established by 16 KAR 4:040. No additional fees are established by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board, public colleges and universities with educator preparation programs and public-school districts.

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

requires or authorizes the action taken by the administrative regulation. KRS 161.020, KRS 161.028, KRS 161.030.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenues created by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenues created by this amendment.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a cost incurring program but, rather, establishes the standards for the one (1) year conditional certificate.

#### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Education Professional Standards Board (Amendment)

#### 16 KAR 3:070. Endorsement for individual intellectual assessment.

RELATES TO: KRS 161.020, 161.028[161.025,] 161.030

STATUTORY AUTHORITY: KRS [456.070,]161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board (EPSB) to establish standards and requirements for obtaining and maintaining a teaching certificate and for programs of preparation for teachers and other professional school personnel, and KRS 161.030(1) requires all certificates issued under KRS 161.010 to 161.126 to be issued in accordance with the administrative regulations of the EPSB[KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board of Education]. This administrative regulation provides for a program of preparation and certification[preparation-certification] leading to a certificate endorsement for administering individual intellectual assessments.

Section 1. (1) Upon application to the EPSB and compliance with 16 KAR 2:010, Section 3(1) an[An] endorsement for individual intellectual assessment shall be issued [in accordance with the pertinent Kentucky statutes and State Board of Education administrative regulations] to an applicant who holds certification as a school[guidance] counselor and who has completed the approved program of preparation for the endorsement at a teacher education institution approved in accordance with 16 KAR 5:010[under the standards and procedures included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel as adopted by 16 KAR 5:013].

(2) The program of preparation for the endorsement for individual intellectual assessment shall include the following twelve (12) hours of graduate credit:

(a) Three (3) semester hours of graduate credit in basic testing and measurement concepts;

(b) Six (6) semester hours of graduate credit which relate directly to individual intellectual assessment; and.

(c) Three (3) semester hours of graduate credit in a supervised practicum for administering, scoring, and interpreting individual intellectual assessments.

Section 2. (1) The endorsement for individual intellectual assessment shall be issued for a duration period of five (5) years and may be renewed upon completion of:

(a) Two (2) years [three (3) years] of experience with administering, scoring, and interpreting individual intellectual assessments as part of the job function; or

(b) Three (3) semester hours of additional graduate credit in counseling, school counseling, or intellectual assessments. [If any portion of renewal experience is not completed, the certificate may be renewed upon completion of six (6) semester hours of credit selected from the areas set forth in Section 3 of this administrative regulation.]

(2) If there is a lapse in the endorsement for individual intellectual assessment for lack of meeting renewal requirements, the endorsement may be reissued at a later date upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and completion of six (6) semester hours of additional graduate credit in counseling, school counseling, or intellectual assessments.]

~~Section 3. An endorsement for individual intellectual assessment shall be issued to an applicant who holds certification as a guidance counselor and who has completed twelve (12) semester hours of graduate credit including:~~

~~(1) Three (3) semester hours of graduate credit in basic testing and measurement concepts.~~

~~(2) Six (6) semester hours of graduate credit which relate directly to individual intellectual assessment.~~

~~(3) Three (3) semester hours of graduate credit in a supervised practicum for administering, scoring, and interpreting individual intellectual assessments.~~

~~Section 4. Guidance counselors who have qualified to administer individual intellectual assessments in accordance with the provisions of 704 KAR 7:020 shall no longer qualify after September 1, 1989, except upon receiving the certificate endorsement for individual intellectual assessment. Guidance counselors holding such approval and who complete the following curriculum requirements by September 1, 1989, may qualify on a minimum of nine (9) semester hours of graduate credit including:~~

~~(1) Three (3) semester hours of graduate credit in basic testing and measurement concepts.~~

~~(2) Six (6) semester hours of graduate credit which relate directly to individual intellectual assessment.]~~

Section 4.[Section 5.] The endorsement for individual intellectual assessment shall be valid for administering individual assessments at all grade levels in the schools of the Commonwealth of Kentucky.

LISA RUDZINSKI, Board Chair

APPROVED BY AGENCY: June 24, 2021

FILED WITH LRC: July 14, 2021 at 3:58 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 23, 2021, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for a program of preparation and certification leading to a certificate endorsement for administering individual intellectual assessments.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the standards for the certificate endorsement for administering individual intellectual assessments.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and to set the standards for and approve university programs for the preparation of teachers and other professional school personnel.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the requirements for issuance and renewal of the endorsement for individual intellectual assessment.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the renewal and reissuance requirements for the endorsement for individual intellectual assessment to align with the renewal and reissuance requirements for the certificate for school counselor.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the renewal and reissuance requirements for the endorsement for individual intellectual assessment to align with the renewal and reissuance requirements for the certificate for school counselor. The endorsement can only be issued to those applicants that hold a certificate for school counselor.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate.

(d) How the amendment will assist in the effective administration of the statutes: The amendment aligns the renewal and reissuance requirements for the endorsement with the certificate for school counselor which an applicant must possess to receive the endorsement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 172 Kentucky school districts and school counselors seeking an endorsement for individual intellectual assessment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will have to meet the standards delineated in the amendment to renew or reissue an endorsement for individual intellectual assessment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): School counselors holding the endorsement for individual intellectual assessment will have

alignment between the renewal requirements of the certificate and endorsement making it easier to maintain both. Districts will have access to a pool of certified counselors who also hold an endorsement to administer individual intellectual assessments.

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

- (a) Initially: None
- (b) On a continuing basis: None

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Certification fees are established by 16 KAR 4:040. No additional fees are established by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board, public colleges and universities with educator preparation programs and public-school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, KRS 161.028, KRS 161.030.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenues created by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenues created by this amendment.

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

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

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

Revenues (+/-):  
Expenditures (+/-):

Other Explanation: This is not a fee generating or a cost incurring program but, rather, establishes the standards for preparation and certification for the endorsement for individual intellectual assessment.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Education Professional Standards Board  
(Amendment)**

**16 KAR 4:050. Dating of certification.**

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires professional school personnel to hold a certificate of legal qualifications for the position. This administrative regulation establishes the effective and expiration dates for certification.

Section 1. (1) The effective date for statements of eligibility, certificates, provisional and probationary certificates, and certificates issued for internship shall be determined in accordance with Sections 2, 3, and 4 of this administrative regulation.

(2) The calendar year of the effective date shall be the base year. The year of expiration shall be determined by adding the years of duration to the base year in accordance with the applicable certification administrative regulation in KAR Title 16.

Section 2. Statements of Eligibility. (1) A statement of eligibility shall be issued to become effective on July 1 provided all requirements are completed on any date from July 1 to September 1 inclusive and to expire on June 30 of the last year of duration.

(2) If requirements for a statement of eligibility are completed at the close of the spring semester of an academic year, the statement of eligibility shall become effective from the date all requirements are completed and to expire on June 30 of the last year of duration.

(3) If requirements are completed on any date after September 1 up to and including the close of the fall semester, the statement of eligibility shall become effective from the date all requirements are completed. The statement of eligibility shall expire on December 31 of the last year of duration.

(4) If requirements are completed after the beginning of the spring semester and before the close of the spring semester, the statement shall become effective from the date all requirements are completed. The statement of eligibility shall expire on June 30 of the last year of duration.

Section 3. Certificates. (1) A certificate shall be issued to become effective on July 1 provided all requirements are completed on any date from July 1 to September 1 inclusive and to expire on June 30 of the last year of duration.

(2) If requirements for a certificate are completed after the beginning of the spring semester and before July 1, the certificate shall become effective from the date all requirements are completed and to expire on June 30 of the last year of duration.

(3) If requirements are completed after September 1 up to and including the close of the fall semester, the certificate shall be dated to become effective from the date all requirements are completed. The certificate shall expire on June 30 of the last year of duration.

Section 4. Provisional and Probationary Certificates. (1) One (1) year provisional or probationary certificates shall be issued to become effective on July 1 provided all requirements are completed on any date from July 1 to September 1 inclusive and to expire on June 30 of the following year.

(2) If requirements are completed after the beginning of the spring semester and before July 1, the certificate shall become effective from the date all requirements are completed and to expire on December 31 of that year.

(3) If requirements are completed after September 1 up to and including the close of the fall semester, the certificate shall be dated to become effective from the date all requirements are completed. The certificate shall expire on June 30 of the following year.

Section 5.[Section 4.] Certificates Issued for Internship. (1) Certificates for the internship shall be issued for the fall and spring semester of the school year provided the confirmation of employment is received by[ia] the Education Professional Standards Board (EPSB)[Office of Teacher Education and Certification] in sufficient time for the applicant to complete seventy (70) days during the semester or 140 days during the school year.

(2) In the event a person is employed during the fall semester but cannot complete the year of internship of 140 days, the internship may be established for one (1) semester and the certification shall become effective the date the confirmation of employment is received by[ia] the EPSB[Office of Teacher Education and Certification.]

(3) A certificate may be issued only when seventy (70) days exists to establish an internship.

LISA RUDZINSKI, Board Chair

APPROVED BY AGENCY: June 24, 2021

FILED WITH LRC: July 14, 2021 at 3:58 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this proposed administrative regulation shall be held on September 23, 2021, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

**CONTACT PERSON:** Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the effective and expiration dates for certification.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the effective and expiration dates for certificates issued by the Education Professional Standards Board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish the standards and requirements for obtaining and maintaining a teaching certificate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets the effective and expiration dates for certificates issued by the Education Professional Standards 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: This amendment adds a section to address the dating of one (1) year provisional and probationary certificates.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to establish the effective and expiration dates of one (1) year provisional and probationary certificates.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the Education Professional Standards Board to establish the standards and requirements for obtaining and maintaining a teaching certificate.

(d) How the amendment will assist in the effective administration of the statutes: The amendment establishes the effective and expiration dates for one (1) year provisional and probationary certificates to set clear procedures for the dating of those certificates.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 172 Kentucky school districts, 30 educator preparation program providers, and educators seeking one (1) year provisional or probationary certificates.

(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 by the listed entities will be 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 associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be clear procedures for the expiration and effective dates of the one (1) year probationary and provisional certificates. The expiration dates will align with the end of a school semester to ensure that the educator is properly certified during the semester.

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

(a) Initially: None

(b) On a continuing basis: None

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Certification fees are established by 16 KAR 4:040. No additional fees are established by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board, public colleges and universities with educator preparation programs and public-school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, KRS 161.028, KRS 161.030.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenues created by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenues created by this amendment.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a cost incurring program but, rather, establishes the effective and expiration dates for certification.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Education Professional Standards Board  
(Amendment)

**16 KAR 5:010. Standards for accreditation of educator preparation providers[units] and approval of programs.**

RELATES TO: KRS 161.028, 161.030, 164.945, 164.946, 164.947, 20 U.S.C. 1021-1022[h]

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board (EPSB) to establish standards and requirements for obtaining and maintaining a teaching certificate and for programs of preparation for teachers and other professional school personnel. KRS 161.030(1) requires all certificates issued under KRS 161.010 to 161.126 to be issued in accordance with the administrative regulations of the EPSB[board]. This administrative regulation establishes the standards for accreditation of an educator preparation provider[unit] and approval of a program to prepare an educator.

Section 1. Definitions. (1) "Accreditation Reviewers" means the evaluators who review educator preparation providers as part of the accreditation process.

(2) "Advanced programs" means educator preparation programs offered at the graduate level and designed to develop additional specialized professional skills or credentials for P-12 educators who have already completed an initial certification program.

(3) "CAEP" means the Council for the Accreditation of Educator Preparation that establishes a set of national accreditation standards for educator preparation that apply to the state accreditation process.

(4) "Educator Preparation Provider" (EPP) means the accredited unit at an institution responsible for the preparation of educators.

(5) "Initial programs" means educator preparation programs offered at the undergraduate or graduate levels to prepare an individual for a first professional teaching credential. These programs are designed to prepare candidates who have not yet earned a certificate to become P-12 educators.

(6) "Institution" means a college or university. [(1) "AACTE" means the American Association of Colleges for Teacher Education.

(2) "Biennial report" means the report prepared by the EPSB summarizing the institutionally-prepared annual reports for a two (2)-year period.

(3) "Board of examiners" means the team who reviews an institution on behalf of NCATE or EPSB.

(4) "EPSB" means the Education Professional Standards Board.

(5) "NCATE" means the National Council for Accreditation of Teacher Education.

(6) "NCATE accreditation" means a process for assessing and enhancing academic and educational quality through voluntary peer review.]

(7) "National Specialized Professional Association" means the association that defines the content-area standards for specialized programs. EPSB approved National Specialized Professional Associations are published on the EPSB website.

(8)[(7)] "State accreditation" means recognition by the EPSB that an EPP[institution] has[-a professional education unit that has] met accreditation standards as a result of review, including an on-site team review.

(9) "Technical visit" means an on-campus, in-person visit by EPSB staff to an institution or EPP to advise for program and accreditation reviews.

(10) "Unit" means the college, school or department of education that is seeking a first-time EPSB accreditation.

(11) "Institutional accreditation" means the accreditation that is granted to an entire institution. This may be earned through a regional accreditor or national accreditor that is recognized by the

U.S. Department of Education.

Section 2. General Accreditation Requirements. (1) A Kentucky[An] institution offering an educator preparation[certification] program shall have[or a program leading to a rank change]:

(a) National accreditation by an educator preparation accreditor approved by the EPSB; or

(b) State accreditation by the EPSB.[

(a) Shall be accredited by the state; and

(b) May be accredited by NCATE.]

(2) State accreditation shall be based[:

(a) A condition of offering an educator certification program or a program leading to a rank change; and

(b) Based] on the EPSB-approved national accreditation standards aligned to the components[which include the program standards] enumerated in KRS 161.028(1)(b), and that[which] are [set out in the "Professional Standards for the Accreditation of Teacher Preparation Institutions"] established by CAEP.[NCATE-. The accreditation standards shall include:]

(a) The 2022 CAEP Initial-Level Standards shall be the accreditation standards for EPPs offering initial teacher certification programs.

(b) The CAEP Standards for Accreditation at the Advanced Level shall be the accreditation standards for EPPs offering advanced educator preparation programs.[

1. Standard 1 – Candidate Knowledge, Skills, and Dispositions. Candidates preparing to work in schools as teachers or other professional school personnel know and demonstrate the content, pedagogical, and professional knowledge, skills, and dispositions necessary to help all students learn. Assessments indicate that candidates meet professional, state, and institutional standards.

2. Standard 2 – Assessment System and Unit Evaluation. The unit has an assessment system that collects and analyzes data on applicant qualifications, candidate and graduate performance, and unit operations to evaluate and improve the unit and its programs.

3. Standard 3 – Field Experience and Clinical Practice. The unit and its school partners design, implement, and evaluate field experiences and clinical practice so that teacher candidates and other school personnel develop and demonstrate the knowledge, skills, and dispositions necessary to help all students learn.

4. Standard 4 – Diversity. The unit designs, implements, and evaluates curriculum and experiences for candidates to acquire and apply the knowledge, skills, and dispositions necessary to help all students learn. These experiences include working with diverse higher education and school faculty, diverse candidates, and diverse students in P-12 schools.

5. Standard 5 – Faculty Qualifications, Performance, and Development. Faculty are qualified and model best professional practices in scholarship, service, and teaching, including the assessment of their own effectiveness as related to candidate performance; they also collaborate with colleagues in the disciplines and schools. The unit systematically evaluates faculty performance and facilitates professional development.

6. Standard 6 – Unit Governance and Resources. The unit has the leadership, authority, budget, personnel, facilities, and resources including information technology resources, for the preparation of candidates to meet professional, state, and institutional standards.

(3) NCATE accreditation shall not be a condition of offering an educator certification program or a program leading to a rank change.]

(3)[(4)] All educator preparation institutions and programs operating in Kentucky that require licensure by the Council on Postsecondary Education under KRS 164.945, 164.946, 164.947, and 13 KAR 1:020 shall be approved by:]

(a) Be accredited by the state through] the EPSB under this administrative regulation as a condition of offering an educator preparation[certification] program or a program leading to rank change[; and

(b) Comply with the EPSB "Accreditation of Preparation Programs Procedure".]

(4) For continuing national or state accreditation, an EPP must

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submit the following evidence as part of the accreditation process:

(a) Documentation submitted to the EPSB staff for Title II compliance, indicating that the EPP's summary pass rate on state licensure examinations meets or exceeds the required state pass rate of eighty (80) percent; and

(b) Documentation of institutional accreditation. Required documentation shall include a copy of the current institutional accreditation letter or report that indicates institutional accreditation status.

Section 3. Developmental Process for New Educator Preparation Institutions[Programs]. (1) ~~Institutions~~[New educator preparation institutions] requesting approval from the EPSB to be recognized as a new EPP[develop educator preparation programs that do not have a historical foundation from which to show the success of candidates or graduates as required under Section 9 of this administrative regulation] shall follow the four (4) stage developmental process established in this Section to gain temporary authority to admit and exit candidates and operate one (1) or more educator preparation programs. The developmental process is required whether an institution intends to seek national or state accreditation.

(2) Stage One: Application.

(a) The [educator preparation] institution shall submit to the EPSB for review and acceptance an official notice of intent[letter] from the chief executive officer and the governing board of the institution [to the EPSB for review and acceptance by the board] indicating the institution's intent to begin the developmental process to become an educator preparation provider[establish an educator preparation program].

(b) The EPSB staff shall make a technical visit to the institution.

(c) The institution shall submit the following documentation:

1. A letter from the institution's chief executive officer that designates the unit as having primary authority and responsibility for professional education programs;

2. A chart or narrative that lists all educator preparation programs to be offered by the institution, including any nontraditional and alternative programs, and shall depict:

a. The degree or award levels for each program;

b. The administrative location for each program; and

c. The structure or structures through which the unit implements its oversight of all programs;

3. If the unit's offerings include off-campus programs, a separate chart or narrative as described in subparagraph 2 of this paragraph, prepared for each location at which off-campus programs are geographically located;

4. An organizational chart of the institution that depicts the educator preparation unit and indicates the unit's relationship to other administrative units within the college or university;

5. The name and job description of the head of the unit and an assurance that the head has the authority and responsibility for the overall administration and operation of the unit;

6. The policies and procedures that guide the operations of the unit. Required documentation shall include the cover page and table of contents for codified policies, bylaws, procedures, and student handbooks;

7. The unit's processes, including a description of the quality assurance system, to regularly monitor and evaluate its operations, the quality of its offerings, the performance of candidates, and the effectiveness of its graduates;

8. Program review documentation identified in Section 18 and

9. The institutional accreditation. Required documentation shall include a copy of the current institutional accreditation letter or report that indicates institutional accreditation status.]

1. Program descriptions required by Section 11 of this administrative regulation;

2. Continuous assessment plan required by Section 11(2) of this administrative regulation; and

3. Fulfillment of Preconditions 1, 2, 3, 5, 7, 8, and 9 established in Section 9 of this administrative regulation.

(d) The EPSB shall provide for a paper review of this documentation by the Reading Committee and the Continuous

Assessment Review Committee.]

(d) Stage One documentation is reviewed by EPSB staff and the Program Review Committee. The Program Review Committee shall make one of the following recommendations:

1. Concerns identified and reported to the educator preparation unit for resolution; or

2. Recommendation to proceed to Stage Two.

(e) Following a recommendation from the Program Review Committee [review of the documentation], EPSB staff shall make an additional technical visit to the institution.

(3) Stage Two: On-Site visit and Accreditation Audit Committee Recommendation.

(a) Nine months prior to the scheduled on-site visit, the institution shall submit to the EPSB a written narrative self-study to describe the process and document that the unit has evaluated its practices against the EPSB approved accreditation standards. The written narrative may be supplemented by a chart, graph, diagram, table, or other similar means of presenting information and shall not exceed 100 pages in length.

(b)[(a)] A [board of examiners] team of trained reviewers identified by EPSB staff shall make a one (1) day visit to the institution to verify the self-study evidence[paper review].

(c)[(b)] The team of three shall be comprised of:

1. One (1) representative from a public postsecondary institution;

2. One (1) representative from an independent postsecondary institution; and

3. One (1) representative from a P-12 organization.[the Kentucky Education Association.]

(d)[(c)] The team shall submit a written report of its findings to the EPSB staff.

(e)[(d)] The EPSB staff shall provide a copy of the written report to the institution.

(f)[(e)]1. The institution may submit a written rejoinder to the report within thirty (30) working days of its receipt.

2. The rejoinder may be supplemented by materials pertinent to the conclusions found in the team's report.

(g)[(f)] The Accreditation Audit Committee shall review the materials gathered during Stages One and Two and make one (1) of the following recommendations to the EPSB with regards to temporary authorization:

1. Approval;

2. Approval with conditions; or

3. Denial of approval.

(4) Stage Three: EPSB Ruling.

(a) The EPSB shall review the materials and recommendations from the Accreditation Audit Committee and make one (1) of the following determinations with regards to temporary authorization:

1. Approval;

2. Approval with conditions; or

3. Denial of approval.

(b) An institution receiving approval or approval with conditions shall:

1. Hold this temporary authorization for two (2) years; and

2. Continue the developmental process by pursuing[and the first] accreditation [process] as established in this administrative regulation.

(c) An institution denied temporary authorization may reapply twelve (12) months after the EPSB's decision.

(d) During the two (2) year period of temporary authorization, the institution shall:

1. Admit and exit candidates;

2. Monitor, evaluate, and assess the academic and professional competency of candidates; and

3. Provide reports[Report regularly] to the EPSB staff on the institution's progress as requested.

(e) During the two (2) year period of temporary authorization, the EPSB staff:

1. May schedule additional technical visits; and

2. Shall monitor progress by [paper] review of annual reports and[.] admission and exit data[.] and trend data[.]

(5) Stage Four: Initial Accreditation Visit.

(a) The institution shall pursue either national or state level

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accreditation [host a first accreditation visit] within two (2) years of the approval or approval with conditions of temporary authorization.

(b) If the institution pursues national accreditation, all [A] further accreditation activities shall be governed by Section 4[9] of this administrative regulation.

(c) If the institution pursues state accreditation, all further accreditation activities shall be governed by Section 6 of this administrative regulation.

Section 4. National Accreditation. (1) An EPP may pursue initial or continuing national accreditation, if the national accreditor has been approved by the EPSB as demonstrating the requirements of KRS 161.028.

(2) A national accreditor seeking EPSB approval shall apply to the EPSB and submit documentation of the following:

(a) Established rigorous standards for educator preparation that align with KRS 161.028(1)(b) and guide institutions in establishing and maintaining high quality programs that produce evidence of academic achievement and educator performance;

(b) Attestation that all accreditation standards be met in order for an educator preparation provider to obtain and maintain accredited status

(c) The scope of accreditation;

(d) The capacity for staff and resources to carry out the operations of the organization;

(e) Public dissemination of information about the accreditation status of educator preparation providers including length of a term of accreditation, reasons for awarding accreditation status, information about any deficiencies in relation to accreditation standards and policies and reasons for conditional approval or denial of accreditation;

(f) A system of quality assurance for standards, policies and procedures that is reviewed on a cyclical basis;

(g) Policies and procedures and a governance structure that support the established accreditation and decision-making processes; and

(h) Letter(s) of support and interest from a Kentucky EPP.

(3) National accreditors approved by the EPSB shall notify the EPSB in writing of any changes to the requirements of subsection (2) of this section and shall include the rationale for the changes.

(4) If an EPP pursues initial or continuing accreditation from a national accreditor approved by the EPSB, the accreditation decision of the national accreditor shall be presented for recognition by the EPSB at the next scheduled meeting following the national accreditation decision.

(5) If the EPP is denied accreditation by the national accreditor, the EPP may seek Emergency Authorization to Operate from the EPSB as outlined in Section 5 of this administrative regulation.

(6) As part of national accreditation, an EPP's programs leading to educator certification and rank change shall be reviewed through the state program review process as established in Section 17 of this administrative regulation. Twenty-four (24) months prior to the scheduled on-site visit, the EPP shall submit programs for review in accordance with the program review section of this administrative regulation.

(7) Prior to the scheduled on-site evaluation visit, EPSB staff shall participate in the pre-visit to the institution to serve as a state consultant to the national chair.

(8) At least one (1) EPSB staff member shall be assigned as support staff and liaison during the national accreditation visit and one (1) state representative trained in the standards of the national accreditor shall serve as a member of the site visit team.

(9) To maintain continuing national accreditation, the EPP shall follow the cycle and timelines established by the national accreditor.

Section 5. Emergency Authorization to Operate (EAO). If a Kentucky EPP seeks initial or continuing national accreditation from a national accreditor approved by the EPSB and is denied accreditation, the EPP may apply for an EAO.

(2) An EAO allows the EPP to temporarily operate for one (1) year or two (2) academic terms.

(3) The EPP cannot admit new candidates during the EAO period.

(4) The application for an EAO shall be made from the EPP to the EPSB within five (5) business days of the date of the official notification by the national accreditor that the EPP was denied national accreditation.

(5) The EPSB staff will conduct a technical visit to the EPP within ten (10) business days of receipt of the request for EAO.

(6) The EPP shall submit a Corrective Action Plan (CAP) addressing all identified deficiencies from their national accreditation within fifteen (15) calendar days following the technical visit.

(7) The CAP will be reviewed by the Accreditation Audit Committee for recommendation to the EPSB for state accreditation, state accreditation with conditions, state accreditation with probation, or denial.

(8) The EPSB shall review the recommendation from the Accreditation Audit Committee at the next EPSB meeting and make the determination to grant the EPP state accreditation, state accreditation with conditions, state accreditation with probation or deny accreditation.

Section 6. State Accreditation. (1) EPPs seeking first or continuing state accreditation are on a seven-year review cycle.

(2) If an EPP held national accreditation prior, but now seeks state accreditation, the EPP would be reviewed for state accreditation in the same year as their previous national cycle.

(3) Twenty-four (24) months prior to the scheduled on-site visit, the EPP shall submit programs for review in accordance with Section 18 of this administrative regulation.

(4) Nine (9) months prior to the on-site visit the EPP shall submit a self-study document and supporting evidence that address the state accreditation standards.

(5) Assigned accreditation reviewers shall conduct an offsite review of the self-study and supporting evidence and produce a Formative Feedback Report to the EPP. [

Section 4. Schedule and Communications. (1) The EPSB shall send an accreditation and program approval schedule to each educator preparation institution no later than August 1 of each year. The first accreditation cycle shall provide for an on-site continuing accreditation visit at a five (5) year interval. The regular accreditation cycle shall provide for an on-site continuing accreditation visit at a seven (7) year interval.

(2) The accreditation and program approval schedule shall be directed to the official designated by the institution as the head of the educator preparation unit with a copy to the president. The head of the educator preparation unit shall disseminate the information to administrative units within the institution, including the appropriate college, school, department, and office.

(3) The EPSB shall annually place a two (2) year schedule of on-site accreditation visits for a Kentucky institution in the agenda materials and minutes of an EPSB business meeting.

(4) The EPSB shall coordinate dates for a joint state and NCATE accreditation on-site visit.

(5) At least six (6) months prior to a scheduled on-site visit, an institution seeking NCATE or state accreditation shall give public notice of the upcoming visit.

(6) The governance unit for educator preparation shall be responsible for the preparation necessary to comply with the requirements for timely submission of materials for accreditation and program approval as established in this administrative regulation.

Section 5. Annual Reports. (1)(a) Each institution shall report annually to the EPSB to provide data about:

1. Faculty and students in each approved program;

2. Progress made in addressing areas for improvement identified by its last accreditation evaluation; and

3. Major program developments in each NCATE standard.

(b)1. An institution seeking accreditation from NCATE and EPSB shall complete the Professional Educator Data System (PEDS) sponsored by AACTE and NCATE and located online at

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~~http://www.aacte.org. After the PEDS is submitted electronically, the institution shall print a copy of the completed report and mail it to the EPSB at 100 Airport Road, Frankfort, Kentucky 40601.~~

~~2. An institution seeking state-only accreditation shall complete the Annual State-Only Institutional Data Report online at <http://www.kyepsb.net/teacherprep/index.asp> and submit it electronically to the division contact through the EPSB Web site.~~

~~(2)(a) The EPSB shall review each institution's annual report to monitor the capacity of a unit to continue a program of high quality.~~

~~(b) The EPSB may pursue action against the unit based on data received in this report.~~

~~(3) The Accreditation Audit Committee shall submit a biennial report, based on data submitted in the annual reports, to the unit head in preparation for an on-site accreditation visit.~~

~~Section 6. Content Program Review Committee. (1)(a) The EPSB shall appoint and train a content program review committee in each of the certificate areas to provide content area expertise to EPSB staff and the Reading Committee.~~

~~(b) Nominations for the content program review committees shall be solicited from the education constituent groups listed in Section 13 of this administrative regulation.~~

~~(2)(a) A content program review committee shall review an educator preparation program to establish congruence of the program with standards of nationally-recognized specialty program associations and appropriate state performance standards.~~

~~(b) A content program review committee shall examine program content and faculty expertise.~~

~~(3) A content program review committee shall submit written comments to EPSB staff and the Reading Committee for use in the program approval process.~~

~~(4) A content program review committee shall not make any determination or decision regarding the approval or denial of a program.~~

~~Section 7. Continuous Assessment Review Committee. (1) The EPSB shall appoint and train a Continuous Assessment Review Committee to be comprised of P-12 and postsecondary faculty who have special expertise in the field of assessment.~~

~~(2) The Continuous Assessment Review Committee shall conduct a preliminary review of each institution's continuous assessment plan.~~

~~(3) The Continuous Assessment Review Committee shall meet in the spring and fall semesters of each year to analyze the continuous assessment plan for those institutions that are within one (1) year of their on-site visit.~~

~~(4) The Continuous Assessment Review Committee shall provide technical assistance to requesting institutions in the design, development, and implementation of the continuous assessment plan.~~

~~Section 8. Reading Committee. (1) The EPSB shall appoint and train a Reading Committee representative of the constituent groups to the EPSB.~~

~~(2) The Reading Committee shall conduct a preliminary review of accreditation materials, annual reports, and program review documents from an educator preparation institution for adequacy, timeliness, and conformity with the corresponding standards.~~

~~(3) For first accreditation, the Reading Committee shall:~~

~~(a) Review the preconditions documents prepared by the institution; and~~

~~(b) Send to the EPSB a preconditions report indicating whether a precondition has been satisfied by documentation. If a precondition has not been met, the institution shall be asked to revise or send additional documentation. A preconditions report stating that the preconditions have been met shall be inserted into the first section of the institutional report.~~

~~(4) For continuing accreditation and program approval, the Reading Committee shall:~~

~~(a) Determine that a submitted material meets requirements;~~

~~(b) Ask that EPSB staff resolve with the institution a discrepancy or omission in the report or program;~~

~~(c) Refer an unresolved discrepancy or omission to the on-site~~

~~accreditation team for resolution; or~~

~~(d) Recommend that the evaluation and approval process be terminated as a result of a severe deficiency in the submitted material.~~

~~(5) The EPSB shall discuss a recommendation for termination with the originating institution. The institution may submit a written response which shall be presented, with the Reading Committee comments and written accreditation and program, by EPSB staff for recommendation to the full EPSB.~~

~~Section 9. Preconditions for First Unit Accreditation. (1) Eighteen (18) months prior to the scheduled on-site visit of the evaluation team, the educator preparation institution shall submit information to the EPSB, and to NCATE if appropriate, documenting the fulfillment of the preconditions for the accreditation of the educator preparation unit, as established in subsection (2) of this section.~~

~~(2) As a precondition for experiencing an on-site first evaluation for educator preparation, the institution shall present documentation to show that the following conditions are satisfied:~~

~~(a) Precondition Number 1. The institution recognizes and identifies a professional education unit that has responsibility and authority for the preparation of teachers and other professional education personnel. Required documentation shall include:~~

~~1. A letter from the institution's chief executive officer that designates the unit as having primary authority and responsibility for professional education programs;~~

~~2. A chart or narrative that lists all professional education programs offered by the institution, including any nontraditional and alternative programs. The chart or narrative report shall depict:~~

~~a. The degree or award levels for each program;~~

~~b. The administrative location for each program; and~~

~~c. The structure or structures through which the unit implements its oversight of all programs;~~

~~3. If the unit's offerings include off-campus programs, a separate chart or narrative as described in subparagraph 2 of this paragraph, prepared for each location at which off-campus programs are geographically located; and~~

~~4. An organizational chart of the institution that depicts the professional education unit and indicates the unit's relationship to other administrative units within the college or university.~~

~~(b) Precondition Number 2. A dean, director, or chair is officially designated as head of the unit and is assigned the authority and responsibility for its overall administration and operation. The institution shall submit a job description for the head of the professional education unit.~~

~~(c) Precondition Number 3. Written policies and procedures guide the operations of the unit. Required documentation shall include cover page and table of contents for codified policies, bylaws, procedures, and student handbooks.~~

~~(d) Precondition Number 4. The unit has a well-developed conceptual framework that establishes the shared vision for a unit's efforts in preparing educators to work in P-12 schools and provides direction for programs, courses, teaching, candidate performance, scholarship, service, and unit accountability. Required documentation shall include:~~

~~1. The vision and mission of the institution and the unit;~~

~~2. The unit's philosophy, purposes, and goals;~~

~~3. Knowledge bases including theories, research, the wisdom of practice, and education policies, that inform the unit's conceptual framework;~~

~~4. Candidate proficiencies aligned with the expectations in professional, state, and institutional standards; and~~

~~5. A description of the system by which the candidate proficiencies described are regularly assessed.~~

~~(e) Precondition Number 5. The unit regularly monitors and evaluates its operations, the quality of its offerings, the performance of candidates, and the effectiveness of its graduates. Required documentation shall include a description of the unit's assessment and data collection systems that support unit responses to Standards 1 and 2 established in Section 2(2)(b)1 and 2 of this administrative regulation.~~

~~(f) Precondition Number 6. The unit has published criteria for~~



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admission to and exit from all initial teacher preparation and advanced programs and can provide summary reports of candidate performance at exit. Required documentation shall include:

1. A photocopy of published documentation (e.g., from a catalog, student teaching handbook, application form, or Web page) listing the basic requirements for entry to, retention in, and completion of professional education programs offered by the institution, including any nontraditional, alternative or off-campus programs; and

2. A brief summary of candidate performance on assessments conducted for admission into programs and exit from them. This summary shall include:

a. The portion of Title II documentation related to candidate admission and completion that was prepared for the state; and

b. A compilation of results on the unit's own assessments.

(g) Precondition Number 7. The unit's programs are approved by the appropriate state agency or agencies and the unit's summary pass rate meets or exceeds the required state pass rate of eighty (80) percent. Required documentation shall include:

1. The most recent approval letters from the EPSB and CPE, including or appended by a list of approved programs. If any program is not approved, the unit shall provide a statement that it is not currently accepting new applicants into the nonapproved program or programs. For programs that are approved with qualifications or are pending approval, the unit shall describe how it will bring the program or programs into compliance; and

2. Documentation submitted to the state for Title II, indicating that the unit's summary pass rate on state licensure examinations meets or exceeds the required state pass rate of eighty (80) percent. If the required state pass rate is not evident on this documentation, it shall be provided on a separate page.

(h) Precondition Number 8. If the institution has chosen to pursue dual accreditation from both the state and NCATE and receive national recognition for a program or programs, the institution shall submit its programs for both state and national review.

(i) Precondition Number 9. The institution is accredited, without probation or an equivalent status, by the appropriate regional institutional accrediting agency recognized by the U.S. Department of Education. Required documentation shall include a copy of the current regional accreditation letter or report that indicates institutional accreditation status.

Section 10. Institutional Report. (1) For a first accreditation visit, the educator preparation unit shall submit, two (2) months prior to the scheduled on-site visit, a written narrative describing the unit's conceptual framework and evidence that demonstrates the six (6) standards are met. The written narrative may be supplemented by a chart, graph, diagram, table, or other similar means of presenting information. The institutional report, including appendices, shall not exceed 100 pages in length. The report shall be submitted to the EPSB and to NCATE, if appropriate.

(2) For a continuing accreditation visit, the educator preparation unit shall submit, two (2) months prior to the scheduled on-site visit, a report not to exceed 100 pages addressing changes at the institution that have occurred since the last accreditation visit, a description of the unit's conceptual framework, and evidence that demonstrates that the six (6) standards are met. The narrative shall describe how changes relate to an accreditation standard and the results of the continuous assessment process, including program evaluation. The report shall be submitted to the EPSB and to NCATE, if appropriate.

Section 11. Program Review Documents. Eighteen (18) months for first accreditation and twelve (12) months for continuing accreditation in advance of the scheduled on-site evaluation visit, the educator preparation unit shall prepare and submit to the EPSB for each separate program of educator preparation for which the institution is seeking approval a concise description which shall provide the following information:

(1) The unit's conceptual framework for the preparation of school personnel which includes:

(a) The mission of the institution and unit;

(b) The unit's philosophy, purposes, professional commitments, and dispositions;

(c) Knowledge bases, including theories, research, the wisdom of practice, and education policies;

(d) Performance expectations for candidates, aligning the expectations with professional, state, and institutional standards; and

(e) The system by which candidate performance is regularly assessed;

(2) The unit's continuous assessment plan that provides:

(a) An overview of how the unit will implement continuous assessment to assure support and integration of the unit's conceptual framework;

(b) Each candidate's mastery of content prior to exit from the program, incorporating the assessment of the appropriate performance standards;

(c) Assessment of the program that includes specific procedures used to provide feedback and make recommendations to the program and unit; and

(d) A monitoring plan for candidates from admission to exit;

(3) Program experiences including the relationship among the program's courses and experiences, content standards of the relevant national specialty program associations (e.g., National Council of Teachers of Mathematics, National Council for the Social Studies, The Council for Exceptional Children, North American Association for Environmental Education, etc.), student academic expectations as established in 703 KAR 4:060, and relevant state performance standards established in 16 KAR 1:010 or incorporated by reference into this administrative regulation including:

(a) NCATE Unit Standards established in Section 2(2)(b) of this administrative regulation;

(b) Kentucky's Safety Educator Standards for Preparation and Certification;

(c) National Association of School Psychologists, Standards for School Psychology Training Programs, Field Placement Programs, Credentialing Standards; and

(d) Kentucky's Standards for Guidance Counseling Programs;

(4)(a) Identification of how the program integrates the unit's continuous assessment to assure each candidate's mastery, prior to exit from the program, of content of the academic discipline, and state performance standards as established in 16 KAR 1:010; and

(b) Identification of how the program utilizes performance assessment to assure that each candidate's professional growth is consistent with the Kentucky Teacher Standards as established in 16 KAR 1:010;

(5) A list of faculty responsible for and involved with the conduct of the specific program, along with the highest degree of each, responsibilities for the program, and status of employment within the unit and the university; and

(6) A curriculum guide sheet or contract provided to each candidate before or at the time of admittance to the program.

Section 12. Teacher Leader Master's Programs and Planned Fifth-Year Programs for Rank II. (1) All master's programs for rank change or planned fifth-year program for Rank II approved or accredited by the EPSB prior to May 31, 2008 shall no longer be approved or accredited as of December 31, 2010.

(a) Master's programs for initial certification shall be exempt from the requirements of this section.

(b) A master's program or planned fifth-year program for Rank II approved by the EPSB prior to May 31, 2008 shall cease admitting new candidates after December 31, 2010.

(c) Candidates admitted to a master's program or planned fifth-year program for Rank II approved by the EPSB prior to May 31, 2008 shall complete the program by January 31, 2013.

(d) An institution of higher learning with a master's program or a planned fifth-year program for Rank II approved by the EPSB prior to May 31, 2008 may submit a redesigned program for approval pursuant to the requirements of subsection (2) of this section beginning May 31, 2008.

(e) An institution may become operational beginning January 1, 2009, if the institution:

1. Submits a redesigned master's program or a planned fifth-year program for Rank II for review pursuant to the requirements of subsection (2) of this section; and

2. Receives approval of the redesigned program by the EPSB pursuant to Section 22 of this administrative regulation.

(f) 1. The EPSB shall appoint a Master's Redesign Review Committee to conduct reviews of redesigned master's programs and planned fifth-year programs for Rank II submitted for approval after May 31, 2008.

2. A master's program or a planned fifth-year program for Rank II submitted for approval after May 31, 2008 shall not be reviewed by the Continuous Assessment Review Committee, Content Program Review Committee, or the Reading Committee prior to presentation to the EPSB pursuant to Section 22(2) of this administrative regulation, but shall be reviewed by the Master's Redesign Review Committee.

3.a. After review of a master's program or planned fifth-year program for Rank II, the Master's Redesign Review Committee shall issue one (1) of the following recommendations to the Educational Professional Standards Board:

- (i) Approval;
- (ii) Approval with conditions; or
- (iii) Denial of approval.

b. The EPSB shall consider recommendations from staff and the Master's Redesign Review Committee and shall issue a decision pursuant to Section 22(4) of this administrative regulation.

(2) Beginning May 31, 2008, the educator preparation unit shall prepare and submit to the EPSB for each separate master's program or planned fifth-year program for Rank II for which the institution is seeking approval a concise description which shall provide the following information:

(a) Program design components which shall include the following descriptions and documentation of:

1. The unit's plan to collaborate with school districts to design courses, professional development, and job-embedded professional experiences that involve teachers at the elementary, middle, and secondary levels;

2. The unit's collaboration plan with the institution's Arts and Science faculty to meet the academic and course accessibility needs of candidates;

3. The unit's process to individualize a program to meet the candidate's professional growth or improvement plan;

4. The unit's method to incorporate interpretation and analysis of annual P-12 student achievement data into the program; and

5. The institution's plan to facilitate direct service to the collaborating school districts by education faculty members;

(b) Program curriculum that shall include core component courses designed to prepare candidates to:

- 1. Be leaders in their schools and districts;
- 2. Evaluate high-quality research on student learning and college readiness;

3. Deliver differentiated instruction for P-12 students based on continuous assessment of student learning and classroom management;

4. Gain expertise in content knowledge, as applicable;

5. Incorporate reflections that inform best practice in preparing P-12 students for postsecondary opportunities;

6. Support P-12 student achievement in diverse settings;

7. Enhance instructional design utilizing the Program of Studies, Core Content for Assessment, and college readiness standards;

8. Provide evidence of candidate mastery of Kentucky Teacher Standards utilizing advanced level performances and Specialized Professional Associations (SPA) Standards if applicable; and

9. Design and conduct professionally relevant research projects; and

(c) The unit's continuous assessment plan that includes, in addition to the requirements of Section 11(2) of this administrative regulation:

1. Instruments to document and evaluate candidate ability to demonstrate impact on P-12 student learning;

2. Clinical experiences and performance activities; and

3. A description of a culminating performance-based

assessment.

(3)(a) A master's program for rank change approved pursuant to this section shall be known as a Teacher Leader Master's Program.

(b) Upon completion of a Teacher Leader Master's Program and recommendation of the institution, a candidate may apply to the EPSB for a Teacher Leader endorsement.

(c) 1. An institution with an approved Teacher Leader Master's Program may establish an endorsement program of teacher leadership coursework for any candidate who received a Master's degree at an out of state institution or who received a master's degree from a Kentucky program approved prior to May 31, 2008.

2. Upon completion of the teacher leadership course work and recommendation of the institution, a candidate who has received a master's degree at an out of state institution or a master's degree from a Kentucky program approved prior to May 31, 2008, may apply to the EPSB for a Teacher Leader endorsement.

Section 7[13]. Accreditation Reviewers[Board of Examiners].

(1) Accreditation Reviewers[A Board of Examiners] shall be comprised of:]:

(a) Be [recruited and appointed by the EPSB. The board shall be comprised of an equal number of] representatives from three (3) constituent groups:]

(a)[1.] Teacher educators;

(b)[2.] P-12 teachers and administrators; and

(c)[3.] State and local policymaker groups.]; and

(b) Include at least thirty-six (36) members representing the following constituencies:

1. Kentucky Education Association, at least ten (10) members;

2. Kentucky Association of Colleges of Teacher Education, at least ten (10) members; and

3. At least ten (10) members nominated by as many of the following groups as may wish to submit a nomination:

a. Kentucky Association of School Administrators;

b. Persons holding positions in occupational education;

c. Kentucky Branch National Congress of Parents and Teachers;

d. Kentucky School Boards Association;

e. Kentucky Association of School Councils;

f. Kentucky Board of Education;

g. Kentucky affiliation of a national specialty program association;

h. Prichard Committee for Academic Excellence;

i. Partnership for Kentucky Schools; and

j. Subject area specialists in the Kentucky Department of Education.

(2) An appointment shall be for a period of four (4) years. A member may serve an additional term if renominated and reappointed in the manner prescribed for membership. A vacancy shall be filled by the EPSB as it occurs.

(3) A member of the Board of Examiners and a staff member of the EPSB responsible for educator preparation and approval of an educator preparation program shall be trained by NCATE or trained in an NCATE-approved state program.]

(2) Accreditation reviewers shall be trained on the CAEP accreditation standards.

(3)[(4)] The EPSB staff shall select and appoint for each scheduled on-site accreditation a team of Accreditation Reviewers[examiners] giving consideration to the number and type of programs offered by the institution. [Team appointments shall be made at the beginning of the academic year for each scheduled evaluation visit. A replacement shall be made as needed.

(5) For an institution seeking NCATE accreditation, the EPSB and NCATE shall arrange for the joint Board of Examiners to co-chaired be by an NCATE appointed team member and a state team chair appointed by the EPSB.

(a) The joint Board of Examiners shall be composed of a majority of NCATE appointees in the following proportions, respectively: NCATE and state six (6) and five (5), five (5) and four (4), four (4) and three (3), three (3) and two (2).

(b) The size of the Board of Examiners shall depend upon the size of the institution and the number of programs to be evaluated.

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~~(5) The~~~~(6) For an institution seeking state-only accreditation,~~  
~~the] EPSB staff shall identify[appoint] a chair for the team.[from a~~  
~~pool of trained Board of Examiners members.~~

~~(7) For state-only accreditation, the Board of Examiners shall~~  
~~have six (6) members.~~

~~(8) The EPSB shall make arrangements for the release time of~~  
~~a Board of Examiner member from his or her place of employment~~  
~~for an accreditation visit.~~

~~Section 14. Assembly of Records and Files for the Evaluation~~  
~~Team. For convenient access, the institution shall assemble, or~~  
~~make available, records and files of written materials which~~  
~~supplement the institutional report and which may serve as further~~  
~~documentation. The records and files shall include:~~

~~(1) The faculty handbook;~~

~~(2) Agenda, list of participants, and products of a meeting,~~  
~~workshop, or training session related to a curriculum and~~  
~~governance group impacting professional education;~~

~~(3) Faculty vitae or resumes;~~

~~(4) A random sample of graduates' transcripts;~~

~~(5) Conceptual framework documents;~~

~~(6) A curriculum program, rejoinder, or specialty group~~  
~~response that was submitted as a part of the program review~~  
~~process;~~

~~(7) Course syllabi;~~

~~(8) Policies, criteria, and student records related to admission~~  
~~and retention;~~

~~(9) Samples of students' portfolios and other performance~~  
~~assessments;~~

~~(10) Record of performance assessments of candidate~~  
~~progress and summary of results including a program change~~  
~~based on continuous assessment;~~

~~(11) Student evaluations, including student teaching and~~  
~~internship performance; and~~

~~(12) Data on performance of graduates, including results of~~  
~~state licensing examinations and job placement rates.]~~

~~Section 8[45]. State Accreditation Previsit to the Institution. No~~  
~~later than one (1) month prior to the scheduled on-site evaluation~~  
~~visit, the EPSB staff and team chair shall conduct a pre-visit to the~~  
~~institution to make a final review of the arrangements.[ For an~~  
~~NCATE-accredited institution, the previsit shall be coordinated with~~  
~~NCATE.]~~

~~Section 9[46]. State On-site Accreditation Visit. (1) At least one~~  
~~(1) staff member of the EPSB shall be assigned as support staff~~  
~~and liaison during the accreditation visit.~~

~~(2) The educator preparation institution shall reimburse a state~~  
~~team member for travel, lodging, and meals in accordance with~~  
~~200 KAR 2:006. [A team member representing NCATE shall be~~  
~~reimbursed by the educator preparation institution.]~~

~~(3) The Accreditation Reviewers[evaluation team] shall conduct~~  
~~an on-site evaluation of the self-study materials prepared by the~~  
~~institution and seek out additional information, as needed, to make~~  
~~a determination as to whether the standards were met for the~~  
~~accreditation of the institution's educator preparation unit and for~~  
~~the approval of an individual educator preparation program.[ The~~  
~~evaluation team shall make use of the analyses prepared through~~  
~~the preliminary review process.]~~

~~(4)(a) An off-campus site that[which] offers a self-standing~~  
~~program shall require a team review. If additional team time is~~  
~~required for visiting an off-campus site, the team chair, the~~  
~~institution, and the EPSB shall negotiate special arrangements.~~

~~(b) Off-campus programs shall be:~~

~~1. Considered as part of the unit and the unit shall be~~  
~~accredited, not the off-campus programs; and~~

~~2. Approved in accordance with Section 23[28] of this~~  
~~administrative regulation.~~

~~(5) Accreditation reviewers shall recommend findings on each~~  
~~of the accreditation standards[In a joint team, all Board of~~  
~~Examiners members shall vote on whether the educator~~  
~~preparation institution has met the six (6) NCATE standards.] A~~  
~~recommendation[determination] about each standard shall be~~

limited to the following options:

~~(a) Met;~~

~~(b) Met, with one (1) or more defined areas for improvement; or~~

~~(c) Not met.~~

~~(6)(a) The Accreditation Reviewers[Board of Examiners] shall~~  
~~review each program and cite the areas for improvement for each,~~  
~~if applicable.~~

~~(b) The Accreditation Reviewers[Board of Examiners] shall~~  
~~define the areas for improvement in its report.~~

~~(7) The EPP may submit within thirty (30) working days of~~  
~~receipt of the report a written rejoinder that may be supplemented~~  
~~by materials pertinent to a conclusion found in the evaluation~~  
~~report.~~

~~(a) The accreditation documentation shall be provided for~~  
~~review by the Accreditation Audit Committee and EPSB.~~

~~(b) An unmet standard or area of improvement cited by the~~  
~~team may be recommended for change or removal by the~~  
~~Accreditation Audit Committee or by the EPSB because of~~  
~~evidence presented in the rejoinder.]~~

~~(7) The processes established in subsections (5) and (6) of this~~  
~~section shall be the same for first and continuing accreditation.~~

~~(8) The on-site evaluation process shall end with a brief oral~~  
~~report:~~

~~(a) By the NCATE team chair and state team chair for a joint~~  
~~state/NCATE visit; or~~

~~(b) By the state team chair for a state-only visit.~~

~~Section 17. Preparation and Distribution of the Evaluation~~  
~~Report. (1) For a state-only visit, the evaluation report shall be~~  
~~prepared and distributed as required by this subsection.~~

~~(a) The EPSB staff shall collect the written evaluation pages~~  
~~from each Board of Examiners member before leaving the~~  
~~institution.~~

~~(b) The first draft shall be typed and distributed to Board of~~  
~~Examiners members.~~

~~(c) A revision shall be consolidated by the Board of Examiners~~  
~~chair who shall send the next draft to the unit head to review for~~  
~~factual accuracy.~~

~~(d) The unit head shall submit written notification to the EPSB~~  
~~confirming receipt of the draft.~~

~~(e) The unit head shall submit to the EPSB and Board of~~  
~~Examiners chair within ten (10) working days either:~~

~~1. A written correction to the factual information contained in~~  
~~the report; or~~

~~2. Written notification that the unit head has reviewed the draft~~  
~~and found no factual errors.~~

~~(f) The Board of Examiners chair shall submit the final report to~~  
~~the EPSB and a copy to each member of the Board of Examiners.~~

~~(g) The final report shall be printed by the EPSB and sent to~~  
~~the institution and to the Board of Examiners members within thirty~~  
~~(30) to sixty (60) working days of the conclusion of the on-site visit.~~

~~(2) For a joint state/NCATE visit, the evaluation report shall be~~  
~~prepared and distributed as required by this subsection.~~

~~(a) The NCATE chair shall be responsible for the preparation,~~  
~~editing and corrections to the NCATE report.~~

~~(b) The state chair shall be responsible for the preparation,~~  
~~editing and corrections of the state report in the same manner~~  
~~established in subsection (1) of this section for a state-only visit.~~

~~(c) The EPSB Board of Examiners report for state/NCATE~~  
~~continuing accreditation visits shall be prepared in accordance with~~  
~~the format prescribed by NCATE for State/NCATE accreditation~~  
~~visits and available on its Web site at~~  
~~<http://www.ncate.org/boe/boeResources.asp>.~~

~~Section 18. Institutional Response to the Evaluation Report.~~  
~~(1)(a) The institution shall acknowledge receipt of the evaluation~~  
~~report within thirty (30) working days of receipt of the report.~~

~~(b) If desired, the institution shall submit within thirty (30)~~  
~~working days of receipt of the report a written rejoinder to the~~  
~~report which may be supplemented by materials pertinent to a~~  
~~conclusion found in the evaluation report.~~

~~(c) The rejoinder and the Board of Examiners report shall be~~  
~~the primary documents reviewed by the Accreditation Audit~~

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### Committee and EPSB:

(d) An unmet standard or area of improvement statement cited by the team may be recommended for change or removal by the Accreditation Audit Committee or by the EPSB because of evidence presented in the rejoinder. The Accreditation Audit Committee or the EPSB shall not be bound by the Board of Examiners' decision and may reach a conclusion different from the Board of Examiners or NCATE.

(2) If a follow-up report is prescribed through accreditation with conditions, the institution shall follow the instructions that are provided with the follow-up report.

(3) If the institution chooses to appeal a part of the evaluation results, the procedure established in Section 24 of this administrative regulation shall be followed.

(4) The institution shall make an annual report relating to the unit for educator preparation and relating to the programs of preparation as required by Section 5 of this administrative regulation.]

Section 10[49]. Accreditation Audit Committee. (1) The Accreditation Audit Committee shall be a committee of the EPSB, and shall report to the full EPSB. The EPSB shall appoint the Accreditation Audit Committee as follows:

(a) One (1) lay member;

(b) Two (2)[One (1)] classroom teachers[teacher, appointed from nominees provided by the Kentucky Education Association];

(c) Four (4) EPP[Two (2) teacher education] representatives, two (2)[one (1)] from a state-supported institution and two (2)[one (1)] from an independent educator preparation institution, appointed from nominees provided by the Kentucky Association of Colleges for Teacher Education; and

(d) One (1)[Two (2)] school administrator [administrators appointed from nominees provided by the Kentucky Association of School Administrators.]

(2) The chair[chairperson] of the EPSB shall designate a member of the Accreditation Audit Committee to serve as its chair[chairperson].

(3) An appointment shall be for a period of four (4) years except that three (3) of the initial appointments shall be for a two (2) year term. A member may serve an additional term if renominated and reappointed in the manner established for membership. A vacancy shall be filled as it occurs in a manner consistent with the provisions for initial appointment.]

(4) A member of the Accreditation Audit Committee shall be trained by NCATE or in NCATE-approved training.]

(4)[(5)] Following an on-site accreditation visit, the Accreditation Audit Committee shall review the reports and materials constituting an institutional self-study, the report of the accreditation reviewers[evaluation team], and the institutional response to the evaluation report. The committee shall then prepare a recommendation for consideration by the EPSB.

(a) The committee shall review procedures of the Accreditation Reviewers[Board of Examiners] to determine whether approved accreditation guidelines were followed.

(b) For each institution, the committee shall make a recommendation with respect to the accreditation of the institutional unit for educator preparation as well as for approval of the individual programs of preparation.

(c) For first accreditation, one (1) of four (4) recommendations shall be made:

1. Accreditation;

2. Provisional accreditation with conditions;

3. Provisional Accreditation with probation[Denial of accreditation]; or

4. Denial[Revocation] of accreditation.

(d) For regular continuing accreditation, one (1) of four (4) recommendations shall be made:

1. Accreditation;

2. Accreditation with conditions;

3. Accreditation with probation; or

4. Revocation of accreditation.]

(6) For both first and continuing accreditation, the Accreditation Audit Committee shall review each program report including a report from the Reading Committee, Board of Examiners team, and

institutional response and shall make one (1) of three (3) recommendations for each individual preparation program to the EPSB:

(a) Approval;

(b) Approval with conditions; or

(c) Denial of approval.]

(5) The Accreditation Reviewers[(7) The Board of Examiners] Team Chair may write a separate response to the recommendation of the Accreditation Audit Committee[Committee's] if the Accreditation Audit Committee's[Committee] decision differs from the Accreditation Reviewer's[Board of Examiners'] evaluation report.]

(8) The Accreditation Audit Committee shall compile accreditation data and information for each Kentucky institution that prepares school personnel. It shall prepare for the EPSB reports and recommendations regarding accreditation standards and procedures as needed to improve the accreditation process and the preparation of school personnel.]

Section 11[20]. Official State Accreditation Action by the EPSB[Education—Professional—Standards—Board]. (1) A recommendation from the Accreditation Audit Committee shall be presented to the full EPSB.

(2) The EPSB shall consider the findings and recommendations of the Accreditation Audit Committee and make a final determination regarding the state accreditation of the EPP[educator preparation unit].

(3) Decision options following a first accreditation visit shall be "accreditation", "provisional accreditation with conditions", "provisional accreditation with probation", or "denial of accreditation"[, or "revocation of accreditation"].

(a) Accreditation.

1. This accreditation decision indicates that the EPP[unit] meets each of the [six (6) NCATE] standards for [unit] accreditation. Areas for improvement may be cited, indicating problems warranting the institution's attention. In its subsequent annual reports, the educator preparation[professional education] unit shall be expected to describe progress made in addressing the areas for improvement cited in the EPSB's action report.

2. The next on-site visit shall be scheduled seven[five (5)] years following the semester of the visit.

(b) Provisional accreditation with conditions.

1. This accreditation decision indicates that the EPP[unit] has three (3) or more areas for improvement within one (1) standard or multiple areas for improvement across multiple standards[not met one (1) or more of the NCATE standards.] The EPP[unit] has accredited status but shall satisfy conditions[provisions] by providing evidence of addressing each area for improvement[meeting each previously-unmet standard]. The EPSB shall require submission of documentation that addresses the areas for improvement[unmet standard or standards] within six (6) months of the accreditation decision. Following the review of the documentation, the EPSB shall decide to[, or shall schedule a visit focused on the unmet standard or standards within two (2) years of the semester that the provisional accreditation decision was granted. If the EPSB decides to require submission of documentation, the institution may choose to waive that option in favor of the focused visit within two (2) years. Following the focused visit, the EPSB shall decide to:

a. Accredit; [or]

b. Provisionally accredit with probation; or

c. Deny accreditation.]

b. Revoke accreditation.]

2. If the EPP[unit] is accredited, the next on-site visit shall be scheduled for seven (7)[five (5)] years following the semester of the first accreditation visit.

(c) Provisional Accreditation with Probation.

1. This accreditation decision indicates that the EPP has not met one (1) or more of the accreditation standards. The EPP has accredited status but is on probation. The EPP shall schedule an on-site visit within two (2) years of the semester in which the provisional probationary decision was rendered. The EPP as part of this visit shall address the unmet standard and the identified

areas for improvement. Following the on-site review, the EPSB shall decide to:

- a. Accredit; or
- b. Deny accreditation.

2. If the EPP is accredited, the next on-site visit shall be scheduled for seven (7) years following the semester of the first accreditation visit.

(d)(c) Denial of accreditation. This accreditation decision indicates that the EPP[unit] does not meet two (2)[one (1)] or more of the [NCATE] standards, and has pervasive problems that limit its capacity to offer quality programs that adequately prepare candidates.

(d) Revocation of accreditation. This accreditation decision indicates that the unit has not sufficiently addressed the unmet standard or standards following a focused visit.

(4) Decision options following a continuing accreditation visit shall be "accreditation", "accreditation with conditions", "accreditation with probation", or "revocation of accreditation".

(a) Accreditation.

1. This accreditation decision indicates that the EPP[unit] meets each of the [six (6)–NCATE] standards for [unit] accreditation. Areas for improvement may be cited, indicating problems warranting the EPPs[institution's] attention. In its subsequent annual reports, the EPP[professional education unit] shall [be expected to] describe progress made in addressing the areas for improvement cited in EPSB's action report.

2. The next on-site visit shall be scheduled for seven (7) years following the semester of the visit.

(b) Accreditation with conditions.

1. This accreditation decision indicates that the EPP[unit] has met all standards, but has three (3) or more areas of improvement within[not met] one (1) standard or multiple areas for improvement across multiple accreditation[or more of the NCATE] standards. If the EPSB renders this decision, the EPP[unit] shall maintain its accredited status, but shall satisfy conditions by addressing each area for improvement in a written report[meeting previously unmet standards]. EPSB shall require submission of documentation that addresses the areas for improvement[unmet standard or standards] within six (6) months of the decision to accredit with conditions[, or shall schedule a visit focused on the unmet standard or standards within two (2) years of the semester that the accreditation with conditions decision was granted. If the EPSB decides to require submission of documentation, the institution may choose to waive that option in favor of the focused visit within two (2)-years]. Following the review of the documentation[focused visit], the EPSB shall decide to:

- a. Continue accreditation; [or]
- b. Continue accreditation with probation; or
- c. [b.] Revoke accreditation.

2. If the EPSB renders the decision to continue accreditation, the next on-site visit shall be scheduled for seven (7) years following the semester in which the continuing accreditation visit occurred.

(c) Accreditation with probation.

1. This accreditation decision indicates that the EPP[unit] has not met one (1) or more of the accreditation[NCATE] standards and has pervasive problems that limit its capacity to offer quality programs that adequately prepare candidates. As a result of the continuing accreditation review, the EPSB has determined that areas for improvement with respect to standards may place an institution's accreditation in jeopardy if left uncorrected. The EPP[institution] shall schedule an on-site visit within two (2) years of the semester in which the probationary decision was rendered. The EPSB Staff shall schedule a visit focused on the unmet standard or standards within two (2) years of the semester that the accreditation with probation decision was granted.[This visit shall mirror the process for first accreditation. The unit as part of this visit shall address all NCATE standards in effect at the time of the probationary review at the two (2) year point.] Following the on-site review, the EPSB shall decide to:

- a. Continue accreditation; or
- b. Revoke accreditation.

2. If accreditation is continued, the next on-site visit shall be

scheduled for seven (7)[five (5)] years after the semester of the continuing accreditation[probationary] visit.

(d) Revocation of accreditation. This decision follows a probationary[Following a comprehensive site] visit and[that occurs as a result of an EPSB decision to accredit with probation or to accredit with conditions, this accreditation decision] indicates that the EPP[unit] does not meet one (1) or more of the accreditation[NCATE] standards, and has pervasive problems that limit its capacity to offer quality programs that adequately prepare candidates. Accreditation shall be revoked if the unit:

1. No longer meets requirements of[preconditions to] accreditation, such as loss of state program approval, national accreditation for educator preparation, or insitutional[regional] accreditation;

2. Misrepresents its accreditation status to the public;

3. Falsely reports data or plagiarized information submitted for accreditation and program review purposes; or

4. Fails to submit annual reports or other documents required for accreditation and program review.

(5) Notification of the EPSB action to revoke continuing accreditation or deny first accreditation[, including failure to remove conditions,] shall include notice that:

(a) The EPP[institution] shall inform candidates[students] currently admitted to a certification or rank program of the following:

1. A candidate[student] recommended for certification or advancement in rank within the twelve (12) months immediately following the denial or revocation of state accreditation and who applies to the EPSB within the fifteen (15) months immediately following the denial or revocation of state accreditation shall receive the certificate or advancement in rank; and

2. A candidate[student] who does not meet the criteria established in subparagraph 1. of this paragraph shall transfer to an EPSB[a state] accredited EPP[education preparation unit] in order to receive the certificate or advancement in rank.[: and]

(b) An institution for which the EPSB has denied or revoked accreditation may[shall] seek national or state accreditation. For state accreditation, the[ through completion of the first accreditation process. The] on-site accreditation visit shall be scheduled by the EPSB no earlier than two (2) years following the EPSB action to revoke or deny state accreditation. During this two (2) year period, candidates may not be admitted to any educator preparation program.

Section 12[24]. Revocation for Cause. (1) If an area of concern or an allegation of misconduct arises [in]between accreditation visits, staff shall bring a complaint to the EPSB for initial review.

(2) After review of the allegations in the complaint, the EPSB may change the accreditation status of the EPP or refer the matter to the Accreditation Audit Committee for further investigation.

(3)(a) Notice of the EPSB's decision to refer the matter and the complaint shall be sent to the EPP[institution.]

(b) Within thirty (30) days of receipt of the complaint, the EPP[institution] shall respond to the allegations in writing and provide evidence pertaining to the allegations in the complaint to the EPSB.

(4)(a) The Accreditation Audit Committee shall review any evidence supporting the allegations and any information provided by the EPP[institution].

(b) Upon completion of the review, the Accreditation Audit Committee shall issue a report containing one (1) of the following four (4) recommendations to the EPSB:

- 1. Accreditation;
- 2. Accreditation with conditions;
- 3. Accreditation with probation; or
- 4. Revocation of accreditation.

(5) The EPP[institution] shall receive a copy of the Accreditation Audit Committee's report and may file a response to the Accreditation Audit Committee's recommendation.

(6)(a) The recommendation from the Accreditation Audit Committee and the EPP's[institution's] response shall be presented to the EPSB.

(b) The EPSB shall consider the findings and

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recommendations of the Accreditation Audit Committee and make a final determination regarding the accreditation of the EPP[educator preparation unit].]

~~Section 22. Program Approval Action Outside the First or Regular Continuing Accreditation Cycle. (1) Approval of a program shall be through the program process established in Section 11 of this administrative regulation except that a new program not submitted during the regular accreditation cycle or a program substantially revised since submission during the accreditation process shall be submitted for approval by the EPSB prior to admission of a student to the program.~~

~~(2) For a new or substantially revised program, the EPSB shall consider a recommendation by staff, including review by the Continuous Assessment Review Committee, Content Program Review Committee, and the Reading Committee.~~

~~(3) A recommendation made pursuant to subsection (2) of this section shall be presented to the full EPSB.~~

~~(4) Program approval decision options shall be:~~

~~(a) Approval, with the next review scheduled during the regular accreditation cycle unless a subsequent substantial revision is made;~~

~~(b) Approval with conditions, with a maximum of one (1) year probationary extension for correction of a specified problem to be documented through written materials or through an on-site visit. At the end of the extension, the EPSB shall decide that the documentation supports:~~

- ~~1. Approval; or~~
- ~~2. Denial of approval; or~~

~~(c) Denial of approval, indicating that a serious problem exists which jeopardizes the quality of preparation of school personnel.~~

~~(5) The EPSB shall order a review of a program if it has cause to believe that the quality of preparation is seriously jeopardized. The review shall be conducted under the criteria and procedures established in the EPSB "Emergency Review of Certification Programs Procedure" policy incorporated by reference. The on-site review shall be conducted by EPSB staff and a Board of Examiners team. The review shall result in a report to which the institution may respond. The review report and institutional response shall be used by the Executive Director of the EPSB as the basis for a recommendation to the full EPSB for:~~

- ~~(a) Approval;~~
- ~~(b) Approval with conditions; or~~
- ~~(c) Denial of approval for the program.~~

~~(6) If the EPSB denies approval of a program, the institution shall notify each student currently admitted to that program of the EPSB action. The notice shall include the following information:~~

~~(a) A student recommended for certification or advancement in rank within the twelve (12) months immediately following the denial of state approval and who applies to the EPSB within the fifteen (15) months immediately following the denial of state approval shall receive the certification or advancement in rank; and~~

~~(b) A student who does not meet the criteria established in paragraph (a) of this subsection shall transfer to a state approved program in order to receive the certificate or advancement in rank.]~~

Section 13[23]. Public Disclosure. (1) After an accreditation and[a unit or] program approval decision becomes final, the EPSB shall prepare official notice of the action. The disclosure notice shall include the essential information provided in the official letter to the institution, including the decision on accreditation, program approval, standards not met, program areas for improvement, and dates of official action.

(2) The public disclosure shall be entered into the minutes of the EPSB[board] for the meeting in which the official action was taken by the EPSB.]

(3) Thirty (30) days after the institution has received official notification of EPSB action, the EPSB shall on request provide a copy of the public disclosure notice to the Kentucky Education Association, the Council on Postsecondary Education, the Association of Independent Kentucky Colleges and Universities or other organizations or individuals.]

Section 14[24]. Appeals Process. (1) If an institution seeks appeal of a decision, the institution shall appeal within thirty (30) days of receipt of the EPSB official notification. An institution shall appeal on the grounds that:

- (a) A prescribed standard was disregarded;
- (b) A state procedure was not followed; or
- (c) Evidence of compliance in place at the time of the review and favorable to the institution was not considered.

(2) An ad hoc appeals board of no fewer than three (3) members shall be appointed by the EPSB chair from members of the Accreditation Reviewers[Board of Examiners] who have not had involvement with the team visit or a conflict of interest regarding the institution. The ad hoc committee shall recommend action on the appeal to the EPSB.

(3) The consideration of the appeal shall be in accordance with KRS Chapter 13B.]

~~Section 25. Approval of Alternative Route to Certification Programs. (1) Alternative route programs authorized under KRS 161.028(1)(s) or (t) shall adhere to the educator preparation unit accreditation and program approval processes established in this administrative regulation and in the EPSB policy and procedure entitled "Approval of Alternative Route to Certification Program Offered Under KRS 161.028" as a condition of offering an educator certification program or program leading to a rank change.~~

~~(2) The EPSB shall consider a waiver upon request of the institution offering the alternative route program. The request shall be submitted in writing no later than thirty (30) days prior to the next regularly scheduled EPSB meeting. In granting the waiver, the board shall consider the provisions of this administrative regulation and any information presented that supports a determination of undue restriction.]~~

Section 15. Interim Reports. (1) Each state accredited EPP shall report to the EPSB in the third year following its previous accreditation visit to provide data about:

1. Progress made in addressing areas for improvement identified by its last accreditation evaluation;
2. Changes in the institution's institutional accreditation status; and
3. Continuous improvement efforts relating to the accreditation standards.

(2)(a) The EPSB staff shall review each EPP's interim report to monitor the progress of the EPP to continue a program of high quality.

(b) The EPSB may pursue action against the EPP based on data received in this report.

Section 16[26]. In compliance with the Federal Title II Report Card State Guidelines established in 20 U.S.C. 1022f and 1022g, the EPSB shall identify an EPP[educator preparation unit] as:

(1) "At-risk of low performing" if an EPP[educator preparation program] has received a:

- (a) State accreditation rating of "provisional"; or
- (b) State accreditation rating of "accreditation with conditions";

[or]

(c) Summative Praxis II pass rate below 80%;

(d) National accreditation rating of "accreditation with stipulation";

(2) "Low performing" if an EPP[educator preparation program] has received a state or national accreditation rating of "accreditation with probation".

Section 17[27]. The Education Professional Standards Board shall maintain data reports related to the following[produce a state report card, which shall include]:

(1) Current accreditation status of all institutions with EPSB approved programs:[General information on the institution and the educator preparation unit;]

(2) Contact information for the person responsible for the EPP[educator preparation unit];

(3) [Type or types of accreditation the unit holds;

(4) Current state accreditation status of the educator

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preparation unit;

(5) Year of last state accreditation visit and year of next scheduled visit;

(4)(6) Table of the EPP's[unit's] approved certification program or programs;

(5)(7) Tables relating the EPP's[unit's] total enrollment disaggregated by ethnicity and gender for the last three (3) years;

(6)(8) Tables relating the EPP's[unit's] faculty disaggregated by the number of full-time equivalents (FTE), ethnicity, and gender for the last three (3) years;

(7)(9) Table of the number of program completers (teachers and other school professionals[administrators]) for the last three (3) years;

(8)(10) Table relating pass rates on the required assessments;

(9)(11) Table relating pass rates for the Kentucky Teacher Internship Program (if applicable);

(10)(12) Table relating pass rates for the Kentucky Principal Internship Program (if applicable);

(11)(13) Table indicating student teacher satisfaction with the preparation program;

(12)(14) Table relating teacher intern satisfaction with the preparation program; and

(13)(15) Table relating new teacher (under three (3) years) and supervisor satisfaction with the preparation program.

Section 18. Program Review Components for Developmental Process. (1) In order to operate a program leading to certification or rank change, the EPP shall have its program review documents reviewed by the EPSB for each separate program of educator preparation for which the EPP is seeking approval.

(2) The following information must be demonstrated in the program review documentation:

(a) An overview that includes:

1. The context and unique characteristics;
2. Description of the organizational structure;
3. The vision, mission, and goals; and
4. The shared values and beliefs for educator preparation.

(b) A description of its systematic approach for continuous improvement;

(c) A description of its clinical partnerships;

(d) An alignment of the program's coursework and field and clinical experiences with the content standards of the relevant National Specialized Professional Association, student academic expectations as established in 703 KAR 4:060, and relevant state performance standards in Title XVI of the Kentucky Administrative Regulations;

(e) Identification and alignment of the program assessments to the state performance standards to assure each candidate's mastery prior to exit from the program;

(f) Identification of how the program addresses the applicable regulatory requirements of Title XVI of the Kentucky Administrative Regulations;

(g) A list of faculty responsible for and involved with the conduct of the specific program, along with the highest degree of each, qualifications for the program, and status of employment within the program and the university; and

(h) A curriculum guide provided to each candidate that includes the following:

1. Name of the program and resulting certification and rank;
2. Program admission criteria;
3. Program coursework;
4. Program exit requirements;
5. Certification requirements if they differ from the program exit requirements.

Section 19. New Program Approval for an accredited EPP. (1) An accredited EPP shall submit a program proposal for each new educator preparation program.

(2) A program proposal shall demonstrate the following components

(a) A description of its clinical partnerships relevant to the new program;

(b) A description of the application of the EPP's continuous improvement plan as it pertains to the new program;

(c) An alignment of the program's coursework and field and clinical experiences with the content standards of the relevant National Specialized Professional Association, student academic expectations as established in 703 KAR 4:060, and relevant state performance standards in Title XVI of the Kentucky Administrative Regulations;

(d) Identification and alignment of the program assessments to the state performance standards to assure each candidate's mastery prior to exit from the program;

(e) Identification of how the program addresses the applicable regulatory requirements of Title XVI of the Kentucky Administrative Regulations;

(f) A list of faculty responsible for and involved with the conduct of the specific program, along with the highest degree of each, qualifications for the program, and status of employment within the program and the university; and

(g) A curriculum guide provided to each candidate that includes the following:

1. Name of the program and resulting certification and rank;
2. Program admission criteria;
3. Program coursework;
4. Program exit requirements; and
5. Certification requirements if they differ from the program exit requirements.

(3) A program must receive EPSB approval prior to admission of students to the program. The Program approval decision options shall be:

(a) Approval with the next review scheduled during the regular accreditation cycle;

(b) Approval with conditions with a maximum of one (1) year probationary extension for correction of a specific problem to be documented through written materials or through an onsite visit. At the end of the extension, the EPSB shall decide if the documentation supports:

1. Approval; or
2. Denial.

(c) Denial approval indicating that a serious problem exists which jeopardizes the quality of preparation for school personnel.

Section 20. Continuing Program Approval. (1) EPPs that have been granted approval for each of educator preparation programs, shall submit the following for each educator preparation program for which it is seeking continuing approval:

(a) Report of any changes in the program since the last EPSB review;

(b) Summary analysis of the program assessment data to identify areas of strength and weakness relevant to the educator performance standards;

(c) Description of the program's continuous improvement plan based on the program analysis.

(2) The EPSB shall order a review of an educator preparation program if it has cause to believe that the quality of the preparation is seriously jeopardized.

(a) The review shall be conducted under the criteria and procedures established in the EPSB "Emergency Review of Certification Programs Procedure" policy incorporated by reference.

(b) Phase One Review shall require a written report about the identified program(s) and the continuous improvement plans.

(c) The Phase Two Review shall require an on-site review to be conducted by EPSB staff and a team of trained reviewers.

(d) The review shall result in a report to which the EPP may respond.

(e) The review report and EPP response shall be used by the Program Review Committee as the basis for a recommendation to the full EPSB for:

1. Approval;
2. Approval with conditions; or
3. Denial of approval for the program.

(f) If the EPSB denies approval of a program, the EPP shall notify each candidate currently admitted to that program of the

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EPSB action. The notice shall include the following information:

1. A candidate recommended for certification or advancement in rank within the twelve (12) months immediately following the denial of state approval and who applies to the EPSB within the fifteen (15) months immediately following the denial of state approval shall receive the certification or advancement in rank; and
2. A candidate who does not meet the criteria established in subparagraph 1. of this paragraph shall transfer to an EPSB approved program to receive the certificate or advancement in rank.

Section 21. Content Review Committee. (1)(a) EPSB staff shall identify and train a content review committee in each of the certificate areas to provide content area expertise to EPSB staff and the Program Review Committee.

(b) Nominations for the content review committees shall be solicited from the education constituent groups.

(2)(a) A content review committee shall review all new educator preparation program proposals to establish congruence of the program with standards of National Specialized Professional Association and appropriate state performance standards in Title XVI of the Kentucky Administrative Regulations.

(b) EPSB staff may initiate a content review committee for a continuing approval review as determined by program changes that may have occurred since the last review.

(3) A content review committee shall submit written comments to EPSB staff and the Program Review Committee for use in the program review process.

(4) A content review committee shall not make any determination or decision regarding the approval or denial of a program.

Section 22. Program Review Committee. (1) The EPSB shall appoint and EPSB staff shall train a Program Review Committee representative of the constituent groups to the EPSB.

(2) The Program Review Committee shall conduct a preliminary review of the Development Process Stage One documentation for adequacy, timeliness, and conformity with the corresponding standards and Kentucky Administrative Regulations.

(3) The Program Review Committee shall send a Program Review Update to the Stage One applicants indicating whether the documentation satisfies the submission requirements. If a requirement has not been met, the applicant shall be asked to revise or send additional documentation.

(4) For new program approval, the Program Review Committee shall:

- (a) Determine that the submitted material meets requirements;
- (b) Ask EPSB staff to resolve with the EPP a discrepancy or omission in the report or programs;
- (c) Make a recommendation for program approval to the EPSB; or
- (d) Recommend that the evaluation and approval process be terminated as a result of a severe deficiency in the program.

(5) For continuing program approval, the Program Review Committee shall:

- (a) Determine that the submitted material meets requirements;
- (b) Identify additional components of the program to be reviewed;
- (c) Ask EPSB staff to resolve with the EPP a discrepancy or omission in the report or programs;
- (d) Refer an unresolved discrepancy or omission to the on-site accreditation team for resolution; or
- (e) Recommend that the evaluation and approval process be terminated as a result of a severe deficiency in the program.

(6) EPSB staff shall discuss a recommendation for termination with the EPP. The EPP may submit a written response that shall be presented with the Program Review Committee comments and program review documents to the full EPSB.

Section 23[28]. Approval of Off-site and [On-line]Programs. (1) Institutions in Kentucky with educator preparation programs shall seek approval from the EPSB[Education Professional Standards Board] before offering courses or whole programs at an off-campus

site.

(a) The institution shall submit a written request to the EPSB[board] to begin offering courses at the off-site location describing the location and physical attributes of the off-campus site, resources to be provided, faculty and their qualifications, and a list of courses or programs to be offered.

(b) The off-site location shall be approved by the EPSB[board] before the institution may begin offering courses at the location.

(2)(a) Until May 31, 2008, initial and continuing on-line educator preparation programs shall be regionally or nationally accredited and accredited or approved, as applicable, by the program's state of origin.

(b) Beginning June 1, 2008, initial and continuing on-line educator preparation programs originating from outside Kentucky shall be regionally accredited, accredited or approved, as applicable, by the program's state of origin, and accredited by NCATE.]

Section 24[29]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "2022 CAEP Initial Level Standards", December 2020;  
(b) "CAEP Standards for Accreditation at the Advanced Level", June 2021; and]

(a) "Professional Standards for the Accreditation of Teacher Preparation Institutions", 2008 Edition, National Council for Accreditation of Teacher Education;

(b) "Education Professional Standards Board Accreditation of Preparation Programs Procedure", August 2002;

(c) "Education Professional Standards Board Approval of Alternative Route to Certification Program Offered under KRS 161.028", August 2002;]

(c)[(d)] "Education Professional Standards Board Emergency Review of Certification Programs Procedure", 2020.[September 2003;

(e) "Kentucky's Safety Educator Standards for Preparation and Certification", May 2004;

(f) "National Association of School Psychologists, Standards for School Psychology Training Programs, Field Placement Programs, Credentialing Standards", July 2000; and

(g) "Kentucky's Standards for Guidance Counseling Programs" derived from the Council for Accreditation of Counseling and Related Education Programs (CACREP) Standards, Education Professional Standards Board, November 2004.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, 300 Sower Boulevard, 5th Floor,[Education Professional Standards Board, 100 Airport Road, 3rd Floor,] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LISA RUDZINSKI, Board Chair

APPROVED BY AGENCY: June 24, 2021

FILED WITH LRC: July 14, 2021 at 3:58 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this proposed administrative regulation shall be held on September 23, 2021, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-



9321; email regcomments@education.ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for accreditation of an educator preparation provider and approval of a program to prepare an educator.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the standards for accreditation of an educator preparation provider and approval of a program to prepare an educator for certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028 requires the Education Professional Standards Board to establish standards for and approve programs for the preparation of teachers and other professional school personnel.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the requirements for accreditation of an educator preparation provider and approval of a program to prepare an educator.

(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 creates the option for an educator preparation provider to pursue state-only or national accreditation. It updates the standards for state-only accreditation and the procedures for approval of an educator preparation program.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to allow educator preparation providers options in pursuing accreditation. It is also necessary to update the standards for accreditation of a provider and the procedures for approval of a program for preparation of an educator.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the Education Professional Standards Board to set the standards for and approve programs for the preparation of teachers and other professional school personnel. This amendment updates those standards and procedures.

(d) How the amendment will assist in the effective administration of the statutes: The amendment updates the standards used for state-only accreditation to nationally recognized standards for the accreditation of educator preparation and allows educator preparation providers the opportunity to seek accreditation from an approved national accreditor who meets the requirements of KRS 161.028(1)(b). The amendment also updates the procedures for approval of programs for the preparation of an educator.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 30 educator preparation program providers and any providers seeking future accreditation and approval for an educator preparation program

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Educator preparation providers will have to meet the standards outlined in the amendment for accreditation of the provider and approval of the programs to prepare an educator.

(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 fee created by this amendment. Complying with the standards for accreditation and program approval will require the expenditure of educator preparation provider staff time and resources. There is not a fee for state

accreditation or program approval. If the educator preparation provider chooses to pursue national accreditation, there may be a fee set by the national accreditor.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Providers will benefit from the option to pursue state accreditation or national accreditation by an accreditor approved by the Education Professional Standards Board. Compliance will result in the provider being accredited for educator preparation and the programs being approved for certification.

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

(a) Initially: There will be some costs associated with training staff and reviewers on the updated standards and procedures for accreditation and program approval. These costs are expected to be minimal.

(b) On a continuing basis: On-going costs will be staff for accreditation and program approval. Staff are already employed and assigned to these roles, so there are no additional costs associated with the amendment.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Certification fees are established by 16 KAR 4:040. There is no fee for state accreditation or program approval. There may be a fee if the provider pursues national accreditation; however, that fee would be set by the national accreditor. No additional fees are established by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board, public colleges and universities with educator preparation programs and public-school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, KRS 161.028, KRS 161.030.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenues created by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenues created by this amendment.

(c) How much will it cost to administer this program for the first year? There will be some costs associated with training staff and reviewers on the updated standards and procedures for accreditation and program approval. These costs are expected to be minimal.

(d) How much will it cost to administer this program for subsequent years? On-going costs will be staff for accreditation and program approval. Staff are already employed and assigned to these roles, so there are no additional costs associated with the amendment.

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

regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating program but, rather, establishes the standards for accreditation and the approval of programs for the preparation of teachers and other professional school personnel.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Education Professional Standards Board  
(Amendment)**

**16 KAR 6:010. Assessment prerequisites for teacher certification.**

RELATES TO: KRS 161.020, 161.028(1), 161.030(3), (4)

STATUTORY AUTHORITY: KRS 161.028(1)(a), 161.030(3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(a) authorizes the Education Professional Standards Board (EPSB) to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030(3) and (4) require the EPSB [Education Professional Standards Board] to select the appropriate assessments required prior to teacher certification. This administrative regulation establishes the examination prerequisites for teacher certification.

Section 1. A teacher applicant for certification shall successfully complete the applicable assessments identified in this administrative regulation prior to Kentucky teacher certification.

Section 2. The EPSB [Education Professional Standards Board] shall require the assessment or assessments and passing scores identified in this section for each new teacher applicant and each teacher seeking an additional certificate. (1) An applicant for Interdisciplinary Early Childhood Education certification (birth to primary) shall take "Education of Young Children (5024) – 160". [~~Interdisciplinary Early Childhood Education (5023) – 166.~~]

(2) An applicant for Elementary certification (grades P-5) shall take "Elementary Education: Multi-Subjects Test (5001)" with the following passing scores on the corresponding assessment sections:

(a) "Elementary Education: Reading and Language Arts (5002)" - 157;

(b) "Elementary Education: Mathematics (5003)" - 157;

(c) "Elementary Education: Social Studies (5004)" - 155; and

(d) "Elementary Education: Science (5005)" - 159.

(3) An applicant for certification at the middle school level (grades 5 through 9) shall take the content assessment or assessments based on the applicant's content area or areas with the corresponding passing scores as identified in this subsection:

(a) Middle School English and Communications: "Middle School English Language Arts (5047)" - 164;

(b) Middle School Mathematics: "Middle School Mathematics (5164) – 157" [~~"Middle School Mathematics (5169)" – 165~~];

(c) Middle School Science: "Middle School Science (5442) – 152" [~~"Middle School Science (5440)" – 150~~]; or

(d) Middle School Social Studies: "Middle School Social Studies (5089)": - 149.

(4) An applicant for certification at the secondary level (grades 8 through 12) shall take the content assessment or assessments corresponding to the applicant's content area or areas with the passing scores identified in this subsection:

(a) Biology: "Biology: Content Knowledge (5235)" - 146;

(b) Chemistry: "Chemistry: Content Knowledge (5245)" - 147;

(c) Earth Science: "Earth and Space Sciences: Content Knowledge (5571)" - 147;

(d) English: "English Language Arts: Content and Analysis (5039)" - 168;

(e) Mathematics: "Mathematics (5165) – 159" [~~Mathematics: Content Knowledge (5164) – 160~~];

(f) Physics: "Physics: Content Knowledge (5265)" - 133; or

(g) Social Studies: "Social Studies: Content and Interpretation (5086)" - 153.

(5) An applicant for certification in all grades shall take the content assessment or assessments corresponding to the applicant's area or areas of specialization identified in this subsection, and, if a passing score is established in this subsection, the applicant shall achieve the passing score or higher:

(a) Art: "Art: Content and Analysis (5135)" - 161;

(b) Chinese: "Chinese (Mandarin): World Language (5665)" - 164;

(c) French: "French: World Language (5174)" - 162;

(d) German: "German: World Language (5183)" - 163;

(e) Japanese: "Japanese: World Language (5661)" - 156;

(f) [(e)] Health: "Health Education (5551)" – 155;

(g) [(f)] Health and Physical Education:

1. "Health and Physical Education: Content Knowledge (5857)" – 160; and

2. "Physical Education: "Physical Education: Content and Design (5095)" – 169;

(h) [(g)] Integrated Music: "Music: Content and Instruction (5114)" - 162;

(i) [(h)] Instrumental Music: "Music: Instrumental and General Knowledge (5115) -150" [~~"Music: Content and Analysis (5114)" – 162~~];

(j) [(i)] Vocal Music:

"Music: Vocal and General Knowledge (5116)" -153" [~~"Music: Content and Analysis (5114)" – 162~~];

(k) [(j)] Latin: "Latin (5601)" – 166;

(l) [(k)] Physical Education: "Physical Education: Content and Design (5095)" - 169;

(m) [(l)] School Media Librarian: "Library Media Specialist (5311)" - 156;

(n) [(m)] School Psychologist: "School Psychologist (5402)" – 147; or

(o) [(n)] Spanish: "Spanish: World Language (5195)" - 168.

(6) Except as provided in subsection (7) of this section, an applicant for certification for teacher of exceptional children in Communication Disorders, Learning and Behavior Disorders, Hearing Impaired, Hearing Impaired with Sign Proficiency, Visually Impaired, or Moderate and Severe Disabilities shall take the content assessment or assessments based on the applicant's area or areas of specialization with the corresponding passing scores as identified in this subsection:

(a) Communication Disorders:

1. "Special Education: Core Content Knowledge and Applications (5354)" - 151; and

2. "Speech-Language Pathology (5331)" – 162;

(b) Hearing Impaired:

1. "Special Education: Core Knowledge and Applications (5354)" - 151; and

2. "Special Education: Education of Deaf and Hard of Hearing Students (5272)" – 160;

(c) Hearing Impaired With Sign Proficiency:

1. "Special Education: Core Knowledge and Applications (5354)" – 151;

2. "Special Education: Education of Deaf and Hard of Hearing Students (5272)" -160; and

3. "American Sign Language Proficiency Interview (ASLPI)" – 3+;

(d) Learning and Behavior Disorders: "Special Education: Core Knowledge and Mild to Moderate Applications (5543)" - 158;

(e) Moderate and Severe Disabilities: "Special Education: Core Knowledge and Severe to Profound Applications (5545)" - 158; or

(f) Visually Impaired:

1. "Special Education: Core Knowledge and Applications (5354)" - 151; and

2. "Special Education: Teaching Students with Visual Impairments (5282)" – 163.

(7) A holder of an exceptional child certificate in Learning and Behavior Disorders or Moderate and Severe Disabilities who is seeking additional certification for any exceptional children teaching certificate listed in subsection (6) of this section shall not be required to take "Special Education: Core Knowledge and

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Applications (5354)".

(8)(a) Except as provided in paragraph (b) of this subsection, an applicant for Career and Technical Education certification to teach in grades 5 - 12 shall take the content assessment or assessments corresponding to the applicant's area or areas of specialization identified in this paragraph, and, if a passing score is established in this paragraph, the applicant shall achieve the passing score or higher:

1. Agriculture: "Agriculture (5701)" – 147;
2. Business and Marketing Education: "Business Education (5101)" - 154;
3. Family and Consumer Science: "Family and Consumer Sciences (5122)" – 153; or
4. Engineering and Technology Education: "Technology Education (5051)" -159.

(b) An applicant for Industrial Education shall take the content assessment or assessments corresponding to the applicant's area or areas of specialization with the passing scores identified in 16 KAR 6:020.

(9) An applicant for a restricted base certificate in the following area or areas shall take the content assessment or assessments based on the applicant's area or areas of specialization with the corresponding passing scores as identified in this subsection:

- (a) English as a Second Language:
  1. Until August 31, 2017: "English to Speakers of Other Languages (5361)" - 157; or
  2. Beginning September 1, 2017: "English to Speakers of Other Languages (5362)" – 155;
- (b) Speech/Media Communications: "Speech Communication (5221)" – 146; or
- (c) Theater: "Theatre (5641)" - 162.

(10) An applicant for an endorsement in the following content area or areas shall take the content assessment or assessments based on the applicant's area or areas of specialization with the passing scores identified in this subsection:

- (a) American Sign Language: "American Sign Language Proficiency Interview (ASLPI)" - 3+;
- (b) English as a Second Language:
  1. Until August 31, 2017: "English to Speakers of Other Languages (5361)" – 157; or
  2. Beginning September 1, 2017: "English to Speakers of Other Languages (5362)" – 155;
- (c) Learning and Behavior Disorders, grades 8 - 12: "Special Education: Core Knowledge and Mild to Moderate Applications (5543)" - 158;
- (d) Literacy Specialist: "Reading Specialist (5302)" - 165["Reading Specialist (5301)" – 164];
- (e) Gifted Education, grades primary - 12: "Gifted Education (5358)" – 157; or
- (f) Reading Primary through Grade 12: "Teaching Reading: K-12 (5206)" – 156["Teaching Reading (5204)" – 153].

Section 3. In addition to the content area assessment or assessments established in Section 2 of this administrative regulation, each new teacher shall take the pedagogy assessment and meet the passing score identified in this section that corresponds to the grade level of certification sought. If a certified teacher is seeking additional certification in any area, the applicant shall not be required to take an additional pedagogy assessment.

(1) An applicant for Elementary certification (grades primary – 5) shall take "Principles of Learning and Teaching: Grades kindergarten - 6 (5622)" - 160.

(2) An applicant for certification at the middle school level (grades 5 through 9) shall take "Principles of Learning and Teaching: Grades 5 - 9 (5623)" - 160.

(3) An applicant for certification at the secondary level (grades 8 through 12) shall take "Principles of Learning and Teaching: Grades 7 - 12 (5624)" - 160.

(4) An applicant for certification in all grades with a content area identified in Section 2(5) of this administrative regulation shall take one (1) of the following assessments and achieve the corresponding passing score or higher:

- (a) "Principles of Learning and Teaching: Grades kindergarten

– 6 (5622)" - 160;

(b) "Principles of Learning and Teaching: Grades 5 – 9 (5623)" - 160; or

(c) "Principles of Learning and Teaching: Grades 7 - 12 (5624)" - 160.

(5) An applicant applying only for certification for teacher of exceptional children shall not be required to take a separate pedagogy assessment established in this section. The content area assessment or assessments established in Section 2 of this administrative regulation shall fulfill the pedagogy assessment requirement for a teacher of exceptional children.

(6) An applicant for Career and Technical Education certification in grades 5 through 12 shall take one (1) of the following assessments and receive the identified passing score:

(a) "Principles of Learning and Teaching: Grades kindergarten - 6 (5622)" - 160;

(b) "Principles of Learning and Teaching: Grades 5 - 9 (5623)" - 160; or

(c) "Principles of Learning and Teaching: Grades 7 - 12 (5624)" - 160.

Section 4. Assessment Recency. (1) A passing score on an assessment established at the time of administration shall be valid for the purpose of applying for certification for five (5) years from the assessment administration date.

(2) A teacher who fails to complete application for certification to the ~~EPSB~~[~~Education Professional Standards Board~~] within the applicable recency period of the assessment and with the passing score established at the time of administration shall retake the applicable assessment or assessments and achieve the passing score or scores required for certification at the time of application.

(3) The assessment administration date shall be established by the Educational Testing Service or other authorized test administrator.

Section 5. (1) An applicant for initial certification shall take the assessments on a date established by:

(a) The Educational Testing Service; or

(b) The agency established by the ~~EPSB~~[~~Education Professional Standards Board~~] as the authorized test administrator.

(2) An applicant shall authorize assessment results to be forwarded by the Educational Testing Service, or other authorized test administrator, to the ~~EPSB~~[~~Kentucky Education Professional Standards Board~~] and to the teacher preparation institution where the applicant received the relevant training.

(3)(a) Public announcement of assessment dates and locations shall be issued sufficiently in advance of assessment dates to permit advance registration.

(b) An applicant shall seek information regarding the dates and location of the assessments and make application for the appropriate assessment prior to the deadline established and sufficiently in advance of anticipated employment to permit assessment results to be received by the ~~EPSB~~[~~Education Professional Standards Board~~] and processed in the normal certification cycle.

Section 6. An applicant shall pay the assessment fee established by the Educational Testing Service or other authorized test administrator for each relevant assessment required to be taken.

Section 7. An applicant who fails to achieve at least the minimum passing score on any of the applicable assessments may retake the assessment.

Section 8. The ~~EPSB~~[~~Education Professional Standards Board~~] in conjunction with ~~the Kentucky Center for Statistics~~[~~Kentucky Center for Education and Workforce Statistics~~] shall collect data and conduct analyses of the scores and institutional reports provided by the Educational Testing Service or other authorized test administrator to determine the impact of these assessments.

LISA RUDZINSKI, Board Chair

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APPROVED BY AGENCY: June 24, 2021

FILED WITH LRC: July 14, 2021 at 3:58 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this proposed administrative regulation shall be held on September 23, 2021, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

**CONTACT PERSON:** Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the examination prerequisites for teacher certification.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to identify the assessments and qualifying scores that are required for teacher certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030(3) and (4) require the Education Professional Standards Board to select the appropriate assessments required for issuance of teacher certification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation identifies the requisite assessments and qualifying scores.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates certain Praxis II assessments to the new version and includes new assessments for certification areas that previously did not have one. The amendment also allows for adoption of the recommended cut-scores set by the Educational Testing Service.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update required assessments to new versions for those that are being discontinued. It is also necessary to adopt the assessment for certification areas that previously did not have an assessment.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.030(3) and (4) require the Education Professional Standards Board to select the appropriate assessments required for issuance of teacher certification. The amendment identifies those assessments and qualifying scores for certain certification areas.

(d) How the amendment will assist in the effective administration of the statutes: The amendment updates the required assessments to new versions for those assessments that are being discontinued. It is also identifies the assessment for certification areas that previously did not have an assessment.

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

administrative regulation: 172 Kentucky school districts, 30 educator preparation program providers, and applicants for teacher certification.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The approved educator preparation programs, and any programs seeking future approval, will have to ensure that their students have knowledge of and are prepared for the required assessments. Applicants for certification will have to successfully complete the assessments required for the certification area they are pursuing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The applicant will have to bear the cost of the assessment unless it is provided by another entity. The fee is established by the test provider. There is no fee established or received by the Education Professional Standards Board.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will benefit from having clearly identified assessments that align to the area of certification sought. Districts will have a pool of certified candidates that demonstrated competency on content assessments for the corresponding area of certification.

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

(a) Initially: None

(b) On a continuing basis: None

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Certification fees are established by 16 KAR 4:040. Testing fees are established by the test provider. No additional fees are established by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board, public colleges and universities with educator preparation programs and public-school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, KRS 161.028, KRS 161.030.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenues created by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenues created by this amendment.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a cost incurring program but, rather, establishes the examination prerequisites for teacher certification.

**FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
(Amendment)**

**103 KAR 8:090. Classification of property; public service corporations.**

RELATES TO: KRS 136.120, 136.130

STATUTORY AUTHORITY: KRS 131.130[Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of all tax laws of this state. KRS 136.130 requires all public service corporations performing any public service in Kentucky to report certain facts prescribed by the department annually for purposes of the ad valorem tax on public service corporations imposed by KRS 136.120. KRS 136.120(2) states that the property of all taxpayers shall be classified as operating property, nonoperating tangible property and nonoperating intangible property. This administrative regulation specifies the classification of certain operating property commonly held by public service corporations[classifies certain property] as real estate, personalty and manufacturing machinery.[The property involved has been the subject of some confusion in the past. This information is helpful to public service companies in classifying new property.]

Section 1. Definitions (1) "Base Gas" means the volume of gas, including native gas, needed as a permanent inventory in a storage reservoir to maintain adequate pressure and deliverability rates throughout the withdrawal season.

(2) "Gathering line" means:

(a) Any pipeline that is installed or used for the purpose of transporting crude oil or natural gas from a well or production facility to the point of interconnection with another gathering line, an existing storage facility, or a transmission or main line, including all lines between interconnections, except those lines or portions subject to the exclusive jurisdiction of the United States Department of Transportation under 49 C.F.R. Parts 191, 192, 194 and 195;

(b) For hazardous liquids, a pipeline 219.1 mm (8 5/8 in) or less in nominal outside diameter that transports petroleum products from a production facility; and

(c) For natural gas, a pipeline that transports gas from a current production facility to a transmission pipeline or main as determined using an industry standard determined pursuant to 49 C.F.R. 192.8, including a pipeline 219.1 mm (8 5/8 in) or less in nominal outside diameter and less than fifty (50) miles in length that transports natural gas or natural gas liquids acted upon by a manufacturing process between two (2) manufacturing facilities.

(3) "Transmission pipeline" means any pipeline that is subject to the exclusive jurisdiction of the United States Department of Transportation under 49 C.F.R. Parts 191, 192, 194 and 195, including all crude oil trunk lines subject to the reporting requirements of the Interstate Commerce Act, Sections 20 and 18 C.F.R. Parts 357.2 and 357.4.

(4) "Working Gas" means the volume of gas in the reservoir above the designated level of base gas.

Section 2. Classification of Public Service Company Property. The department [The Revenue Cabinet] prescribes the following classification of property to be used by public service corporations in reporting under KRS 136.120 et seq. This list is not intended to be complete and comprehends only those items of property whose

proper classification has been subject to some confusion in the past.

Type of Property	Classification
Unmined Coal	Real Estate
Undeveloped Oil & Gas Reserves	Real Estate
Leasehold	Real Estate
Oil & Gas Wells	Real Estate
Transmission Pipelines (Oil, Gas & Water)	Real Estate
Conduits	Real Estate
Base & Nonrecoverable Gas Stored	Real Estate
Working Gas Stored	Tangible Personal
Other Gas Stored	Tangible Personal
Gas Compressors	Tangible Personal
Oil Lifting Units	Tangible Personal
Oil Storage Tanks (over 30,000 Gallons)	Real Estate
Oil Storage Tanks (under 30,000 Gallons)	Tangible Personal
Oil Inventory	Tangible Personal
Television Cable	Tangible Personal
Oil & Gas Gathering Lines	Tangible Personal
Electric Transmission Lines	Tangible Personal
Electric Distribution Lines	Tangible Personal
Meters & Regulators	Tangible Personal
Underground Cables	Tangible Personal
Telephone Lines	Tangible Personal
Wire in Underground Conduits	Tangible Personal
Towers, Structures & Supports	Tangible Personal
Electric Substations/ Transformers	Manufacturing Machinery
Machinery & Equipment used in the Manufacture of Gas	Manufacturing Machinery
Solar Energy Panels	Manufacturing Machinery
Wind Energy Turbines	Manufacturing Machinery
Inverters; Converters; Transformers; Substations; Mounting Systems; Trackers; and Direct Current (DC) Meters, Regulators, Batteries, Cables, Conduits, Connectors, Junction Boxes, Combiner Boxes, Fuses, Circuit Breakers, and Switches for Solar & Wind Energy Systems	Manufacturing Machinery
Water Treatment Equipment	Manufacturing Machinery
Personal Property Certified Under KRS 224.1-300	Pollution Control

Class of Property	Classification by Revenue Cabinet
Leasehold	Real Estate
Oil wells	Real Estate
Gas wells	Real Estate
Gathering lines	Personalty
Pipe lines (transmission)	Real Estate
Electric transmission lines	Personalty
Electric distribution lines	Personalty
Telephone lines	Personalty
Underground cables	Personalty
Electric substations and transformers	Manufacturing Machinery
Machinery & equipment used in manufacture of gas	Manufacturing Machinery
Conduits	Real Estate
Wire contained in under ground conduits	Personalty

THOMAS MILLER, Commissioner  
APPROVED BY AGENCY: July 13, 2021

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FILED WITH LRC: July 13, 2021 at 1:16 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on September 22, 2021, at 10:00 a.m. in Room 11A, State Office Building, 501 High Street, Frankfort, Kentucky 40601. The hearing may be conducted by video teleconference at the discretion of the agency. An individual interested in being heard at this hearing shall provide written notification to the agency of the intention to attend the hearing at least five (5) business days prior to the date scheduled for the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the 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 September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary Morris

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends 103 KAR 8:090 to provide updated classifications of certain commonly held properties of public service corporations (PSC's) pursuant to KRS 136.130(1).

(b) The necessity of this administrative regulation: To comply with statutory requirements; add new utility technology; and remove outdated guidance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with KRS 13A, 131.130, 132.020, 132.200, and 136.130.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation outlines the administrative process for the classification of property owned by PSC's and provides them with a list of assets and classifications as guidance, creating uniformity in how they classify their property for tax purposes.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates department guidance relating to property classification to include new technology and administration standards.

(b) The necessity of the amendment to this administrative regulation: see 1(b)

(c) How the amendment conforms to the content of the authorizing statutes: see 1(c)

(d) How the amendment will assist in the effective administration of the statutes: see 1(d)

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 251 public service corporations across the Commonwealth will be able to utilize the guidance contained herein.

(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: None that the Department of Revenue is aware of other than updating their reporting pursuant to KRS 136.120.

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

question (3): There are no costs known to the Department.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have a greater understanding of the requirements for filing, and experience more efficient and timely tax filings with the Department of Revenue.

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

(a) Initially: Current department staff and resources will be used to absorb the implementation costs of this administrative regulation.

(b) On a continuing basis: None, until amendments are made in the future.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees established or increased in this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied because all PSC's using the classification and guidance contained in this administrative regulation will be treated equally.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Only the Finance and Administration Cabinet, Department of Revenue will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A and 131.130.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures and revenues for government agencies as a result of amending 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? None.

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### FINANCE AND ADMINISTRATION CABINET Department of Revenue (Amendment)

#### 103 KAR 16:270. Apportionment; receipts factor.

RELATES TO: KRS 141.010, 141.040, 141.120, 141.121, 141.206

STATUTORY AUTHORITY: KRS 131.130, 141.018, 141.120, 141.121

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. KRS 141.120(9) requires that all apportionable income of

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multi-state corporations be apportioned to Kentucky by multiplying the income by a fraction. KRS 141.120(11)(d) authorizes the department to promulgate administrative regulations providing how to determine the receipts factor used in the multi-state apportionable income apportionment formula. KRS 141.120(12)(b) authorizes the department to promulgate administrative regulations for determining alternative allocation and apportionment methods for taxpayers engaged in particular industries. KRS 141.121 authorizes the department to promulgate an administrative regulation for sourcing receipts of public service corporations and financial organizations, and requires the department to promulgate a regulation to detail the sourcing of receipts related to financial institutions. This administrative regulation provides guidance[guidelines] for determining the receipts factor of a multi-state [multistate] corporation.

Section 1. Definitions. (1) "Advertising services" means an agreement to include the broadcast customer's advertising content in the broadcaster's film programming.

(2) "Affiliated airline" is defined by KRS 141.121(1)(a).

(3) "Apportionable income" is defined by KRS 141.120(1)(a).

(4)(3) "Barrel mile" means the transportation of one (1) barrel of liquid or gas one (1) mile.

(5)(4) "Billing address" means the location indicated in the books and records of the taxpayer as the primary mailing address relating to a customer's account that at the time of the transaction is kept in good faith in the normal course of business, and not for tax avoidance purposes.

(6) "Borrower or credit card holder located in this state" means:

(a) A borrower, other than a credit card holder, that is engaged in a trade or business which maintains its commercial domicile in this state; or

(b) A borrower that is not engaged in a trade or business or a credit card holder whose billing address is in this state.

(7)(5) "Broadcast customer" means a person, corporation, partnership, limited liability company, or other entity, such as an advertiser or a platform distribution company, that has a direct connection or contractual relationship with the broadcaster under which revenue is derived by a broadcaster.

(8)(6) "Broadcaster" means a taxpayer that is a television broadcast network, a cable program network, or a television distribution company. The term "broadcaster" does not include a platform distribution company.

(9)(7) "Business customer" means a customer that is a business operating in any form, including a sole proprietorship. Sales to a non-profit organization, to a trust, to the U.S. Government, to a foreign, state, or local government, or to an agency or instrumentality of that government are treated as sales to a business customer and are assigned consistent with the rules for those sales.

(10) "Card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit, debit, or similar type of card has charged merchandise or services to the card.

(11)(8) "Code" means the Internal Revenue Code as defined by KRS 141.010(15).[(14)-]

(12) "Commercial domicile" is defined by KRS 141.120(1)(b).

(13) "Credit card" means a card, or other means of providing information, that entitles the holder to charge the cost of purchases, or a cash advance, against a line of credit.

(14) "Debit card" means a card, or other means of providing information, that enables the holder to charge the cost of purchases, or a cash withdrawal, against the holder's bank account or a remaining balance on the card.

(15)(9) "Delivered to a location" means to the location of the taxpayer's market for the service, which may not be the location of the taxpayer's employees or property.

(16)(10) "Film programming" means one (1) or more performances, events, or productions (or segments of performances, events, or productions) intended to be distributed for visual and auditory perception, including items such as news, entertainment, sporting events, plays, stories, or other literary, commercial, educational, or artistic works.

(17)(11) "Financial institution" is defined by KRS 141.010(11).[(KRS 136.500-)]

(18)(12) "Financial organization" is defined by KRS 141.120(1)(c), and includes:

(a) Any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956, as amended; or

(b) Registered as a savings and loan holding company under the Federal National Housing Act, as amended; and

(c) Any entity more than fifty (50) percent owned, directly or indirectly, by such holding companies.

(19)(13) "Individual customer" means a customer that is not a business customer.

(20) "In-person services" means services that are physically provided in person by the taxpayer, if the customer or customer's real or tangible property upon which the services are performed is in the same location as the service provider when the services are performed. In-person services shall include situations when a third-party contractor provides the services on behalf of the taxpayer.

(21)(14) "Intangible property" means property that is not physical or whose representation by physical means is merely incidental. Examples of intangible property shall include:

(a) Agreements not to compete;

(b) Brand names;

(c) Computer software;

(d) Contract rights, including broadcasting rights;

(e) Copyrights;

(f) Designs;

(g) Formulae;

(h) Goodwill and going concern value;

(i) Ideas;

(j) Information;

(k) Know-how;

(l) Licenses;

(m) Literary, musical, or artistic composition;

(n) Methods;

(o) Patents;

(p) Procedures;

(q) Processes;

(r) Programs;

(s) Securities;

(t) Systems;

(u) Technical data;

(v) Trade dress;

(w) Trademarks;

(x) Trade names; and

(y) Trade secrets. [and includes items such as copyrights; patents; trademarks; trade names; brand names; franchises; licenses; trade secrets; trade dress; information; know-how; methods; programs; procedures; systems; formulae; processes; technical data; designs; licenses; literary, musical, or artistic compositions; information; ideas; contract rights including broadcast rights; agreements not to compete; goodwill and going concern value; securities; and computer software.]

(22) "Internal Revenue Code" is defined by KRS 141.010(21).

(23)(15) "Kentucky revenue passenger miles[mile]" is defined by KRS 141.121(1)(c).

(24) "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and its customer, or the purchase, in whole or in part, of such extension of credit from another. Loans include participations, syndications, and leases treated as loans for federal income tax purposes. Loans shall not include:

(a) Assets held in a trading account;

(b) Cash items in the process of collection;

(c) Credit card receivables, including purchased credit card relationships;

(d) Federal funds sold;

(e) Futures or forwards contracts;

(f) Non-interest bearing balances due from depository institutions;

(g) Notional principal contracts such as swaps;

(h) Options;

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(i) Securities, interests in a REMIC, or other mortgage-backed or asset-backed security;

(j) Securities purchased under agreements to resell; and

(k) Other similar items.

(25) "Loan secured by real property" means that fifty (50) percent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

(26) "Merchant discount" means the fee (or negotiated discount) charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit, debit, or similar type of card is accepted in payment for merchandise or services sold to the card holder, net of any cardholder charge-back and unreduced by any interchange transaction or issuer reimbursement fee paid to another for charges or purchases made its cardholder.

(27) "Miles [(16) "Mile-]operated" means the movement of a barge, tug, or other watercraft one (1) mile.

(28) "Non-apportionable income" is defined by KRS 141.120(1)(d).

(29) "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(30)[(47)] "Passenger airline" is defined by KRS 141.121(1)(d).

(31)[(48)] "Place of order" means the physical location from which a customer places an order for a sale other than a sale of tangible personal property from a taxpayer, resulting in a contract with the taxpayer.

(32)[(49)] "Platform distribution company" means a cable service provider, a direct broadcast satellite system, an Internet content distributor, or any distributor that directly charges viewers for access to any film programming.

(33)[(20)] "Population" means the most recent population data maintained by the U.S. Census Bureau for the year in question as of the close of the taxable period.

(34)[(24)] "Provider" is defined by KRS 141.121(1)(e).

(35)[(22)] "Public service company" is defined by KRS 141.0401(6)(a)9. [(f)-]

(36)[(23)-] "Qualified air freight forwarder" is defined by KRS 141.121(1)(f).

(37)[(24)] "Receipts" is defined by KRS 141.120(1)(e).

(38)[(25)] "Related member" is defined by KRS 141.205(1)(g).

(39)[(26)] "Revenue car mile" means the movement of a loaded railroad car one (1) mile.

(40)[(27)] "Revenue passenger miles[mile]" is defined by KRS 141.121(1)(g).

(41) "State" is defined by KRS 141.010(34).

(42)[(28)] "State where a contract of sale is principally managed by the customer" means the primary location at which an employee or other representative of a customer serves as the primary contact person for the taxpayer with respect to the day-to-day execution and performance of a contract entered into by the taxpayer with the customer.

(43) "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

### Section 2. Additional Principles.

(1) Year to year consistency. If the taxpayer departs from or modifies the basis for excluding or including gross receipts in the receipts factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(2) State to state consistency. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports are not uniform in the inclusion or exclusion of gross receipts, the taxpayer shall disclose in its Kentucky return the nature and extent of the variance.

(3) Denominator. The denominator of the receipts factor shall

include the gross receipts that are received[~~derived by the taxpayer~~] from transactions and activity in the regular course of the taxpayer's [its-]trade or business, except gross receipts excluded under this administrative regulation.

(4) Numerator. The numerator of the receipts factor shall include gross receipts attributable to this state that are received by [~~and derived by-~~]the taxpayer from transactions and activity in the regular course of the taxpayer's trade [its-trade-]or business, except gross receipts excluded under this administrative regulation.

### Section 3. Sales of Tangible Personal Property in This State.

(1) Gross receipts from sales of tangible personal property (except sales to the United States Government) are in this state if the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of sale.

(2) Property shall be determined as delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state. Example. The taxpayer, with inventory in State A, sold \$100,000 of its products to a purchaser having branch stores in several states, including Kentucky. The order for the purchase was placed by the purchaser's central purchasing department located in State B. \$25,000 of the purchase order was shipped directly to purchaser's branch store in Kentucky. The branch store in Kentucky is the purchaser with respect to \$25,000 of the taxpayer's sales.

(3) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state. Example. The taxpayer makes a sale to a purchaser who maintains a central warehouse in Kentucky at which all merchandise purchases are received. The purchaser reships the goods to its branch stores in other states for sale. All of the taxpayer's products shipped to the purchaser's warehouse in Kentucky constitute property delivered or shipped to a purchaser within Kentucky.

(4) A purchaser within this state shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state. Example. A taxpayer in Kentucky sold merchandise to a purchaser in State A. Taxpayer directed the manufacturer or supplier of the merchandise in State B to ship the merchandise to the purchaser's customer in Kentucky pursuant to purchaser's instructions. The sale by the taxpayer is in Kentucky.

(5) If property [~~being~~]shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this state, the sales are in this state. Example. The taxpayer, a produce grower in State A, begins shipment of perishable produce to the purchaser's place of business in State B. While en route, the produce is diverted to the purchaser's place of business in Kentucky where [in which state-]the taxpayer is subject to tax. The sale by the taxpayer is attributed to Kentucky.

Section 4. Sales of Tangible Personal Property to the United States Government. Gross receipts from sales of tangible personal property to the United States Government are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. For the purposes of this administrative regulation, only sales for which the United States Government makes direct payment to the seller pursuant to the terms of a contract constitute sales to the United States Government. Sales by a subcontractor to the prime contractor, the party to the contract with the United States Government, do not constitute sales to the United States Government.

(1) Example. A taxpayer contracts with General Services Administration to deliver X number of trucks which were paid for by the United States Government. The sale is a sale to the United States Government.

(2) Example. The taxpayer, as a subcontractor to a prime contractor with the National Aeronautics and Space Administration, contracts to build a component of a rocket for \$1,000,000. The sale by the subcontractor to the prime contractor is not a sale to the



United States Government.

Section 5. Sales Other Than Sales of Tangible Personal Property: General Rules. ~~[KRS 141.120(11) provides for the inclusion in the numerator of the receipts factor of gross receipts arising from transactions other than sales of tangible personal property.]~~

(1) ~~Market-Based Sourcing. Receipts from sales other than sales of tangible personal property shall be in this state if [other than receipts described in KRS 141.120(10) (from sales of tangible personal property), are in this state within the meaning of KRS 141.120(11) if and to the extent that] the taxpayer's market for the sales is in this state. The provisions in this section establish [uniform] rules for:~~

~~(a) Determining whether and to [the/what] extent the market for a sale other than the sale of tangible personal property is in this state;~~

~~(b) Reasonably approximating the state or states of assignment if the state or states cannot be determined; and~~

~~(c) 1. Excluding receipts from the sale of intangible property from the numerator and denominator of the receipts factor pursuant to KRS 141.120(11)(a)4.b.iii.; [141.120(11)(a)(4)(b)iii.];~~

~~2. Excluding receipts from the denominator of the receipts factor, pursuant to KRS 141.120(11)(c) if the state or states of assignment cannot be determined or reasonably approximated; or~~

~~3. Excluding receipts from the denominator of the receipts factor, pursuant to KRS 141.120(11)(c) if the taxpayer is not taxable in the state to which the receipts are assigned as determined under KRS 141.120(3).~~

(2) ~~General Principles of Application; Contemporaneous Records. [In order to satisfy the requirements of this administrative regulation, a] taxpayer's assignment of receipts from sales [of] other than sales of tangible personal property shall be consistent with the following principles:~~

~~(a) 1. A taxpayer shall apply the rules set forth in this administrative regulation based on objective criteria and shall consider all sources of information reasonably available to the taxpayer upon its tax filing, including [ ] items such as the taxpayer's books and records kept in the normal course of business;~~

~~2. A taxpayer shall determine its method of assigning receipts in good faith, and apply it consistently with respect to similar transactions year to year; and~~

~~3. A taxpayer shall retain contemporaneous records that explain the determination and application of its method of assigning its receipts, including its underlying assumptions, and shall provide those records to the department upon request.~~

~~(b) This administrative regulation provides various assignment rules that apply sequentially in a hierarchy. For each sale to which a hierarchical rule applies, a taxpayer shall make an effort to apply the primary rule applicable to the sale before seeking to apply the next rule in the hierarchy (and shall continue to do so with each succeeding rule in the hierarchy, if applicable). For example, in some cases, the applicable rule first requires a taxpayer to determine the state or states of assignment, and if the taxpayer cannot do so, the rule requires the taxpayer to reasonably approximate the state or states. In these cases, the taxpayer shall attempt to determine the state or states of assignment (i.e., apply the primary rule in the hierarchy) in good faith and with reasonable effort before it may reasonably approximate the state or states.~~

~~(c) A taxpayer's method of assigning its receipts, including the use of a method of approximation, if applicable, shall reflect an attempt to obtain the most accurate assignment of receipts consistent with this administrative regulation, rather than an attempt to lower the taxpayer's tax liability. A method of assignment that is reasonable for one (1) taxpayer may not necessarily be reasonable for another taxpayer, depending upon the applicable facts.~~

(3) ~~Rules of Reasonable Approximation. (a) This administrative regulation establishes [uniform] rules for determining whether and to what extent the market for a sale other than the sale of tangible personal property is in this state. The administrative regulation sets forth rules of reasonable approximation, which shall apply if the~~

state or states of assignment cannot be determined. In some instances, the reasonable approximation shall be made in accordance with specific rules of approximation prescribed in this administrative regulation. In other cases, the applicable rule in this administrative regulation permits a taxpayer to reasonably approximate the state or states of assignment, using a method that reflects an effort to approximate the results that may be obtained under the applicable rules or standards set forth in this administrative regulation.

~~(b) Approximation Based Upon Known Sales.~~

~~1. If applying the applicable rules set forth in subsections (7), (8), (9), and (10) of this section, a taxpayer may ascertain the state or states of assignment of a substantial portion of its receipts from sales of substantially similar services ("assigned receipts"), but not all of those sales; and~~

~~2. If the [The] taxpayer reasonably believes, based on all available information, that the geographic distribution of some or all of the remainder of those sales generally tracks that of the assigned receipts, it shall include receipts from those sales which it believes tracks the geographic distribution of the assigned receipts. This rule applies in the context of licenses and sales of intangible property if the substance of the transaction resembles a sale of goods or services.~~

~~(c) Related Member [Related Member] Transactions – Information Imputed from Customer to Taxpayer. If a taxpayer has receipts subject to this administrative regulation from transactions with a related member [related member] customer, information that the customer has that is relevant to the sourcing of receipts from these transactions is imputed to the taxpayer.~~

~~(4) Rules with Respect to Exclusion of Receipts from the Receipts Factor.~~

~~(a) The receipts factor only includes those amounts defined as receipts.~~

~~(b) Certain receipts arising from the sale of intangibles are excluded from the numerator and denominator of the sales factor pursuant to KRS 141.120(11)(a)4.b.iii.; [141.120(11)(a)(4)(b)iii.];~~

~~(c) If [In a case in which] a taxpayer cannot ascertain the state or states to which receipts of a sale are to be assigned pursuant to the applicable rules set forth in this administrative regulation, [including through the use of a method of reasonable approximation, if relevant], using a reasonable amount of effort undertaken in good faith, the receipts shall be excluded from the denominator of the taxpayer's receipts factor pursuant to KRS 141.120(11)(c).~~

~~(d) If a taxpayer assigns receipts to a state or states in which they are not taxable, those receipts [In a case in which a taxpayer may ascertain the state or states to which receipts from a sale are to be assigned pursuant to the applicable rules set forth in this administrative regulation, but the taxpayer is not taxable in one (1) or more of those states, the receipts that may be assigned to those states where the taxpayer is not taxable] shall be excluded from the denominator of the taxpayer's receipts factor pursuant to KRS 141.120(11)(c).~~

~~(e) Receipts of a taxpayer from hedging transactions, or from the maturity, redemption, sale, exchange, loan, or other disposition of cash or securities, shall be excluded pursuant to KRS 141.120(1)(e).~~

~~(f) Nothing in the provisions adopted here pursuant to KRS 141.120 is intended to limit the application of KRS 141.120(12) or the authority granted to the department under KRS 141.120(12).~~

~~(5) Sale, Rental, Lease, or License of Real Property. In the case of a sale, rental, lease, or license of real property, the receipts from the sale shall be [are] in this state if and to the extent that the property is in this state.~~

~~(6) Rental, Lease, or License of Tangible Personal Property. In the case of a rental, lease, or license of tangible personal property, the receipts from the sale shall be [are] in this state if and to the extent that the property is in this state. If property is mobile property that is located both within and without this state during the period of the lease or other contract, the receipts assigned to this state are the receipts from the contract period multiplied by the fraction computed under 103 KAR 16:290[.] (as adjusted, if~~

necessary, to reflect differences between usage during the contract period and usage during the taxable year).

(7) Sale of a Service.

(a) General Rule. The receipts from a sale of a service shall be [are-]in this state if and to the extent that the service is delivered to a location in this state. The rules to determine the location of the delivery of a service in the context of several specific types of service transactions shall be [are-]set forth in this subsection and in subsections (8), (9), and (10) of this section.

(b) In-Person Services. 1. Examples of in-person services include services such as:

~~1. Except as provided in this paragraph, in-person services are services that are physically provided in person by the taxpayer, if the customer or the customer's real or tangible property upon which the services are performed is in the same location as the service provider when the services are performed. This rule includes situations when the services are provided on behalf of the taxpayer by a third-party contractor. Examples of in-person services may include:~~

- a. Warranty and repair services;
- b. Cleaning services;
- c. Plumbing services;
- d. Carpentry;
- e. Construction contractor services;
- f. Pest control;
- g. Landscape services;
- h. Medical and dental services, including medical testing, x-rays and mental health care and treatment;
- i. Child care;
- j. Hair cutting and salon services;
- k. Live entertainment and athletic performances; and
- l. In-person training or lessons.

~~2. In-person services shall include services as described in subparagraph 1., clauses a. through l. of this paragraph that are performed:~~

- a. At a location that is owned or operated by the service provider; or
- b. A location of the customer, including the location of the customer's real or tangible personal property.

~~3. Various professional services, including services such as accounting, financial and consulting services, and other similar services are not treated as in-person services within the meaning of this paragraph, although they may involve some amount of in-person contact.~~

~~4. Assignment of Receipts. Rule of Determination. Except as provided in this subparagraph, if the service provided by the taxpayer is an in-person service, the service is delivered to the location where the service is received. Therefore, the receipts from a sale shall be [are-]in this state if and to the extent the customer receives the in-person service in this state. In assigning its receipts from sales of in-person services, a taxpayer shall first attempt to determine the location where a service is received, as follows:~~

~~a. If the service is performed with respect to the body of an individual customer in this state (e.g., hair cutting or x-ray services) or in the physical presence of the customer in this state (e.g., live entertainment or athletic performances), the service is received in this state.~~

~~b. If the service is performed with respect to the customer's real estate in this state or if the service is performed with respect to the customer's tangible personal property at the customer's residence or in the customer's possession in this state, the service is received in this state.~~

~~c. If the service is performed with respect to the customer's tangible personal property and the tangible personal property is to be shipped or delivered to the customer, whether the service is performed within or outside this state, the service is received in this state if the property is shipped or delivered to the customer in this state.~~

~~5. Rule of Reasonable Approximation. If the state or states where a service is actually received cannot be determined, but the taxpayer has sufficient information regarding the place of receipt from which it may reasonably approximate the state or states where the service is received, the taxpayer shall reasonably~~

approximate the state or states. If the state to which the receipts are to be assigned may be determined or reasonably approximated, but the taxpayer is not taxable in that state, the receipts that may be assigned to the state shall be [are-]excluded from the denominator of the taxpayer's receipts factor pursuant to KRS 141.120(11)(c).

6. Examples. In these examples assume, unless otherwise stated, that the taxpayer is taxable in each state to which its receipts may be assigned, so that there is no requirement that the receipts from the sale or sales be eliminated from the denominator of the taxpayer's receipts factor. For purposes of the examples, it is irrelevant whether the services are performed by an employee of the taxpayer, or by an independent contractor acting on the taxpayer's behalf.

a. Example. Salon Corp has retail locations in Kentucky and in other states where it provides hair cutting services to individual and business customers, the latter of whom are paid for through the means of a company account. The receipts from sales of services provided at Salon Corp's in-state locations shall be [are-]in Kentucky. The receipts from sales of services provided at Salon Corp's locations outside Kentucky, even if provided to residents of Kentucky, are not receipts from in-state sales.

b. Example. Landscape Corp provides landscaping and gardening services in Kentucky and in neighboring states. Landscape Corp provides landscaping services at the in-state vacation home of an individual who is a resident of another state and who is located outside Kentucky when the services are performed. The receipts from sale of services provided at the in-state location shall be [are-]in Kentucky.

c. Example. Same facts as in Example b., except that Landscape Corp provides the landscaping services to Retail Corp, a corporation with retail locations in several states, and the services are with respect to those locations of Retail Corp that are in Kentucky and in other states. The receipts from the sale of services provided to Retail Corp shall be [are-]in Kentucky to the extent the services are provided in Kentucky.

d. Example. Camera Corp provides camera repair services at a Kentucky retail location to walk-in individual and business customers. In some cases, Camera Corp actually repairs a camera that is brought to its in-state location at a facility that is in another state. In these cases, the repaired camera is then returned to the customer at Camera Corp's Kentucky location. The receipts from sale of these services shall be [are-]in Kentucky.

e. Example. Same facts as in Example d., except that a customer located in Kentucky mails the camera directly to the out-of-state facility owned by Camera Corp to be fixed, and receives the repaired camera back in Kentucky by mail. The receipts from sale of the service shall be [are-] in Kentucky.

f. Example. Teaching Corp provides seminars in Kentucky to individual and business customers. The seminars and the materials used in connection with the seminars are prepared outside the state. The teachers who teach the seminars include teachers that are residents outside the state, and the students who attend the seminars include students that are residents outside the state. Because the seminars are taught in Kentucky, the receipts from sales of the services shall be [are-]in Kentucky.

(8) Services Delivered to the Customer, or on Behalf of the Customer, or Delivered Electronically Through the Customer.

(a) If the service provided by the taxpayer is not an in-person service within the meaning of subsection (7)(b) of this section, or a professional service within the meaning of subsection (10) of this section, and the service is delivered to or on behalf of the customer, or delivered electronically through the customer, the receipts from a sale are in this state if and to the extent that the service is delivered in this state. For the purposes of this subsection and subsection (9) of this section, a service that is delivered "to" a customer is a service in which the customer and not a third party is the recipient of the service. A service that is delivered "on behalf of" a customer is one in which a customer contracts for a service, but one (1) or more third parties, rather than the customer, is the recipient of the service, such as fulfillment services, or the direct or indirect delivery of advertising to the customer's intended audience. A service may be delivered to or on

behalf of a customer by physical means or through electronic transmission. A service that is delivered electronically "through" a customer is a service that is delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to an end user or other third-party recipient.

(b) Assignment of Receipts. The assignment of receipts to a state or states in the instance of a sale of a service that is delivered to the customer or on behalf of the customer, or delivered electronically through the customer, depends upon the method of delivery of the service and the nature of the customer. Separate rules of assignment apply to services delivered by physical means and services delivered by electronic transmission. [(For purposes of this subsection, a service delivered by an electronic transmission is not a delivery by a physical means)]. If a rule of assignment set forth in this administrative regulation[,] depends on whether the customer is an individual or a business customer[,] and the taxpayer acting in good faith cannot reasonably determine whether the customer is an individual or business customer, the taxpayer shall treat the customer as a business customer. If the state to which the receipts from a sale are to be assigned may be determined or reasonably approximated, but the taxpayer is not taxable in that state, the receipts that may be assigned to that state shall be [are] excluded from the denominator of the taxpayer's receipts factor.

1. Delivery to or on Behalf of a Customer by Physical Means Whether to an Individual or Business Customer. Examples of services [Services] delivered to a customer or on behalf of a customer through a physical means include services such as:[-, for example:]

a. Product delivery services if property is delivered to the customer or to a third party on behalf of the customer;

b. The delivery of brochures, fliers, or other direct mail services;

c. The delivery of advertising or advertising-related services to the customer's intended audience in the form of a physical medium; and

d. The sale of custom software if the taxpayer installs the custom software at the customer's site (e.g., if software is developed for a specific customer in a case when the transaction is properly treated as a service transaction for purposes of corporate taxation.) The rules in this administrative regulation apply whether the taxpayer's customer is an individual customer or a business customer.

2. Rule of Determination. In assigning the receipts from a sale of a service delivered to a customer or on behalf of a customer through a physical means, a taxpayer shall first attempt to determine the state or states where the service is delivered. If the taxpayer is able to determine the state or states where the service is delivered, it shall assign the receipts to that state or states.

3. Rule of Reasonable Approximation. If the taxpayer cannot determine the state or states where the service is actually delivered, but has sufficient information regarding the place of delivery from which it may reasonably approximate the state or states where the service is delivered, it shall reasonably approximate the state or states.

4. Examples. In these examples assume, unless otherwise stated, that the taxpayer is taxable in each state to which its receipts may be assigned, so that there is no requirement in these examples that the receipts shall be eliminated from the denominator of the taxpayer's receipts factor.

a. Example. Direct Mail Corp, a corporation based outside Kentucky, provides direct mail services to its customer, Business Corp. Business Corp contracts with Direct Mail Corp to deliver printed fliers to a list of customers that is provided to it by Business Corp. Some of Business Corp's customers are in Kentucky and some of those customers are in other states. Direct Mail Corp will use the postal service to deliver the printed fliers to Business Corp's customers. The receipts from the sale of Direct Mail Corp's services to Business Corp shall be [are] assigned to Kentucky to the extent that the services are delivered on behalf of Business Corp to Kentucky customers (i.e., to the extent that the fliers are delivered on behalf of Business Corp to Business Corp's intended

audience in Kentucky).

b. Example. Ad Corp is a corporation based outside Kentucky that provides advertising and advertising-related services in Kentucky and in neighboring states. Ad Corp enters into a contract at a location outside Kentucky with an individual customer who is not a Kentucky resident to design advertisements for billboards to be displayed in Kentucky, and to design fliers to be mailed to Kentucky residents. All of the design work is performed outside Kentucky. The receipts from the sale of the design services shall be [are] in Kentucky because the service is physically delivered on behalf of the customer to the customer's intended audience in Kentucky.

c. Example. Same facts as Example b., except that the contract is with a business customer that is based outside Kentucky. The receipts from the sale of the design services shall be [are] in Kentucky because the services are physically delivered on behalf of the customer to the customer's intended audience in Kentucky.

d. Example. Fulfillment Corp, a corporation based outside Kentucky, provides product delivery fulfillment services in Kentucky and in neighboring states to Sales Corp, a corporation located outside Kentucky that sells tangible personal property through a mail order catalog and over the Internet to customers. In some cases if a customer purchases tangible personal property from Sales Corp to be delivered in Kentucky, Fulfillment Corp will, pursuant to its contract with Sales Corp, deliver that property from its fulfillment warehouse located outside Kentucky. The receipts from the sale of the fulfillment services of Fulfillment Corp to Sales Corp shall be [are] assigned to Kentucky to the extent that Fulfillment Corp's deliveries on behalf of Sales Corp are to recipients in Kentucky.

e. Example. Software Corp, a software development corporation, enters into a contract with a business customer, Buyer Corp, which is physically located in Kentucky, to develop custom software to be used in Buyer Corp's business. Software Corp develops the custom software outside Kentucky, and then physically installs the software on Buyer Corp's computer hardware located in Kentucky. The development and sale of the custom software is properly characterized as a service transaction, and the receipts from the sale shall be [are] assigned to Kentucky because the software is physically delivered to the customer in Kentucky.

f. Example. Same facts as Example e., except that Buyer Corp has offices in Kentucky and several other states, but is commercially domiciled outside Kentucky and orders the software from a location outside Kentucky. The receipts from the development and sale of the custom software service shall be [are] assigned to Kentucky because the software is physically delivered to the customer in Kentucky.

(9) Delivery to a Customer by Electronic Transmission. Services delivered by electronic transmission shall include services such as those that are transmitted through the means of wire, lines, cable, fiber optics, electronic signals, satellite transmission, audio or radio waves, or other similar means, whether or not the service provider owns, leases or controls the transmission equipment. In the case of the delivery of a service by electronic transmission to a customer, the following rules shall apply:

(a) Services Delivered By Electronic Transmission to an Individual Customer or Business Customer: [-]

1. Services Delivered By Electronic Transmission to an Individual Customer.

a. Rule of Determination. In the case of the delivery of a service to an individual customer by electronic transmission, the service shall be [is] delivered in this state if and to the extent [that] the taxpayer's customer receives the service in this state. If the taxpayer may determine the state or states where the service is received, it shall assign the receipts from that sale to that state or states.

b. Rules of Reasonable Approximation. If the taxpayer cannot determine the state or states where the customer actually receives the service, but has sufficient information regarding the place of receipt from which it may reasonably approximate the state or states where the service is received, it shall reasonably approximate the state or states. If a taxpayer does not have

sufficient information from which it may determine or reasonably approximate the state or states in which the service is received, it shall reasonably approximate the state or states using the customer's billing address.

2. Services Delivered By Electronic Transmission to a Business Customer.

a. Rule of Determination. In the case of the delivery of a service to a business customer by electronic transmission, the service ~~shall be [is]~~ delivered in this state if and to the extent that the taxpayer's customer receives the service in this state. If the taxpayer may determine the state or states where the service is received, it shall assign the receipts from that sale to the state or states. For purposes of paragraph (b)2. of this subsection, ~~[it is intended that]~~ the state or states where the service is received shall reflect the location at which the service is directly used by the employees or designees of the customer.

b. Rule of Reasonable Approximation. If the taxpayer cannot determine the state or states where the customer actually receives the service, but has sufficient information regarding the place of receipt from which it may reasonably approximate the state or states where the service is received, it shall reasonably approximate the state or states.

c. Secondary Rule of Reasonable Approximation. In the case of the delivery of a service to a business customer by electronic transmission, if a taxpayer does not have sufficient information from which it may determine or reasonably approximate the state or states in which the service is received, the taxpayer shall reasonably approximate the state or states as set forth in this administrative regulation. In these cases, unless the taxpayer may apply the safe harbor set forth in this subsection the taxpayer shall reasonably approximate the state or states in which the service is received as follows:

(i) By assigning the receipts from the sale to the state where the contract of sale is principally managed by the customer;

(ii) If the state where the customer principally manages the contract is not reasonably determinable, by assigning the receipts from the sale to the customer's place of order; and

(iii) If the customer's place of order is not reasonably determinable, by assigning the receipts from the sale using the customer's billing address<sup>[2]</sup> except if the taxpayer derives more than five (5) percent of its receipts from sales of services from any single customer, then the taxpayer shall identify the state in which the contract of sale is principally managed by that customer.

d. Safe Harbor. In the case of the delivery of a service to a business customer by electronic transmission, a taxpayer may not be able to determine<sup>[2]</sup> or reasonably approximate the state or states in which the service is received. In these cases, the taxpayer may, in lieu of the rule stated in paragraph (a)2.c. of this subsection, apply the safe harbor stated in this clause. Under this safe harbor, a taxpayer may assign its receipts from sales to a particular customer based upon the customer's billing address in a taxable year in which the taxpayer:

(i) Engages in substantially similar service transactions with more than 250 customers, whether business or individual; and

(ii) Does not derive more than five (5) percent of its receipts from sales of all services from that customer. This safe harbor applies only for purposes of services delivered by electronic transmission to a business customer.

e. Related Member Transactions. In the case of a sale of a service by electronic transmission to a business customer that is a related member, the taxpayer may not use the secondary rule of reasonable approximation in subclause (iii)<sup>[iii]</sup> of clause c. within this subparagraph. The taxpayer<sup>[2]</sup>, but may use the rule of reasonable approximation and the safe harbor provided by this administrative regulation only if the department may aggregate sales to related members in determining whether the sales exceed five (5) percent of receipts from sales of all services under that safe harbor provision if necessary or appropriate to prevent distortion.

f. Examples. In these examples, unless otherwise stated, assume that the taxpayer is not related to the customer to which the service is delivered. Assume that the taxpayer is taxable in each state to which its receipts may be assigned, so that there is no requirement in these examples that the receipts shall be

eliminated from the denominator of the taxpayer's receipts factor. Further, assume if relevant, unless otherwise stated, that the safe harbor set forth in clause d. of this subparagraph does not apply.

(i) Example. Support Corp, a corporation that is based outside Kentucky, provides software support and diagnostic services to individual and business customers that have previously purchased certain software from third-party vendors. These individual and business customers are located in Kentucky and other states. Support Corp supplies its services on a case-by-case basis if directly contacted by its customer. Support Corp generally provides these services through the Internet, but sometimes provides these services by phone. In all cases, Support Corp verifies the customer's account information before providing any service. Using the information that Support Corp verifies before performing a service, Support Corp may determine where its services are received, and therefore shall assign its receipts to these locations. The receipts from sales made to Support Corp's individual and business customers ~~shall be [are]~~ in Kentucky to the extent that Support Corp's services are received in Kentucky.

(ii) Example. Online Corp, a corporation based outside Kentucky, provides Web-based services through the means of the Internet to individual customers who are residents in Kentucky and in other states. These customers access Online Corp's Web services primarily in their states of residence, and sometimes, while traveling, in other states. For a substantial portion of its receipts from the sale of services, Online Corp may either determine the state or states where the services are received, or, if it cannot determine the state or states, it has sufficient information regarding the place of receipt to reasonably approximate the state or states. However, Online Corp cannot determine or reasonably approximate the state or states of receipt for all of the sales of its services. Assuming that Online Corp reasonably believes, based on all available information, that the geographic distribution of the receipts from sales for which it cannot determine or reasonably approximate the location of the receipt of its services generally tracks those for which it does have this information, Online Corp shall assign to Kentucky the receipts from sales for which it does not know the customers' locations in the same proportion as those receipts for which it has this information.

(iii) Example. Same facts as in Example (ii), except that Online Corp reasonably believes that the geographic distribution of the receipts from sales for which it cannot determine or reasonably approximate the location of the receipt of its Web-based services do not generally track the sales for which it does have this information. Online Corp shall assign the receipts from sales of its services for which it lacks information as provided to its individual customers using the customers' billing addresses.

(iv) Example. Same facts as in Example (iii), except that Online Corp is not taxable in one (1) state to which some of its receipts from sales may be assigned. The receipts that may be assigned to that state ~~shall be [are]~~ excluded from the denominator of Online Corp's receipts factor.

(v) Example. Net Corp, a corporation based outside Kentucky, provides Web-based services to a business customer, Business Corp, a company with offices in Kentucky and two (2) neighboring states. Particular employees of Business Corp access the services from computers in each Business Corp office. Assume that Net Corp determines that Business Corp employees in Kentucky were responsible for seventy-five (75) percent of Business Corp's use of Net Corp's services, and Business Corp employees in other states were responsible for twenty-five (25) percent of Business Corp's use of Net Corp's services. Seventy-five (75) percent of the receipts from the sale are received in Kentucky. Assume alternatively that Net Corp lacks sufficient information regarding the location or locations where Business Corp's employees used the services to determine or reasonably approximate the location or locations. Under these circumstances, if Net Corp derives five (5) percent or less of its receipts from sales to Business Corp, Net Corp shall assign the receipts under the secondary rule of approximation to the state where Business Corp principally managed the contract, or if that state is not determinable, to the state where Business Corp placed the order for the services, or if that state is not reasonably determinable, to the state of Business

Corp's billing address. If Net Corp derives more than five (5) percent of its receipts from sales of services to Business Corp, Net Corp shall identify the state in which its contract of sale is principally managed by Business Corp and shall assign the receipts to that state.

(vi) Example. Net Corp, a corporation based outside Kentucky, provides Web-based services through the means of the Internet to more than 250 individual and business customers in Kentucky and in other states. Assume that for each customer Net Corp cannot determine the state or states where its Web services are actually received, and lacks sufficient information regarding the place of receipt to reasonably approximate the state or states. Assume that Net Corp does not derive more than five (5) percent of its receipts from sales of services to a single customer. Net Corp may apply the safe harbor, and may assign its receipts using each customer's billing address. If Net Corp is not taxable in one (1) or more states to which some of its receipts may be assigned, it shall exclude those receipts from the denominator of its receipts factor.

(b) Services Delivered Electronically Through or "on Behalf of" an Individual or Business Customer. A service delivered electronically "on behalf of" the customer is one in which a customer contracts for a service to be delivered electronically, but one (1) or more third parties, rather than the customer, is the recipient of the service, such as the direct or indirect delivery of advertising on behalf of a customer to the customer's intended audience. A service delivered electronically "through" a customer to third-party recipients is a service that is delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to end users or other third-party recipients.

1. Rule of Determination. In the case of the delivery of a service by electronic transmission, if the service is delivered electronically to end users or other third-party recipients through or on behalf of the customer, the service is delivered in this state if and to the extent that the end users or other third-party recipients are in this state. For example, in the case of the direct or indirect delivery of advertising on behalf of a customer to the customer's intended audience by electronic means, the service shall be [is] delivered in this state to the extent that the audience for the advertising is in this state. In the case of the delivery of a service to a customer that acts as an intermediary in reselling the service in substantially identical form to third-party recipients, the service shall be [is] delivered in this state to the extent that the end users or other third-party recipients receive the services in this state. These rules apply if [whether] the taxpayer's customer is an individual customer or a business customer and if [whether] the end users or other third-party recipients to which the services are delivered through or on behalf of the customer are individuals or businesses.

2. Rule of Reasonable Approximation. If the taxpayer cannot determine the state or states where the services are actually delivered to the end users or other third-party recipients either through or on behalf of the customer, but has sufficient information regarding the place of delivery from which it may reasonably approximate the state or states where the services are delivered, it shall reasonably approximate the state or states.

3. Select Secondary Rules of Reasonable Approximation.

a. If a taxpayer's service is the direct or indirect electronic delivery of advertising on behalf of its customer to the customer's intended audience, and if the taxpayer lacks sufficient information regarding the location of the audience from which it may determine or approximate that location, the taxpayer shall approximate the audience in a state for the advertising using the following secondary rules of reasonable approximation. If a taxpayer is delivering advertising directly or indirectly to a known list of subscribers, the taxpayer shall approximate the audience for advertising in a state using a percentage that reflects the ratio of the state's subscribers in the specific geographic area in which the advertising is delivered relative to the total subscribers in that area. For a taxpayer with less information about its audience, the taxpayer shall approximate the audience in a state using the percentage that reflects the ratio of the state's population in the specific geographic area in which the advertising is delivered

relative to the total population in that area.

b. The taxpayer shall approximate the extent to which the service is received in a state by using the percentage that reflects the ratio of the state's population in the specific geographic area in which the taxpayer's intermediary resells the services, relative to the total population in that area:

(i) If a taxpayer's service is the delivery of a service to a customer that then acts as the taxpayer's intermediary in reselling that service to end users or other third party recipients; or

(ii) If the taxpayer lacks sufficient information regarding the location of the end users or other third party recipients from which it may determine or reasonably approximate that location.

c. Examples. Assume in each of these examples that the taxpayer that provides the service is taxable in this state and shall apportion its income pursuant to KRS 141.120.

(i) Example: Web Corp, a corporation that is based outside Kentucky, provides Internet content to viewers in Kentucky and other states. Web Corp sells advertising space to business customers pursuant to which the customers' advertisements shall appear in connection with Web Corp's Internet content. Web Corp receives a fee for running the advertisements that is determined by reference to the number of times the advertisement is viewed or clicked upon by the viewers of its Web site. Web Corp's sale of advertising space to its business customers shall be [is] assigned to Kentucky to the extent that the viewers of the Internet content are in Kentucky, as measured by viewings or clicks. If Web Corp is unable to determine the actual location of its viewers, and lacks sufficient information regarding the location of its viewers to reasonably approximate the location, Web Corp shall approximate the amount of its Kentucky sales by multiplying the amount of the sales by a percentage that reflects the Kentucky population in the specific geographic area in which the content containing the advertising is delivered relative to the total population in the area.

(ii) Example. Retail Corp, a corporation that is based outside of Kentucky, sells tangible property through its retail stores located in Kentucky and other states, and through a mail order catalog. Answer Co, a corporation that operates call centers in multiple states, contracts with Retail Corp to answer telephone calls from individuals placing orders for products found in Retail Corp's catalogs. The phone answering services of Answer Co are being delivered to Retail Corp's customers and prospective customers. Therefore, Answer Co is delivering a service electronically to Retail Corp's customers or prospective customers on behalf of Retail Corp, and shall assign the proceeds from this service to the state or states from which the phone calls are placed by the customers or prospective customers. If Answer Co cannot determine the actual locations from which phone calls are placed, and lacks sufficient information regarding the locations to reasonably approximate the locations, Answer Co shall approximate the amount of its Kentucky sales by multiplying the amount of its fee from Retail Corp by a percentage that reflects the Kentucky population in the specific geographic area from which the calls are placed relative to the total population in the area.

(iii) Example. Web Corp, a corporation that is based outside of Kentucky, sells tangible property to customers via its Internet Web site. Design Co designed and maintains Web Corp's Web site, including making changes to the site based on customer feedback received through the site. Design Co's services are delivered to Web Corp, the proceeds from which shall be [are] assigned pursuant to this subsection. The fact that Web Corp's customers and prospective customers incidentally benefit from Design Co's services, and may even interact with Design Co in the course of providing feedback, does not transform the service into one delivered "on behalf of" Web Corp to Web Corp's customers and prospective customers.

(iv) Example. Wholesale Corp, a corporation that is based outside Kentucky, develops an Internet-based information database outside Kentucky and enters into a contract with Retail Corp under which Retail Corp will market and sell access to this database to end users. Depending on the facts, the provision of database access may be either the sale of a service or the license of intangible property, or may have elements of both. Assume that on the particular facts applicable in this example, Wholesale Corp

is selling database access in transactions properly characterized as involving the performance of a service. If an end user purchases access to Wholesale Corp's database from Retail Corp, Retail Corp in turn compensates Wholesale Corp in connection with that transaction. Wholesale Corp's services are being delivered through Retail Corp to the end user. Wholesale Corp shall assign its sales to Retail Corp to the state or states in which the end users receive access to Wholesale Corp's database. If Wholesale Corp cannot determine the state or states where the end users actually receive access to Wholesale Corp's database, and lacks sufficient information regarding the location from which the end users access the database to reasonably approximate the location, Wholesale Corp shall approximate the extent to which its services are received by end users in Kentucky. Wholesale Corp shall approximate by using a percentage that reflects the ratio of the Kentucky population in the specific geographic area in which Retail Corp regularly markets and sells Wholesale Corp's database relative to the total population in the area. It does not matter for purposes of the analysis whether Wholesale Corp's sale of database access constitutes a service or a license of intangible property, or some combination of both.

(10) Professional Services.

(a) Except as provided in this subsection, professional services are services that require specialized knowledge, and in some cases, require a professional certification, license, or degree. These services include the performance of technical services that require the application of specialized knowledge. Professional services shall include[,] services such as:

1. Management services;
2. Bank and financial services;
3. Financial custodial services;
4. Investment and brokerage services;
5. Fiduciary services;
6. Tax preparation;
7. Payroll and accounting services;
8. Lending services;
9. Credit card services (including credit card processing services);
10. Data processing services;
11. Legal services;
12. Consulting services;
13. Video production services;
14. Graphic and other design services;
15. Engineering services; and
16. Architectural services.

(b) Overlap with Other Categories of Services.

1. Certain services that are under "professional services" as set forth in paragraph (a)1. through 16. of this subsection are nevertheless treated as "in-person services", and shall be [are] assigned under the rules of subsection (7)(b) of this section. Professional services that are physically provided in person by the taxpayer such as carpentry, certain medical and dental services, or child care services, if the customer or the customer's real or tangible property upon which the services are provided is in the same location as the service provider when the services are performed, are "in-person services". In-person services are assigned as these, but may be considered to be "professional services." However, professional services, if the service is of an intellectual or intangible nature, such as legal, accounting, financial, and consulting services shall be [are] assigned as professional services under the rules of this subsection, notwithstanding the fact that these services may involve some amount of in-person contact.

2. Professional services may [in some cases] include the transmission of one (1) or more documents or other communications by mail or by electronic means. In some cases, all or most communications between the service provider and the service recipient may be by mail or by electronic means. However, [in these cases,] despite this transmission, the assignment rules that apply shall be [are] those set forth in this subsection and not those set forth in subsection (8) of this section pertaining to services delivered to a customer or through or on behalf of a customer.

(c) Assignment of Receipts. In the case of a professional service, it is generally possible to characterize the location of delivery in multiple ways by emphasizing different elements of the service provided, no one (1) of which shall [will] consistently represent the market for the services. Therefore, the location of delivery in the case of professional services is not susceptible to a general rule of determination, and shall be reasonably approximated. The assignment of receipts from a sale of a professional service depends in many cases upon whether the customer is an individual or business customer. In any instance in which the taxpayer, acting in good faith, cannot reasonably determine whether the customer is an individual or business customer, the taxpayer shall treat the customer as a business customer. For purposes of assigning the receipts from a sale of a professional service, a taxpayer's customer shall be [is] the person that contracts for the service, irrespective of whether another person pays for or benefits from the taxpayer's services. If [in any instance in which] the taxpayer is not taxable in the state to which receipts from a sale is assigned, the receipts are excluded from the denominator of the taxpayer's receipts factor pursuant to KRS 141.120(11)(c).

1. General Rule. Receipts from sales of professional services shall be [are] assigned in accordance with this section, other than those services described in:

- a. Subparagraph 2. of this paragraph on architectural and engineering services;
- b. [Subparagraph 3. of this paragraph on services provided by a financial institution; and
- c.] Subparagraph 3.[4.] of this paragraph on transactions with related members.

c.[d.] Professional Services Delivered to Individual Customers. Except as provided in this subsection, in any instance in which the service provided is a professional service and the taxpayer's customer is an individual customer, the state or states in which the service is delivered shall be reasonably approximated as set forth in this subsection. The taxpayer shall assign the receipts from a sale to the customer's state of primary residence, or, if the taxpayer cannot reasonably identify the customer's state of primary residence, to the state of the customer's billing address. Except in any instance in which the taxpayer derives more than five (5) percent of its receipts from sales of all services from an individual customer, the taxpayer shall identify the customer's state of primary residence and shall assign the receipts from the service or services provided to that customer to that state.

d.[e.] Professional Services Delivered to Business Customers. Except as provided in this subsection, in any instance in which the service provided is a professional service and the taxpayer's customer is a business customer, the state or states in which the service is delivered shall be reasonably approximated as set forth in this section. Unless the taxpayer may use the safe harbor set forth in clause e.[f.] of this subparagraph, the taxpayer shall assign the receipts from the sale as follows:

- (i) By assigning the receipts to the state where the contract of sale is principally managed by the customer;
- (ii) If the place of customer management is not reasonably determinable, to the customer's place of order; and
- (iii) If the customer's place of order is not reasonably determinable, to the customer's billing address. Except in any instance in which the taxpayer derives more than five (5) percent of its receipts from sales of all services from a customer, the taxpayer shall identify the state in which the contract of sale is principally managed by the customer.

e.[f.] Safe Harbor; Large Volume of Transactions. Except as provided in[,] the rules set forth in clauses c. and d. [and e.] of this subparagraph, a taxpayer may assign its receipts from sales to a particular customer based on the customer's billing address in any taxable year in which the taxpayer engages in substantially similar service transactions with more than 250 customers, whether individual or business, and does not derive more than five (5) percent of its receipts from sales of all services from that customer. This safe harbor applies only for purposes of clause c. [d.] of this subparagraph.

2. Architectural and Engineering Services with respect to Real

or Tangible Personal Property. Architectural and engineering services with respect to real or tangible personal property are professional services within the meaning of this subsection. However, unlike in the case of the general rule that applies to professional services:

a. The receipts from a sale of an architectural service shall be [are] assigned to a state or states if ~~[and to the extent that ]~~ the services are with respect to real estate improvements located, or expected to be located, in the state or states; and

b. The receipts from a sale of an engineering service shall be [are] assigned to a state or states if ~~[and to the extent that ]~~ the services are with respect to tangible or real property located in the state or states, including real estate improvements located in, or expected to be located in, the state or states. These rules shall apply if ~~[whether or not ]~~ the customer is an individual or business customer. In any instance in which architectural or engineering services are not described in this subparagraph, the receipts from a sale of these services shall be assigned under the general rule for professional services.

~~3. [Services Provided by Financial Organizations and Institutions. The apportionment rules that apply to financial organizations are set forth in KRS 141.121(5) and in this administrative regulation. In any instance in which a financial organization performs services that are to be assigned pursuant to KRS 141.121(5) and this administrative regulation, including, for example, financial custodial services, those services are considered professional services within the meaning of this subsection, and are assigned according to the general rule for professional service transactions as set forth in paragraph(c)1. of this subsection. Financial institutions are subject to the franchise tax imposed by KRS 136.505 and related statutes and administrative regulations under KRS Chapter 136 and are exempt from the corporation income tax per KRS 141.040(1)(a) and the limited liability entity tax per KRS 141.040(6)(a).~~

~~4. [Related Member Transactions. In any instance in which the professional service is sold to a related member, rather than applying the rule for professional services delivered to business customers in paragraph (c)1.d.[e.] of this subsection, the state or states to which the service shall be [is] assigned is the place of receipt by the related member as reasonably approximated using the following hierarchy:~~

~~a. If the service primarily relates to specific operations or activities of a related member conducted in one (1) or more locations, then to the state or states in which those operations or activities are conducted in proportion to the related member's payroll at the locations to which the service relates in the state or states; or~~

~~b. If the service does not relate primarily to operations or activities of a related member conducted in particular locations, but instead relates to the operations of the related member generally, then to the state or states in which the related member has employees, in proportion to the related member's payroll in those states. The taxpayer may use the safe harbor provided by this administrative regulation only if the department may aggregate the receipts from sales to related members in applying the five (5) percent rule if necessary or appropriate to avoid distortion.~~

~~4.[5.] Broadcast Advertising Services. Notwithstanding anything contained in this administrative regulation to the contrary, receipts from a broadcaster's sale of advertising services to a broadcast customer shall be [are] assigned to this state if the commercial domicile of the broadcast customer is in this state.~~

~~5.[6.] Examples. Unless otherwise stated, assume in each of these examples, if relevant, that the taxpayer is taxable in each state to which its receipts may be assigned, so that there is no requirement in the examples that the receipts shall be excluded from the denominator of the taxpayer's receipts factor. Assume that the customer is not a related member and that the safe harbor does not apply.~~

~~a. Example. Broker Corp provides securities brokerage services to individual customers who are resident in Kentucky and in other states. Assume that Broker Corp knows the state of primary residence for many of its customers, and if it does not know this state of primary residence, it knows the customer's billing~~

address. Assume that Broker Corp does not derive more than five (5) percent of its receipts from sales of all services from any one (1) individual customer. If Broker Corp knows its customer's state of primary residence, it shall assign the receipts to that state. If Broker Corp does not know its customer's state of primary residence, but rather knows the customer's billing address, it shall assign the receipts to that state.

~~b. Example. Same facts as in Example a., except that Broker Corp has several individual customers from whom it derives, in each instance, more than five (5) percent of its receipts from sales of all services. Receipts from sales to customers from whom Broker Corp derives five (5) percent or less of its receipts from sales of all services shall be assigned as described in Example a.. For each customer from whom it derives more than five (5) percent of its receipts from sales of all services, Broker Corp shall determine the customer's state of primary residence and shall assign the receipts from the services provided to that customer to that state. In any case in which a five (5) percent customer's state of primary residence is Kentucky, receipts from a sale made to that customer shall be assigned to Kentucky. In any case in which a five (5) percent customer's state of primary residence is not Kentucky, receipts from a sale made to that customer shall not be [are not] assigned to Kentucky. If receipts from a sale are assigned to a state other than Kentucky, if the state of assignment (i.e., the state of primary residence of the individual customer) is a state in which Broker Corp is not taxable, receipts from the sales shall be excluded from the denominator of Broker Corp's receipts factor.~~

~~c. Example. Architecture Corp provides building design services as to buildings located, or expected to be located, in Kentucky to individual customers who are resident in Kentucky and other states, and to business customers that are based in Kentucky and other states. The receipts from Architecture Corp's sales shall be [are] assigned to Kentucky because the locations of the buildings to which its design services relate are in Kentucky, or are expected to be in Kentucky. For purposes of assigning these receipts, it is not relevant where, in the case of an individual customer, the customer primarily resides or is billed for the services, and it is not relevant where, in the case of a business customer, the customer principally manages the contract, placed the order for the services, or is billed for the services. Further, these receipts shall be [are] assigned to Kentucky even if Architecture Corp's designs are either physically delivered to its customer in paper form in a state other than Kentucky or are electronically delivered to its customer in a state other than Kentucky.~~

~~d. Example. Law Corp provides legal services to individual clients who are residents in Kentucky and in other states. In some cases, Law Corp may prepare one (1) or more legal documents for its client as a result of these services or the legal work may be related to litigation or a legal matter that is ongoing in a state other than where the client is resident. Assume that Law Corp knows the state of primary residence for many of its clients, and if it does not know the [this] state of primary residence, it knows the client's billing address. Assume that Law Corp does not derive more than five (5) percent of its receipts from sales of all services from any one (1) individual client. If Law Corp knows its client's state of primary residence, it shall assign the receipts to that state. If Law Corp does not know its client's state of primary residence, but rather knows the client's billing address, it shall assign the receipts to that state. For purposes of the analysis, it is irrelevant whether the legal documents relating to the service are mailed or otherwise delivered to a location in another state, or the litigation or other legal matter that is the underlying predicate for the services is in another state.~~

~~e. Example. Same facts as in Example d., except that Law Corp provides legal services to several individual clients who it knows have a primary residence in a state where Law Corp is not taxable. Receipts from these services shall be [are] excluded from the denominator of Law Corp's receipts factor even if the billing address of one (1) or more of these clients is in a state in which Law Corp is taxable, including Kentucky.~~

~~f. Example. Law Corp provides legal services to several multistate business clients. In each case, Law Corp knows the~~

state in which the agreement for legal services that governs the client relationship is principally managed by the client. In one (1) case, the agreement is principally managed in Kentucky; in the other cases, the agreement is principally managed in a state other than Kentucky. If the agreement for legal services is principally managed by the client in Kentucky the receipts from sale of the services shall be [are-]assigned to Kentucky; in the other cases, the receipts shall not be [are not-]assigned to Kentucky. In the case of receipts that shall be [are-]assigned to Kentucky, the receipts shall be [are so-]assigned even if:

(i) The legal documents relating to the service are mailed or otherwise delivered to a location in another state; or

(ii) The[the] litigation or other legal matter that is the underlying predicate for the services is in another state.

g. Example. Same facts as in Example f., except that Law Corp is not taxable in one (1) of the states other than Kentucky in which Law Corp's agreement for legal services that governs the client relationship is principally managed by the business client. Receipts from these latter services shall be [are-]excluded from the denominator of Law Corp's receipts factor.

h. Example. Consulting Corp, a company that provides consulting services to law firms and other customers, is hired by Law Corp in connection with legal representation that Law Corp provides to Client Co. Specifically, Consulting Corp is hired to provide expert testimony at a trial being conducted by Law Corp on behalf of Client Co. Client Co pays for Consulting Corp's services directly. Assuming that Consulting Corp knows that its agreement with Law Corp is principally managed by Law Corp in Kentucky, the receipts from the sale of Consulting Corp's services shall be [are-]assigned to Kentucky. It is not relevant for purposes of the analysis that Client Co is the ultimate beneficiary of Consulting Corp's services, or that Client Co pays for Consulting Corp's services directly.

~~i. [Example. Bank Corp provides financial custodial services, including the safekeeping of some of its customers' financial assets, to 100 individual customers who are resident in Kentucky and in other states. Assume for purposes of this example that Bank Corp knows the state of primary residence for many of its customers, and if it does not know the state of primary residence, it knows the customer's billing address. Assume that Bank Corp does not derive more than five (5) percent of its receipts from sales of all of its services from any single customer. Because Bank Corp does not have more than 250 customers, it may not apply the safe harbor for professional services stated in this subsection. If Bank Corp knows its customer's state of primary residence, it shall assign the receipts to that state. If Bank Corp does not know its customer's state of primary residence, but rather knows the customer's billing address, it shall assign the receipts to that state. Bank Corp's receipts are assigned to Kentucky if the customer's state of primary residence (or billing address, in cases when it does not know the customer's state of primary residence) is in Kentucky, even if Bank Corp's financial custodial work, including the safekeeping of the customer's financial assets, takes place in a state other than Kentucky.~~

~~j. Example. Same facts as Example i., except that Bank Corp has more than 250 customers, individual or business. Bank Corp may apply the safe harbor for professional services stated in paragraph (c)1.f. of this subsection, and may assign its receipts from sales to a state or states using each customer's billing address.~~

~~k. Example. Same facts as Example j., except that Bank Corp derives more than five (5) percent of its receipts from sales from a single individual customer. As to the sales made to this customer, Bank Corp shall determine the individual customer's state of primary residence and shall assign the receipts from the service or services provided to that customer to that state. Receipts from sales to all other customers are assigned as described in Example j.~~

l.] Example. Advisor Corp, a corporation that provides investment advisory services, provides these advisory services to Investment Co. Investment Co is a multistate business client of Advisor Corp that uses Advisor Corp's services in connection with investment accounts that it manages for individual clients, who are

the ultimate beneficiaries of Advisor Corp's services. Assume that Investment Co's individual clients are persons that are residents in numerous states, which may or may not include Kentucky. Assuming that Advisor Corp knows that its agreement with Investment Co is principally managed by Investment Co in Kentucky, receipts from the sale of Advisor Corp's services shall be [are-]assigned to Kentucky. It is not relevant for purposes of the analysis that the ultimate beneficiaries of Advisor Corp's services may be Investment Co's clients, who are residents of numerous states.

~~l.[m.] Example. Advisor Corp provides investment advisory services to Investment Fund LP, a partnership that invests in securities and other assets. Assuming that Advisor Corp knows that its agreement with Investment Fund LP is principally managed by Investment Fund LP in Kentucky, receipts from the sale of Advisor Corp's services shall be [are-]assigned to Kentucky. It is not relevant for purposes of the analysis that the partners in Investment Fund LP are residents of numerous states.~~

~~k.[n.] Example. Design Corp is a corporation based outside Kentucky that provides graphic design and similar services in Kentucky and in neighboring states. Design Corp enters into a contract at a location outside Kentucky with an individual customer to design fliers for the customer. Assume that Design Corp does not know the individual customer's state of primary residence and does not derive more than five (5) percent of its receipts from sales of services from the individual customer. All of the design work is performed outside Kentucky. Receipts from the sales shall be [are-]in Kentucky if the customer's billing address is in Kentucky.~~

(11) License, Lease or Rental [or Lease] of Intangible Property.

(a) 1. The receipts from the license of intangible property are in this state if ~~[and to the extent]~~ the intangible is used in this state. "Use" is construed to refer to the location of the taxpayer's market for the use of the intangible property that is being licensed and is not to be construed to refer to the location of the property or payroll of the taxpayer. The rules that shall apply to determine the location of the use of intangible property in the context of several specific types of licensing transactions shall be [are] set forth in paragraphs (b) through (f) ~~[(b)-(f)]~~ of this subsection. For purposes of the rules set forth in this subsection, a lease or rental of intangible property shall [is to-]be treated the same as a license of intangible property.

2. A license of intangible property that conveys all substantial rights in that property shall be [is-]treated as a sale of intangible property for purposes of this administrative regulation. For purposes of this subsection and subsection (12) of this section, a sale or exchange of intangible property shall be [is-]treated as a license of that property if the receipts from the sale or exchange are derived from payments that are contingent on the productivity, use, or disposition of the property.

3. Intangible property licensed as part of the sale or lease of tangible property shall be [is] treated under this section as the sale or lease of tangible property.

4. In any instance in which the taxpayer is not taxable in the state to which the receipts from the license of intangible property shall be [are-]assigned, the receipts shall be [are-]excluded from the denominator of the taxpayer's receipts factor pursuant to KRS 141.120(11)(c).

5. Nothing in this administrative regulation shall be construed to allow or require inclusion of receipts in the receipts factor that are not included in the definition of "receipts" pursuant to KRS 141.120(1)(e), or that are excluded from the numerator and the denominator of the receipts factor pursuant to KRS 141.120(11)(a)(4)(b)iii. To the extent that the transfer of either a security or business "goodwill" or similar intangible value, including, "going concern value" or "workforce in place," may be characterized as a license or lease of intangible property, receipts from the transaction shall be excluded from the numerator and the denominator of the taxpayer's receipts factor.

(b) License of a Marketing Intangible.

1. If a license is granted for the right to use intangible property in connection with the sale, lease, license, or other marketing of goods, services, or other items (i.e., a marketing intangible) to a consumer, the royalties or other licensing fees paid by the licensee for that marketing intangible shall be [are-]assigned to this state to



the extent that those fees are attributable to the sale or other provision of goods, services, or other items purchased or otherwise acquired by consumers or other ultimate customers in this state.

a. Examples of a license of a marketing intangible shall include:

(i) The ~~the~~ license of a service mark, trademark, or trade name;

(ii) Certain ~~certain~~ copyrights;

(iii) The ~~the~~ license of a film, television or multimedia production or event for commercial distribution; and

(iv) A ~~a~~ franchise agreement.

b. In each of these instances, the license of the marketing intangible is intended to promote consumer sales.

2. In the case of the license of a marketing intangible, if a taxpayer has actual evidence of the amount or proportion of its receipts that is attributable to this state, it shall assign that amount or proportion to this state. In the absence of actual evidence of the amount or proportion of the licensee's receipts that are derived from consumers in this state, the portion of the licensing fee to be assigned to this state shall be reasonably approximated by multiplying the total fee by a percentage that reflects the ratio of the population of this state in the specific geographic area in which the licensee makes material use of the intangible property to regularly market its goods, services, or other items relative to the total population in that area.

3. If the license of a marketing intangible is for the right to use the intangible property in connection with sales or other transfers at wholesale rather than directly to retail customers, the portion of the licensing fee to be assigned to this state shall be reasonably approximated by multiplying the total fee by a percentage that reflects the ratio of the population of this state in the specific geographic area in which the licensee's goods, services, or other items are ultimately and materially marketed using the intangible property relative to the total population of that area.

4. Unless the taxpayer demonstrates that the marketing intangible is materially used in the marketing of items outside the United States, the fees from licensing those marketing intangible shall be presumed to be derived from within the United States.

(c) License of a Production Intangible.

1. If a license is granted for the right to use intangible property other than in connection with the sale, lease, license, or other marketing of goods, services, or other items, and the license is to be used in a production capacity (a "production intangible"), the licensing fees paid by the licensee for that right shall be ~~are~~ assigned to this state to the extent that the use for which the fees are paid takes place in this state.

2. Examples of a license of a production intangible shall include items such as the license of a patent, a copyright, or trade secrets to be used in a manufacturing process, if the value of the intangible lies predominately in its use in that process.

3. In the case of a license of a production intangible to a member other than a related member, if the location of actual use is unknown, it shall be ~~is~~ presumed that the use of the intangible property takes place in the state of the licensee's commercial domicile ~~if (where) the licensee is a business~~ or the licensee's state of primary residence ~~if (where the) licensee is an individual~~. If the department may reasonably establish that the actual use of intangible property pursuant to a license of a production intangible takes place in part in this state, it shall be ~~is~~ presumed that the entire use is in this state, except to the extent that the taxpayer may demonstrate that the actual location of a portion of the use takes place outside this state. In the case of a license of a production intangible to a related member, the taxpayer shall assign the receipts to where the intangible property is actually used.

(d) License of a Broadcasting Intangible.

1. If a broadcaster grants a license to a broadcast customer for the right to use film programming, the licensing fees paid by the licensee for the right shall be ~~are~~ assigned to this state to the extent that the broadcast customer is located in this state.

2. In the case of business customers, the broadcast customer's location shall be determined using the broadcast customer's commercial domicile.

3. In the case of individual customers, the broadcast customer's location shall be determined using the address of the broadcast customer listed in the broadcaster's records.

(e) License of a Mixed Intangible. If a license of intangible property includes both a license of a marketing intangible and a license of a production intangible (a "mixed intangible") and the fees to be paid in each instance are separately and reasonably stated in the licensing contract, the department shall accept that separate statement for purposes of this administrative regulation. If a license of intangible property includes both a license of a marketing intangible and a license of a production intangible and the fees to be paid in each instance are not separately and reasonably stated in the contract, it shall be ~~is~~ presumed that the licensing fees are paid entirely for the license of the marketing intangible, except to the extent that the taxpayer or the department may reasonably establish otherwise.

(f) License of Intangible Property if Substance of Transaction Resembles a Sale of Goods or Services.

1. In some cases, the license of intangible property will resemble the sale of an ~~electronically delivered~~ ~~electronically-delivered~~ good or service rather than the license of a marketing intangible or a production intangible. In these cases, the receipts from the licensing transaction shall be ~~are~~ assigned by applying the rules set forth in subsection (9)(a) and (b) of this section, as if the transaction were a service delivered to an individual or business customer or delivered electronically through an individual or business customer, as applicable. Examples of transactions to be assigned under this subsection shall include transactions such as:

a. The ~~the~~ license of database access;

b. The ~~the~~ license of access to information;

c. The ~~the~~ license of digital goods; and

d. The ~~the~~ license of certain software (e.g., if the transaction is not the license of pre-written software that is treated as the sale of tangible personal property.)

2. Sublicenses. Pursuant to this paragraph, the rules of subsection (9)(b) of this section ~~subsection~~ may apply if a taxpayer licenses intangible property to a customer that in turn sublicenses the intangible property to end users as if the transaction were a service delivered electronically through a customer to end users. The rules set forth in subsection (9)(b) of this section ~~subsection~~ that apply to services delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to end users or other recipients may apply with respect to licenses of intangible property for purposes of sublicense to end users. For this purpose, the intangible property sublicensed to an end user shall not fail to be substantially identical to the property that was licensed to the sublicensor merely because the sublicense transfers a reduced bundle of rights with respect to that property (e.g., because the sublicensee's rights are limited to its own use of the property and do not include the ability to grant a further sublicense), or because that property is bundled with additional services or items of property.

3. Examples. In these examples, unless otherwise stated, assume that the taxpayer is taxable in each state to which its receipts may be assigned so that there is no requirement in these examples that the receipts shall be eliminated from the denominator of the taxpayer's receipts factor. Assume that the customer is not a related member.

a. Example. Crayon Corp and Dealer Co enter into a license contract under which Dealer Co as licensee may use trademarks that are owned by Crayon Corp in connection with Dealer Co's sale of certain products to retail customers. Under the contract, Dealer Co shall pay Crayon Corp a licensing fee that is a fixed percentage of the total volume of monthly sales made by Dealer Co of products using the Crayon Corp trademarks. Under the contract, Dealer Co may sell the products at multiple store locations, including store locations that are both within and without Kentucky. Further, the licensing fees that are paid by Dealer Co are broken out on a per-store basis. The licensing fees paid to Crayon Corp by Dealer Co shall represent fees from the license of a marketing intangible. The portion of the fees ~~to be~~ assigned to Kentucky

~~shall be [are]~~ determined by multiplying the fees by a percentage that reflects the ratio of Dealer Co's receipts that are derived from its Kentucky stores relative to Dealer Co's total receipts.

b. Example. Network Corp is a broadcaster that licenses rights to its film programming to both platform distribution companies and individual customers. Platform distribution companies pay licensing fees to Network Corp for the rights to distribute Network Corp's film programming to the platform distribution companies' customers. Network Corp's individual customers pay access fees to Network Corp for the right to directly access and view Network Corp's film programming. Network Corp's receipts from each platform distribution company shall be assigned to Kentucky if the broadcast customer's commercial domicile is in Kentucky. Network Corp's receipts from each individual broadcast customer shall be assigned to Kentucky if the address of the broadcast customer listed in the broadcaster's records is in Kentucky.

c. Example. Moniker Corp enters into a license contract with Wholesale Co. Pursuant to the contract, Wholesale Co may use trademarks owned by Moniker Corp to brand sports equipment that is to be manufactured by Wholesale Co or an unrelated entity, and to sell the manufactured equipment to unrelated companies that will ultimately market the equipment to consumers in a specific geographic region, including a foreign country. The license agreement confers a license of a marketing intangible, even though the trademarks in question shall be affixed to property to be manufactured. In addition, the license of the marketing intangible is for the right to use the intangible property in connection with sales to be made at wholesale rather than directly to retail customers. The component of the licensing fee that constitutes the Kentucky receipts of Moniker Corp ~~shall be [is-]~~ determined by multiplying the amount of the fee by a percentage that reflects the ratio of the Kentucky population in the specific geographic region relative to the total population in that region. If Moniker Corp is able to reasonably establish that the marketing intangible was materially used throughout a foreign country, then the population of that country shall be included in the population ratio calculation. However, if Moniker Corp is unable to reasonably establish that the marketing intangible was materially used in the foreign country in areas outside a particular major city; then none of the foreign country's population beyond the population of the major city is included in the population ratio calculation. If Moniker Corp is not taxable in any state ~~[including a]~~ or foreign country) in which Wholesale Co's ultimate consumers are located, the receipts that may be assigned to that state ~~shall be [are-]~~ excluded from the denominator of Moniker Corp's receipts factor.

d. Example. Formula, Inc and Appliance Co enter into a license contract under which Appliance Co may use a patent owned by Formula, Inc to manufacture appliances. The license contract specifies that Appliance Co is to pay Formula, Inc a royalty that is a fixed percentage of the gross receipts from the products that are later sold. The contract does not specify other fees. The appliances are both manufactured and sold in Kentucky and several other states. Assume the licensing fees are paid for the license of a production intangible, even though the royalty is to be paid based upon the sales of a manufactured product (i.e., the license is not one that includes a marketing intangible). Because the department may reasonably establish that the actual use of the intangible property takes place in part in Kentucky, the royalty ~~shall be [is]~~ assigned based to the location of that use rather than to location of the licensee's commercial domicile. It ~~shall be [is-]~~ presumed that the entire use is in Kentucky, except to the extent that the taxpayer may demonstrate that the actual location of some or all of the use takes place outside Kentucky. Assuming that Formula, Inc may demonstrate the percentage of manufacturing that takes place in Kentucky using the patent relative to the manufacturing in other states, that percentage of the total licensing fee paid to Formula, Inc under the contract shall constitute Formula, Inc's Kentucky receipts.

e. Example. Axel Corp enters into a license agreement with Biker Co in which Biker Co may produce motor scooters using patented technology owned by Axel Corp~~[.]~~ and ~~[to-]~~ sell the scooters by marketing the fact that the scooters were manufactured using the special technology. The contract is a

license of both a marketing and production intangible, i.e., a mixed intangible. The scooters are manufactured outside Kentucky. Assume that Axel Corp lacks actual information regarding the proportion of Biker Co's ~~[Co's-]~~ receipts that are derived from Kentucky customers. Assume that Biker Co is granted the right to sell the scooters in a U.S. geographic region in which the Kentucky population constitutes twenty-five (25) percent of the total population during the period in question. The licensing contract requires an upfront licensing fee to be paid by Biker Co to Axel Corp and does not specify what percentage of the fee derives from Biker Co's right to use Axel Corp's patented technology. Because the fees for the license of the marketing and production intangible are not separately and reasonably stated in the contract, it ~~shall be [is-]~~ presumed that the licensing fees are paid entirely for the license of a marketing intangible, unless either the taxpayer or the department reasonably establishes otherwise. Assuming that neither member establishes otherwise, twenty-five (25) percent of the licensing fee ~~shall constitute [constitutes-]~~ Kentucky receipts.

f. Example. Same facts as Example e., except that the license contract specifies separate fees to be paid for the right to produce the motor scooters and for the right to sell the scooters by marketing the fact that the scooters were manufactured using the special technology. The licensing contract ~~shall constitute [constitutes-]~~ both the license of a marketing intangible and the license of a production intangible. Assuming that the separately stated fees are reasonable, the department shall:

(i) Assign no part of the licensing fee paid for the production intangible to Kentucky; and

(ii) Assign twenty-five (25) percent of the licensing fee paid for the marketing intangible to Kentucky.

g. Example. Better Burger Corp, which is based outside Kentucky, enters into franchise contracts with franchisees that agree to operate Better Burger restaurants as franchisees in various states. Several of the Better Burger Corp franchises are in Kentucky. In each case, the franchise contract between the individual and Better Burger provides that the franchisee is to pay Better Burger Corp an upfront fee for the receipt of the franchise and monthly franchise fees, which cover~~[, among other things,]~~ the right to use the Better Burger name and service marks, food processes and cooking know-how, ~~and [as well as-]~~ fees for management services. The upfront fees for the receipt of the Kentucky franchises ~~shall constitute [constitute-]~~ fees paid for the licensing of a marketing intangible. These fees ~~shall constitute~~ Kentucky receipts because the franchisees are for the right to make Ketter Kentucky sales. The monthly franchise fees paid by Kentucky franchisees ~~shall constitute~~ fees paid for:

(i) The license of marketing intangibles (the Better Burger name and service marks);

(ii) The license of production intangibles (food processes and know-how); and

(iii) Personal services (management fees).

~~(iv) The fees paid for the license of the marketing intangibles and the production intangibles constitute Kentucky receipts because in each case the use of the intangibles occurs [is to take place-] in Kentucky. The fees paid for the personal services shall [are to-] be assigned pursuant to this section.~~

h. Example. Online Corp, a corporation based outside Kentucky, licenses an information database through the means of the Internet to individual customers that are resident in Kentucky and in other states. These customers access Online Corp's information database primarily in their states of residence, and sometimes, while traveling, in other states. The license is a license of intangible property that resembles a sale of goods or services and ~~shall be [are-]~~ assigned in accordance with this paragraph. If Online Corp may determine or reasonably approximate the state or states where its database is accessed, it shall do so. Assuming that Online Corp cannot determine or reasonably approximate the location where its database is accessed, Online Corp shall assign the receipts made to the individual customers using the customers' billing addresses to the extent known. Assume for purposes of this example that Online Corp knows the billing address for each of its customers. Online Corp's receipts from sales made to its individual customers ~~shall be [are-]~~ in Kentucky ~~if [in any case in which-]~~ the

customer's billing address is in Kentucky.

i. Example. Net Corp, a corporation based outside Kentucky, licenses an information database through the means of the Internet to a business customer, Business Corp, a company with offices in Kentucky and two (2) neighboring states. The license is a license of intangible property that resembles a sale of goods or services and shall be [are-]assigned in accordance with this paragraph. Assume that Net Corp cannot determine where its database is accessed, but reasonably approximates that seventy-five (75) percent of Business Corp's database access took place in Kentucky, and twenty-five (25) percent of Business Corp's database access took place in other states. In that case, seventy-five (75) percent of the receipts from database access shall be [is] in Kentucky. Assume alternatively that Net Corp lacks sufficient information regarding the location where its database is accessed to reasonably approximate the location. Under these circumstances, if Net Corp derives five (5) percent or less of its receipts from database access from Business Corp, Net Corp shall assign the receipts under subsection (9)(a)2)(b) of this section to the state where Business Corp principally managed the contract, or if that state is not reasonably determinable to the state where Business Corp placed the order for the services, or if that state is not reasonably determinable to the state of Business Corp's billing address. If Net Corp derives more than five (5) percent of its receipts from database access from Business Corp, Net Corp shall identify the state in which its contract of sale is principally managed by Business Corp and shall assign the receipts to that state.

j. Example. Net Corp, a corporation based outside Kentucky, licenses an information database through the means of the Internet to more than 250 individual and business customers in Kentucky and in other states. The license is a license of intangible property that resembles a sale of goods or services and receipts from that license shall be [are-]assigned in accordance with this paragraph. Assume that Net Corp cannot determine or reasonably approximate the location where its information database is accessed. Assume that Net Corp does not derive more than five (5) percent of its receipts from sales of database access from any single customer. Net Corp may apply the safe harbor stated in subsection (9)(a)2.d. of this section, and may assign its receipts to a state or states using each customer's billing address. If Net Corp is not taxable in one (1) or more states to which some of its receipts may be otherwise assigned, it shall exclude those receipts from the denominator of its receipts factor.

k. Example. Web Corp, a corporation based outside of Kentucky, licenses an Internet-based information database to business customers who then sublicense the database to individual end users that are resident in Kentucky and in other states. These end users access Web Corp's information database primarily in their states of residence, and sometimes, while traveling, in other states. Web Corp's license of the database to its customers includes the right to sublicense the database to end users, while the sublicenses provide that the rights to access and use the database are limited to the end users' own use and prohibit the individual end users from further sublicensing the database. Web Corp receives a fee from each customer based upon the number of sublicenses issued to end users. The license is a license of intangible property that resembles a sale of goods or services and shall be [are-]assigned by applying the rules set forth in subsection (9)(b) of this section. If Web Corp may determine or reasonably approximate the state or states where its database is accessed by end users, it shall do so. Assuming that Web Corp lacks sufficient information from which it may determine or reasonably approximate the location where its database is accessed by end users, Web Corp shall approximate the extent to which its database is accessed in Kentucky using a percentage that represents the ratio of the Kentucky population in the specific geographic area in which Web Corp's customer sublicenses the database access relative to the total population in that area.

(12) Sale of Intangible Property.

(a) Assignment of Receipts. The assignment of receipts to a state or states in the instance of a sale or exchange of intangible property depends upon the nature of the intangible property sold. For purposes of this subsection, a sale or exchange of intangible

property includes a license of that property if the transaction is treated for tax purposes as a sale of all substantial rights in the property and the receipts from transaction are not contingent on the productivity, use, or disposition of the property. For the rules that apply if the consideration for the transfer of rights is contingent on the productivity, use, or disposition of the property, see KRS 141.120(11)(a)(4)(b)(ii), [iii-]

1. [(a)] Contract Right or Government License that Authorizes Business Activity in Specific Geographic Area. In the case of a sale or exchange of intangible property if the property sold or exchanged is a contract right, government license or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area, the receipts from the sale shall be [are-]assigned to a state if and to the extent that the intangible property is used or may be used within the state. If the intangible property is used or may be used only in Kentucky, the taxpayer shall assign the receipts from the sale to this state. If the intangible property is used or may be used in this state and one (1) or more other states, the taxpayer shall assign the receipts from the sale to this state to the extent that the intangible property is used in or authorized for use in this state, through the means of a reasonable approximation.

2. [(b)] Sale that Resembles a License (Receipts are Contingent on Productivity, Use, or Disposition of the Intangible Property[-]) In the case of a sale or exchange of intangible property, if the receipts from the sale or exchange are contingent on the productivity, use, or disposition of the property, the receipts from the sale shall be [are-]assigned by applying the rules set forth in subsection (11) of this section that establishes rules [(f)]pertaining to the license, [er] lease, or rental of intangible property[)].

3. [(c)] Sale that Resembles a Sale of Goods and Services. In the case of a sale or exchange of intangible property, if the substance of the transaction resembles a sale of goods or services and if the receipts from the sale or exchange are not derived [do not derive-]from payments contingent on the productivity, use, or disposition of the property, the receipts from the sale shall be [are] assigned by applying the rules set forth in subsection (11)(f) of this section (relating to licenses of intangible property that resemble sales of goods and services). Examples of these transactions include those that are analogous to the license transactions cited as examples in subsection (11)(f)3. of this section.

4. [(d)] Excluded Receipts.

a. Receipts from the sale of intangible property shall not be [are not] included in the receipts factor in any case in which the sale does not give rise to receipts within the meaning of KRS 141.120(1)(e). In addition, pursuant to KRS 141.120(11)(a)(4)(b)(iii),—receipts from the sale of intangible property shall be [are-]excluded from the numerator and the denominator of the taxpayer's receipts factor if the receipts are not referenced in KRS 141.120(11)(a)(4)(b)(i) or KRS 141.120(11)(a)(4)(b)(ii). Examples of sales [The sale-]of intangible property that are [is] excluded from the numerator and denominator of the taxpayer's receipts factor under KRS 141.120(11)(a)(4)(b)(iii) shall include[s]:

- (i) The [the-]sale of a partnership interest;
- (ii) The [the-]sale of business "goodwill[,-]";
- (iii) The [the-]sale of an agreement not to compete; or
- (iv) The sale of any[,-or] similar intangible value.

b. If [in any instance in which,-] the state to which the receipts from a sale is to be assigned may be determined or reasonably approximated, but if the taxpayer is not taxable in the state, the receipts that may be assigned to the state shall be excluded from the denominator of the taxpayer's receipts factor.

5. [(e)] Examples. In these examples, unless otherwise stated, assume that the taxpayer is taxable in each state to which some of its receipts may be assigned, so that there is no requirement in these examples that the receipts to other states shall be excluded from the taxpayer's denominator pursuant to subsection (12)(a)(4)(b) [(44)(a)] of this section and KRS 141.120(11)(c).

a. [4-] Example. Airline Corp, a corporation based outside Kentucky, sells its rights to use several gates at an airport located in Kentucky to Buyer Corp, a corporation that is based outside Kentucky. The contract of sale is negotiated and signed outside of

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Kentucky. The receipts from the sale ~~shall be [are-]~~in Kentucky because the intangible property sold is a contract right that authorizes the holder to conduct a business activity solely in Kentucky.

b.[2-] Example. Wireless Corp, a corporation based outside Kentucky, sells a license issued by the Federal Communications Commission (FCC) to operate wireless telecommunications services in a designated area in Kentucky to Buyer Corp, a corporation that is based outside Kentucky. The contract of sale is negotiated and signed outside of Kentucky. The receipts from the sale ~~shall be [are-]~~in Kentucky because the intangible property sold is a government license that authorizes the holder to conduct business activity solely in Kentucky.

c.[3-] Example. Same facts as in Example b., except that Wireless Corp sells to Buyer Corp an FCC license to operate wireless telecommunications services in a designated area in Kentucky and an adjacent state. Wireless Corp shall attempt to reasonably approximate the extent to which the intangible property is used in or may be used in Kentucky. For purposes of making this reasonable approximation, Wireless Corp may rely upon credible data that identifies the percentage of persons that use wireless telecommunications in the two (2) states covered by the license.

d.[4-] Example. Same facts as in Example c., except that Wireless Corp is not taxable in the adjacent state in which the FCC license authorizes it to operate wireless telecommunications services. The receipts paid to Wireless Corp that may be assigned to the adjacent state shall be excluded from the denominator of Wireless Corp's receipts factor.

e.[5-] Example. Sports League Corp, a corporation that is based outside Kentucky, sells the rights to broadcast the sporting events played by the teams in its league in all fifty (50) U.S. states to Network Corp. Although the games played by Sports League Corp will be broadcast in all fifty (50) states, the games are of greater interest in the southeast region of the country, including Kentucky. Because the intangible property sold is a contract right that authorizes the holder to conduct a business activity in a specified geographic area, Sports League Corp shall attempt to reasonably approximate the extent to which the intangible property is used in or may be used in Kentucky. For purposes of making this reasonable approximation, Sports League Corp may rely upon audience measurement information that identifies the percentage of the audience for its sporting events in Kentucky and the other states.

f.[6-] Example. Same facts as in Example e., except that Sports League Corp is not taxable in one (1) state. The receipts paid to Sports League Corp that may be assigned to that state shall be excluded from the denominator of Sports League Corp's receipts factor.

g.[7-] Example. Inventor Corp, a corporation that is based outside Kentucky, sells patented technology that it has developed to Buyer Corp, a business customer that is based in Kentucky. Assume that the sale is not one in which the receipts derive from payments that are contingent on the productivity, use, or disposition of the property. Inventor Corp understands that Buyer Corp is likely to use the patented technology in Kentucky, but the patented technology may be used anywhere (i.e., the rights sold are not rights that authorize the holder to conduct a business activity in a specific geographic area). The receipts from the sale of the patented technology ~~shall be [are-]~~excluded from the numerator and denominator of Inventor Corp's receipts factor.

### (13) Special Rules.

(a) Software Transactions. A license or sale of pre-written software for purposes other than commercial reproduction ~~{[}~~or other exploitation of the intellectual property rights ~~that is{]}~~ transferred on a tangible medium ~~shall be [is-]~~treated as the sale of tangible personal property, rather than as either the license or sale of intangible property or the performance of a service. In these cases, the receipts ~~shall be [are-]~~in this state as determined under the rules for the sale of tangible personal property set forth under KRS 141.120(10) and ~~this administrative regulation.[related administrative regulations-]~~ In all other cases, the receipts from a license or sale of software ~~shall [are to-]~~be assigned to this state as determined otherwise under this administrative regulation. (e.g.,

depending on the facts, as the development and sale of custom software, see subsection (8) of this section, as a license of a marketing intangible, see subsection (11)(b) of this section, as a license of a production intangible, see subsection (11)(c) of this section, as a license of intangible property if the substance of the transaction resembles a sale of goods or services, see subsection (11)(f) of this section, or as a sale of intangible property, see subsection (12) of this section.)

### (b) Sales or Licenses of Digital Goods or Services.

1. In the case of a sale or license of digital goods or services, ~~[including, among other things, the sale of various video, audio, and software products, or similar transactions,]~~ the receipts from the sale or license ~~shall be [are-]~~assigned by applying the same rules as are set forth in subsection (9)(a) and (b) or subsection 10(c)5. of this section, as if the transaction were a service delivered to an individual or business customer or delivered through or on behalf of an individual or business customer. Examples of sales or licenses of digital goods or services include sales of various video, audio, and software products or other similar transactions. For purposes of the analysis, it ~~shall not be [is not-]~~relevant what the terms of the contractual relationship are or whether the sale or license might be characterized, depending upon the particular facts, as, for example, the sale or license of intangible property or the performance of a service.

2. Providers of communication services, cable service, and Internet access. Providers shall apportion income to this state using a three (3) factor formula as provided in KRS 141.901 pursuant to KRS 141.121(3).

Section 6. Special Rules: Receipts Factor. The special sourcing rules established in this section shall apply to the particular industries, transactions or activities described in this section for use in computing the fraction for apportioning apportionable income. ~~[The following special rules are established in respect to the receipts factor of the apportionment formula:]~~

(1) ~~[Bank holding company. For any corporation or other business entity registered under state law as a bank holding company or registered under 12 U.S.C. 1841, et. seq., the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under 12 U.S.C. 1701 to 1750, the Federal National Housing Act, as amended, and any entity more than fifty (50) percent owned, directly or indirectly, by these holding companies, receipts are included in the receipts factor denominator and assigned to the receipts factor numerator in this state to the extent those receipts may be included in the denominator and assigned to this state under KRS 136.530.~~

(2) ~~]-Bargeline. Bargelines shall determine transportation receipts in this state by multiplying total transportation revenues by a fraction, the numerator of which shall be [is-]miles operated in this state and the denominator of which shall be [is-]total miles operated for the taxable year. Miles operated in this state shall be fifty (50) percent of the miles operated on the Ohio River, the Big Sandy River, and the Mississippi River adjacent to this state's shoreline plus all miles operated on other inland waterways within this state.~~

(2)[(3)] Busline. Buslines shall determine transportation receipts in this state by multiplying total transportation revenues by a fraction, the numerator of which shall be [is-]miles operated in this state and the denominator of which shall be [is-]total miles operated for the taxable year.

### (3) Financial institutions and financial organizations.

(a) Except as otherwise provided, a financial institution or financial organization whose business activity is taxable both within and without this state shall allocate and apportion its net income as provided in this section, including, a financial institution or financial organization organized under the laws of a foreign country whose effectively connected income as defined under the Internal Revenue Code is taxable both within this state and within another state.

(b) Non-apportionable income. All items of nonapportionable income (income which is not includable in the apportionable income tax base) shall be allocated pursuant to KRS 141.120, KRS 141.121 and 103 KAR 16:060.

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(c) Apportionable income. All apportionable income shall be apportioned to this state in accordance with KRS 141.121 and this administrative regulation.

(d) Sourcing of receipts, generally. The receipts factor is a fraction, the numerator of which is the receipts of the taxpayer in this state during the taxable year and the denominator of which is the receipts of the taxpayer within and without this state during the taxable year. The method for calculating receipts for purposes of the denominator is the same as the method for determining receipts for purposes of the numerator. The receipts factor shall include only those receipts described in this administrative regulation which constitute apportionable income and are included in the computation of the apportionable income base for the taxable year.

(e) Receipts from the lease of real property. The numerator of the receipts factor shall include receipts from the lease or rental of real property owned by the taxpayer if the property is located within this state or receipts from the sublease of real property if the property is located within this state. For this purpose, "real property owned" means real property:

1. On which the taxpayer may claim depreciation for federal income tax purposes; or

2. Property to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes or could claim depreciation if subject to federal income tax. "Real property owned" does not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(f) Receipts from the lease of tangible personal property. The numerator of the receipts factor shall include receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state or receipts from the sublease of property if the property is located within this state. For this purpose, "tangible personal property owned" means tangible personal property:

1. On which the taxpayer may claim depreciation for federal income tax purposes; or

2. Property to which the taxpayer holds legal title, and on which no other person may claim depreciation for federal income tax purposes or could claim depreciation if subject to federal income tax. "Tangible personal property owned" does not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(g) Interest, fees, and penalties imposed in connection with loans secured by real property.

1. The numerator of the receipts factor shall include interest, fees, and penalties imposed in connection with loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the receipts described in this paragraph shall be included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, then the receipts described in this paragraph shall be included in the numerator of the receipts factor if the borrower is located in this state.

2. The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made and any and all subsequent substitutions of collateral shall be disregarded.

(h) Interest, fees, and penalties imposed in connection with loans not secured by real property. The numerator of the receipts factor shall include interest, fees, and penalties imposed in connection with loans not secured by real property if the borrower is located in this state.

(i) Net gains from the sale of loans. The numerator of the receipts factor shall include net gains from the sale of loans. Net gains from the sale of loans shall include income recorded under the coupon stripping rules of Section 1286 of the Internal Revenue Code.

1. The amount of net gains, but not less than zero, from the sale of loans secured by real property included in the numerator shall be determined by multiplying such net gains by a fraction. The numerator of the fraction shall be the amount included in the

numerator of the receipts factor pursuant to paragraph (f) of this subsection and the denominator shall be the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

2. The amount of net gains, but not less than zero, from the sale of loans not secured by real property included in the numerator shall be determined by multiplying such net gains by a fraction. The numerator of the fraction shall be the amount included in the numerator of the receipts factor pursuant to paragraph (g) of this subsection and the denominator shall be the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(j) Receipts from fees, interest, and penalties charged to card holders. The numerator of the receipts factor shall include fees, interest, and penalties charged to credit, debit, or similar card holders, including annual fees and overdraft fees, if the billing address of the card holder is in this state.

(k) Net gains from the sale of credit card receivables. The numerator of the receipts factor shall include net gains, but not less than zero, from the sale of credit card receivables multiplied by a fraction. The numerator of the fraction shall be the amount included in the numerator of the receipts factor pursuant to paragraph (i) of this subsection and the denominator shall be the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(l) Card issuer's reimbursement fees. The numerator of the receipts factor shall include:

1. All credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to credit card holders included in the numerator of the receipts factor pursuant to paragraph (i) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to credit card holders;

2. All debit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to debit card holders included in the numerator of the receipts factor pursuant to paragraph (i) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to debit card holders; and

3. All other card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to all other card holders included in the numerator of the receipts factor pursuant to paragraph (i) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to all other card holders.

(m) Receipts from merchant discount. 1. If the taxpayer can readily determine the location of the merchant and if the merchant is in this state, the numerator of the receipts factor shall include receipts from merchant discount.

2. If the taxpayer cannot readily determine the location of the merchant, the numerator of the receipts factor shall include the receipts from the merchant discount multiplied by a fraction:

a. In the case of a merchant discount related to the use of a credit card, the numerator of which is the amount of fees, interest, and penalties charged to credit card holders included in the numerator of the receipts factor pursuant to paragraph (i) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to credit card holders; or

b. In the case of a merchant discount related to the use of a debit card, the numerator of which is the amount of fees, interest, and penalties charged to debit card holders included in the numerator of the receipts factor pursuant to paragraph (i) of this subsection, and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to debit card holders; or

c. In the case of a merchant discount related to the use of all other types of cards, the numerator of which is the amount of fees, interest, and penalties charged to all other card holders included in the numerator of the receipts factor pursuant to paragraph (i) of this subsection, and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to all other

card holders.

3. The taxpayer's method for sourcing each receipt from a merchant discount shall be consistently applied to the receipt in all states that have adopted sourcing methods substantially similar to subparagraphs 1. and 2. of this paragraph (l) and shall be used on all subsequent returns for sourcing receipts from such merchant unless the department permits or requires application of an alternative method.

(n) Receipts from ATM fees. The receipts factor shall include all ATM fees that are not forwarded directly to another bank.

1. The numerator of the receipts factor shall include fees charged to a cardholder for the use at an ATM of a card issued by the taxpayer if the cardholder's billing address is in this state.

2. The numerator of the receipts factor shall include fees charged to a cardholder, other than the taxpayer's cardholder, for the use of such card at an ATM owned or rented by the taxpayer, if the ATM is in this state.

(o) Loan servicing fees.

1. a. The numerator of the receipts factor shall include loan servicing fees derived from loans secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to paragraph (f) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

b. The numerator of the receipts factor shall include loan servicing fees derived from loans not secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to paragraph (g) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

2. If the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor shall include these fees if the borrower is located in this state.

(p) Receipts from services. The numerator of the receipts factor shall include receipts from services not otherwise apportioned under this section, sourced in accordance with Subsections (7), (8), (9), and (10) of Section 5 of this administrative regulation.

(q) Receipts from investment assets and activity and trading assets and activity.

1. Interest, dividends, net gains not less than zero, and other income from investment assets and activities and from trading assets and activities that are reported on the taxpayer's financial statements, call reports, or similar reports shall be included in the receipts factor. Investment assets and activities and trading assets and activities shall include:

a. Equities;

b. Federal funds;

c. Foreign currency transactions;

d. Forward contracts;

e. Future contracts;

f. Investment securities;

g. Notional principal contracts such as swaps;

h. Options;

i. Securities purchased and sold under agreements to resell or repurchase; or

j. Trading account assets.

2. With respect to the investment and trading assets and activities described in this subparagraph, the receipts factor shall include:

a. The amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements; and

b. The amount by which interest, dividends, gains, and other income from trading assets and activities, including assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

3. The numerator of the receipts factor shall include interest, dividends, net gains not less than zero, and other income from investment assets and activities and from trading assets and activities described in subparagraph 1. of this subsection that are attributable to this state as follows:

a. The amount of interest, dividends, net gains not less than zero, and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator shall be determined by multiplying all income from these assets and activities by a fraction, the numerator of which is the average value of such assets which are properly assigned to a regular place of business of the taxpayer within this state, and the denominator of which is the average value of all such assets.

b. The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator shall be determined by multiplying the amount described in subparagraph 2.a. of this subsection from such funds and securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the taxpayer within this state, and the denominator of which is the average value of all such funds and such securities.

c. The amount of interest, dividends, gains, and other income from trading assets and activities, including assets and activities in the matched book, in the arbitrage book and foreign currency transactions, (but excluding amounts described in clauses a. and b. of this subparagraph 3.), attributable to this state and included in the numerator shall be determined by multiplying the amount described in subparagraph 2.b. of this subsection by a fraction, the numerator of which is the average value of such trading assets which are properly assigned to a regular place of business of the taxpayer within this state, and the denominator of which is the average value of all such assets.

d. For purposes of this subparagraph 3., average value shall be determined as follows:

(i) Value of property owned by the taxpayer. The value of real property and tangible personal property owned by the taxpayer shall be the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation, or amortization.

(ii) Average value of property owned by the taxpayer. The average value of property owned by the taxpayer shall be computed on an annual basis by adding the value of the property on the first day of the taxable year and the value on the last day of the taxable year and dividing the sum by two. If averaging on this basis does not properly reflect average value, the department may require averaging on a more frequent basis. The taxpayer may elect to average on a more frequent basis. When averaging on a more frequent basis is required by the department or is elected by the taxpayer, the same method of valuation shall be used consistently by the taxpayer with respect to property within and without this state and on all subsequent returns unless the taxpayer receives prior permission to use an alternative method for determining average value from the department, or the department requires a different method for determining average value.

4. In lieu of using the method set forth in subparagraph 3., the taxpayer may elect or the department may require, the use of the method set forth in this subparagraph 4. in order to allocate and apportion income to fairly represent the extent of a taxpayer's business activity in this state.

a. The amount of interest, dividends, net gains not less than zero, and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator shall be determined by multiplying all income from these assets and activities by a fraction, the numerator of which is the gross income from such assets and activities which are properly assigned to a regular place of business of the taxpayer within this state, and the denominator of which is the gross income from all such assets and activities.

b. The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements

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and securities sold under repurchase agreements attributable to this state and included in the numerator shall be determined by multiplying the amount described in subparagraph 2.a. of this subsection from the funds and securities by a fraction, the numerator of which is the gross income from such funds and the securities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all these funds and securities.

c. The amount of interest, dividends, gains, and other income from trading assets and activities, including assets and activities in the matched book, in the arbitrage book and foreign currency transactions, but excluding amounts described in clauses a. and b. of this subparagraph 4., attributable to this state and included in the numerator shall be determined by multiplying the amount described in subparagraph 2.b. of this subsection by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

5. If the taxpayer elects or is required by the department to use the method set forth in subparagraph 4., the taxpayer shall use this method on all subsequent returns unless the taxpayer petitions the department in accordance with KRS 141.120(12)(b)(2) and receives permission to use a different method on subsequent returns.

6. The taxpayer shall have the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. If the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one regular place of business is in this state and one regular place of business is outside this state, the asset or activity shall be considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, these policies and guidelines shall be presumed to be established at the commercial domicile of the taxpayer.

(r) All other receipts. The numerator of the receipts factor shall include all other receipts pursuant to the rules set forth in KRS 141.120, KRS 141.121, and this administrative regulation.

(4) Passenger airline. Pursuant to KRS 141.121(2)(b)(1), passenger airlines shall determine transportation receipts in this state by multiplying total transportation revenues by a fraction, the numerator of which is Kentucky revenue passenger miles in this state and the denominator of which is total revenue passenger miles for the taxable year.

(5) Pipeline. Pipeline companies shall determine operating receipts in this state by multiplying total operating revenues by a fraction, the numerator of which is barrel miles transported in this state and the denominator of which is total barrel miles transported for the taxable year.

(6) Public service company. Public service companies shall allocate and apportion net income in accordance with KRS 141.121(5) and this administrative regulation.

(7) Qualified air freight forwarder. Pursuant to KRS 141.121(2)(b)(2), qualified air freight forwarders shall determine freight forwarding receipts in this state by multiplying total freight forwarding revenues by a fraction, the numerator of which shall be [is-]miles operated in this state and the denominator of which shall be [is-]total miles operated by the affiliated airline for the taxable year.

(8) Railroad. Railroads shall determine transportation receipts in this state by multiplying total transportation revenues by a fraction, the numerator of which shall be [is-]revenue car miles in this state and the denominator of which shall be [is-]total revenue car miles for the taxable year.

(9) Regulated investment company. Regulated investment companies shall apportion income pursuant to KRS 141.120 and this administrative regulation, [is-] except that a regulated investment company may elect an alternative method for determining receipts

pursuant to KRS 141.121(4)(b).

(10) Securities brokerage services. Securities brokers operating within certain Kentucky Enterprises Zones defined by KRS 141.121(4)(c), shall apportion income pursuant to KRS 141.120 and this administrative regulation, except that a securities broker so defined may elect an alternative method for determining receipts pursuant to KRS 141.121(4)(c).

(11) Truckline. Trucklines shall determine transportation receipts in this state by multiplying total transportation revenues by a fraction, the numerator of which shall be [is-]miles operated in this state and the denominator of which shall be [is-]total miles operated for the taxable year.

Section 7. This administrative regulation shall apply to tax periods beginning on or after January 1, 2018.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY:

FILED WITH LRC:

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2021, at 10:00 a.m. in Room 11A, State Office Building, 501 High Street, Frankfort, Kentucky 40601. The hearing may be conducted by video teleconference at the discretion of the agency. An individual interested in being heard at this hearing shall provide written notification to the agency of the intention to attend the hearing at least five (5) business days prior to the date scheduled for the hearing.. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the 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 September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary Morris

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides guidance on the computation of the corporation income tax receipts factor used to compute a multistate corporation's taxable net income subject to Kentucky's corporation income tax. This regulation includes guidance specific to the computation of the receipts factor for financial institutions that are now subject to corporation income tax.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide corporation income tax taxpayers with guidance on the computation of the corporation income tax receipts factor used to compute a multistate corporation's taxable net income.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with the provisions of KRS Chapter 13A that require an agency to maintain guidance and current statutory references in its regulations to avoid deficiency. This regulation also includes guidance specific to the computation of the receipts factor for financial institutions that are now subject to corporation income tax under KRS Chapter 141.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulatory language assists a corporate taxpayer by providing guidance on the computation of the corporation income tax receipts factor used to compute a multistate corporation's taxable net income subject to Kentucky's corporation income tax. This regulation

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includes guidance specific to the computation of the receipts factor for financial institutions that are now subject to corporation income tax.

(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 amended regulation corrects statutory references and provides guidance specific to the computation of the receipts factor for financial institutions that are now subject to corporation income tax.

(b) The necessity of the amendment to this administrative regulation: See (1)(b) above.

(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: Multistate corporations, including financial institutions doing business in the Commonwealth of Kentucky may utilize this regulation when computing their Kentucky corporation income tax.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The amendments related to multistate financial institutions will enable them to accurately compute their corporation income tax liability. Other amendments to this regulation are merely technical to conform with the provisions of KRS Chapter 13A.

(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: Multistate corporations will need to follow the guidance provided in this regulation to file a correct corporation income tax return.

(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 fees or costs associated with the amendment with regard to taxpayers or the Department of Revenue.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An accurate filing of corporation income tax returns will occur.

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

(a) Initially: It is not anticipated that there will be any additional costs to implement this administrative regulation. The administrative costs have already been absorbed through current staff and budgeted funding.

(b) On a continuing basis: There are no additional cost expected continually at this time.

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

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

(8) State whether or not this administrative regulation established any fees, or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed regulation will be applied equally to all entities impacted by it.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that

requires or authorizes the action taken by the administrative regulation. KRS 131.130(1), 141.120, and 141.050.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No expenditures or revenues are expected to be generated for state or local agencies by this administrative regulation. This administrative regulation only provides guidance on how a multistate corporation computes the receipts factor.

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

(c) How much will it cost to administer this program for the first year? Current budgetary funding for the Department of Revenue will absorb the administrative costs associated with administering this program.

(d) How much will it cost to administer this program for subsequent years? No additional funding (not already budgeted to the Department) is needed for subsequent years at this time.

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:

### FINANCE AND ADMINISTRATION CABINET Department of Revenue (Amendment)

#### 103 KAR 16:320. Claim of right doctrine.

RELATES TO: KRS 141.039(13), 141.050, 26 U.S.C. 1341

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: ~~[Internal Revenue Code 1341, 26 U.S.C. 1341, provides for an adjustment pursuant to the claim of right doctrine. KRS 141.039 determines a corporation's Kentucky net income.]~~ KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. KRS 141.050(4) requires the department to promulgate administrative regulations to effectively carry out the provisions of KRS Chapter 141. Internal Revenue Code Section 1341, 26 U.S.C. 1341, provides for an adjustment to income tax where a taxpayer restores a substantial amount held under claim of right. This administrative regulation interprets the application of the claim of right doctrine for Kentucky corporation income tax purposes. ~~[how the claim of right doctrine shall be applied to a Kentucky corporation income tax return.]~~

Section 1. Definition. "Internal Revenue Code" is defined in KRS 141.010(15)(14).

Section 2. General. If a corporation has made a claim of right adjustment in its federal tax return, a claim of right adjustment may be made to the Kentucky corporation income tax return in accordance with this section.

(1) If the year the income or deduction was originally reported or deducted remains open under the statutory period authorizing an amendment to the Kentucky corporation income tax return, the claim of right shall be made by amending the corporation's tax return for the year the income or deduction was reported. ~~[is still open under the statute of limitations, the claim of right shall be made by amending that same year's corporation income tax return.]~~

(2) If the year the income or deduction was originally reported or deducted is closed due to the expiration of the statutory period authorizing an amendment to the Kentucky corporation income tax



~~return, [as the statute of limitations has expired,] the claim of right shall be made in the same taxable year as the credit or deduction was claimed for federal purposes.~~

~~(a) The amount of the federal adjustment shall be adjusted for differences between the Internal Revenue Code and KRS Chapter 141.[KRS.]~~

~~(b) Example. A corporation reported claim of right income in the amount of \$1,000,000 in a prior year closed under the statutory period authorizing an amendment to the return, and apportioned twenty (20) percent of its apportionable income to Kentucky, which resulted in additional Kentucky income tax liability of \$12,000. The adjustment to the corporation's tax liability attributable to the claim of right shall not exceed \$12,000 in the taxable year in which the claim is allowed, regardless of whether the corporation's apportionable income to Kentucky in the year in which the claim is allowed exceeds twenty (20) percent of the corporation's total apportionable income. This principle shall also apply if the tax rate in the year the adjustment attributable to the claim of right differs from the year the income was originally reported, or if no tax was paid as a result of prior reporting of the income or deduction subject to a claim of right. [For example, if a corporation reported claim of right income of \$1,000,000 in a prior year, which is closed by the statute of limitations, and apportioned twenty (20) percent of its business income to Kentucky, which resulted in additional Kentucky income tax liability of \$12,000, then the adjustment for the claim of right shall not exceed a \$12,000 tax effect in the taxable year in which the claim is allowed, even though the corporation's business apportionment factor the year in which the claim is allowed is sixty (60) percent. This principle shall also apply if the tax rates differ between the applicable years or if no tax was paid as a result of prior reporting of the income or deduction subject to a claim of right.]~~

Section 3. Documentation. The burden of proof shall be on the corporation to establish ~~[show]~~ that the income or deduction subject to a claim of right was taxed or subject to tax in Kentucky, and the amount of tax actually paid on the income underlying the claim. ~~[which was paid on the income.]~~ Separate computations shall be attached to the return, when filed, showing the claim of right for federal tax purposes and the amount claimed to be attributable for ~~[to]~~ Kentucky income tax purposes.~~[to Kentucky.]~~

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: July 13, 2021

FILED WITH LRC: July 13, 2021 at 1:16 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2021, at 10:00 a.m. in Room 11A, State Office Building, 501 High Street, Frankfort, Kentucky 40601. The hearing may be conducted by video teleconference at the discretion of the agency. An individual interested in being heard at this hearing shall provide written notification to the agency of the intention to attend the hearing at least five (5) business days prior to the date scheduled for the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the 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 September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary Morris

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides guidance on the computation of tax where a corporate taxpayer restores a substantial amount included in income for a prior taxable year because it appeared the taxpayer had an unrestricted right to the income.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide taxpayers with guidance for the computation and reporting of tax on Kentucky tax returns.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with the provisions of KRS Chapter 13A that require an agency to maintain guidance and current statutory references in its regulations to avoid deficiency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulatory language assists a corporate taxpayer by providing guidance on the computation of tax where the taxpayer restores a substantial amount included in income for a prior taxable year because it appeared the taxpayer had an unrestricted right to the income.

(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 amended regulation corrects statutory references.

(b) The necessity of the amendment to this administrative regulation: See (1)(b) above.

(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: Corporate taxpayers doing business in the Commonwealth of Kentucky may utilize this regulation when computing and reporting corporation income taxes due to the Commonwealth of Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The amendments to this regulation are merely technical to conform with the provisions of KRS Chapter 13A.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions or requirements are necessary to comply with this amendment. This administrative regulation is only intended to make technical changes to conform with the requirements under KRS Chapter 13A.

(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 fees or costs associated with the amendment with regard to taxpayers or the Department of Revenue.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Potentially a more efficient and timely processing of their Kentucky tax returns, and efficient processing of their refunds, if applicable.

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

(a) Initially: It is not anticipated that there will be any additional costs to implement this administrative regulation. The administrative costs have already been absorbed through current staff and budgeted funding.

(b) On a continuing basis: There are no additional cost expected continually at this time.

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

(7) Provide an assessment of whether an increase in fees or

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funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees, or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1), 141.039, 141.050, and 26 U.S.C. 1341.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 expenditures or revenues are expected to be generated for state or local agencies by this administrative regulation. This administrative regulation only provides clarification of the current federal law and Kentucky statutes.

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

(c) How much will it cost to administer this program for the first year? Current budgetary funding for the Department of Revenue will continue to absorb the administrative costs associated with tax reporting by a corporate taxpayer when reporting income and computing tax in a taxable year, which was accounted for and reported in a prior taxable year because it appeared the taxpayer had an unrestricted right to the income.

(d) How much will it cost to administer this program for subsequent years? No additional funding (not already budgeted to the Department) is known for subsequent years at this time. We currently absorb the administrative costs of this program, if possible, for processing returns, providing customer service, etc.

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:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)

103 KAR 16:352. Corporation income taxes policies and circulars.

RELATES TO: KRS 131.130(1), 141.010, 141.0101, 141.012, 141.039, 141.040, 141.044, 141.120, 141.160, 141.170, [144.200,] 141.210, 141.206, 141.990

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. Prior to the enactment of KRS 13A, the department issued policies and circulars as guidance for the administration of Kentucky's tax laws. Since that time, changes to corporation income tax law have created conflict with these policies and circulars. [The Department

of Revenue has many policies and circulars, a number of which predate the enactment of KRS Chapter 13A, that conflict with current tax laws.] This administrative regulation rescinds corporation income tax [taxes] policies and circulars.

Section 1. The following corporation income and license tax [taxes] policies [and circulars] of the department [Department of Revenue] are rescinded and shall be null, void, and unenforceable:

(1) Revenue Policy 41P010 - Cooperatives. This policy shall be [is being] rescinded because it conflicts with KRS 141.160 and 141.170.

(2) Revenue Policy 41P020 - Short period return or change in tax period resulting from change in ownership. This policy shall be [is being] rescinded because it restates KRS 141.140(1).

(3) Revenue Policy 41P030 - Six-year statute of limitations. This policy shall be [is being] rescinded because it restates KRS 141.210(2).

(4) Revenue Policy 41P040 - Declaration of estimated tax penalty. This policy shall be [is being] rescinded because it is made obsolete by KRS 141.044(2)(c). [restates KRS 141.990(3).]

(5) Revenue Policy 41P070 - Income and deductions. This policy shall be [is being] rescinded because it is obsolete and restates KRS 141.010, 141.039, and 141.050.

(6) Revenue Policy 41P071 - Claim of right. This policy shall be [is being] rescinded because it was incorporated into 103 KAR 16:320.

(7) Revenue Policy 41P080 - Coal royalty income. This policy shall be [is being] rescinded because it restates KRS 141.039(1)(d). [141.010(12)(d).]

(8) Revenue Policy 41P090 - Jobs Tax Credit. This policy shall be rescinded because it conflicts with KRS Chapter 13A.

(9) Revenue Policy 41P100 - Deductibility of state taxes. This policy shall be [is being] rescinded because it is obsolete due to the repeal of the New York Subsidiary Capital tax. The department issued guidance pursuant to KRS 131.130(8) on the deductibility of state taxes. [103 KAR 16:360, Deductibility of the New York Franchise Tax on Business Corporations, the Massachusetts Corporate Excise Tax, and West Virginia Business and Occupations Tax in Computing a Corporation's Net Income, provides guidance on the deductibility of the New York Franchise Tax on Business Corporations which includes subsidiary capital in the tax base.]

(10)[(9)] Revenue Policy 41P110 - Deductibility of state taxes. This policy shall be [is being] rescinded because it restates KRS 141.039(2)(c)1 and guidance has been issued by the department pursuant to KRS 131.130(8). [guidance on the deductibility of the Massachusetts corporation excise tax is provided in 103 KAR 16:360, Deductibility of the New York Franchise Tax on Business Corporations, the Massachusetts Corporate Excise Tax, and West Virginia Business and Occupations Tax in Computing a Corporation's Net Income.]

(11)[(40)] Revenue Policy 41P120 - Deductibility of state taxes. This policy shall be [is being] rescinded because the Indiana gross receipts tax was repealed effective January 1, 2003, making this policy obsolete.

(12)[(44)] Revenue Policy 41P121 - Deductibility of state taxes. This policy shall be [is being] rescinded because it restates KRS 141.039(2)(c)1 and guidance has been issued by the department pursuant to KRS 131.130(8). [guidance on the deductibility of the West Virginia Business and Occupations Tax is provided in 103 KAR 16:360, Deductibility of the New York Franchise Tax on Business Corporations, the Massachusetts Corporate Excise Tax, and West Virginia Business and Occupations Tax in Computing a Corporation's Net Income.]

(13)[(42)] Revenue Policy 41P125 - Windfall profit tax. This policy shall be [is being] rescinded because it restates KRS 141.039(2)(c) [141.010(13)] and the provision of the Internal Revenue Code referred to in the policy has been repealed.

(14)[(43)] Revenue Policy 41P130 - Taxation of income from activities on the outer continental shelf. This policy shall be [is being] rescinded because it restates provisions in KRS 141.010, 141.039, [KRS 141.010(12), (13), (14),] and 141.120 and the holding of a court decision.

(15)[(44)] Revenue Policy 41P140 - Subpart F Income. This

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policy shall be ~~[is being]~~ rescinded because it conflicts with KRS 141.039(1)(b). ~~[141.040(12)-]~~

~~(16)(145)~~ Revenue Policy 41P150 - Expenses Related to Nonbusiness or Nontaxable Income. This policy shall be ~~[is being]~~ rescinded because it was incorporated into 103 KAR 16:060.

~~(17)(146)~~ Revenue Policy 41P160 - First-Year Net Operating Loss. This policy shall be ~~[is being]~~ rescinded because it restates KRS 141.012, which was repealed effective for taxable years beginning on or after January 1, 2006.

~~(18)(147)~~ Revenue Policy 41P170 - Sales Factor. This policy shall be ~~[is being]~~ rescinded because it is obsolete. Guidance on the ~~receipts~~[sales] factor is provided by 103 KAR 16:270.

~~(19)(148)~~ Revenue Policy 41P180 - Property Factor. This policy shall be ~~[is being]~~ rescinded because it is obsolete. Guidance on the property factor is provided by 103 KAR 16:290.

~~(20)(149)~~ Revenue Policy 41P190 - Net Rental Income. This policy shall be ~~[is being]~~ rescinded because guidance on the treatment of net rental income in the property factor is provided by 103 KAR 16:290, Apportionment; Property Factor.

~~(21)(20)~~ Revenue Policy 41P200 - Partnership and Joint Venture Income Classified Business Income. This policy shall be ~~[is being]~~ rescinded because it conflicts with KRS 141.206.

~~(22)(24)~~ Revenue Policy 41P210 - Business Apportionment Factor for Corporations Reporting Income on Completed Contract Method. This policy shall be ~~[is being]~~ rescinded because it was incorporated into 103 KAR 16:340.

~~(23)(22)~~ Revenue Policy 41P220 - Separate Accounting. This policy shall be ~~[is being]~~ rescinded because it restates KRS 141.120(12) and was [statements in the policy conflict with KRS 141.200(15). Parts of the policy not in conflict with KRS 141.200(15) were] incorporated into 103 KAR 16:330.

~~(24)(23)~~ Revenue Policy 41P230 - Financial Organizations. This policy shall be ~~[is being]~~ rescinded because it is obsolete. [was incorporated into 103 KAR 16:150-]

~~(25)(24)~~ Revenue Policy 41P240 - Homeowners Associations. This policy shall be ~~[is being]~~ rescinded because it restates KRS 141.010, 141.039, and 141.040.

~~(26)(25)~~ Revenue Policy 41P250 - Taxation of Foreign Sales Corporations and Domestic International Sales Corporations. This policy shall be ~~[is being]~~ rescinded because it is obsolete. Updated guidance is provided in 103 KAR 16:370, Corporation Income Tax Treatment of Foreign Sales Corporations and Domestic International Sales Corporations.

~~(27)(26)~~ Revenue Policy 41P260 - Corporate Distributions, Liquidations and Reorganizations. This policy shall be ~~[is being]~~ rescinded because it restates KRS 141.0101(10).

~~(28)~~ Revenue Policy 41P500 – Agreement to extend statute of limitations. This policy shall be rescinded because it is obsolete. Corporation license tax was repealed in 2005.

~~(29)~~ Revenue Policy 41P520 – Capital. This policy shall be rescinded because it is obsolete. Corporation license tax was repealed in 2005.

~~(30)~~ Revenue Policy 41P530 – Borrowed moneys. This policy shall be rescinded because it is obsolete. Corporation license tax was repealed in 2005.

~~(31)~~ Revenue Policy 41P540 – Unearned leasehold income. This policy shall be rescinded because it is obsolete. Corporation license tax was repealed in 2005.

~~(32)~~ Revenue Policy 41P550 – Borrowed moneys. This policy shall be rescinded because it is obsolete. Corporation license tax was repealed in 2005.

~~(33)~~ Revenue Policy 41P560 – Outer continental shelf. This policy shall be rescinded because it is obsolete. Corporation license tax was repealed in 2005.

~~(34)~~ Revenue Policy 41P570 – Corporation license tax apportionment factor. This policy shall be rescinded because it is obsolete. Corporation license tax was repealed in 2005.

~~(35)~~ Revenue Policy 41P580 – Sales factor. This policy shall be rescinded because it is obsolete. Corporation license tax was repealed in 2005.

~~(36)~~ Revenue Policy 41P590 – Homeowners associations. This policy shall be rescinded because it is obsolete. Corporation license tax was repealed in 2005.

~~(37)~~ Revenue Policy 41P600 – Real estate investment trust. This policy shall be rescinded because it is obsolete. Corporation license tax was repealed in 2005.

Section 2. The following corporation income tax circulars of the department are rescinded and shall be void:

~~(1)~~ Revenue Circular 40C005 – Kentucky depreciation system. This circular shall be rescinded because it restates provisions in KRS 141.0101.

~~(2)~~ Revenue Circular 40C010 – Reporting requirements for nonresident partners' of S-corporation shareholders' combined Kentucky income tax return. This circular shall be rescinded because it was superseded by KRS 141.206.

~~(3)~~ Revenue Circular 40C030 – Corporation and individual income tax-special reporting procedures. This circular shall be rescinded because it is obsolete.

~~(4)(27)~~ Revenue Circular 41C020 - Safe harbor or finance leases. This circular shall be ~~[is being]~~ rescinded because it is obsolete. ~~[Updated guidance is provided in 103 KAR 16:380, Safe Harbor or Finance Leases.]~~

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: July 13, 2021

FILED WITH LRC: July 13, 2021 at 1:16 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2021, at 10:00 a.m. in Room 11A, State Office Building, 501 High Street, Frankfort, Kentucky 40601. The hearing may be conducted by video teleconference at the discretion of the agency. An individual interested in being heard at this hearing shall provide written notification to the agency of the intention to attend the hearing at least five (5) business days prior to the date scheduled for the hearing.. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the 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 September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary Morris

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends 103 KAR 16:352 to insert updated language to comply with KRS 13A requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure the guidance contained herein continues to remain in effect.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with the provisions of KRS 13A that require an agency to maintain the most up to date guidance and statutory references in its regulations to avoid deficiency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed language will keep in force a list of rescinded tax policies that is frequently referenced for protests, disputes and legal claims against the state.

(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: See (1)(a).

(b) The necessity of the amendment to this administrative regulation: See (1)(b) above.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Most likely only corporate tax payers or their attorneys would be interested in the information in this amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions are necessary to comply with this amendment. It is only updating the current language to fulfill KRS 13A requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation does not add any additional fees or costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will benefit from keeping this information in effect for their guidance, if needed.

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

(a) Initially: There are no new costs associated with the filing of this amendment.

(b) On a continuing basis: There are no expected additional costs as a result of this amendment in the future.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current budget funding and department staff will be used to implement and enforce this regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1) and 13A.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 new revenues will be generated by making 13A conforming changes to this 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? None.

(c) How much will it cost to administer this program for the first year? No additional costs are expected in the first year of this

regulation being in effect.

(d) How much will it cost to administer this program for subsequent years? No additional costs are expected 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:

**FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
(Amendment)**

**103 KAR 18:020. Withholding return adjustment.**

RELATES TO: KRS 141.330, 141.355

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. KRS 141.050(4) directs the department to promulgate administrative regulations to effectively carry out the provisions of KRS Chapter 141. This administrative regulation explains the procedure which the employer shall [is-to] use in correcting errors in the withholding and payment of Kentucky income tax.

Section 1. General. If the amount of tax withheld by the employer exceeds or is less than the tax required to be withheld and [if more or less than the correct amount of tax is withheld, for any period, or more or less than the correct amount of tax is] paid to the department for any period, proper adjustment may be made on the return for a subsequent period of the same calendar year. Every return on which an adjustment for a preceding period is reported shall [must] include a statement explaining the adjustment and designating the period in which the error occurred. A claim for refund may be filed for any overpayment.

Section 2. Under-withholding. If less than the correct amount of the tax required to be withheld is deducted from any wage payment, the employer may [is authorized to] deduct the under-collection from the remuneration of the employee under his or her control. If there is no such remuneration under the control of the employer, the matter is one for settlement between the employer and the employee, but the amount under-collected shall be the liability of the employer. ~~[employer is responsible for the underwithholding.]~~

Section 3. Over-withholding. If more than the correct amount of tax required to be withheld is deducted from any wage payment, the over-collection may be repaid to the employee. The employer shall obtain and keep, as part of his or her records, the written acknowledgement of receipt of the repayment by the employee ~~[receipt of the employee]~~ showing the date and amount of the repayment. Any over-collection not repaid and received for by the employee shall [must] be reported and paid to the department ~~[Department of Revenue]~~ for the period in which the over-collection was made.

Section 4. Other Errors. Employers shall [should] consult the department for correction of errors in withholding which cannot be adjusted in a return for a subsequent period of the same calendar year.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: July 13, 2021

FILED WITH LRC: July 13, 2021 at 1:16 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2021, at 10:00 a.m. in Room 11A, State Office Building, 501 High Street, Frankfort, Kentucky 40601. The hearing

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may be conducted by video teleconference at the discretion of the agency. An individual interested in being heard at this hearing shall provide written notification to the agency of the intention to attend the hearing at least five (5) business days prior to the date scheduled for the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the 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 September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary Morris

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation explains the procedure that an employer must use in correcting errors in withholding of Kentucky income tax.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide taxpayers with the latest up to date guidance for filing Kentucky tax returns.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with the provisions of KRS Chapter 13A that require an agency to maintain the most up to date guidance and statutory references in its regulations to avoid deficiency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed language will assist an employer with return adjustments for withholding under-payments and over-payments by providing the latest guidance available. Thereby maintaining compliance with current statutes.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates outdated language to maintain compliance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: See (1)(b) above.

(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 administrative regulation provides guidance to employers in circumstances where tax has either been under-withheld or over-withheld for use when reporting individual income tax to the department.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No new or additional actions or requirements are necessary to comply with this amendment. The amendments to this administrative regulation are solely to update current regulatory language to comply with KRS Chapter 13A requirements.

(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 fees or costs necessarily incurred by the

Department of Revenue as a result of the amendments to the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Potentially a more efficient and timely processing of their Kentucky tax return.

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

(a) Initially: It is not anticipated that there will be any additional costs to implement this administrative regulation. The administrative costs to file this amendment have already been absorbed with current staff and budgeted funding. The processing of returns, schedules, reports, etc., provided for under this amendment have been ongoing.

(b) On a continuing basis: There are no additional cost expected continually at this time.

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

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

(8) State whether or not this administrative regulation established any fees, or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed regulation will be applied equally to all entities impacted by it.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1) and KRS Chapter 13A.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 expenditures or revenues are expected to be generated for state or local agencies by this 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? None that is known.

(c) How much will it cost to administer this program for the first year? Current fiscal year budgetary funding for the Department of Revenue will absorb the administrative costs of this program.

(d) How much will it cost to administer this program for subsequent years? No additional costs (not already budgeted to the Department) for subsequent years are expected at this time. We currently absorb the administrative costs of this program for processing returns, providing customer service, etc.

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:

FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
(Amendment)

103 KAR 18:090. Payroll records.

RELATES TO: KRS 131.130, 141.050, 141.310; 141.315; 141.325

STATUTORY AUTHORITY: KRS 131.130(1), 141.050(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. KRS 141.050(4) directs the department to promulgate administrative regulations to effectively carry out the provisions of KRS Chapter 141. This administrative regulation provides guidelines for the maintenance and retention of records relative to income tax withholding by employers.

Section 1. Maintain Records. (1)(a) Every employer required to deduct and withhold income tax upon wages [the tax] shall keep employee withholding exemption certificates and records showing the following:

1. The number of persons employed during the year whose wages are subject to withholding;

2. The ~~the~~ periods of employment; and

3. The [the] amounts and dates of payment to each person [such persons.]

(b) No specific form for [such] records has been prescribed by the department.

(2) Records required by this administrative regulation shall be maintained for a period of at least four (4) years after the date the withholding return is filed or the date tax withheld by the employer is paid, whichever is later.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: July 13, 2021

FILED WITH LRC: July 13, 2021 at 1:16 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2021, at 10:00 a.m. in Room 11A, State Office Building, 501 High Street, Frankfort, Kentucky 40601. The hearing may be conducted by video teleconference at the discretion of the agency. An individual interested in being heard at this hearing shall provide written notification to the agency of the intention to attend the hearing at least five (5) business days prior to the date scheduled for the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the 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 September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary Morris

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides guidelines for the maintenance and retention of records relative to income tax withholding by employers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide guidance to employers required to deduct and withhold income tax from

payments of wages.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with the provisions of KRS Chapter 13A that require an agency to maintain the most up to date guidance and statutory references in its regulations to avoid deficiency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed language will assist the department to maintain regulatory guidance in place for employers of the Commonwealth to utilize.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates outdated language to maintain conformity with the provisions in KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: See (1)(b) above.

(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 administrative regulation affects employers required to deduct and withhold tax from wages paid to 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 new or additional actions or requirements are necessary to comply with this amendment. This administrative regulation is only intended to update current regulatory language to comply with requirements under KRS Chapter 13A.

(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 fees or costs required by the amendments to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Potentially a more efficient and timely processing of their Kentucky tax return.

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

(a) Initially: It is not anticipated that there will be any additional costs to implement this administrative regulation. The administrative costs to file this amendment have already been absorbed through current staff and budgeted funding.

(b) On a continuing basis: There are no additional costs expected continually at this time.

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

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

(8) State whether or not this administrative regulation established any fees, or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1) and KRS 13A.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 expenditures or revenues are expected to be generated for state or local agencies by this 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? None that is known.

(c) How much will it cost to administer this program for the first year? Current budgetary funding for the Department of Revenue will absorb the administrative costs of this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs (not already budgeted to the Department) is known for subsequent years at this time. We currently absorb the administrative costs of this program for processing returns, providing customer service, etc.

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:

**FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
(Amendment)**

**103 KAR 27:050. Sourcing of retail sales by florists.[Florists and nurserymen.]**

RELATES TO: KRS 139.010, 139.105, 139.200, 139.310, 139.330

STATUTORY AUTHORITY: KRS 131.130(1), 139.105

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. KRS 139.105 requires florist wire sales to be sourced in accordance with an administrative regulation promulgated by the department. This administrative regulation interprets the sales and use tax law as it applies to sales by florists[ and nurserymen].

Section 1. Sales of the following are examples of items that shall be subject to the sales and use tax:

(1) Balloons;

(2) Bouquets;

(3) Candy;

(4) Flowers;

(5) Potted plants;

(6) Shrubbery;

(7) Vases;

(8) Wreaths; and

(9) Other similar items of tangible personal property.[flowers, wreaths, bouquets, potted plants, shrubbery, and other such items of tangible personal property are subject to the sales and use tax.]

Section 2. Florist transactions through a florists' wire delivery association. If [Where] florists conduct transactions through a florists' wire [telegraphic] delivery association, the following rules shall [will] apply in the computation of tax liability:

(1) On all orders taken by a Kentucky florist and sent [telegraphed] to a second florist in Kentucky for delivery in Kentucky, the sending florist shall [will] be liable for the tax based upon gross receipts from the customer who places the order;

(2) If a [In cases where a] Kentucky florist receives an order and subsequently sends [pursuant to which he gives telegraphic] instructions to a second florist located outside Kentucky for delivery of flowers to a point outside Kentucky, the Kentucky tax owed shall be based upon gross [tax will likewise be owing with respect to the total] receipts of the sending florist from the customer who places the order; and

(3) If [In cases where] Kentucky florists receive [telegraphic] instructions from another florist [other florists] either within or outside of Kentucky for the delivery of flowers, the receiving florist shall [will] not be held liable for tax with respect to any receipts realized [which he may realize] from the transaction. In this instance, if the order originated in Kentucky, the tax shall [will] be due [from] and payable by the Kentucky florist who first received the order and then sent [gave the telegraphic] instructions to the second florist.

Section 3. Florist transactions not through a florists' wire delivery association. If florists conduct transactions through any other means other than a florists' wire delivery association, all orders shall be sourced to the destination where the tangible personal property is delivered, pursuant to KRS 139.105. The florist shall collect and remit the sales and use tax accordingly on the retail sale of the tangible personal property. [When a nurseryman or florist sells shrubbery, young trees or similar items, and as part of the transaction transplants them to the land of the purchaser for a lump sum or a flat rate, the vendor so selling and installing must make a segregation of that portion of the charge which is for tangible personal property sold and that portion of the charge which is for installation. Failure to segregate the charge will subject the entire amount of the transaction to the sales tax.]

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: July 13, 2021

FILED WITH LRC: July 13, 2021 at 1:16 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2021, at 10:00 a.m. in Room 11A, State Office Building, 501 High Street, Frankfort, Kentucky 40601. The hearing may be conducted by video teleconference at the discretion of the agency. An individual interested in being heard at this hearing shall provide written notification to the agency of the intention to attend the hearing at least five (5) business days prior to the date scheduled for the hearing.. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the 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 September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary Morris

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends 103 KAR 27:050 to insert language clarifying guidance for the interpretation of the sales and use tax law as it applies to florists.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide guidance to florists on how to apply recent changes in the sales tax law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language

conforms with the provisions of KRS Chapter 13A that require an agency to maintain the most up to date guidance and statutory references in its regulations to avoid deficiency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulatory language will provide florists with the most up to date guidance on the sourcing of sales pursuant to updated statutory requirements so they can efficiently file returns, and remain in good standing with the Department of Revenue.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment will change the existing administrative regulation by adding a necessary statutory reference related to florist sourcing; updating the promulgation statement within the NECESSITY, FUNCTION, AND CONFORMITY section; updating the regulations to meet KRS Chapter 13A requirements; adding additional tangible personal property sales examples; providing clarifying language; and deleting previous guidance related to the taxability of certain sales that are now taxable as the furnishing of landscaping services.

(b) The necessity of the amendment to this administrative regulation: See (1)(b) above.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All florists and their customers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions are necessary to comply with this amendment. Florists are currently collecting sales tax on transactions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation does not add any additional fees or costs to be incurred by florists.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Florists will collect sales tax as required by law and remain in good standing with the department.

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

(a) Initially: Any new costs that may have been created by the statutory changes (for example, taxpayer outreach efforts to inform the general public of the changes in KRS 139.200) have already been, and will continue to be absorbed through current staff and budgeted funding. Current staff are already answering questions to provide guidance to florists.

(b) On a continuing basis: There are no expected additional costs as a result of this amendment in the future, as the collection process is ongoing.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current budget funding and department staff will be used to implement and enforce this regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1) and KRS Chapter 13A.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 new revenues will be generated. The amendment provides language to clarify guidance and make KRS Chapter 13A conforming technical changes to this 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? None.

(c) How much will it cost to administer this program for the first year? No additional costs are expected in the first year of this regulation being in effect.

(d) How much will it cost to administer this program for subsequent years? No additional costs are expected 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:

**FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
(Amendment)**

**103 KAR 27:150. Repairers and reconditioners of tangible personal property.**

RELATES TO: KRS 139.010, 139.200, 139.215, 139.260, 139.270, 139.280, 139.290, 139.310, 139.330

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. This administrative regulation establishes the sales and use tax requirements for parts and materials used by repairers and reconditioners of tangible personal property.

Section 1. Definitions.

(1) "De minimis" is defined by KRS 139.215.

(2) "Extended warranty services" is defined by KRS 139.010(13).

Section 2. (1) A repairer or reconditioner of tangible personal property shall be classified as a retailer of taxable tangible personal property sold (including repair parts, replacement parts, and materials) along with all service, installation, and repair charges associated with installing or applying the taxable tangible personal property sold.

(2) Examples of repairers or reconditioners shall include repairers or reconditioners of:

- (a) Airplanes;
- (b) Bicycles;
- (c) Boats;
- (d) Cellular phones;
- (e) Computers;
- (f) Furniture;



- (g) Machinery;
- (h) Motor vehicles;
- (i) Musical instruments;
- (j) Radios; or
- (k) Television sets.

Section 3. Taxable and Nontaxable Service and Installation Labor for Repairers or Reconditioners of Tangible Personal Property. (1) Charges for labor or services provided in installing or applying taxable tangible personal property, digital property, and services sold shall be subject to sales and use tax. For example, an appliance repair shop that sells and installs a new drain pump on a washing machine shall collect and remit sales tax on the sale of the drain pump and any service, installation, or labor charge associated with the installation of the drain pump. Since the drain pump sold is subject to sales and use tax, the service, installation, or labor charges associated with the installation of the drain pump also shall be subject to sales and use tax.

(2) Service, installation, or labor charges made to tangible personal property where there is no sale of taxable tangible personal property, digital property, or service shall not be subject to sales and use tax. For example, the charge for an appliance repair shop to merely reconnect a loose drain hose shall not be subject to sales and use tax. If the appliance repair shop only reconnects a loose drain hose with no sale of taxable property or services, then the service, installation, or labor charge associated with the repair shall not be subject to sales and use tax.

(3) If tangible personal property, digital property, or services sold are not subject to sales and use tax, the charges for labor or services provided in installing or applying the property or services sold also shall not be subject to sales and use tax. For example, an appliance repair shop that sells and installs a washing machine electronic control panel receives a fully completed Resale Certificate, Form 51A105, Streamlined Sales and Use Tax Agreement—Certificate of Exemption, Form 51A206, or Multistate Tax Commission’s Uniform Sales and Use Tax Exemption/Resale Certificate—Multijurisdictional, for the purchase of the electronic control panel. Since the electronic control panel is exempt from sales and use tax, the service, installation, or labor charge associated with the sale and installation of the electronic control panel also shall not be subject to sales and use tax.

Section 4. De Minimis Parts and Materials.~~(1) A repairer or reconditioner of tangible personal property shall be classified as a retailer of parts and materials furnished in connection with repair work in which the value of the parts and materials is substantial in relation to the total charge.~~

~~(2) Examples of a repairer or reconditioner shall include: repairers of motor vehicles, airplanes, bicycles, machinery, farm implements, musical instruments, computers, radios, television sets, boats, and furniture.~~

~~(3) The repairer or reconditioner shall segregate on the invoices to their customers and in their books and records the price of the parts and materials from the charges for labor of repair, reconditioning, installation and other services. The tax shall be applicable to the sales price of the property.~~

~~(4) If the labor and other services are not separately stated from the price of the property furnished as required by subsection (3) of this section, it shall be presumed that the entire charge represents the sale price of the property and the tax shall apply to the entire charge.~~

Section 2-] (1) According to the provisions of KRS 139.215, if the value of the parts and materials used in the repair or reconditioning of tangible personal property is less than ten (10) percent of the total value of the parts and materials, labor, and [charges for the labor or] other services performed and if no separate charge is made for the property, the repairer or reconditioner shall be classified as the consumer of the property, and the suppliers of parts and materials shall be classified as retailers subject to the tax with respect to the property which they sell to the repairer or reconditioner.

(2) The list in this subsection shall serve as examples of

repairs or alterations in which the parts and materials used are less than ten (10) percent in relation to the charges for labor or other services performed;

- (a) Repairs of:
  1. Clothing;
  2. Dental prosthesis;
  3. Eyeglass frames;
  - 4.[2.] Fishing rods;
  - 5.[3.] Jewelry;
  - 6.[4.] Tires;
  - 7.[5.] Tubes; or
  - 8.[6.] Watches; or

(b) Alterations performed by the retailer to refit clothes and other garments for the use for which they were originally produced.

Section 5. Extended Warranty Services. (1)(a) Effective July 1, 2018, receipts from the sale of extended warranty services, including the sale of optional service, maintenance, or extended warranty contracts related to taxable tangible personal property, shall be subject to sales and use tax.

(b) The person performing repair work under the provisions of an extended warranty service agreement or contract subject to tax sold on or after July 1, 2018, may purchase the repair parts used in fulfilling the contract exempt from sales and use tax using the Resale Certificate, Form 51A105, the Streamlined Sales and Use Tax Agreement- Certificate of Exemption, Form 51A206, or the Multistate Tax Commission’s Uniform Sales and Use Tax Exemption/Resale Certificate-Multijurisdictional pursuant to KRS 139.270.

(c) Charges by an entity to perform repair labor under the provisions of an extended warranty service agreement or contract sold on or after July 1, 2018, where the provided repair parts are covered as part of the contract, shall not be subject to sales and use tax.

(d) Charges by a third party to perform repair work for an extended warranty service agreement provided under the provision of an extended warranty service agreement or contract sold on or after July 1, 2018, where the provided repair parts are covered as part of the contract, shall not be subject to sales and use tax.

(e) Charges for repair work made outside the provisions of an existing extended warranty service agreement or contract that include taxable service, installation, or repair labor are included in gross receipts pursuant to KRS 139.010(15)(a)(6) and subject to sales tax.

(f) Deductibles charged as part of the provision of a taxable extended warranty service contract shall be subject to sales and use tax.

(2) (a) Receipts from the sale of optional service, maintenance, or extended warranty contracts sold prior to July 1, 2018, not required as part of the sale of taxable tangible personal property, shall not be subject to sales and use tax if the retailer separately itemized the charge for the sale of the service, maintenance, or extended warranty contract on the customer’s invoice and in the retailer’s books and records.

(b) The person performing the repair work under a contract described in subsection (2)(a) of this section sold prior to July 1, 2018, shall report and pay the tax on the purchase price of all tangible personal property used in the fulfillment of the contract.

Section 6. Forms. The forms listed herein 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>.

~~Section 7. [Section 3. If the method of repairing or reconditioning tangible personal property involves commingling property delivered to a repairer or reconditioner with similar property so that the customer receives repaired or reconditioned property which may not be the identical property delivered to the~~

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~~repairer or reconditioner but which is exactly the same kind of property or derived from exactly the same kind of property as that delivered, tax shall apply to the entire amount charged by the repairer or reconditioner for the exchange of property, and a deduction shall not be allowed for services involved since the exchange and other acts incidental to it constitute an integral transaction. This shall apply, for example, to the exchange of a reconditioned vehicle motor for a worn motor.~~

~~Section 4. (1) Receipts from the sale of optional service, maintenance, or extended warranty contracts offered but not required as a part of the sale of taxable tangible personal property shall not be subject to sales and use tax if the retailer separately itemizes the charge for the sale of the service, maintenance, or extended warranty contract on the customer's invoice and in the retailer's books and records. The person performing the repair work under the contract shall report and pay the tax on the purchase price of all tangible personal property used in the fulfillment of optional service, maintenance, or extended warranty contracts.~~

~~(2) Receipts from the sale of service, maintenance, or extended warranty contracts that are included as part of the sale of taxable tangible personal property shall be included in the sales price subject to tax as provided in KRS 139.010.~~

~~Section 5.](1) This administrative regulation shall replace Revenue Circular 51C020 and Revenue Policy 51P190.~~

~~(2) Revenue Circular 51C020 and Revenue Policy 51P190 are hereby rescinded and shall be null, void, and unenforceable.~~

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: July 13, 2021

FILED WITH LRC: July 13, 2021 at 1:16 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2021, at 10:00 a.m. in Room 11A, State Office Building, 501 High Street, Frankfort, Kentucky 40601. The hearing may be conducted by video teleconference at the discretion of the agency. An individual interested in being heard at this hearing shall provide written notification to the agency of the intention to attend the hearing at least five (5) business days prior to the date scheduled for the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the 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 September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary Morris

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is an amendment that updates regulatory language to conform to recent statutory language revisions, clarifies previous guidance contained, specifies the types of property sold and updates the regulation regarding the tax treatment of service and installation charges.

(b) The necessity of this administrative regulation: The amendment is necessary to update outdated regulatory language; to clarify the guidance previously contained herein; to specify the types of property sold; and to update the regulation regarding the tax treatment of service and installation charges.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

(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 this existing administrative regulation by adding a definition for "extended warranty services"; updating the regulation regarding the tax treatment related to service and installation charged related to the sale of tangible personal property, digital property and taxable services; adds examples of transactions where the repair parts and materials used are less the 10% in relation to charges for labor, deletes outdated tax treatments; and updates the tax treatment of "extended warranty services".

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, or state and local governments that provide services that would be taxable under this amendment.

(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 taxpayer may need to apply for the applicable tax identification number with the Department of Revenue to remit the tax collected on the services that are now taxable.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with obtaining a taxpayer identification number. However any costs associated with administering the remittance of the tax on the part of the taxpayer is unknown, depending on what steps they take to ensure compliance (i.e. hiring an accountant to manage and remit their tax receipts).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Taxpayers will benefit from the updated guidance herein to help them stay in good standing with the Department of Revenue.

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

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

(b) On a continuing basis: There is no cost expected on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended regulation will be applied equally to all entities

impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue is the only government entity 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 131.130 and KRS 131.131.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? Undetermined. The statutory changes that expanded the sales tax requirement to the taxation of services will increase revenues to the Commonwealth of Kentucky. However, an accurate estimate of new revenue cannot be given at this early state of implementation.

(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 revenue increase related to the statutory changes herein is undetermined at this time.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect. All costs will be absorbed by the current department budget.

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

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

Revenues (+/-): + See 3(a) for explanation.

Expenditures (+/-): None.

Other Explanation:

**FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
(Amendment)**

**103 KAR 27:230. Motor vehicle body shops.[Automotive body shops or suppliers.]**

RELATES TO: KRS 139.010, 139.200, 139.210, 139.215, [139.220, 139.230,]139.240, 139.250, 139.260, 139.270, 139.280, 139.290, 139.310, 139.330, 139.470, 139.480

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. This administrative regulation interprets the sales and use tax law as it applies to motor vehicle body shops.[establishes sales and use tax requirements for transactions involving automotive body shops or related suppliers.]

Section 1. Definitions. (1) “Extended warranty services” is defined by KRS 139.010(13).

(2) “Motor vehicle” is defined by KRS 138.450(5).

(3) “Original warranty” means the guarantee to furnish, pursuant to the provisions of an original contract of sale and for a specified period of time, replacement parts, materials, or labor related to the property or service sold.

(4) “Person” is defined by KRS 139.010(26).

(5) “Retailer” is defined by KRS 139.010(35).

Section 2. Motor Vehicle Body Shops as Retailers. (1) Motor vehicle body shops shall be classified as retailers of all tangible personal property sold (including repair parts, replacement parts, and materials) along with all service installation and repair charges associated with installing or applying the tangible personal property sold.

(2) Motor vehicle [(1) Automotive]body shops shall be classified as retailers of parts and materials used in body work that become a component part of a motor vehicle.

(3)[(2)] The list in this subsection shall serve as examples of parts and materials used in body work that become a component part of a motor vehicle:

- (a) Body putty;
- (b) Body solder;
- (c) Finishing glazes;
- (d) Lacquers;
- (e) Paint;
- (f) Plastic filler;
- (g) Primer;
- (h) Resins (epoxy, fiberglass, or polyester);
- (i) Sealants;
- (j) Shellacs;
- (k) Thinners;
- (l) Undercoating; and
- (m) Welding rods.

(4) A motor vehicle [(3) An automotive]body shop may purchase materials and parts that become component parts of a motor vehicle exempt for resale [without paying tax to a supplier] if the body shop issues a Resale Certificate, Form 51A105, a “Streamlined Sales and Use Tax Agreement—Certificate of Exemption,” Form 51A260, or a “Multistate Tax Commission’s Uniform Sales and Use Tax Exemption/Resale Certificate—Multi-jurisdiction”[which is incorporated by reference in 103-KAR 3:020,] to the seller at the time of purchase pursuant to KRS 139.270.

Section 3. Taxable and Nontaxable Service and Installation Labor Performed by Motor Vehicle Body Shops Outside a Warranty Contract. (1) Charges for labor or services provided in installing or applying taxable repair parts sold shall be subject to sales and use tax. For example, a motor vehicle repair shop that sells and installs bumpers on an automobile shall collect and remit sales tax on the sale of the bumpers and any service, installation, or labor charge associated with the installation of the bumpers. Since the bumpers sold are subject to sales tax, the service, installation, or labor charges associated with the installation of the bumpers shall also be subject to sales and use tax.

(2) Service, installation, or labor charges made to tangible personal property where there is no sale of taxable tangible personal property, digital property, or service shall not be subject to sales tax. For example, if a motor vehicle body shop provides a vehicle inspection with no sale of taxable property or services, the service, installation, or labor charge associated with the vehicle inspection shall not be subject to sales tax.

(3) If tangible personal property, digital property, or services sold are not subject to sales and use tax, the charges for labor or services provided in installing or applying the property or services sold shall not be subject to sales and use tax. For example, if a motor vehicle body shop that sells and installs a front grill receives a fully completed Resale Certificate, Form 51A105, for the purchase of the front grill, the front grill is exempt as a sale for resale. The service, installation, or labor charge associated with the sale and installation of the front grill shall not be subject to sales and use tax.

Section 4. Extended Warranty Services. (1)(a) Effective July 1, 2018, receipts from the sale of extended warranty services, including the sale of optional service, maintenance, and extended warranty contracts related to taxable tangible personal property, shall be subject to sales and use tax.

(b) The person performing repair work under the provisions of an extended warranty service agreement or contract subject to tax sold on or after July 1, 2018 may purchase the repair parts used in

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fulfilling the contract as a sale for resale exempt from sales and use tax by presenting a resale certificate in accordance with the provisions of KRS 139.270.

(c) Charges by a motor vehicle body shop to perform repair labor under the provisions of an extended warranty service agreement or contract sold on or after July 1, 2018, where the provided repair parts are covered as part of the contract, shall not be subject to sales and use tax.

(d) Charges by a third party to perform repair work for the extended warranty service agreement provider under the provision of an extended warranty service agreement or contract sold on or after July 1, 2018, where the provided repair parts are covered as part of the contract, shall not be subject to sales and use tax.

(e) Charges for repair work made outside the provisions of the extended warranty service agreement or contract, that include otherwise taxable repair parts and service and installation labor, shall be included in gross receipts subject to sales and use tax pursuant to KRS 139.010(15)(a)(6).

(f) Deductibles charged as part of the provision of a taxable extended warranty service contract shall be subject to sales and use tax.

(2) (a) Receipts from the sale of optional service, maintenance, or extended warranty contracts sold prior to July 1, 2018, not required as a part of the sale of taxable tangible personal property, shall not be subject to sales and use tax if the retailer separately itemized the charge for the sale of the service, maintenance, or extended warranty contract on the customer's invoice and in the retailer's books and records.

(b) The person performing the repair work under a contract sold prior to July 1, 2018, shall report and pay the tax on the purchase price of all tangible personal property used in the fulfillment of the optional service, maintenance, or extended warranty contracts.

Section 5. Original Warranty Services. (1) Receipts from the sale of original warranties shall be subject to sales and use tax.

(2) The person performing repair work under the provisions of an original warranty may purchase the repair parts used in fulfilling the warranty exempt as a sale for resale exempt from sales and use tax by presenting a resale certificate in accordance with the provisions of KRS 139.270.

(3) Charges by a motor vehicle body shop to perform repair labor under the provisions of an original warranty, if the provided repair parts are covered as part of the warranty, shall not be subject to sales and use tax.

(4) Charges by a third party to perform repair work for the original warranty provider under the provision of an original warranty, if the provided repair parts are covered as part of the warranty, shall not be subject to sales and use tax.

(5) Charges for repair work made outside the provisions of an original warranty, that include otherwise taxable repair parts and service and installation labor, shall be included in gross receipts subject to sales and use tax pursuant to KRS 139.010(15)(a)(6).

(6) Deductibles charged as part of the provision of a taxable original warranty shall be subject to sales and use tax.

Section 6. A Motor Vehicle Body Shop Classified as a Consumer When Performing Services Outside a Warranty Contract. (1) Pursuant to KRS 139.215, if the value of the component parts and materials sold by a motor vehicle body shop is less than ten percent (10%) of the total charges for the component parts, materials, and the labor or other services performed, and if no separate charge is made for the property, the motor vehicle body shop shall be classified as the consumer of the property and the parts and materials shall be subject to sales and use tax when purchased from their suppliers.

(2) If the value of the component parts and materials sold by a motor vehicle body shop is less than ten percent (10%) of the total charges for the component parts, materials, and the labor or other services performed, and if no separate charge is made for the property, sales tax shall not be due on the sale from the motor vehicle body shop to the customer.

(3) A motor vehicle [

(4) An automotive body shop shall collect sales tax on charges for materials and parts sold to customers. They shall separately state on the customer invoice and in their records the sales price of the parts and materials from the charges for repair and installation labor. If the labor charges are not separately stated, the presumption shall be that the entire charge represents the sales price of tangible personal property sold with the applicable tax due from the seller.

Section 2. (1) An automotive] body shop shall be classified as the consumer of items of tangible personal property used in the performance of body work that do not become a component part of the motor vehicle and shall pay sales and use tax on the items accordingly.

(4)[(2)] The list in this subsection shall serve as examples of items used in the performance of body work that do not become a component part of a motor vehicle:

- (a) Acetylene and other welding gases;
- (b) Cleaners;
- (c) Compound pads;
- (d) Flux;
- (e) Masking paper;
- (f) Masking tape;
- (g) Polishing or buffing pads;
- (h) Removers (liquid or paste);
- (i) Rubbing compounds;
- (j) Sanding discs;
- (k) Sandpaper; or
- (l) Waxes.

(5) A motor vehicle body shop shall pay sales and use tax on the purchase of shop supplies because these supplies are consumed when furnishing the repair service.

Section 6. Forms. The forms referenced herein 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 website at <http://revenue.ky.gov>.

Section 7. [Section 3.] (1) This administrative regulation shall replace Revenue Circular 51C001-S12.

(2) Revenue Circular 51C001-S12 is hereby rescinded and shall be null, void, and unenforceable.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: July 13, 2021

FILED WITH LRC: July 13, 2021 at 1:16 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2021, at 10:00 a.m. in Room 11A, State Office Building, 501 High Street, Frankfort, Kentucky 40601. The hearing may be conducted by video teleconference at the discretion of the agency. An individual interested in being heard at this hearing shall provide written notification to the agency of the intention to attend the hearing at least five (5) business days prior to the date scheduled for the hearing.. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the 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 September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email [Gary.Morris@ky.gov](mailto:Gary.Morris@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary Morris

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation interprets the sales and use tax law as it applies to motor vehicle body shops.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide up to date guidance regarding motor vehicle body shops due to the 2018 statutory changes in KRS 139.200 making these services taxable.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with the provisions of KRS 13A that require an agency to maintain the most up to date guidance and statutory references in its regulations to avoid deficiency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulatory language provides guidance on the taxability of sales made by motor vehicle body shops and services provided under extended warranty contracts.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment will change the existing administrative regulation by: updating the regulation title; adding KRS 139.470 and 139.480 to the RELATES TO section; updating the NECESSITY, FUNCTION, AND CONFORMITY section; updating the taxability of motor vehicle body shops pursuant to KRS 139.200; providing examples of property consumed within motor vehicle repair and body shop services; and providing guidance on the application of the "Resale Certificate" to tangible personal property purchase within these industries.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All motor vehicle body shops as well as their customers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions are necessary to comply. This amendment does not add any requirements. It is only intended to provide updated guidance regarding the taxability of transactions involving motor vehicle body shops.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply. This administrative regulation does not add any additional fees or costs to be incurred by motor vehicle body shops.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the administrative regulation will benefit from the information contained therein.

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

(a) Initially: It is not anticipated that there will be any additional costs to implement this administrative regulation. Additional costs that may have been created by the statutory changes (for example, taxpayer outreach efforts to inform the general public of the changes in KRS 139.200) have already been, and will continue to be, absorbed through current staff and budgeted funding. Current staff are already answering questions to provide guidance on motor vehicle body shops.

(b) On a continuing basis: There is no additional cost expected on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed regulation.

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

(8) State whether or not this administrative regulation established any fees, or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No expenditures or revenues are expected to be generated for state or local agencies by this administrative regulation. This administrative regulation only provides clarification of the current statute that has been in effect since July 1, 2018.

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

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
(Amendment)**

**103 KAR 30:091. Sales to farmers.**

RELATES TO: KRS 139.010, 139.260, 139.470, 139.480

STATUTORY AUTHORITY: 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS [139.010;]131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. KRS 139.480 exempts specified property from sales and use taxes. This administrative regulation establishes the sales and use tax requirements for sales to farmers.

Section 1. Definitions\_ (1) "Attachments" means tangible

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personal property that:

(a) Is necessary for the operation of farm machinery and is purchased primarily to improve efficiency to diversify the function which the machinery is capable of performing; and

(b) Includes replacement attachments, or repair or replacement parts for the attachments.

(2) "Crops" means plants, trees, or shrubs grown for sale, including corn, flowers, fruit, hay, sod, soybeans, straw, timber, tobacco, vegetables, and wheat, ~~straw, fruit, vegetables, timber, and flowers~~.

(3) "Farmer" means any person that is regularly engaged in the occupation of:

(a) Tilling and cultivating the soil for the production of crops as a business;

(b) Raising livestock or poultry, if the livestock or poultry, or the products of the livestock or poultry, are for sale;

(c) Producing milk for sale; or

(d) Breeding or producing:

1. Aquatic organisms;

2. Buffalos;

3. Cervids;

4. Llamas or alpacas; or

5. Ratites.

~~1. Ratites;~~

~~2. Llamas or alpacas;~~

~~3. Buffalos;~~

~~4. Aquatic organisms; or~~

~~5. Cervids.]~~

(4) "Farm machinery" is defined by KRS 139.480(11).

(5) "Livestock" means animals of a kind the products of which ordinarily constitute food for human consumption.

(6) "On-farm facility" means property used in the pursuits provided under KRS 139.480 as follows:

(a) Fencing or structures permanently affixed to or installed on the premises of the property;

(b) Improvements to real property such as ponds;

(c) Any materials incorporated into the construction, renovation, or repair of the fencing, structures, or improvements described in paragraph (a) or (b); and

(d) Any equipment, machinery, or attachments including repair or replacement parts for the equipment, machinery, or attachments used in the operation of the facility.

(7) "Person" is defined by KRS 139.010(26)(49).

Section 2. The examples of taxable and nontaxable items contained in this administrative regulation shall be used for illustrative purposes only and are not intended to be all inclusive.

Section 3. Farm Machinery. In addition to the more commonly recognized items that are classified as "farm machinery", the list provided in this section shall serve as examples of the items that shall qualify for exemption if used exclusively and directly for farming as provided in KRS 139.480(11):

(1) All terrain vehicles (ATV) or utility vehicles;

(2) Automatic or portable feeding equipment including:

(a) Livestock creep feeders; and

(b) Poultry feeders;

(3) Automatic egg gathering systems;

(4) Automatic washers;

(5) Automatic waterers;

(6) Brooders;

(7) Bulk tanks (mechanical);

(8) Bush hogs;

(9) Chain saws;

(10) Cleaning machinery (mechanical);

(11) Clippers for livestock;

(12) Coke stoves for curing tobacco;

(13) Cooling units or cooling fans;

(14) Egg processing machinery;

(15) Farm wagons;

(16) Grain or hay elevators;

(17) Hay mowers;

(18) Heaters (portable);

(19) Incubators;

(20) Insecticide sprayers (hand-held);

(21) Irrigation systems;

(22) Log splitters;

(23) Milking machines;

(24) Posthole diggers (mechanical);

(25) Roller mills;

(26) Seed sowers (automatic);

(27) Shop welders or other machinery (mechanical) used exclusively to maintain other farm machinery;

(28) Silo unloaders (augers);

(29) Tilt table for livestock;

(30) Tobacco curing machinery;

(31) Tobacco setter;

(32) Tobacco transplant system machinery, including:

(a) Clipping equipment;

(b) Heating equipment;

(c) Injector systems;

(d) Seeding equipment; and

(e) Ventilation equipment; or

(33) Tractor mounted sprayer.

Section 4. Exempt Chemicals. In addition to more commonly recognized items that are classified as "farm chemicals", the list provided in this section shall serve as examples of items that shall qualify for the farm chemical exemption as provided in KRS 139.480(8):

(1) Adjuvant to enhance herbicide coverage of crops;

(2) Antiseptic wipes to clean cows' udders;

(3) Insecticidal dipping chemicals;

(4) Insecticidal ear tags;

(5) Lime or hydrated lime for disinfectant;

(6) Methyl bromide gas or similar tobacco chemicals; or

(7) Seed flow enhancers to optimize seed planting and spacing, including talc or graphite.

Section 5. Exempt Feed. The list provided in this section shall serve as examples of items that shall qualify for the feed and feed additive exemptions as provided in KRS 139.480(9):

(1) Bag or block salt;

(2) Dietary supplements as a feed additive;

(3) Fish pellets, grain, corn gluten, peanut hulls, soybean hulls, or distiller's grain;

(4) Milk replacer;

(5) Mineral blocks;

(6) Protein blocks;

(7) Protein supplements; or

(8) Special medicated feed pre-mixes.

Section 6. On-farm Facilities. The list provided in this section shall serve as examples of items the sale or purchase of which shall qualify for the exemption provided for all on-farm facilities under KRS 139.480:

(1) Branding iron heaters or irons;

(2) Bucket racks;

(3) Building materials, including:

(a) Concrete;

(b) Gravel;

(c) Guttering;

(d) Insulation;

(e) Lumber;

(f) Nails;

(g) Paint;

(h) Rock;

(i) Roofing materials; or

(j) Sand;

(4) Culvert pipe;

(5) Drainage tile;

(6) Erosion mats;

(7) Farm gates;

(8) Feeding system materials or equipment, including:

(a) Feed buckets;

(b) Feed bunks for farm wagons;

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- (c) Hoses;
- (d) Nozzles;
- (e) Pipelines;
- (f) Round bale feeders;
- (g) Salt or mineral feeders; or
- (h) Tubes;
- (9) Fencing materials, including:
  - (a) Cattle guards;
  - (b) Fence chargers;
  - (c) Insulators or other components used in an electrical fence system;
  - (d) Planks;
  - (e) Posts;
  - (f) Staples; or
  - (g) Wire;
- (10) Handling facilities, including:
  - (a) Corral panels, chutes, or sweeps;
  - (b) Farrowing crates;
  - (c) Headgates; or
  - (d) Holding crates or hutches;
- (11) Insect control (electric);
- (12) Livestock oilers;
- (13) Manure pit for livestock;
- (14) Pond sealers;
- (15) Silos, silo covers, or silage covers;
- (16) Water hydrants or water tanks; or
- (17) Water pipe including plastic or other material.

Section 7. Packaging Materials. The list provided in this section shall serve as examples of items the sale or purchase of which shall be exempt from sales and use tax if used in the packaging of products for sale, in addition to the exemption provided for twine and wire used for baling hay and straw in KRS 139.480(26)(27):

- (1) Bags or sacks;
- (2) Baskets;
- (3) Crates;
- (4) Net Wrap [~~Shrink wrap~~]; or
- (5) Shrink Wrap [~~Net wrap~~].

Section 8. Farm Work Stock. The list provided in this section shall serve as examples of farm work stock the sale or purchase of which shall be exempt from sales and use tax as provided in KRS 139.480(6):

- (1) Donkeys or burros;
- (2) Draft horses;
- (3) Guard dogs, including the Pyrenees or Polish Tatra breeds, to protect sheep, goats, or other livestock;
- (4) Herd dogs for herding sheep, cattle, or other livestock;
- (5) Jacks; or
- (6) Mules.

Section 9. Attachments, Repair and Replacement Parts. (1) Attachments sold or purchased for use on farm machinery which are necessary to the operation of the farm machinery shall be exempt from sales and use tax. The list provided in this subsection shall serve as examples of items of sale or purchase of which shall be exempt from sales and use tax:

- (a) Dual wheel assemblies;
- (b) Hitches;
- (c) Hydraulic systems;
- (d) Water tanks; or
- (e) Weights.
- (2) Repair and replacement parts sold or purchased for use on farm machinery which are necessary to the operation of the machinery shall be exempt from sales and use tax. The list provided in this subsection shall serve as examples of items the sale or purchase of which shall be exempt from sales and use tax:
  - (a) Batteries;
  - (b) Bolts;
  - (c) Chain saw repair parts;
  - (d) Cutting parts;
  - (e) Fan belts;
  - (f) Farm machinery filters;

- (g) Miscellaneous motor repair parts;
- (h) Mufflers;
- (i) Plow points;
- (j) Spark plugs;
- (k) Springs;
- (l) Tires; or
- (m) V-belts.

Section 10. Taxable Items. The list provided in this section shall serve as examples of items commonly used on farms, the sale or purchase of which shall not be exempt from the sales or use tax as provided by KRS 139.480:

- (1) Hand tools or wholly hand-operated equipment, including:
  - (a) Axes;
  - (b) Barn brooms;
  - (c) Barn forks;
  - (d) Brooms;
  - (e) Drench guns;
  - (f) Grease guns;
  - (g) Hoes;
  - (h) Jacks (manual or electronic);
  - (i) Ladders;
  - (j) Pitchforks;
  - (k) Pliers;
  - (l) Post hole diggers (manual);
  - (m) Rakes;
  - (n) Shovels;
  - (o) Tobacco balers (hand operated);
  - (p) Wheelbarrows; or
  - (q) Wrenches;
- (2) Accessories not essential to the operation of the farm machinery except if sold as a part of an assembled unit, including:
  - (a) Air conditioning units;
  - (b) Cabs;
  - (c) Canopies;
  - (d) Cigarette lighters;
  - (e) Deluxe seats;
  - (f) Lubricators;
  - (g) Radios;
  - (h) Seat cushions or covers; or
  - (i) Tool or utility boxes;
- (3) Miscellaneous equipment, materials, or supplies, including:
  - (a) Antifreeze, oil, grease, lubricant, hydraulic fluid, or transmission fluid;
  - (b) Bedding materials including:
    - 1. Chicken bedding;
    - 2. Chicken litter;
    - 3. Straw;
    - 4. Sawdust; or
    - 5. Wood shavings;
  - (c) Bird seed;
  - (d) Bromo gas applicators;
  - (e) Bumper hitch trailers;
  - (f) Calcium chloride;
  - (g) Castrators or elastrator bands or rings;
  - (h) Chains;
  - (i) Charcoal for cistern filtration;
  - (j) Chicken transport cages;
  - (k) Coke for curing tobacco;
  - (l) Copper sulphate;
  - (m) Dehorner;
  - (n) Dog food;
  - (o) Feed for work stock animals;
  - (p) Identification tags;
  - (q) Lawn or garden equipment, including:
    - 1. Push mowers;
    - 2. Riding lawn mowers;
    - 3. Rotor tillers;
    - 4. Weed eaters; or
    - 5. Zero turn mowers;
  - (r) Livestock oil unless containing insecticide;
  - (s) Milk cans, milk strainers, or milk storage tanks;
  - (t) Rope;

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- (u) Snaps or washers;
- (v) Tobacco canvas or other plant bed covers;
- (w) Tobacco knives, tobacco spears, or tobacco sticks;
- (x) Tobacco transplant system materials, including:
  1. Plastic;
  2. Trays; or
  3. Ventilation curtains.
- (y) Tractor paint;
- (z) Truck batteries and truck tires; or
- (aa) Work shoes or boots, work clothes, or safety goggles;
- (4) Items sold or purchased for use in raising, feeding, showing, exhibiting, or breeding of horses except water as provided in KRS 139.470(12);[(14);]
- (5) Items sold or purchased for use in the raising and keeping of bees:
  - ~~(6)~~[(5)] Medicines, vaccines, vitamins, or wormers; [or
  - ~~(7)~~[(6)] Veterinary instruments, including:
    - (a) Needles;
    - (b) Operating tables; or
    - (c) Syringes.

Section 11. Exemption Certificates. (1) A farmer shall issue a Farm Exemption Certificate, Form 51A158, [Farm Exemption Certificate,] or a Streamlined Sales and Use Tax Agreement – Certificate of Exemption, Form 51A260, [Streamlined Sales and Use Tax Agreement – Certificate of Exemption, which are incorporated by reference in 103 KAR 3:020,] for the exempt purchase of tangible personal property other than tangible personal property referenced in subsection 2 of this section. [exempted under KRS 139.480.]

(2)(a) A farmer shall issue an On-farm Facilities Certificate of Exemption for Materials, Machinery and Equipment, Form 51A159, [which is incorporated by reference in 103 KAR 3:020,] for the exempt purchase of tangible personal property for incorporation into the construction, repair, or renovation of on-farm facilities exempt under the provisions of KRS 139.480.

(b) A farmer shall issue a separate, individual certificate for new construction, repairs, or renovations. Unless the certificate has an expiration date when submitted jointly with a contractor, the certificate shall remain effective for each project type (new construction, repairs, or renovations) until the purchaser notifies the seller in writing that it is no longer valid.

(3)(a) A contractor may jointly execute an On-farm Facilities Certificate of Exemption for Materials, Machinery, and Equipment, Form 51A159, with a farmer for building materials, machinery, and equipment that are for incorporation into the construction, repair, or renovation of an on-farm facility.

(b) A contractor shall not use the certificate for the purchase, rental, or lease of construction equipment, consumable supplies, or other tangible personal property that is not for incorporation into the on-farm facility.

(c) A jointly executed On-farm Facilities Certificate of Exemption for Materials, Machinery, and Equipment, Form 51A159, with a contractor shall be acceptable only for purchases made for periods within the effective dates indicated on the certificate at the time of purchase.

(d) A contractor shall jointly execute a new certificate with a farmer for additional purchases of materials, machinery, or equipment required for the same project after the initial expiration date or for additional projects.

Section 12. Service Providers. (1) Persons engaged in spraying fertilizer, hauling agricultural lime, or providing other services to persons regularly engaged in farming shall not qualify for the farm machinery exemption.

(2) The service provider shall not execute an exemption certificate on behalf of the farmer for the purchase of fertilizer, agricultural lime, or other tangible personal property used to perform the service.

(3) Services otherwise treated as landscaping services pursuant to KRS 139.200(2)(g), including fence clearing, mowing, spraying, and tree trimming provided to a farmer where the service is performed on land that is regularly used in the business of

farming are not subject to sales tax.

Section 13. Non-taxable service and installation labor. Charges for labor or services rendered in installing or applying property sold that is not subject to sales tax shall also not be subject to sales tax. This treatment includes charges for the installation or repair of tax-exempt farm machinery and any tax-exempt attachments, repair or replacement parts thereto.

Section 14[43]. (1) This administrative regulation shall replace Revenue Policies 51P090, 51P100, 51P105, 51P120, 51P130, 51P135 and 51P360.

(2) Revenue Policies 51P090, 51P100, 51P105, 51P120, 51P130, 51P135 and 51P360 are hereby rescinded and shall be null, void, and unenforceable 103 KAR 30:091

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: July 13, 2021

FILED WITH LRC: July 13, 2021 at 1:16 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2021, at 10:00 a.m. in Room 11A, State Office Building, 501 High Street, Frankfort, Kentucky 40601. The hearing may be conducted by video teleconference at the discretion of the agency. An individual interested in being heard at this hearing shall provide written notification to the agency of the intention to attend the hearing at least five (5) business days prior to the date scheduled for the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the 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 September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary Morris

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends 103 KAR 30:091 to insert updated language to provide guidance for the interpretation of the sales and use tax law as it applies to sales to farmers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide guidance to farmers on tangible personal property that is exempt from sales and use tax or subject to sales and use tax.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with the provisions of KRS 13A that require an agency to maintain the most up to date guidance and statutory references in its regulations to avoid deficiency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulatory language will provide farmers with the most up to date guidance on the taxability of common tangible personal property used in farming activities.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment will change the existing administrative regulation by alphabetizing examples; adding the treatment of sod as an example to consolidate the guidance for dirt and sod contained within 103 KAR 28:170; adding tax treatment



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related to bees; and providing clarifying language.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide updated and accurate information regarding guidance on the sales and use tax law as it applies to sales to farmers.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed regulatory language conforms with the provisions of KRS 13A that require an agency to maintain the most up to date guidance and statutory references in its regulations to avoid deficiency.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment will change the existing administrative regulation by alphabetizing examples; adding the treatment of sod as an example to consolidate the guidance for dirt and sod contained within 103 KAR 28:170; adding tax treatment related to bees; and providing clarifying language.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All farmers engaged in farming for business as well as retailers who makes sales to farmers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions are necessary to comply with the amendment. This amendment does not add any requirements, it is only intended to provide updated guidance regarding the taxability of transactions involving farmers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the amended regulation. This regulation does not add any additional fees or costs to be incurred by farmers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the regulation will benefit from the information contained therein.

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

(a) Initially: It is not anticipated that there will be any additional costs to implement this regulation. Additional costs that may have been created by the statutory changes (for example, taxpayer outreach efforts to inform the general public of the changes in KSR 139.200) have already been and will continue to be absorbed through current staff and budgeted funding. Current staff are already answering questions to provide guidance to farmers.

(b) On a continuing basis: There is no cost expected on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenues are expected to be generated by this administrative regulation.

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

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

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

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

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
(Amendment)

103 KAR 30:120. Machinery for new and expanded industry.

RELATES TO: KRS 139.010, 139.480, 241.010, 243.030, 243.040

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky tax laws. This administrative regulation interprets [Fe interpret] the sales and use tax law as it applies to exemption qualification for "machinery for new and expanded industry."

Section 1. Definitions. (1) "Directly used in the manufacturing or industrial processing process" is defined by KRS 139.010(12).

(2) "Industrial processing" is defined by KRS 139.010(17).

(3) "License" is defined by KRS 241.010(34).

(4) "Machinery" means machines, in general, or collectively; also, the working parts of a machine, engine, or instrument; as, the machinery of a watch. (Webster's New International Dictionary). This definition does not specify that machinery must have working parts and be able to perform a function in and of itself, as a "machine" would. The machinery of a manufacturing operation is composed of all the components making up the process, including the fixed and nonmoving parts as well as the moving parts. This is illustrated in the example of the machinery of a watch.

(5) "Machinery for new and expanded industry" is defined by KRS 139.010(19).

(6) "Manufacturing" is defined by KRS 139.010(20).

(7) "Plant facility" is defined by KRS 139.010(28).

(8) "Premises" is defined by KRS 241.010(44).

(9) "Recycled materials" is defined by KRS 139.010(31).

Section 2. Requirements for Exemption. The machinery and the appurtenant equipment necessary to the completed installation of such machinery, together with the materials directly used in the installation of such machinery and appurtenant equipment, which are incorporated for the first time into new or existing plant facilities or licensed premises as provided in KRS 139.010(19), or which are installed in the place of existing [plant] machinery having a lesser

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productive capacity, and which are directly used in a manufacturing or industrial processing [~~processing production~~] operation shall be exempt from the sales and use tax. [~~The term "processing production" shall include: the processing and packaging of raw materials, in-process materials, and finished products; the processing and packaging of farm and dairy products for sale; and the extraction of minerals, ores, coal, clay, stone and natural gas.~~] In summary, the following four (4) specific requirements must be met before machinery qualifies for exemption:

(1) It must be machinery.

(2) It must be used directly in the manufacturing or industrial processing process.

(3) It must be incorporated for the first time into:

(a) Plant [~~plant~~] facilities established in this state; or

(b) The premises of alcohol beverage producers in this state that include a retail establishment licensed under KRS 243.030 or KRS 243.040.

(4) It must not replace other machinery.

Section 3.2. Analysis of Requirements. (1) It must be machinery. [~~The term "machinery" shall mean: machines, in general, or collectively; also, the working parts of a machine, engine, or instrument; as, the machinery of a watch. (Webster's New International Dictionary). This definition does not specify that machinery must have working parts and be able to perform a function in and of itself, as a "machine" would. The machinery of a manufacturing operation is composed of all the components making up the process, including the fixed and nonmoving parts as well as the moving parts. This is illustrated in the example of the machinery of a watch.~~]

(2) It must be used directly in the manufacturing or industrial processing process. Machinery must be intimately involved in production in order to be considered used "directly" in the manufacturing or industrial processing process. The fact that machinery is necessary for a manufacturing or industrial processing process shall [~~does~~] not automatically qualify it for exemption. A single manufacturer may, within its [~~his~~] primary manufacturing process, have more than one (1) production activity.

(a) Primary manufacturing process.

1. The primary manufacturing process is the production operation resulting in a finished product which will be transferred from the producing plant for distribution to customers or for further processing at another plant site. Production begins at a point where the raw material enters a process and is acted upon to change its size, shape, or composition or is transformed in some manner. Production ends when the finished goods are packaged or ready for sale. Packaging is considered complete when the product is in the container in which it is normally received by the purchaser.

2. All activities preceding the point of introduction of the raw material into the manufacturing process and following the point at which the finished product is packaged or ready for sale are not production activities and the machinery used therein shall be [~~is~~] subject to tax.

3. Storage facilities, including those provided for the storage of in-process materials which have been removed from the production line to await further processing, are not used directly in the manufacturing process and shall be [~~are~~] subject to tax. Proximity of storage facilities to the production line is immaterial.

(b) Contributory or secondary manufacturing process. This activity generally falls into one (1) of four (4) categories:

1. The manufacture of industrial tools to be used in the manufacturing process. Examples include the manufacture of dies, patterns, rolls, molds, cutters and cutter blades, and like property. The exemption for machinery used shall be [~~herein is~~] determined by the same criteria used for determining the exemption provided in the primary manufacturing process.

2. The processing of materials which do not become an ingredient of the finished product but are consumed as industrial supplies directly in the primary manufacturing process. Examples include water cooling systems, bottle washing preparatory to filling, and chemical processes whereby the chemical is used as a catalyst directly on the product being manufactured. This machinery exemption begins at the point where the material is

acted upon to condition it for use in the manufacturing process or at the point where it performs a function itself, if it is not acted upon prior to that point. The exemption ends when the material leaves the process.

3. Electrical machinery and similar equipment used directly in the operation of other machinery which is used directly in the manufacturing process.

4. Machinery used exclusively for quality control of in-process material or the efficient operation of machinery. Examples are air cooling or air conditioning systems, control panels, exhaust systems, and similar activities.

(3) It must be incorporated for the first time into plant facilities or licensed premises established in this state. To meet this requirement, the machinery must be installed in this state for the first time and it must be incorporated into plant facilities or licensed premises in this state. Machinery which has been once installed into manufacturing facilities or licensed premises in this state may be subject to tax [~~as provided in 103 KAR 30:200~~] when subsequently sold by that manufacturer. Machinery purchased and delivered in Kentucky shall be [~~is~~] subject to tax when the machinery is not acquired for installation in Kentucky.

(4) It must not replace other machinery. New machinery purchased to replace other machinery in the plant or licensed premises shall be [~~is~~] subject to tax unless the new machinery increases the consumption of recycled materials at the plant facility or licensed premises by not less than ten percent (10%), performs a different function, manufactures a different product, or has a greater productive capacity, measured by units of production, than the machinery replaced.

(a) Modification of existing machinery may qualify for exemption if the modification is to perform a different function or manufacture a different product [~~qualifies for exemption~~]. Modification of existing machinery is not replacement machinery but maintenance of existing machinery; therefore, modifications that merely provide a greater productive capacity as measured by units of production shall not qualify for exemption.

(b) Modification of existing machinery that results in automation of non-automated functions without performance of a different function or manufacture of a different product shall not qualify for exemption.

Section 4. Pursuant to KRS 139.470(22), charges for labor or services to apply, install, repair, or maintain tangible personal property directly used in manufacturing or industrial processing process shall not be subject to sales and use tax if the charges for labor or services are separately stated. Purchasers may issue a fully completed "Certificate of Exemption Labor or Services on Manufacturing Equipment," Form 51A360, or "Streamlined Sales and Use Tax Agreement—Certificate of Exemption," Revenue Form 51A206, to claim the applicable exemption for the labor or service charges on tangible personal property directly used in the manufacturing or industrial processing process.

Section 5[3]. In all cases where a question arises concerning the exemption of machinery for new and expanded industry, the burden of proof that each qualification has been met is upon the one seeking the exemption.

Section 6. Forms. The forms referenced herein may be inspected, copied, or obtained, subject to applicable copyright law, at:

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

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

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

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: July 13, 2021

FILED WITH LRC: July 13, 2021 at 1:16 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September

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22, 2021, at 10:00 a.m. in Room 11A, State Office Building, 501 High Street, Frankfort, Kentucky 40601. The hearing may be conducted by video teleconference at the discretion of the agency. An individual interested in being heard at this hearing shall provide written notification to the agency of the intention to attend the hearing at least five (5) business days prior to the date scheduled for the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the 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 September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary Morris

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is an amendment that updates regulatory language to conform to recent statutory language revisions, clarifies previous guidance, and updates the regulation regarding the tax treatment for machinery eligible for the machinery for new and expanded industry exemption from sales and use tax.

(b) The necessity of this administrative regulation: The amendment is necessary to update outdated regulatory language; to clarify the guidance previously contained in the regulation; to specify treatment of certain labor charges; and to update the regulation regarding the tax treatment for machinery eligible for the machinery for new and expanded industry exemption from sales and use tax.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform to KRS 131.130 and KRS 131.110.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

(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 this existing administrative regulation to reflect recent legislative changes by updating the regulation regarding the tax treatment for machinery installed in the licensed premises of alcoholic beverage producers with retail establishments, the tax treatment of certain labor charges for repair and installation, and clarifies the previous guidance provided.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, and organizations involved in manufacturing and industrial processing that are eligible for the sales and use tax exemptions related to machinery for new and expanded industry.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The taxpayer will need to submit

applicable exemption certificates to suppliers when claiming the machinery for new and expanded industry exemption, or an exemption for labor or service charges on the repair of such machinery.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with executing the applicable exemption certificates. In fact, clear regulatory guidance should reduce any taxpayer compliance costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Taxpayers will benefit from the updated guidance to help them stay in good standing with the Department of Revenue.

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

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

(b) On a continuing basis: There is no cost expected on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted by it.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue is the only government entity 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 131.130 and KRS 131.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None. The amended regulatory language addresses exemptions from sales and use tax. However, clear regulatory language helps ensure exemptions are properly handled so that the proper amount of tax is paid on transactions not eligible for the exemptions.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None. However, clear regulatory language helps ensure exemptions are properly handled so that the proper amount of tax is paid on transactions not eligible for the exemptions.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect. All costs will be absorbed by the current department budget.

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

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

Revenues (+/-): + See 3(a) for explanation.  
 Expenditures (+/-): None.  
 Other Explanation:

**FINANCE AND ADMINISTRATION**  
**Department of Revenue**  
**(Amendment)**

**103 KAR 30:140. Energy and energy-producing fuels.**

RELATES TO: KRS 139.010, 139.480(3), 160.613(3)  
 STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of [to administer and enforce] Kentucky's tax laws. This administrative regulation establishes the requirements for the partial exemptions[exemption] provided for energy and energy-producing fuels.

Section 1. Definitions. (1) "Cost of production" means the total of all costs, according to accepted accounting principles, incurred in manufacturing, mining, processing, or refining of tangible personal property computed on the basis of "plant facilities" except for:

- (a) The cost of the energy or energy-producing fuels used therein; and
- (b) The related distribution, transmission, and transportation services for this energy that are billed to the user.
- (2) "EDP Authorization" means the "Energy Direct Pay Authorization", Form 51F010 for use for the exemption from the sales and use tax or Form 51F011 for use for the exemption from the utility gross receipts license tax as approved by the department.
- (3) "In the course of" means those phases of a company's operations in which the expenses incurred are properly included in the computation of the cost of production.
- (4) [(3)] "Plant facilities" is defined by [in] KRS 139.010(28), [139.480(3)].
- (5) "Toller" is defined by KRS 139.480(3).
- (6) "UGRLT" means utility gross receipts license tax imposed by KRS 160.613.

Section 2. Cost of production expenses. The list in this section shall serve as examples of accounts or classifications normally reflected in the computation of the cost of production:

- (1) Direct labor cost;
- (2) Direct materials; and
- (3) Overhead expenses:
  - (a) Administrative expenses allocated to cost of production;
  - (b) Compensation insurance;
  - (c) Depreciation for plant equipment;
  - (d) Indirect labor;
  - (e) Indirect materials;
  - (f) Insurance for plant equipment;
  - (g) Miscellaneous factory expenses;
  - (h) Office expenses allocated to cost of production;
  - (i) Rent or depreciation for plant building; and
  - (j) Taxes for plant equipment. [Direct materials;
- (2) Direct labor cost;
- (3) Overhead expenses;
- (4) Depreciation for plant equipment;
- (5) Insurance for plant equipment;
- (6) Taxes for plant equipment;
- (7) Rent or depreciation for plant building;
- (8) Compensation insurance;
- (9) Indirect materials;
- (10) Indirect labor;
- (11) Miscellaneous factory expenses;
- (12) Administrative expenses allocated to cost of production;
- and
- (13) Office expenses allocated to cost of production.]

Section 3. (1) A taxpayer claiming an exemption for energy or energy-producing fuels under KRS 139.480(3) or KRS 160.613(3) shall compute the cost of production on a basis consistent with accepted accounting principles. Any significant deviations from procedures used in previously reported periods which are based on considerations of sales tax or UGRLT reduction shall not be permitted.

(2) A toller beginning tolling operations on or after July 1, 2018, shall fulfill the itemized requirements specified in KRS 139.480(3)(d)(1) through (5) before a determination can be made whether to exclude any portion of the cost of tangible personal property that is incorporated into or becomes a part of the product of its manufacturing or industrial processing activity when calculating the annual cost of production to determine eligibility for these exemptions.

Section 4. To qualify for the partial exemption as described in this regulation, consumers of energy and energy-producing fuel shall:

- (1) Submit to the Department of Revenue an "Application for Energy Direct Pay Authorization", Form 51A109; and
- (2) Upon receipt of an EDP Authorization, forward a copy of the EDP authorization to their suppliers of taxable production energy in order to claim the applicable exemption.

Section 5. Determination of sales and use tax liability. (1) When completing the "Application for an Energy Direct Pay Authorization", Form 51A109, an applicant shall:

- (a) Indicate the tax type for which the application applies;
- (b) Provide an itemization of the accounts included in the computation of the sales and use tax cost of production based upon applicable costs incurred in the last completed fiscal or calendar year ending prior to the date of the application;
- (c) Submit documentation with the application substantiating the annual energy purchases corresponding to the accounts included in the computation of cost of production for sales and use tax purposes; and
- (d) If the energy cost and any related distribution, transmission, and transportation services for this energy billed to the user exceeds three (3) percent of the cost of production:
  - 1. Estimate the sales and use tax liability by:
    - a. Multiplying the cost of production calculated for sales and use tax purposes by three (3) percent; and
    - b. Multiplying the resulting amount by six (6) percent; and
  - 2. Report and make monthly payments equal to one-twelfth (1/12) of the total estimated tax on the monthly sales and use tax returns.
- (2) By the 20<sup>th</sup> day of the fifth month following the end of each taxpayer's fiscal year ending subsequent to the date of the authorization, the taxpayer shall:
  - (a) File a "Kentucky Sales and Use Tax Energy Exemption Annual Return", Form 51A129, reconciling the estimate to the final amount of tax due; and
    - 1. Pay the additional tax due; or
    - 2. Designate the refund amount due if no additional tax is due and an overpayment exists; and
  - (b) Make an estimate for the succeeding year and adjust the payment for the months remaining so that the total tax to be paid for the year will agree with the total estimated tax. The estimate shall remain consistent with the cost of production accounts used to estimate the sales tax liability on the application for authorization.

Section 6. Determination of UGRLT Liability. (1) When completing the "Application for an Energy Direct Pay Authorization", Form 51A109, an applicant shall:

- (a) Indicate the tax type for which the application applies;
- (b) Provide an itemization of the accounts included in the computation of the UGRLT cost of production based upon applicable costs incurred in the last completed fiscal or calendar year ending prior to the date of the application;
- (c) Submit documentation with the application substantiating the annual energy purchases corresponding to the accounts

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included in the computation of cost of production for UGRLT purposes; and

(d) If the energy cost and any related distribution, transmission, and transportation services for this energy billed to the user exceeds three percent (3%) of the cost of production, the taxpayer shall:

1. Estimate the tax by:

a. Multiplying the cost of production calculated for UGRLT purposes by three percent (3%); and

b. Multiplying the resulting amount by the percentage rate imposed by the local school district, not to exceed three percent (3%); and

2. Report and make monthly payments equal to one-twelfth (1/12) of the total estimated tax on the monthly UGRLT returns.

(2) By the 20th day of the fifth month following the end of each taxpayer's fiscal year ending subsequent to the date of the authorization, the taxpayer shall:

(a) File a "Utility Gross Receipts License Tax (UGRLT) Energy Exemption Annual Return", Form 73A902, reconciling the estimate to the amount of tax due; and

1. Pay the additional tax due; or

2. If no additional tax is due, credit the overpayment on the following year's estimate or designate the refund amount due; and

(b) Make an estimate for the succeeding year and adjust the payment for the months remaining so the total tax to be paid for the year will agree with the total estimated tax. The estimate shall remain consistent with the cost of production accounts used to estimate the UGRLT liability on the application for authorization. [Consumers of energy and energy-producing fuel who qualify for an exemption under this administrative regulation shall:

(1) Submit to the Department of Revenue an Application for "Energy Direct Pay Authorization", Form 51A109, which is incorporated by reference in 103 KAR 3:020; and

(2) Upon issuance of an "Energy Direct Pay Authorization Notification", Form 51F010, which is incorporated by reference in 103 KAR 3:020, pay the taxes due under this administrative regulation.

~~Section 5. (1) The "Application for an Energy Direct Pay Authorization," Form 51A109, shall be filed with the Department of Revenue.~~

~~(2) The applicant shall set forth an itemization of the accounts included in the computation of cost of production based upon costs incurred in the last completed fiscal or calendar year ending prior to the date of the application.~~

~~(3) If the energy cost and any related distribution, transmission, and transportation services for this energy that are billed to the user exceeds three (3) percent of the cost of production, the taxpayer shall:~~

~~(a) Estimate the tax by:~~

~~1. Multiplying the cost of production by three (3) percent; and~~

~~2. Multiplying the resulting figure by six (6) percent; and~~

~~(b) Report and make monthly payments equal to one-twelfth (1/12) of the total estimated tax.~~

~~Section 6. Four (4) months after the end of each fiscal or calendar year ending subsequent to the date of the authorization, the taxpayer shall:~~

~~(1) File a "Kentucky Sales and Use Tax Energy Exemption Annual Return", Form 51A129, which is incorporated by reference in 103 KAR 3:020, reconciling the estimate to the amount of tax due; or~~

~~(a) Pay the additional tax due; or~~

~~(b) If no additional tax is due, credit the overpayment on next year's estimate or apply for a refund; and~~

~~(2) Make an estimate for the succeeding year and adjust the payment for the months remaining so that the total tax to be paid for the year will agree with the total estimated tax. This estimate shall include the same information required by Section 5 of this administrative regulation.;~~

~~Section 7. An EDP Authorization ["Energy Direct Pay Authorization Notification", Form 51F010;] shall not be used for any purchases other than energy or energy-producing fuels used in the~~

course of manufacturing, processing, mining, or refining and any related distribution, transmission, and transportation services for this energy that are billed to the user.

Section 8. (1) An EDP Authorization shall not be issued unless the cost of taxable energy or energy-producing fuels used in the course of manufacturing, processing, mining, or refining and any related distribution, transmission, and transportation services for this energy billed to the user during the immediately preceding year exceeds three percent (3%) of the previous year's cost of production.

(2) For UGRLT calculations, fuels not subject to tax, but used in the course of manufacturing, processing, mining, or refining, shall be included in the cost of production. Examples of fuels not subject to UGRLT include:

(a) Bottled gases;

(b) Coal;

(c) Coke;

(d) Diesel;

(e) Fuel oil;

(f) Gasoline;

(g) Kerosene;

(h) Nitrogen;

(i) Propane; and

(j) Steam.;

~~Section 8. An "Energy Direct Pay Authorization Notification", Form 51F010, shall not be issued unless the cost of energy or energy-producing fuels and any related distribution, transmission, and transportation services for this energy that are billed to the user during the immediately preceding year exceeds three (3) percent of the previous year's cost of production. For new taxpayers without a previous year's cost of production history, the taxpayer may submit the estimated energy costs and cost of production for consideration by the department.;~~

~~Section 9. An operator of a commercial greenhouse shall be considered engaged in a processing operation and shall be eligible to purchase energy and energy-producing fuel and any related distribution, transmission, and transportation services for this energy billed to the user exempt from applicable taxes if the requirements provided in this administrative regulation are met [that are billed to the user exempt from sales and use tax if the cost of the fuel exceeds three (3) percent of the cost of production as provided in Section 5 of this administrative regulation.;~~

~~Section 10. Forms. The forms referenced herein 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 website at <http://revenue.ky.gov>.~~

~~Section 11. (1) This administrative regulation shall replace Revenue Policy 51P020.~~

~~(2) Revenue Policy 51P020 is hereby rescinded and shall be null, void, and unenforceable.~~

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: July 13, 2021

FILED WITH LRC: July 13, 2021 at 1:16 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2021, at 10:00 a.m. in Room 11A, State Office Building, 501 High Street, Frankfort, Kentucky 40601. The hearing may be conducted by video teleconference at the discretion of the agency. An individual interested in being heard at this hearing shall provide written notification to the agency of the intention to attend the hearing at least five (5) business days prior to the date scheduled for the hearing.. If no notification of intent to attend the hearing is received

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by that date, the hearing will be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the 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 September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary Morris

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation interprets the sales and use tax and utility gross receipts license tax law as it applies to the purchase of energy and energy producing fuels.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide up to date guidance on the purchase of energy and energy producing fuels.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with the provisions of KRS 13A that require an agency to maintain the most up to date guidance and statutory references in its regulations to avoid deficiency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation updates current regulatory language regarding the sales and use tax Energy Direct Pay Exemption to include recent statutory changes regarding tollers, and provide guidance on the utility gross receipts license tax Energy Direct Pay exemption.

(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 this existing administrative regulation by updating statutory references within the "RELATES TO" section and body of the regulation, updating the promulgation statement within the "NECESSITY, FUNCTION, AND CONFORMITY" section, adding regulatory guidance for the utility gross receipts license tax Energy Direct Pay exemption, and other clarifying language.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All current and future sales and use tax or utility gross receipts license tax account holders that are authorized to claim the Energy Direct Pay exemption will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions are necessary to comply with the amendments.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no known additional costs to comply with the amendments to the regulation.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): Anyone who accesses the regulation will benefit from the information contained therein.

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

(a) Initially: There are no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the costs to implement this administrative regulation.

(b) On a continuing basis: There is no costs expected on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this 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 additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed regulation will be applied equally to all entities impacted by it.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenues are expected to be generated by this administrative regulation.

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

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### FINANCE AND ADMINISTRATION CABINET

Department of Revenue

(Amendment)

#### 103 KAR 30:190. Interstate and foreign commerce.

RELATES TO: KRS 139.010, 139.105, 139.260, 139.340, 139.470, 139.486

STATUTORY AUTHORITY: KRS 131.130[(4)]

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

interstate and foreign commerce. The purpose of this administrative regulation is to state, generally, the application of the Commerce Clause of the Constitution of the United States of America to the sales and use tax law.

Section 1. Definitions. (1) “Consummated” means the point at which a sales transaction is completed and accepted to the extent that both the seller and the purchaser are legally committed to fulfill the transaction.

(2) “Industrial machinery” is defined by KRS 139.486(1).

(3) “Receive” means:

(a) Taking possession of tangible personal property;

(b) Making first use of services; or

(c) Taking possession or making first use of digital products, whichever comes first; and

(d) “Receive” does not include possession by a shipping company on behalf of the purchaser.

(3) “Seller” is defined by KRS 139.010(39).

(4) “Use” is defined by KRS 139.010(44). ~~[The purpose of this administrative regulation is to state generally the application of the Commerce Clause of the Constitution of the United States to the Sales and Use Tax Law.]~~

Section 2. Sales Tax: Transactions Consummated in Kentucky.

(1) Where tangible personal property is located in this state at the time of its sale ~~[{or is subsequently produced in this state}],~~ and then delivered in this state to the purchaser, the seller shall be [is] subject to the sales tax if the sale is at retail and is consummated in Kentucky. A sale shall not be [is not] presumed to be made in interstate commerce if the purchaser or its [his–]representative receives ~~[physical–]possession of tangible personal property,~~ receives digital property or makes first use of taxable services ~~[such property]~~ in this state. This is true notwithstanding the fact that the purchaser may, after receiving ~~[physical–possession–of]~~ the property in this state, transport or send the property out of the state for use outside the state or for use in the conduct of interstate commerce.

(2) (a) The sales tax shall [does–]not apply to gross receipts from sales if, under the terms of its agreement with the purchaser, the seller makes delivery of tangible personal property sold from a point in this state to a point outside this state, not to be returned to a point within this state if delivery is actually made. Tangible personal property may be delivered by carrier, mail, or any other method of delivery.

(b) The sales tax shall not apply if a shipping company, on behalf of a purchaser, takes possession of the tangible personal property in this state for delivery outside this state, not to be returned to a point within this state, and delivery is actually made.

(3) The sales tax shall not apply to gross receipts from sales of tangible personal property to a common carrier under the conditions that are exempt pursuant to KRS 139.470(4).

~~(a) [in which the seller is obligated, under the terms of his agreement with the purchaser, to make physical delivery of the goods sold from a point in this state to a point outside this state, not to be returned to a point within this state, provided that such delivery is actually made. The tax does not apply to gross receipts from sales in which the seller, under the terms of his agreement with the purchaser, delivers the goods by carrier or by mail from a point in this state to a point outside this state not to be returned to a point within this state.]~~

~~(3) Pursuant to KRS 139.470(5), the sales tax does not apply to gross receipts from sales of tangible personal property to a common carrier, shipped by the seller via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to an out-of-state destination for use by the carrier in the conduct of its business as a common carrier.] Normally, when a sale by a Kentucky retailer involves a transfer of title and possession of the goods to the purchaser outside this state, the sale shall not be [is not] subject to the purchaser sales tax. The purpose of the exemption in KRS 139.470(4)[(5)] is to place common carriers on the same footing as other out-of-state purchasers who take title and possession of~~

goods outside this state [out-of-state] without requiring retailers to use some other common carrier to transport the goods outside this state [out-of-state–]to the purchasing common carrier. Thus, the exemption shall apply only [applies–]to tangible personal property shipped as cargo via the purchasing carrier. It shall [does] not apply to tangible personal property placed in use by the purchasing common carrier in this state.

(b) Examples of when the exemption shall [does] apply include:

1. Bulk ~~[bulk]~~ purchases of inventory items by a common carrier for immediate transport and storage outside this state;

2. Purchases ~~[purchases]~~ of tangible personal property by a common carrier for immediate shipment outside this state [out-of-state] without removal of the property from its original container within this state; and

3. Purchases ~~[purchases]~~ of jet fuel by a common carrier placed in a tanker vehicle in this state for immediate transport outside this state [out-of-state] where the fuel will be placed in the tanks of the planes which will consume it.

(c) Examples of when the exemption shall [does] not apply include:

1. Purchases ~~[purchases]~~ of repair parts by a common carrier for the carrier’s own vehicles which are installed within this state;

2. Purchases ~~[purchases]~~ of components and furnishings for the common carrier’s vehicles which are placed in use in this state; and

3. Purchases ~~[purchases]~~ of jet fuel placed in the tanks of the common carrier’s plane which will consume it within this state, regardless of whether all of the fuel purchased will be consumed within this state.

(d) Mere compliance with the bill of lading requirements pursuant to KRS 139.470(4) shall not exempt a purchase [of the exemption statute does not entitle a purchase to exempt status] if the tangible personal property is placed in use before leaving this state.

(4) The sales tax shall [does] not apply to gross receipts from sales of property sold to a foreign purchaser for shipment abroad and delivered to a ship, airplane, or other conveyance furnished by the purchaser for the purpose of carrying the property abroad if the property is [and] actually carried to a foreign destination, with title and control of the property passing to the foreign purchaser upon delivery, and no portion of the property is being used or consumed in the United States.

(5) The sales tax shall [does] not apply to gross receipts from sales of industrial machinery for use out of state pursuant to KRS 139.486. [As defined by KRS 139.486 when such machinery is delivered to a manufacturer or processor, or their agent for use out of state. Industrial machinery will be presumed for sale, use, storage or consumption out of state if:

(a) Delivery is to a common carrier, whether chosen by the seller or by the purchaser, and whether F.O.B. seller’s shipping point or F.O.B. purchaser’s destination, provided the shipping document indicates delivery to a location outside the state; or

(b) Delivery is made by seller’s own transportation vehicles to a location outside the state.]

(6) To establish that the gross receipts from any given sale are exempt because the tangible personal property is delivered by the seller from a point within this state to a point outside this state, under the terms of an agreement with the purchaser, the seller shall [will] be required to retain in its [his] records documentary evidence which satisfies the department [cabinet] that there was such an agreement and a bona fide delivery outside this state of the property ~~[which was]~~ sold.

Section 3. Use Tax: Transactions Consummated Outside Kentucky. (1) The use tax shall apply [applies] to sales consummated outside Kentucky when the tangible personal property sold is delivered [shipped] to the purchaser in this state or digital property is purchased for storage, use, or other consumption in this state. Examples of ~~[such]~~ transactions subject to use tax shall include:

(a) An order for goods ~~[is] consummated [completed and accepted (consummated)]~~ outside Kentucky and the seller’s branch office or other place of business in this state is utilized in any way,

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such as in receiving the order, distributing the goods, [and] or billing for the merchandise; [-or]

(b) An order for goods [is] given in this state to an agent of an out-of-state seller who transmits the order to a point outside Kentucky for acceptance; [-] or

(c) An order for goods that results from the solicitation in this state of the purchaser by an agent of an out-of-state seller and the order is sent by the purchaser directly to a point outside Kentucky for acceptance.

(2) The use tax applies with respect to any tangible personal property or digital property purchased for storage, use, or other consumption in this state, the sale of which is exempt from sales tax under this administrative regulation, except property not subject to the sales or use tax or property held or stored in this state for sale in the regular course of business or subsequent use solely outside this state, and except property purchased for use in interstate or foreign commerce, placed in use in interstate or foreign commerce, prior to its entry into this state, and thereafter used continuously in interstate or foreign commerce.[]

~~(3) "Storage" and "use" do not include the keeping, retaining, or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state.~~

~~Section 4. The term "consummated" as used in this administrative regulation means the point at which a sales transaction is completed and accepted to the extent that both the seller and the purchaser are legally committed to fulfill the transaction.]~~

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: July 13, 2021

FILED WITH LRC: July 13, 2021 at 1:16 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2021, at 10:00 a.m. in Room 11A, State Office Building, 501 High Street, Frankfort, Kentucky 40601. The hearing may be conducted by video teleconference at the discretion of the agency. An individual interested in being heard at this hearing shall provide written notification to the agency of the intention to attend the hearing at least five (5) business days prior to the date scheduled for the hearing.. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the 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 September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary Morris

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is an amendment that updates regulatory language to clarify previous guidance contained, update definitions and make updates to conform with 13A drafting requirements related to transactions in interstate and foreign commerce.

(b) The necessity of this administrative regulation: The amendment is necessary to update outdated regulatory language; to clarify the guidance previously contained herein; to clarify previous guidance contained, update definitions and make updates to conform

with 13A drafting requirements

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to clarify the tax treatment of transactions in interstate and foreign commerce.

(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 this existing administrative regulation by adding definitions for "industrial machinery", "seller", and "use", moving the definitions for "consummated" and "receive" into Section 1 per 13A drafting requirements, updating other 13A requirements (for instance, "shall" versus "will"), adding statutory references, and clarifying language on the tax treatment of transactions in interstate and foreign commerce.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses and organizations, or state and local governments that provide sell or buy in interstate and foreign commerce would be affected by the amendment to 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: No additional actions are required by the amendment to the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional actions are required by complying with the amendment to the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Taxpayers will benefit from the updated guidance herein to help them stay in good standing with the Department of Revenue.

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

(a) Initially: There is no expected cost to implement the proposed amendment.

(b) On a continuing basis: There is no cost expected on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted by it.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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



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Administration Cabinet, Department of Revenue is the only government entity 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 131.130 and KRS 131.131.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

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

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

Revenues (+/-): + See 3.(a) for explanation.

Expenditures (+/-): None.

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)

103 KAR 30:250. Property used in the publication of newspapers.

RELATES TO: KRS 139.010, 139.200, 139.260, 139.270, 139.280, 139.290, 139.310, 139.330, 139.470(9)[(40)], 139.480(10)

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. This administrative regulation establishes sales and use tax requirements for manufacturing activities relating to the publication of newspapers.

Section 1. Definitions. (1) "Manufacturing" is defined in KRS 139.010(20).

(2) "Plant facility" is defined in KRS 139.010(28)[(24)].

Section 2. Requirements for Exemption. The storage, use, or other consumption of tangible personal property for use in the manufacturing process of newspaper publication shall be exempt from the sales and use tax in accordance with KRS 139.470(9), [according to the provisions of KRS 139.170, 139.470(10)], 139.480(10), and 103 KAR 30:120.

Section 3. Manufacturing Process. The manufacturing process within a plant facility commences with the movement of raw materials from storage into a continuous, unbroken, integrated process, and ends when the finished product is packaged and ready for sale. The manufacturing process shall include the following newspaper publication operations performed at a plant facility in a continuous, unbroken, integrated process: [operations flow:]

(1) Prepress operations: [-]

(a) Type-setting that transforms the text and images from the final preprint edit format into a design, layout, or paste-up format ready for printing whether performed electronically, digitally, by hard copy [hardcopy] layout, or by other printing technology now in existence or later devised; and

(b) The production of printing plates made photo mechanically

or digitally;

(2) Press room and printing process: [-]

(a) Printing and collating the hard copy newspaper pages in accordance with the preprint design;

(b) Examples of conventional printing processes shall include:

- 1. Letterpress;
2. Flexography;
3. Lithography; or
4. Gravure; and

(3) Mail room operations, including addressing, labeling and packaging for distribution.

Section 4. Nonmanufacturing Process. The following operations shall not constitute activities performed within the manufacturing process of newspaper publication:

(1) Photography and reporting, except for development of negatives and the production of prints at the newspaper plant facility;

(2) Newsroom activities. The list in this subsection shall serve as examples of newsroom activities:

- (a) Monitoring of news events or related research;
(b) Composition of news stories, opinions, or editorials for editorial review;

(c) Editing process; or

(d) Layout and page design by editorial staff;

(3) Selling and design of advertisements;

(4) Library and research, including the use of servers, computers, and other equipment to compile and index information; or

(5) Storage and loading dock operations, including the storage of paper or other raw materials or the conveyance of packaged newspapers for storage, loading, or distribution.

Section 5. Subscription charges for wire services for the transmission of unedited text shall be considered purchases of services not subject to the sales and use tax.

Section 6. (1) This administrative regulation shall replace Revenue Circular 51C012.

(2) Revenue Circular 51C012 is hereby rescinded and shall be null, void, and unenforceable.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: July 13, 2021

FILED WITH LRC: July 13, 2021 at 1:16 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2021, at 10:00 a.m. in Room 11A, State Office Building, 501 High Street, Frankfort, Kentucky 40601. The hearing may be conducted by video teleconference at the discretion of the agency. An individual interested in being heard at this hearing shall provide written notification to the agency of the intention to attend the hearing at least five (5) business days prior to the date scheduled for the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the 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 September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary Morris

(1) Provide a brief summary of:

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(a) What this administrative regulation does: This administrative regulation is an amendment that updates regulatory language to add the definition for “manufacturing”, add statutory references, add detail regarding manufacturing at a newspaper plant facility, and make updates in accordance with KRS Chapter 13A drafting requirements.

(b) The necessity of this administrative regulation: The amendment is necessary to update outdated language and make KRS Chapter 13A formatting changes and statutory corrections.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to further clarify information currently contained in the regulation.

(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: See (1)(a).

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions are required under 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 are no additional costs associated or required under this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Taxpayers will benefit from the updated guidance which will help them stay in good standing with the Department of Revenue.

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

(a) Initially: It is not anticipated that there will be any additional costs to implement this administrative regulation. The administrative costs to file this amendment have already been absorbed with current staff and budgeted funding.

(b) On a continuing basis: There is no cost expected on a continual basis.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted by it.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue is the only

government entity 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 131.130, 131.131, and 13A.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 expenditures or revenues are expected to be generated for state or local agencies by this 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? None that is known.

(c) How much will it cost to administer this program for the first year? Current fiscal year budgetary funding for the Department of Revenue will absorb the administrative costs.

(d) How much will it cost to administer this program for subsequent years? No additional costs (not already budgeted to the Department) is known for subsequent years are expected at this time.

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

Revenues (+/-): + None.

Expenditures (+/-): None.

Other Explanation:

### FINANCE AND ADMINISTRATION CABINET Department for Facilities and Support Services (Amendment)

#### 200 KAR 3:020. Use of State-Owned Facilities and Grounds.

RELATES TO: KRS 42.019, 42.425, 56.010, 56.463

STATUTORY AUTHORITY: KRS 42.019(1), 42.425(1)(c), 56.010, 56.463(8)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes uniform rules for the governance of state facilities and grounds. While all state facilities and grounds are owned by the people of the Commonwealth at large, it is sometimes detrimental to the effective carrying-out of the people's business for persons, or groups of persons, to disregard reasonable conditions established for use of state facilities and state grounds. The purpose of this administrative regulation is to balance the interests of the citizens of the commonwealth at large with the interests of individual citizens, or groups of citizens, to use state facilities and grounds in a reasonable fashion in order to redress their grievances and coordinate various uses of public buildings and Grounds, to preserve Historic Properties, to ensure the health and safety of the public and state employees while on state property, and to protect the public from unnecessary financial losses. KRS 42.019(1) requires the Division of Historic Properties to oversee the management and preservation of state-owned historic properties. KRS 42.425(1)(c) entrusts the Department for Facilities and Support Services with primary responsibility for developing and implementing policies applicable to all state agencies to ensure effective planning for and efficient operation of state office buildings. KRS 56.010 requires the Finance and Administration Cabinet to institute civil proceedings in the name of the Commonwealth for any trespass or injury to state property under its control. KRS 56.463(8) requires the Finance and Administration Cabinet to promulgate administrative regulations as may be necessary to govern the acquisition, control, and disposition of the commonwealth's real property.

Section 1. Definitions. (1) "Agency" means a "budget unit," as defined by KRS 48.010(9).

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(2) "Applicant" means a visitor who has submitted an Application to Use State Facilities and Grounds.

(3) "Application" means the Application to Use State Facilities and Grounds form created and maintained by the Division of Historic Properties that allows individuals, organizations, and entities to request the ability to conduct an event at historic properties.

(4) "Cabinet" means the Finance and Administration Cabinet.

(5) "Commissioner" means the Commissioner of the Department for Facilities and Support Services.

(6) "Deadly Weapon" is defined by KRS 500.080(4).

(7) ~~(6)~~ "Demonstration activity" means any gathering of twelve (12) or more visitors demonstrating, parading, picketing, speech making, holding vigils, sit-ins, or rallies, or conducting other activities for the purpose of demonstrating approval or disapproval of governmental policies or practices (or the lack thereof), expressing a view on public issues, or bringing into public notice any issue or other matter.

(8) ~~(7)~~ "Department" means the Department for Facilities and Support Services.

(9) ~~(8)~~ "Division" means the Division of Historic Properties, established by KRS 42.425(1)(d)4.

(10) ~~(9)~~ "Event" means any demonstration activity, performance, ceremony, presentation, meeting, or rally held in a state facility or on state grounds.

(11) "Firearm" is defined by KRS 237.060(2).

(12) "Handgun" is defined by KRS 527.010(5).

(13) ~~(10)~~ "Historic properties" means state-owned historic properties under the management and preservation authority of the Division of Historic Properties, pursuant to KRS 42.019.

(14) "Livestock" is defined by KRS 257.010(11).

(15) "Long Gun" means any firearm that is not a handgun, including but not limited to:

(a) Rifles.

(b) Carbines, and

(c) Shotguns.

(16) ~~(11)~~ "Normal business hours" means:

(a) The hours in which a facility is declared or posted as open and accessible to individuals other than employees or agents of the commonwealth; and

(b) Any time period during which a facility hosts a legislative session, public meeting, or court session.

(17) ~~(12)~~ "Organization" means any group or association of individuals joined together to accomplish shared goals or to advance shared interests or values, inclusive of its employees, agents, invitees, or guests.

(18) ~~(13)~~ "Public meeting" means a "meeting," as defined by KRS 61.805(1).

(19) ~~(14)~~ "Rally" means a gathering of twelve (12) or more visitors for the purpose of actively promoting a cause.

(20) ~~(15)~~ "Solicit" and "solicitation" are defined by KRS 367.650(4).

(21) ~~(16)~~ "Spontaneous event" means an event where twelve (12) or more visitors gather to exercise their First Amendment rights in facilities and on grounds open to the general public in response to a triggering event that has occurred within the preceding calendar week, or is currently occurring. Regularly scheduled events, or events that are advertised by any means seven (7) or more calendar days prior to the starting date of the event are presumptively not "spontaneous events."

(22) ~~(17)~~ "State facilities" or "facilities" means any buildings owned or managed by the Finance and Administration Cabinet pursuant to KRS 56.463.

(23) ~~(18)~~ "State grounds" or "grounds" means any lands owned or managed by the Finance and Administration Cabinet pursuant to KRS 56.463.

(24) ~~(19)~~ "Tenant" means an individual or organization, except for an agency that is:

(a) Occupying land or property rented from the commonwealth; and

(b) Limited to the specific state facility or state grounds where the land or property is located.

(25) "Tenant agency" means an agency that is:

(a) Assigned commonwealth land or property; and

(b) Limited to the specific state facilities or state grounds assigned for agency use.

(26) ~~(20)~~ "Triggering event" means a previously unknown or unpredicted event where, because of its unknown or unpredicted nature, a group of visitors could not reasonably be expected to submit an application seven (7) days in advance.

(27) ~~(24)~~ "Visitor" means:

(a) Any person, organization, or entity present at a State Facility or on State Grounds that is not a tenant agency, nor employed or contracted to perform work there on behalf of the commonwealth;

(b) A person or organization employed or contracted to perform work on behalf of the commonwealth if present at a state facility or on state grounds for reasons other than performing work on behalf of the commonwealth; and

(c) Persons present at state facilities or state grounds by virtue of an approved application.

Section 2. Request to Use State Facilities or Grounds. (1) Each visitor seeking to hold an event at a state facility or on state grounds shall submit a completed "Application to Use State Facilities and Grounds" to the division at least seven (7) calendar days prior to the anticipated date of the event.

(a) Applications shall not be submitted, and an event shall not be scheduled, more than 365 calendar days prior to the date of an event.

(b) An applicant may only make one (1) application for one (1) event at a time.

(c) Applications shall be reviewed and approved on a first come, first served basis, except that state sponsored activities shall be given priority over applications received by the division on the same date as a request by an agency regarding a state-sponsored event.

(d) The division shall deny an application if:

1. The application is incomplete;
2. The proposed event requests space allocated for a state sponsored activity, a previously scheduled event, the normal operation of state business, or a legislative session;
3. The proposed event poses a safety or security risk;
4. Applicant has made material misrepresentations regarding the nature or scope of an event or solicitation, inclusive of misrepresentations contained in prior applications; or
5. Applicant has failed to pay costs or damages due for a prior event.

(e) If an application is approved, the division shall issue a written approval specifying:

1. The property or portion of property for which approval is granted;
2. The date and time period for which approval is granted;
3. Any fee or costs to be paid for use of state property or equipment;
4. The amount of any advance deposit required; ~~and~~
5. Whether proof of liability insurance shall be required for the requested use; ~~and~~

6. Any applicable restrictions.

(f) If an application is denied, the division shall issue a written denial specifying:

1. The Section 2(1)(d) provision the denial is based upon;
2. If the application is incomplete, a description of the missing information;
3. If the applicant has made prior misrepresentations, a description of the misrepresentation; and
4. If the applicant has failed to pay costs or damages for a prior event, a description of the costs or damages and the amount remaining due.

(g) Any written approval to use Commonwealth facilities is non-transferable and the purpose, time, place, or other conditions specified for use shall not be changed without the written consent of the division.

(h) Except as provided by paragraph (j) of this subsection, the division may revoke prior approval to hold an event at a historic property if the property is requested for a state sponsored activity.

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If the division revokes prior approval for an applicant to use a historic property, it shall either:

1. Provide a refund of any fee paid for the use of the state property, or

2. Provide alternate dates that the facility is available for use.

(i) The division may relocate a previously approved event at a historic property as established in the Rules for Use of State Facilities and Grounds.

(j) The division shall not reschedule or relocate a previously approved event at a historic property less than three (3) days prior to the scheduled event date except as established in the Rules for Use of State Facilities and Grounds.

(2) Except for spontaneous events, visitors who make use of a state facility or state grounds without written approval:

(a) May be charged a fee equal to the amount normally charged for approved uses, if applicable; and

(b) May be removed from a state facility or state grounds if their use interferes with a use approved by the division, or with a state sponsored activity.

(3) Each visitor seeking to hold an event at a state facility or on state grounds, other than a demonstration activity, shall submit a completed Rental Application and Lease Agreement.

(4) An agency may adapt the Rental Application and Lease Agreement for its own use as follows:

(a) Inserting the Rental Application and Lease Agreement onto agency-specific letterhead;

(b) Altering the Rental Application and Lease Agreement to reflect contact information for the agency; and

(c) Inserting the following information regarding the areas assigned to agency use available to rent:

1. Identification of available areas;
2. Capacity of available areas;
3. Whether food or drink may be consumed in available areas;
4. Equipment available to rent; and
5. Hours when available areas may be rented.

(5) An agency that adapts the Rental Application and Lease Agreement for its own use shall enter into a written agreement with the commissioner addressing:

(a) Which facilities and grounds are covered by the Rental Application and Lease Agreement;

(b) The agency responsible for processing Rental Application and Lease Agreement submissions; and

(c) Disposition of fees collected.

Section 3. Conditions Governing Use of State Facilities and Grounds. (1) General conditions governing all state facilities and grounds to which visitors, applicants, and other persons visiting under application agree to abide.

(a) Visitors shall comply with the Rules for Use of State Facilities and Grounds.

(b) Visitors shall agree to be, and are, responsible for any vandalism, damage, breakage, loss, or other destruction caused by that individual, organization, or entity. In regards to historic properties, costs may include costs for the services of specialists in relevant historical restoration skills.

(c) An agency agrees to reimburse, and shall reimburse, the department for any damage caused to state facilities assigned to its use.

(d) This administrative regulation is not intended to waive or preclude recovery by an agency from visitors for damages caused by them.

(e) Visitors shall indemnify and hold harmless the Commonwealth of Kentucky, its departments, agents, employees, and contractors from and against any and all suits, damages, claims, or liabilities due to personal injury or death; damage to or loss of property; or for any other injury or damage arising out of or resulting from the use of state facilities or grounds, except as provided by in KRS Chapter 49.

(f) Visitors shall not dig, excavate, or use metal detectors.

(g) Visitors shall not post or affix signs, announcements, or other documents on any exterior or interior wall, ceiling, floor, door, window, or other surface not specifically designated for that purpose.

(h) Visitors shall promptly remove items or materials owned or used by them after an exhibit, event, or visitation. Failure to do so may result in the department billing the individual, organization, or entity with the costs of disposal, inclusive of use of staff time, which the individual, organization, or entity agrees to be responsible for as a condition of using the state facility or grounds.

(i) Smoking shall not be permitted in state facilities or on state grounds.

(j) Visitors shall not wear masks or hoods that conceal the identity of the wearer, except for:

1. Religious[religious] dress of a generally recognized religion,

2. Minor[or minor] children celebrating Halloween, and[-]

3. Department-provided face coverings, worn to prevent or mitigate the spread of communicable disease.

(k) Public use of state facilities by visitors shall not interfere with the conduct of normal public business, including any legislative session, court proceedings, or any other public business.

(l) Use of state facilities and state grounds by visitors shall conform to any applicable limits or requirements contained in the Kentucky Building Code, 815 KAR 7:120[-]; the Kentucky Standards of Safety contained in 815 KAR 10:060[-]; orders of the State Fire Marshal[ ], [and] local fire codes, inclusive of any applicable occupancy limits[-]; and the provisions of this administrative regulation or the materials incorporated herein.

(m) Visitors shall not congregate in, or otherwise obstruct, passageways or office entrance areas in a manner that would impair the normal conduct of state business or the safe evacuation of people in the event of a fire or similar emergency.

(n) Use or parking of a motorized vehicle on lawns, sidewalks, or terraces shall be restricted to emergency, maintenance, construction, development, delivery, or authorized building access purposes as determined by the department.

(o) The operation of aircraft, other than at designated landing areas, shall be prohibited.

(p) The mass release of birds, butterflies, or other living creatures shall be prohibited.

(q) Livestock shall be prohibited, except at facilities designated for livestock-related purposes, unless express written approval is granted by the division.

~~(r)[(q)]~~ In addition to any use limitations imposed by this administrative regulation, within areas assigned to its use, an agency may impose such additional use restrictions as are necessary and proper to ensure:

1. Efficient operation and conduct of state business;
2. The safety of state employees and visitors;
3. The security of public assets and data; and
4. Restrictions necessary to conform to requirements of state and federal law.

~~(s)[(r)]~~ The following items shall be prohibited, unless owned or controlled by the state:

1. Hot-air balloons and similar lighter-than-air objects and aircraft;
2. Powered aircraft, including drones and remotely-operated aircraft;
3. Remotely controlled toys and vehicles;
4. Rockets and similar missiles; and
5. Fireworks and other explosive items.

~~(t)[(s)]~~ The following items shall not be permitted in any state facility, unless the items are owned or controlled by the state:

1. Any equipment, apparatus, or machinery that fails to conform with local fire codes;
2. Skateboards, roller skates, rollerblades, bicycles, mopeds, motor bicycles, motorcycles, and hoverboards; exclusive of mobility devices used by a disabled individual; and
3. Any personal property that interferes with any electrical or mechanical system in a state facility.

(u) Individuals openly carrying a deadly weapon may be ordered to leave state facilities and grounds when brandishing a firearm or other deadly weapon in an unsafe manner, including but not limited to:

1. Pointing the muzzle of a firearm at another individual,
2. Failing to keep the safety of a firearm in the "on" position

while carrying a firearm.

3. Failing to keep their finger outside of the trigger guard of a firearm, or

4. Threatening another person with a firearm or other deadly weapon; and

5. Failing to fully comply with the provisions of Section 3(1)(w), the other provisions of Administrative Regulation or the lawful direction of facility security personnel.

(v) Individuals ordered to leave state facilities and grounds pursuant to Section 3(1)(u) may be subject to criminal prosecution if they refuse to leave state facilities and grounds or comply with the lawful direction of facility security personnel.

(w) Individuals authorized to enter a state facility with one or more firearms shall:

1. Securely maintain handguns in a holster with two or more retention security features;

2. Securely maintain long guns behind the back using a strap slung over the shoulder, muzzle pointing up, in a manner to prevent muzzle rocking rearward during movement;

3. Be in possession of no more ammunition than can be loaded into the firearm at one time; and

4. Possess no more than one magazine, whether attached or detached from the firearm.

(x)(†) The terms of this administrative regulation shall not apply to:

1. Tourism, Arts, and Heritage Cabinet administered facilities and properties;

2. Tenants of state facilities;

3. Inmates and other incarcerated persons; or

4. Other individuals in the care, custody, or control of the state.

(2) Operating hours and access requirements.

(a) The commissioner, in consultation with agencies using each facility, shall establish normal business hours to designate when state facilities and grounds are open for public access. The commissioner may delegate authority to set normal business hours for all state facilities and grounds or for specific state facilities and grounds.

(b) Normal business hours of operation shall be posted at public entrances of state facilities and prominently posted on state grounds.

(c) Public entrances, operating hours, and scope of access may be changed due to maintenance, emergency, disaster, safety threats, and similar concerns as determined by the commissioner.

(d) For purposes of public security and safety, all packages, backpacks, purses, bags, briefcases, or other similar items brought into a state facility shall be subject to search.

(e) A visitor shall not enter or remain on state facilities or grounds after normal business hours of operation without express approval, except state employees, contract workers for the state, or members of the public who are:

1. Meeting with an agency or legislator in regard to a public matter;

2. Attending a scheduled public meeting; or

3. Escorted by a state employee for the purpose of conducting state business.

(f) Visitors present at a state facility or on state grounds may be given up to thirty (30) minutes after normal business hours have ended to vacate the state facility or state grounds before being subject to immediate removal.

(g) If an agency allows individuals to remain in a state facility after normal business hours, it may be found to be jointly liable for damage caused by unescorted visitors.

(h) Visitors shall not camp or remain overnight in state facilities or on state grounds.

(i) As a condition to their use of, or presence on, state facilities and grounds, applicant and visitors agree that state and local law enforcement officers may physically remove them from state facilities and grounds if they remain longer than thirty (30) minutes after normal business hours have ended and waive any claim against the law enforcement officers and the commonwealth unless undue force is used resulting in serious physical injury as defined by KRS 500.080(15).

(3) Commercial activity.

(a) The following commercial activity shall be prohibited in state facilities or on state grounds:

1. Selling, displaying, or vending commercial products;

2. Solicitation; and

3. Advertising.

(b) The restrictions in paragraph (a) of this subsection regarding commercial activity shall not apply to:

1. State agencies;

2. State-affiliated or approved charitable fund-raising campaigns;

3. Individuals or organizations who have contracted with the state to conduct commercial activity at state facilities or on state grounds;

4. Nominal employee activity, if it otherwise conforms with applicable employee ethics restrictions and does not interfere with state business; and

5. Notice boards specifically set aside for public posting.

(4) Administration of usage conditions.

(a) In addition to any civil or criminal penalties provided for under Kentucky law, visitors who violate the restrictions contained in this administrative regulation, agree to be, and shall be subject to immediate removal from state grounds and facilities as follows:

1. If a violation concerns damage to state facilities or grounds, or disruption of state business, the commissioner or agency head of the affected agency may request removal by officers of the Kentucky State Police, contract security staff, or other state or local law enforcement officers; or

2. If a violation concerns a safety concern or threat, removal may be done at the request of the commissioner or agency head of the affected agency, or upon exercise of independent discretion of the Kentucky State Police, contract security staff assigned to the state facility or grounds, or other state and local law enforcement offices.

(b) The commissioner, agency head of a tenant agency, officers of the Kentucky State Police, contract security staff, or other state or local law enforcement officers may place limitations on total number of participants, the area in which an event may be conducted, and/or may direct the clearing of an area or separation of groups, in order to ensure compliance with applicable health and safety standards, to maintain public order, and to or ensure that normal public business may be conducted.

(c) This administrative regulation shall not:

1. Prohibit the regular conduct of agency operations in a state facility or on state grounds after normal business hours regarding state facilities or grounds assigned to the agency's use; or

2. Limit the ability of an agency to make full and unencumbered use of state facilities or grounds assigned to them, subject to any specific conditions placed upon their use by the department.

Section 4. Additional Conditions Regarding Access and Use for Historic Properties. (1) Visitors to historic properties shall comply with the additional restrictions regarding the use of the capitol grounds and state historic properties included in the Rules for Use of State Facilities and Grounds.

(2) A visitor seeking to hold an event at a historic property shall comply with the requirements in the Areas Available for Governmental and Business-Oriented Events and Rental Use form.

(3) A visitor seeking to hold an event at the capitol shall also submit the Capitol Event Information Form to the division.

(4) The Department of Parks and Kentucky Horse Park may advise and consult the division in regard to any restrictions or use guidelines relating to state shrines or museums.

Section 5. Enforcement. (1) Authority to initiate civil proceedings in the name of the Commonwealth for any trespass or injury to state property under the cabinet's control shall be vested with the cabinet's Office of General Counsel.

(2) The cabinet's Office of General Counsel may delegate authority to initiate civil proceedings to counsel for an agency affected by a trespass or injury to state property, to another agency, or to outside counsel.

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(3) Nothing in this regulation is intended to waive or restrict in any way any normal criminal or civil remedies available under law that relates to improper trespass on, or misuse of, state facilities; obstruction of governmental operations~~[disruption of public business]~~; nuisance; or any other legal remedy otherwise available to the Commonwealth or its subdivisions.

(4) Nothing in this regulation is intended to limit, waive, or otherwise alter the authority the rules for the operation and parking of motor vehicles on state grounds, as enumerated in 200 KAR 3:010.

### Section 6. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application to Use State Facilities and Grounds", June 2021~~[2019]~~;

(b) "Rental Application and Lease Agreement", June 2019;

(c) "Rules for Use of State Facilities and Grounds", June 2021~~[2019]~~; and

(d) "Areas Available for Governmental and Business-Oriented Events and Rental Use", June 2021~~[2019]~~; and

~~(e) "Capitol Event Information Form", June 2019.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Finance and Administration Cabinet, Office of General Counsel, Capital Annex Room 392, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

SAM RUTH, Commissioner

HOLLY M. JOHNSON, Secretary

APPROVED BY AGENCY: June 30, 2021

FILED WITH LRC: July 1, 2021 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 23, 2021 at 10:00 a.m. at Kentucky Finance and Administration Cabinet Office of General Counsel, 702 Capital Ave., Suite 392, Frankfort, Kentucky 40601. 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Cary B. Bishop, Assistant General Counsel, Office of General Counsel, 702 Capital Ave., Suite 392, Frankfort, Kentucky 40601, phone (502) 564-8627, fax (502) 564-9875. email cary.bishop@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cary Bishop

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes uniform rules for the governance of state Facilities and Grounds.

(b) The necessity of this administrative regulation: Sets standards to ensure safety and security of state Facilities and Grounds, as well as staff and visitors. Provides uniform guidelines for visitors to prevent damage to state properties, as well as to ensure for the efficient operation of state business.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Finance and Administration Cabinet and its subdivisions are authorized by KRS 42.019, KRS 42.425, KRS 56.463, and KRS 56.010 to ensure the preservation and efficient operation of state Facilities, as well as to seek redress for damage to state property. This regulation establishes uniform standards for the use of state-owned properties by the public, in furtherance of those goals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear notice to agencies and visitors, of any standards and rules which exist in regard to the use of state Facilities and Grounds.

(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 visitors to state facilities to wear department-provided face coverings. Additionally, the amendment prohibits livestock from state facilities and grounds not designated for livestock purposes, enumerates safety standards regarding deadly weapons openly carried at state facilities or on state grounds, and adds clarifying definitions and language to the existing regulation

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to address the prohibition against face coverings worn by visitors contained in the existing regulation, potential damage to state facilities and grounds by livestock brought to facilities and grounds not intended for livestock purposes, safety standards regarding openly carried deadly weapons, and to clarify portions of the existing regulation that are ambiguous.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is consistent with the authority provided in KRS 42.019(1), 42.425(1)(c), 56.010, 56.463(8).

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates provisions to assist with the efficient operation of state facilities, consistent with the KRS 42.425 responsibilities of the Department for Facilities and Support Services. The amendment also details uniform standards which apply to state facilities and grounds, as required by KRS 56.463(8), and provides guidance regarding instances when the Finance and Administration Cabinet may institute civil proceedings pursuant to KRS 56.010.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Regulation offers clarity to state agencies and visitors to state properties regarding standards for use of Commonwealth Facilities and Grounds.

(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 Department for Facilities and Support Services will work with agencies to provide face-coverings for visitors who wish to wear them in state facilities. Visitors to state facilities must comply with safety standards regarding openly carried deadly weapons, as well as prohibition against the presence of livestock at state facilities and grounds not designated for livestock purposes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs should be limited to the cost to the Department of Facilities and Support Services providing face coverings to visitors.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Agencies and the Department for Facilities and Support Services will be provided clarity regarding standards and rules which allow for the public right of access to state Facilities and Grounds while preserving the ability to conduct regular public business, ensuring the safety of staff and visitors, and avoiding damage to state properties.

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

(a) Initially: Less than \$20,000 per year for purchase of face coverings.

(b) On a continuing basis: Less than \$20,000 per year for purchase of face coverings.

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

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

or funding is anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or adjusted by the amendment.

(9) TIERING: Is tiering applied? Tiering is not applied. All state agencies follow identical requirements regarding the setting of normal business hours and their authority to establish an application process for public use of Facilities assigned to them. Similarly, visitors to state Facilities and Grounds are uniformly subject to the conditions set forth in this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The regulation impacts all state Facilities and Grounds owned or managed by the Finance and Administration Cabinet pursuant to KRS 56.463. Agencies occupying these state properties must observe the requirements of the regulation. State or local government agencies not occupying state Facilities and Grounds owned or managed by the Finance and Administration Cabinet will not be affected.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 42.019, KRS 42.425, KRS 56.463, and KRS 56.010.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There is no estimated effect on the expenses or revenues of any state or local agency from this administrative regulation. The amendment does not require any new labor-intensive administrative tasks, which may require additional staff, it merely clarifies standards to be applied regarding public use of state Facilities and Grounds.

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

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

(c) How much will it cost to administer this program for the first year? Less than \$20,000 per year for purchase of face coverings.

(d) How much will it cost to administer this program for subsequent years? Less than \$20,000 per year for purchase of face coverings.

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

Revenues (+/-): \$0

Expenditures (+/-): Less than \$20,000 per year for purchase of face coverings. Exact expenditures will vary based upon fluctuations in the number of visitors to state facilities and grounds, as well as supply and fluctuations in the cost of face coverings.

Other Explanation:

BOARDS AND COMMISSIONS

Board of Licensure for Long-Term Care Administrators (Amendment)

201 KAR 6:020. Other requirements for licensure.

RELATES TO: KRS 216A.070(1), 216A.080(1)

STATUTORY AUTHORITY: KRS 216A.070, 216A.080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.070 requires the Kentucky Board of Licensure for Long-Term Care Administrators to develop, impose, and enforce standards for licensure, and authorizes the Board to promulgate administrative regulations necessary for the proper performance of its duties. KRS 216A.080 authorizes the board to promulgate administrative regulations to establish requirements for applicants seeking licensure. This administrative regulation establishes requirements for examination and licensure.

Section 1. Examination. (1) The examination administered and verified by the National Association of Long-Term Care Administrator Boards (NAB) shall serve as the board approved examination required by KRS 216A.080(d).

Section 2. Requirements. An applicant for a long-term care administrator license shall, in addition to meeting all of the requirements set forth in KRS 216A.080(1):

(1) Have satisfactorily completed a course of study for, and have been awarded a baccalaureate degree from, an accredited college or university accredited by an agency recognized by the United States Department of Education;

(2) Submit to the Board of Licensure for Long-Term Care Administrators documentation of a passing NAB exam score, as defined by NAB for the period in which the exam was completed. Passing scores may be from up to two (2) years before or one (1) year following the filing of an application for licensure or reinstatement;

(3)(a) Have a bachelor's or master's degree from an academic program accredited by NAB which was awarded within two (2) years of the date of the application; or

(b) Have completed an internship, that is at least 1,000 hours in length, which is a part of a degree in long-term care administration or a related field; or

(c) Have six (6) months of continuous management experience in a long-term care facility. If part-time, not less than 1,000 hours of management experience within a twenty-four (24) month period. This experience shall be completed up to two (2) years before or one (1) year following the date of application. The management experience shall include evidence of responsibility for:

1. Personnel management;
2. Budget preparation;
3. Fiscal management;
4. Public relations; and
5. Regulatory compliance and quality improvement. [

~~(b) An internship, that is at least 1,000 hours in length, which is a part of a degree in long-term care administration or a related field; or~~

~~(c) A bachelor's or master's degree from an academic program accredited by NAB which was awarded within two (2) years of the date of the application;]~~

(4) Submit two (2) professional letters of reference; and

(5) Submit Form 1, [an] "Application for Licensure[-]" and Form 2, a "Work Verification Form", if required.

Section 3. Qualification. An applicant currently holding a Health Services Executive (HSE) qualification from NAB shall be considered to have met the requirements of Section 2 of this administrative regulation and ~~and~~ Applicants shall submit documentation of a current HSE qualification from NAB.

Section 4. Any application not completed within one (1) year of the date of application shall be deemed incomplete and withdrawn.

Section 5. Notification. A licensee shall provide the board with written notification within thirty (30) days of the occurrence of any of the following:

- (1) Change of home address;
- (2) Change of employer;
- (3) Conviction of a felony or misdemeanor;
- (a) A licensee providing notice of a conviction shall provide a copy of the judgment in the case.

(b) A plea of nolo contendere or an Alford plea shall not absolve the licensee of an obligation to report a conviction; or

(4) Immediate Jeopardy or Substandard Level of Care notice received from the Cabinet for Health and Family Services by the long-term care facility at which the licensee serves as the administrator of record. A licensee providing notice of a citation shall provide a copy of the inspection report and submitted plan of correction.

Section 6. Incorporation by Reference. (1) The following

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materials are incorporated by reference:

(a) Form 1, "Application for Licensure", June 2021; and [May 2018, is incorporated by reference.]

(b) Form 2, "Work Verification Form", June 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Long-Term Care Administrators, [Department for Professional Licensing,] 500 Mero Street, [2SC32] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and is available at <https://ltca.ky.gov/>.

KENNETH URLAGE, Board Chair

APPROVED BY AGENCY: July 14, 2021

FILED WITH LRC: July 15, 2021 at 11:02 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 AM EST on September 28, 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:

Topic: LTCA Regulation Public Hearing

Time: Sep 28, 2021 10:00 AM Eastern Time (US and Canada)

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

<https://us02web.zoom.us/j/87211472129?pwd=SG91VmIxOGIaN3ljeHd6WHhK2FOQT09>

Password: 296951

Or Telephone:

Dial:

USA 713 353 0212

USA 888227517 (US Toll Free)

Conference code: 257130

Find local AT&T Numbers:

<https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=7133530212&accessCode=257130>

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)

162.255.36.11 (US East)

115.114.131.7 (India Mumbai)

115.114.115.7 (India Hyderabad)

213.19.144.110 (Amsterdam Netherlands)

213.244.140.110 (Germany)

103.122.166.55 (Australia Sydney)

103.122.167.55 (Australia Melbourne)

149.137.40.110 (Singapore)

64.211.144.160 (Brazil)

149.137.68.253 (Mexico)

69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)

207.226.132.110 (Japan Tokyo)

149.137.24.110 (Japan Osaka)

Meeting ID: 872 1147 2129

Password: 296951

SIP: 87211472129@zoomcrc.com

Password: 296951

Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date (September 21), the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM EST on September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Leah Cooper Boggs, General Counsel,

Department of Professional Licensing, 500 Mero Street 237 CW, office phone (502) 782-0562; cell phone (502) 352-8095; fax (502) 564-3969, email [LBoggs@ky.gov](mailto:LBoggs@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leah Cooper Boggs

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements to obtain a license for a long-term care administrator.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to update and clarify the requirements to obtain a license and the license application.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is required by KRS 216A.070 to regulate the practice of long-term care administration and promulgate administrative regulations regarding how to obtain a license. KRS 216A.080 also authorizes the Board to promulgate administrative regulations regarding licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulation clarifies the requirements to obtain a license and simplifies the license application.

(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: See (1)(d).

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the 976 individuals licensed by the Board and anyone interested in obtaining a license from the Board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None. It only simplifies and clarifies the requirements to obtain a license in the Commonwealth of Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None. It only simplifies and clarifies the requirements to obtain a license in the Commonwealth of Kentucky.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will assist licensees and prospective licensees in understanding the requirements to obtain a license.

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

(a) Initially: None. It only simplifies and clarifies the requirements to obtain a license in the Commonwealth of Kentucky.

(b) On a continuing basis: None.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable as the



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proposed language will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Board of Licensure for Long-term Care Administrators.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216A.070 and 216A.080

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 administrative regulation will not create any additional expenses or revenues for any state or local government agency after implementation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fires, or school districts) for the first year? No revenues are expected to be generated by the provisions of this 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? None.

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

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Board of Embalmers and Funeral Directors
(Amendment)

201 KAR 15:030. Fees.

EFFECTIVE: June 30, 2021

RELATES TO: KRS 316.125(2)(a), 316.130(2), (4), (5), 316.132, 316.140(2)

STATUTORY AUTHORITY: KRS 316.125(2)(a), 316.130(2), (4), (5), 316.132, 316.140(2), 316.210(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.125(2)(a), 316.130(2), (4), and (5), 316.132, 316.140(2), and 316.210(1) require the board to set out in administrative regulations certain fees. This administrative regulation establishes these fees.

Section 1. (1) The funeral establishment license fee shall be \$500[\$200].

(2) The renewal fee for a funeral establishment license shall be based on call volumes as follows:

(a) Zero (0) to ninety-nine (99) calls: \$450;

(b) 100 to 299 calls: \$550;

(c) 300 to 499 calls: \$650; or

(d) 500 or more calls: \$750.

(e) The late fee for a funeral establishment license renewal shall be double the applicable call volume renewal fee in Section 1 (1-4) of this administrative regulation [\$200].

Section 2. Individual License Fees.

(1) [The] Embalmer's license renewal fee shall be \$100.

(2) [Section 3. The] Funeral director's license renewal fee shall be \$100.

(3) [Section 4. The late fee for a funeral establishment license renewal shall be \$200.

Section 5.] The late fee for an embalmer's license renewal or a funeral director's license renewal shall be double their renewal fee established in subsections (a) and (b) of this section[\$400].

Section 3.[6.] The fee for an annual courtesy card shall be \$100 dollars.

Section 4. Apprenticeship Fees.

(1) The registration fee for an embalmer apprenticeship shall be \$100.

(b) The registration fee for a funeral directors apprenticeship shall be \$100.

(c) The reinstatement fee for an apprenticeship shall be fifty dollars (\$50) per license.

(d) [7. The fee for processing an application for a continuing education program shall be \$150 per program; for programs included in a conference or convention setting, the total fee shall not exceed \$600.

Section 8. (1) A processing fee of twenty-five (25) dollars shall apply to all document actions not covered by other fees established by KRS Chapter 316 or this administrative regulation such as national exam score requests, out-of-state verifications, official name change requests, paper submissions of any documents or applications that are available to submit electronically, and revisions to wall licensure.

(2) A fee of sixty (60) dollars shall be assessed for any payment made to the Board pursuant to KRS Chapter 316 or these administrative regulations, where the check, draft, money order, or other financial instrument is returned by the payor's bank or financial institution for insufficient funds, or cannot otherwise be deposited into the board's account.

Section 9.] The registration fee for Level II funeral director registration shall be fifty (50) dollars.

(e) [Section 10.] The registration fee for Level II embalmer registration shall be fifty (50) dollars.

(f) The licensure exam fee shall be \$100 per license.

Section 5. Surface Transportation Fees.

(1) The surface transportation license fee is \$150.

(2) The surface transportation renewal fee is \$150.

(3) The surface transportation course and examination fee is seventy-five dollars (\$75).

Section 6. The inspection fees for establishments will be:

(1) A routine (only once per eighteen (18) months) or requested inspection will be \$100.

(2) A re-inspection within a period of three (3) months following a routine inspection, due to a deficiency found by the Inspector of the Board of Embalmers and Funeral Directors of the Commonwealth of Kentucky on a routine inspection, shall be assess a fee of \$200.

(3) If an establishment fails three (3) consecutives inspections with a period of six (6) months, any subsequent inspections required to determine if the failures have been cured shall require payment of \$200 for each subsequent inspection.

Section 7. The fee for processing an application for a continuing education program shall be \$150 per program; for programs included in a conference or convention setting, the total fee shall not exceed \$600.

Section 8. Processing and NSF.

(1) A processing fee of twenty-five (25) dollars shall apply to all document actions not covered by other fees established by KRS Chapter 316 or this administrative regulation such as national exam score requests, out-of-state verifications, official name change requests, paper submissions of any documents or applications that are available to submit electronically, and revisions to wall licensure.

(2) A fee of sixty (60) dollars shall be assessed for any

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payment made to the Board pursuant to KRS Chapter 316 or these administrative regulations, where the check, draft, money order, or other financial instrument is returned by the payor's bank or financial institution for insufficient funds, or cannot otherwise be deposited into the board's account.

~~Section 9.~~[Section 14:] All fees assessed under this administrative regulation shall be nonrefundable.

CHRISTI K. MOFFETT, Executive Director

APPROVED BY AGENCY: June 29, 2021

FILED WITH LRC: June 30, 2021 at 12:56 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2021 at 9:00 a.m., Via ZOOM. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of this hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Christi Moffett, Executive Director of Kentucky Board of Embalmers and Funeral Directors, 9114 Leesgate Road, Suite 4, Louisville, Kentucky 40222, phone 502.426.4589 fax 502.426.4117; email christik.moffett@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christi Moffett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation brings all fees into one regulation

(b) The necessity of this administrative regulation: HB220 removed fees from statutes placing them in administrative regulations. The bill goes into effect 6/29/21. Board renewals start 7/1/21.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation brings all the fees into one regulation for easy access.

(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: All the fees will be located in one regulation

(b) The necessity of the amendment to this administrative regulation: HB220 removed fees from statutes placing them in administrative regulations. The bill goes into effect 6/29/21. Board renewals start 7/1/21.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation brings all the fees into one regulation since HB220 removed them; it will also provide easy access for end users.

(d) How the amendment will assist in the effective administration of the statutes: This brings all the fees related to funeral services under one regulation for ease of access for end users. In recent years KBEFD has run a deficit averaging \$100k seeking the state's assistance to complete the fiscal year. It is the Board's desire to be fiscally responsible and independent.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently five hundred eleven (511) funeral related establishments in Kentucky. They would all be affected by the rate increase. The last establishment increase was in 1996. We have tiered the increase based on case counts. Potential apprentice applicants would also be impacted. The Board averages five (5) apprentices per month.

(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:

(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: Pay renewal or fee as defined

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

Apprentices will pay \$75 per license

Establishments will pay the following based on their volume (case count)

Case Counts	Fee
99+	\$ 450
100-299	\$ 550
300-499	\$ 650
500+	\$ 750

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be legally licensed for a period of one year for establishments. Apprentice applications will be processed and presented to the board for consideration.

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

(a) Initially: No additional cost

(b) On a continuing basis: No additional cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? No special or additional funding will be required for implementation or enforcement.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: These fees are not increasing; just being moved to a single regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation gathers all the fees into one regulation. There is a fee increase for establishments based on case counts.

(9) TIERING: Is tiering applied? Yes,

Case Count	%	KBEFD # Est	Fees
99+	54%	275	\$ 450
100-299	40%	204	\$ 550
300-499	4%	20	\$ 650
500+	2%	10	\$ 750

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

Funeral Directors, Embalmers  
Funeral Establishments and Embalming Services  
Funeral Apprentices

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

201 KAR 15:030  
KRS 316.030(4)(g)  
KRS 316.030(5)(f)  
KRS 316.125(2)(a)  
201 KAR 15:040 Section 1(1)  
201 KAR 15:040 Section 3(3)  
201 KAR 15:040 Section 4(1)  
201 KAR 15:050 Section 4(5)  
201 KAR 15:110 Section 5(5)b  
201 KAR 15:110 Section 5(5)c  
201 KAR 15:110 Section 5(5)d  
201 KAR 15:110 Section 5(5)e  
201 KAR 15:125 Section 1(2)(b)  
201 KAR 15:125 Section 2(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

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first full year the administrative regulation is to be in effect. None

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

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

(c) How much will it cost to administer this program for the first year? No additional cost to the agency

(d) How much will it cost to administer this program for subsequent years? 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 (+/-):

PROPOSED

Case Calls	KBEFD Facilities	Fee	Income
99+	275	\$ 450	\$ 123,750
100-299	204	\$ 550	\$ 112,200
300-499	20	\$ 650	\$ 13,000
500+	10	\$ 750	\$ 7,500
			\$ 256,450

EXISTING

Existing	KBEFD Facilities	Fee	Income
Flat Fee	510	\$ 200	\$ 102,000

Expenditures: None

Other Explanations: None

**BOARDS AND COMMISSIONS**  
**Board of Embalmers and Funeral Directors**  
**(Amendment)**

**201 KAR 15:040. Examination.**

RELATES TO: KRS 316.030 4(h), 5(g)

STATUTORY AUTHORITY: KRS 316.030, 316.210(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.030 (4)(h) and (5)(g) require an applicant for an embalmer's license or a funeral director's license to pass an examination prepared or approved by the board. This administrative regulation establishes the administration, content, and evaluation of examinations by the board.

Section 1. Exam administration. (1) ~~[The board shall administer]~~ Examinations for funeral director and embalmer licenses will be held at [the regular meetings of the board.] intervals predefine on a published calendar.

(2) An applicant seeking to take an examination administered by the board shall submit the fee ~~[required by KRS 316.030(4)(g) or (5)(f)]~~ as defined in KRS 316.030 to the board at least forty-five (45) days before the desired examination.

(a) The examination fee shall include a license in good standing for the remainder of the fiscal year if the applicant is successful in the examination.

(b) An applicant shall be entitled to only one (1) examination for each fee paid.

(3) One (1) or more members of the board shall administer the ~~[written]~~ oral examination for a license issued by the board.

(4) An applicant may seek a reasonable accommodation in the manner for which an examination by the board is given.

(a) Accommodations will be considered by the board on the same basis as reasonable accommodations that may be available under the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.

(b) An applicant who takes an examination with a reasonable accommodation must still perform the essential functions of taking the examination and meet the normal performance requirements for passage.

(5) At the discretion of the board, examinations may be held at other times, if necessary.

Section 2. Content of Examination. (1) The examination for an embalmer's license shall include the following subjects:

- (a) Embalming;
- (b) Anatomy;
- (c) Microbiology;
- (d) Pathology;
- (e) Chemistry;
- (f) Restorative art;
- (g) Mortuary administration and law;
- (h) Accounting;
- (i) Sociology;
- (j) Psychology; and
- (k) Requirements of KRS Chapter 316 and the administrative regulations promulgated pursuant to KRS Chapter 316.

(2) The examination for a funeral director's license shall include the following subjects:

- (a) Mortuary administration;
- (b) Ethics;
- (c) Accounting;
- (d) Sociology;
- (e) Business law;
- (f) Primary psychology;
- (g) Transportation rules;
- (h) Hygiene, sanitation, and disinfection; and
- (i) Requirements of KRS Chapter 316 and the administrative regulations promulgated pursuant to KRS Chapter 316.

(3) All written questions for the embalmer's and funeral director's examinations are the property of the board and applicants shall return the questions to the board with their answers.

Section 3. Evaluation. A score of seventy-five (75) percent on ~~[any]~~ a board authorized examination ~~[administered by the board]~~ shall constitute a passing grade.

Section 4. Alternative to Written Examination by the Board. An applicant who has successfully completed the examination prepared and administered by the Conference of Funeral Service Examining Boards may request exemption from the written embalmer examination. The applicant shall successfully complete an oral examination administered by one (1) or more members of the board in lieu of the written embalmer examination.

CHRISTI K. MOFFETT, Executive Director

APPROVED BY AGENCY: June 29, 2021

FILED WITH LRC: June 30, 2021 at 12:56 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2021 at 9:00 a.m., Via ZOOM. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of this hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Christi Moffett, Executive Director of Kentucky Board of Embalmers and Funeral Directors, 9114 Leesgate Road, Suite 4, Louisville, Kentucky 40222, phone 502.426.4589 fax 502.426.4117; email christik.moffett@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christi Moffett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation moves all fees into one regulation

(b) The necessity of this administrative regulation: HB220 removed fees from statutes placing them in administrative

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regulations. The bill goes into effect 6/29/21. Board renewals start 7/1/21.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation brings all the fees into one regulation for easy access.

(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: All the fees will be located in one regulation

(b) The necessity of the amendment to this administrative regulation: HB220 removed fees from statutes placing them in administrative regulations. The bill goes into effect 6/29/21. Board renewals start 7/1/21.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Moving all the fees into one regulation will make it easier for readers.

(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:

(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: Pay renewal or fee as defined

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

Apprentices will pay \$75 per license

Establishments will pay the following based on their volume (case count)

Case Counts	Fee
99+	\$ 450
100-299	\$ 550
300-499	\$ 650
500+	\$ 750

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be legally licensed for a period of one year for establishments. Apprentice applications will be processed and presented to the board for consideration.

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

(a) Initially: No additional cost

(b) On a continuing basis: No additional cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? No special or additional funding will be required for implementation or enforcement.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: These fees are not increasing; just being moved to a single regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation gathers all the fees into one regulation. There is a fee increase for establishments based on case counts.

(9) TIERING: Is tiering applied? Yes,

Case Count	%	KBEFD # Est	Fees
99+	54%	275	\$ 450
100-299	40%	204	\$ 550
300-499	4%	20	\$ 650
500+	2%	10	\$ 750

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

Funeral Directors, Embalmers  
Funeral Establishments and Embalming Services  
Funeral Apprentices

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

201 KAR 15:030  
KRS 316.030(4)(g)  
KRS 316.030(5)(f)  
KRS 316.125(2)(a)  
201 KAR 15:040 Section 1(1)  
201 KAR 15:040 Section 3(3)  
201 KAR 15:040 Section 4(1)  
201 KAR 15:050 Section 4(5)  
201 KAR 15:110 Section 5(5)b.  
201 KAR 15:110 Section 5(5)c.  
201 KAR 15:110 Section 5(5)d.  
201 KAR 15:110 Section 5(5)e.  
201 KAR 15:125 Section 1(2)(b)  
201 KAR 15:125 Section 2(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. None

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

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

(c) How much will it cost to administer this program for the first year? No additional cost to the agency

(d) How much will it cost to administer this program for subsequent years? 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 (+/-):

PROPOSED

Case Calls	# KBEFD Facilities	Fee	Income
99+	275	\$ 450	\$ 123,750
100-299	204	\$ 550	\$ 112,200
300-499	20	\$ 650	\$ 13,000
500+	10	\$ 750	\$ 7,500
	510		\$ 256,450

EXISTING

Existing	KBEFD Facilities	Fee	Income
Flat Fee	510	\$ 200	\$ 102,000

Expenditures: None

Other Explanations: None

**BOARDS AND COMMISSIONS**  
**Board of Embalmers and Funeral Directors**  
**(Amendment)**

**201 KAR 15:050. Apprenticeship and supervision requirements.**

RELATES TO: KRS 316.030

STATUTORY AUTHORITY: KRS 316.210(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.210(1) authorizes the Kentucky Board of Embalmers and Funeral Directors to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 316. KRS 316.030(4)(e) and (5)(d) require an applicant for an embalmer's license or a funeral director's license to serve an apprenticeship

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under the supervision of a Kentucky-licensed embalmer or funeral director. KRS 316.030(9) requires an applicant to file sworn statements semiannually during the apprenticeship. This administrative regulation establishes the requirements for apprentices and their supervisors, the time for filing the sworn statements, and the additional information required in the sworn statements.

Section 1. Apprenticeship Application. (1) Prior to beginning an apprenticeship, an applicant shall:

(a) File an Apprenticeship Application Form with the board that includes the sworn statement required by KRS 316.030(7)(c);

(b) Pay the registration fee established in KRS 316.030(7)(b);

(c) Submit a current photograph;

(d) Submit a copy of the applicant's high school transcript or diploma, or high school equivalency diploma;

(e) Submit an official copy of any college transcripts;

(f) Submit an official copy of National Board scores, if available; and

(g) Submit an official copy of a current (less than ninety (90) days prior to the application) criminal justice information system (CJIS) report obtained from the Federal Bureau of Investigation (FBI); and

(h) Appear before the board with the supervisor at the time and place identified by the board.

(2) The apprenticeship shall begin the day the applicant and supervisor meet with the board.

Section 2. Supervisor Responsibilities. (1) An apprenticeship shall be served under the board-approved supervisor identified on the Apprenticeship Registration Form as the supervisor of record.

(2) Apprenticeships for both embalming and for funeral directing may be served concurrently under:

(a) A single individual acting as the supervisor of record who holds both a funeral director's license and an embalmer's license; or

(b) Two (2) individual licensees acting as the supervisor of record who together hold both a funeral director's license and an embalmer's license.

(3) Licensed embalmers and licensed funeral directors who seek approval from the board as a supervisor of record shall:

(a) Embalm or direct funerals at, and be employed by, the establishment where the apprentice is registered or at another funeral establishment if approved by the board;

(b) Appear before the board for approval with the apprentice; and

(c) Be responsible for ensuring that the apprentice complies with KRS Chapter 316 and 201 KAR Chapter 15.

(4) The board may withdraw approval of a supervisor based upon:

(a) Evidence of the inability to supervise an apprentice properly; or

(b) A violation of KRS Chapter 316 or 201 KAR Chapter 15.

(5) Apprentices may receive supervision by licensees other than the supervisor of record.

(a) Registered embalmer apprentices may be supervised by other licensed embalmers designated by the supervisor of record.

(b) Registered apprentice funeral directors may be supervised by other licensed funeral directors designated by the supervisor of record.

(c) Supervisors of record that designate other licensees to provide supervision for an apprentice shall remain responsible for the actions of the apprentice and for the quality of the designated supervision.

(d) The apprentice shall prepare an Apprentice Travel Form and maintain it with the apprentice calendar.

(6) The supervisor shall instruct an apprentice and ensure that an apprentice receives experience in all aspects of funeral directing or embalming, as applicable to the individual's apprenticeship.

(a) The instruction shall include:

1. The laws relating to the profession, including KRS Chapter 316 and 201 KAR Chapter 15; and

2. The theory and application of funeral directing or embalming.

(b) The training and work assignments for apprentice embalmers shall cover the following service items:

1. Initial call details;

2. Removals;

3. Embalming;

4. Restorative art treatment;

5. Posing body and features;

6. Bathing and cosmetizing of bodies;

7. Dressing and casketing of bodies;

8. Recordkeeping;

9. Purchasing of necessary supplies;

10. Preparation of autopsied bodies;

11. Care and maintenance of equipment and embalming room; and

12. Professional responsibility.

(c) The training and work assignments for apprentice funeral directors shall cover the following service items:

1. Initial call details;

2. Removals;

3. Counseling of families on the types of services and merchandise available;

4. Arrangements of funeral services and merchandise;

5. Preparing death certificates and documents;

6. Preparing applications for certain death benefits, such as Social Security, Veterans Administration, insurance companies, and lodges;

7. Preparing newspaper notices;

8. Conducting visitations or memorial services;

9. Directing funerals and graveside services;

10. Follow-up service to the family after the funeral service has been completed;

11. Recordkeeping;

12. Purchasing of necessary supplies;

13. Caring for equipment and premises; and

14. Professional responsibility.

Section 3. Supervision of Apprentices. (1) Supervision of embalmer apprentices.

(a) For the first twenty-five (25) cases with which an embalmer apprentice assists and throughout the first six (6) months of training, the supervisor or the supervisor's designee shall be present with the apprentice and provide direct supervision of all of the apprentice's embalming activities.

(b) After the apprentice has completed both twenty-five (25) cases and six (6) months of the apprenticeship, the apprentice may perform embalming services if the supervisor or the supervisor's designee is available for consultation and supervision, in accordance with KRS 316.010(14).

(c) The supervisor shall notify the board in writing on the Level II Apprentice Registration Form that the apprentice has completed the required twenty-five (25) cases before allowing the apprentice to embalm without direct supervision. The embalmer Level II registration fee required by 201 KAR 15:030 shall be submitted with the Level II Apprentice Registration Form. The Level II apprenticeship shall commence upon receipt of a Level II apprentice card issued by the board. The supervisor or the supervisor's designee shall continue to supervise the apprentice, in accordance with KRS 316.010(14) and 316.030(4)(e), for the duration of the apprenticeship.

(d) A Level II apprenticeship may continue for a period of up to three (3) years while the apprentice completes the apprenticeship requirements and takes the licensure examination.

(e) An apprentice should take the first examination for licensure within sixty (60) days of completion of all other apprenticeship requirements.

(f) For any apprenticeship violation of the rules of the apprenticeship, or other rules applicable to the professions of embalming or funeral directing, the board may extend the period of apprenticeship as part of disciplinary action.

(g) The board may grant extensions of any apprenticeship upon application for an extension by an apprentice and

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demonstration by the apprentice of good cause or extenuating circumstances upon which an extension should be granted.

### (2) Supervision of funeral director apprentices.

(a) For the first twenty-five (25) cases with which a funeral director apprentice assists and throughout the first six (6) months of training, the supervisor or the supervisor's designee shall provide direct supervision during all of an apprentice's funeral directing activities.

(b) After the apprentice has completed both twenty-five (25) cases and six (6) months of the apprenticeship, the apprentice may perform funeral directing services if the supervisor or the supervisor's designee is available for consultation and supervision, in accordance with KRS 316.010(14).

(c) The supervisor shall notify the board in writing on the Level II Apprentice Registration Form that the apprentice has completed the required twenty-five (25) cases before allowing the apprentice to practice funeral directing without direct supervision. The funeral director Level II registration fee required by 201 KAR 15:030 shall be submitted with the Level II Apprentice Registration Form. The Level II apprenticeship shall commence upon receipt of a Level II apprentice card issued by the board. The supervisor or the supervisor's designee shall continue to supervise the apprentice, in accordance with KRS 316.010(14) and 316.030(4)(f), for the duration of the apprenticeship.

(d) A Level II apprenticeship may continue for a period of up to three (3) years while the apprentice completes the apprenticeship requirements and takes the licensure examination.

(e) An apprentice should take the first examination for licensure within sixty (60) days of completion of all other apprenticeship requirements.

(f) For any apprenticeship violation of the rules of the apprenticeship, or other rules applicable to the professions of embalming or funeral directing, the board may extend the period of apprenticeship as part of disciplinary action.

(g) The board may grant extensions of any apprenticeship upon application for an extension by an apprentice and demonstration by the apprentice of good cause or extenuating circumstances upon which an extension should be granted.

### (3) Removals.

(a) The supervisor or the supervisor's designee shall be present and provide direct supervision during the removal of bodies for the first six (6) months of the apprenticeship and the first twenty-five (25) removals assisted in by the apprentice.

(b) After an apprentice has served six (6) months of apprenticeship and assisted with twenty-five (25) removals, an apprentice may make removals without the direct supervision of the supervisor or the supervisor's designee if the supervisor has determined that the apprentice is competent to perform removals without direct supervision.

(c) The supervisor shall notify the board in writing on the Level II Apprenticeship Registration Form that the apprentice has completed the required twenty-five (25) removals and that the supervisor's approval has been given for the apprentice to make removals without direct supervision before the apprentice may begin making these removals.

(d) No individual who obtains or holds a permit from this board to transport dead human bodies may use transport removals performed under that permit to accumulate the number of removals required to complete an apprenticeship. All apprenticeship removals shall be performed within the requirements of the apprenticeship and supervision. Hours accumulated performing removals under a Transport Permit shall not count toward an apprentice's weekly work hours requirement.

### (4) Calendar.

(a) The apprentice shall maintain a calendar at the registered location of the apprenticeship of the apprentice's work schedule documenting the forty (40) regular hours per week that he or she has worked. The calendar shall be reviewed and signed on a daily basis by the supervisor to indicate that the supervisor has reviewed and approved the apprentice's work. The calendar shall be available for inspection by the state inspector during any inspection of the establishment. The calendar shall be maintained by an apprentice until such time as the apprentice passes required

examinations and becomes licensed.

### (b) The calendar shall identify:

1. The daily work schedule of the apprentice, including beginning and ending times; and

2. The days on which the apprentice does not work.

(5) An apprentice may work at the funeral establishment more hours per week than required by subsection (4) of this section. An apprentice may also attend mortuary school classes or complete mortuary school classwork while serving an apprenticeship, but shall nonetheless still work the required forty (40) hour week under the apprenticeship.

(6) If an apprentice's supervisor of record is replaced during the apprenticeship period, a Change of Supervisor form shall be completed and submitted within thirty (30) days following the change.

### Section 4. Terminating and Reestablishing an Apprenticeship.

(1) Within five (5) days of the termination of an apprenticeship, the supervisor of record and the apprentice shall notify the board in writing of the termination, including the date on which the apprenticeship ceased.

(2) An apprentice funeral director or embalmer whose apprenticeship is terminated at the establishment originally identified to the board shall, within thirty (30) days of being employed by another funeral director or embalmer:

(a) Notify the board in writing of the change in employment and apprenticeship by completing and submitting a Change of Supervisor form;

(b) Identify the name, street address, and license number of the funeral director or embalmer under which the apprentice is continuing the apprenticeship; and

(c) Complete a new registration as set out in Section 2 of this administrative regulation that is signed by the licensed funeral director or embalmer who is to be the apprentice's new supervisor of record.

(3) An apprentice funeral director or embalmer who is unable to perform the duties of the apprenticeship for a period of two (2) weeks or more because of:

(a) The birth of a child and to care for the newborn child within one year of birth;

(b) The placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;

(c) To care for the employee's spouse, child, or parent who has a serious health condition;

(d) A serious health condition that makes the employee unable to perform the essential functions of his or her job; or

(e) Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty shall immediately notify the board of:

1. The date on which the apprentice became unable to perform the duties; and

2. The date on which the apprenticeship will be recommenced, not to exceed six (6) months following the commencement of the leave from apprenticeship.

(4) An apprenticeship shall not end later than the administration of the second examination for which the apprentice is eligible.

(5) At any time an apprenticeship ceases, or becomes inactive under these administrative regulations, an apprentice does not lose credit for the time served in an apprenticeship. Any such apprentice whose apprenticeship has ceased or become inactive may be reinstated to apprenticeship by notice to the board including the name of the apprentice's supervisor upon his or her return to active apprenticeship, the establishment at which the apprentice is employed, and payment of a processing fee [~~of fifty (50) dollars~~] as promulgated in 201 KAR 15:030. The reinstated apprentice shall be responsible for compliance with all other apprenticeship requirements from the date of reinstatement forward.

Section 5. Sworn Statements. (1) An apprentice shall file the Apprenticeship Sworn Statement required by KRS 316.030(7) on or before May 1 and November 1 of each year relating to the six

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(6) month period ending with the preceding middle of April or middle of October, respectively.

(2) The Apprenticeship Sworn Statement shall include:

(a) The names and dates of funerals in which the apprentice for a funeral director's license assisted in managing during each six (6) month period;

(b) The names and dates of embalming cases in which the apprentice for an embalmer's license assisted during each six (6) month period; and

(c) The names of the service items set forth in Section 3(6) of this administrative regulation specifically identified for each case in which the apprentice assisted during each six (6) month period.

(3) With the initial sworn statement, an apprentice shall file a report written by the applicant summarizing the requirements of KRS Chapter 316 and 201 KAR Chapter 15.

(4) With subsequent sworn statements, an apprentice shall file a report written by the applicant on an article or a book related to embalming or funeral directing read by the applicant during the six (6) month period. It shall contain a reference that includes the author, title, month and year of publication, and page numbers.

(5) The reports required by subsections (3) and (4) of this section shall be two (2) pages at a minimum and typed.

(6) An apprentice in mortuary school shall be exempt from the book report requirements of subsections (3) through (5) of this section if the apprentice submits the number of hours he or she is enrolled on the Apprenticeship Sworn Statements.

(7)(a) The supervisor of record shall sign the sworn statements and certify that the apprentice has completed the cases and service items identified in the statement.

(b) If the apprentice has received supervision from a supervisor's designee, the supervisor of record shall still be responsible for:

1. The activities of the apprentice;
2. Signing the sworn statement; and
3. The certification of completion of cases and service items identified in the statement.

(8) Before the activities of the apprentice can count toward the requirements of KRS 316.030(4)(f) or (5)(e), the case shall include the following service items:

(a) For an embalming case, the apprentice shall have participated in the service items listed in Section 4(6)(b)3 through 7 of this administrative regulation; and

(b) For a funeral directing case, the apprentice shall have participated in the service items listed in Section 4(6)(c)3 through 9 of this administrative regulation.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Apprenticeship Application", 9/ 2019;
- (b) "Change of Apprentice Supervisor", 9/2019;
- (c) "Apprenticeship Sworn Statement", 9/2019;
- (d) "Level II Apprentice Application", 9/2019; and
- (e) "Apprentice Travel Form", 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Embalmers and Funeral Directors, 9114 Leesgate Rd, Ste 4, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

CHRISTI K. MOFFETT, Executive Director

APPROVED BY AGENCY: June 29, 2021

FILED WITH LRC: June 30, 2021 at 12:56 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2021 at 9:00 a.m., Via ZOOM. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of this hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September

30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Christi Moffett, Executive Director of Kentucky Board of Embalmers and Funeral Directors, 9114 Leesgate Road, Suite 4, Louisville, Kentucky 40222, phone 502.426.4589 fax 502.426.4117; email christik.moffett@ky.gov.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Christi Moffett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation moves all fees into one regulation

(b) The necessity of this administrative regulation: HB220 removed fees from statutes placing them in administrative regulations. The bill goes into effect 6/29/21. Board renewals start 7/1/21.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation brings all the fees into one regulation for easy access.

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

(a) How the amendment will change this existing administrative regulation: All the fees will be located in one regulation

(b) The necessity of the amendment to this administrative regulation: HB220 removed fees from statutes placing them in administrative regulations. The bill goes into effect 6/29/21. Board renewals start 7/1/21.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation removes the fees and places them all in one fee regulation for ease of use. This regulation will increase application fees from thirty (30) dollars to seventy five (75) dollars per application type (embalmer or funeral director).

(d) How the amendment will assist in the effective administration of the statutes: Ease of use having all fees in one regulation

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Board averages five (5) new apprentice applications per month. This regulation will increase application fees from thirty (30) dollars to seventy five (75) dollars per application type (embalmer or funeral director). This expense can be paid by the individual or the funeral establishment. In addition, moving all the fees into one regulation will make it easier for readers.

(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:

(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: Pay renewal or fee as defined

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

Apprentices will pay \$75 per license

Establishments will pay the following based on their volume (case count)

Case Counts	Fee
99+	\$ 450
100-299	\$ 550
300-499	\$ 650
500+	\$ 750

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be legally licensed for a period of one year for establishments. Apprentice applications will be processed and presented to the board for consideration.

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

(a) Initially: No additional cost

(b) On a continuing basis: No additional cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? No special or additional funding will be required for implementation or enforcement.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: These fees are not increasing; just being moved to a single regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation gathers all the fees into one regulation. There is a fee increase for establishments based on case counts.

(9) TIERING: Is tiering applied? Yes,

Case Count	%	KBEFD # Est	Fees
99+	54%	275	\$ 450
100-299	40%	204	\$ 550
300-499	4%	20	\$ 650
500+	2%	10	\$ 750

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

- Funeral Directors, Embalmers
- Funeral Establishments and Embalming Services
- Funeral Apprentices

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

- 201 KAR 15:030
- KRS 316.030(4)(g)
- KRS 316.030(5)(f)
- KRS 316.125(2)(a)
- 201 KAR 15:040 Section 1(1)
- 201 KAR 15:040 Section 3(3)
- 201 KAR 15:040 Section 4(1)
- 201 KAR 15:050 Section 4(5)
- 201 KAR 15:110 Section 5(5)b
- 201 KAR 15:110 Section 5(5)c
- 201 KAR 15:110 Section 5(5)d
- 201 KAR 15:110 Section 5(5)e
- 201 KAR 15:125 Section 1(2)(b)
- 201 KAR 15:125 Section 2(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. None

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

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

(c) How much will it cost to administer this program for the first year? No additional cost to the agency

(d) How much will it cost to administer this program for subsequent years? 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 (+/-):

PROPOSED

Case Calls	KBEFD Facilities	Fee	Income
99+	275	\$ 450	\$ 123,750
100-299	204	\$ 550	\$ 112,200
300-499	20	\$ 650	\$ 13,000
500+	10	\$ 750	\$ 7,500
			\$ 256,450

EXISTING			
Existing	KBEFD Facilities	Fee	Income
Flat Fee	510	\$ 200	\$ 102,000

Expenditures: None  
Other Explanations: None

**BOARDS AND COMMISSIONS**  
**Board of Embalmers and Funeral Directors**  
**(Amendment)**

**201 KAR 15:110. Funeral establishment criteria.**

RELATES TO: KRS 316.010, 316.030, 316.125, 316.127, 316.130, 316.260, 16 C.F.R. 453.2(b)(2)-(5), 29 U.S.C. 651

STATUTORY AUTHORITY: KRS 316.125(1), 316.210(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.125(1) prohibits operating a full-service funeral establishment, a visitation and ceremonial funeral service establishment, or an embalming service establishment without first obtaining the applicable license from the board. KRS 316.210(1) authorizes the board to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 316. This administrative regulation establishes the minimum requirements for the licensing and operation of a funeral establishment.

Section 1. General Requirements. (1) The interior and exterior of the establishment shall be kept free and clean of litter, dirt, debris, and clutter or other objects or conditions that present a potential or actual hazard to the health, safety, or welfare of the public and the funeral establishment's employees.

(2) Only the following persons shall be permitted in a preparation room during the course of embalming a dead human body:

- (a) Employees of the establishment where the human body is being embalmed;
- (b) Registered apprentices;
- (c) Members of the family of the deceased;
- (d) Authorized representatives of the deceased; or
- (e) Any other individual otherwise allowed by law.

(3) An establishment shall maintain the following documents, if applicable:

- (a) Board approved embalming reports that include:
  1. The name of each body embalmed;
  2. The date of death;
  3. The date and time that the embalming took place;
  4. The name and signature of the embalmer; and
  5. The embalmer's license number;
- (b) Proper documentation of the authorization to embalm; and
- (c) Accurate and current copies of:
  1. The casket price list;
  2. The outer burial container price list;
  3. The general price list; and
  4. The statement required by the Federal Trade Commission in 16 C.F.R. 453.2(b)(2) through (5), as maintained in the general practice of the establishment.

(4) An establishment shall maintain embalming reports and documentation of authorization to embalm for a minimum of three (3) years.

(5) Establishments located in any public office building, strip mall, public storage, mini-storage, mini-warehouse, multiunit storage complex, or similar facility used by the general public for the storage of goods shall be ineligible for a license.

(6) The building in which an establishment is located, and any sidewalks and parking areas provided adjacent to the establishment, shall be in conformity with the requirements of the applicable federal, state and local statutes, administrative regulations, ordinances, and zoning provisions relating to publicly-accessible buildings and establishments.

- (7) An establishment shall display a sign that:
  - (a) Identifies the name of the establishment; and
  - (b) Is in a location visible from an adjacent public road.



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(8) An establishment shall have adequate rest room facilities for members of the public if public funeral services or visitation or ceremonial services will be conducted in the establishment.

Section 2. Visitation and Ceremonial Funeral Service Establishment. An establishment that provides visitation and ceremonial funeral services shall have:

- (1) A viewing area or chapel that shall be at least 400 square feet in size; and
- (2) The applicable equipment necessary for conducting and arranging funeral services, including:
  - (a) Tables or desks and chairs for arrangement conferences;
  - (b) Seating for the viewing room;
  - (c) Casket bier;
  - (d) Register book stand;
  - (e) Officiant stand;
  - (f) Flower display stands; and
  - (g) Organ, piano, music-producing equipment, or any suitable combination of these items.

Section 3. Embalming Service Establishment. (1) An establishment that provides embalming services shall:

- (a) Have facilities and a preparation room that comply with the requirements of the Occupational Safety and Health Act, 29 U.S.C. 651;
  - (b) Have at least one (1) approved embalming table and all professional instruments necessary for embalming and the preparation of dead human bodies; and
  - (c) Ensure that a preparation room shall not be used as a storage area other than for supplies pertaining to the embalming and preparation of dead human bodies.
- (2) Human remains shall not be prepared for disposition except by a licensed embalmer or a Level 2 apprentice, in accordance with KRS 316.030, in a preparation room that meets the requirements of this administrative regulation.
- (3) All windows and doors shall be constructed or screened to prevent persons from looking into the preparation room.
- (4) Each preparation room entrance shall be lockable, shall be locked when not in use, and shall display a sign indicating private or restricted entry.
- (5) Licensed embalmers may perform removals and transport dead bodies.

Section 4. Full Service Funeral Establishments. A full service funeral establishment shall have:

- (1) An area available to the public devoted to the display of funeral merchandise. Caskets or casket sections may be viewed by sample, computer, catalog, or other display that corresponds to the current general price list for the funeral establishment; and
- (2) A separate room or office for arranging funerals. This room may be used to satisfy the requirements of subsection (1) of this section.

Section 5. Inspections. (1) Each establishment shall be subject to inspection at the convenience of the board inspector.

- (a) An establishment that is sited on more than one (1) parcel of real estate shall be required to notify the inspector of the location and identity of the separate parcels, and will be charged a separate inspection fee as set forth in this administrative regulation for each separate parcel, as if each parcel were a separately-licensed establishment.
- (b) Failure of the establishment to be open and available for an inspection within a reasonable period of time after the inspector requests access for inspection shall be deemed by the board to be a violation of KRS Chapter 316, including KRS 316.150(1)(a), and may subject the establishment and its establishment manager to disciplinary action.
- (2) The inspector shall inspect the establishment to see if it has suitable and dignified quarters appropriate for the category of services for which it is licensed.
- (3) An establishment that provides embalming services shall have completed and signed embalming reports available for inspection upon request.

(4) The following forms shall be available for inspection or copying by the inspector:

- (a) A current general price list of charges for services to the public;
  - (b) A current price list of caskets as charged to the public;
  - (c) A current price list of outer burial containers as charged to the public; and
  - (d) All apprentice calendars and apprentice travel forms.
- (5)(a) An establishment seeking an initial inspection for the purpose of obtaining a new license under KRS Chapter 316 may request the inspection by the inspector of the Board of Funeral Directors and Embalmers of the Commonwealth of Kentucky, and will be assessed a fee [~~in the amount of \$250~~] as promulgated in 201 KAR 15:030 for the inspection. This fee will cover the inspector's initial visit, and one (1) subsequent visit for re-inspection to assure that any initial deficiencies have been cured.
- (b) An establishment licensed under KRS Chapter 316 that is routinely inspected by the inspector of the Board of Funeral Directors and Embalmers of the Commonwealth of Kentucky shall be assessed an inspection fee, as promulgated in 201 KAR 15:030 payable to the board, [~~of \$100.~~] This fee shall not be assessed more than one (1) time per calendar year.
- (c) An establishment licensed under KRS Chapter 316 that requires a re-inspection within a period of three (3) months following a routine inspection, due to a deficiency found by the inspector of the Board of Funeral Directors and Embalmers of the Commonwealth of Kentucky on a routine inspection, shall be assessed a re-inspection fee [~~of \$200~~] as promulgated in 201 KAR 15:030. This fee shall be paid regardless of any disciplinary action that otherwise may be taken against the establishment for the failure of the inspection.
- (d) An establishment licensed under KRS Chapter 316 may request an inspection by the inspector of the Board of Funeral Directors and Embalmers of the Commonwealth of Kentucky, and shall pay a fee [~~of \$100~~] as promulgated in 201 KAR 15:030 for the inspection.

(e) If an establishment fails three (3) consecutive inspections within a period of six (6) months, any subsequent inspections required to determine if the failures have been cured shall require payment [~~of a fee of \$200~~] as promulgated in 201 KAR 15:030 for each subsequent inspection. In an instance of three (3) consecutive failures of inspections within six (6) months, the board may also, in its sole discretion, direct that the establishment in question cease operations for an appropriate period of time to permit the establishment to become compliant, and may assess a fine based upon the violations and failure to correct same.

(f) Inspection fees will be invoiced by the board to the licensee, and will not be due at the time of the inspection.

Section 6. Establishment Manager. (1) Each establishment shall have a Kentucky-licensed funeral director, a Kentucky-licensed embalmer, or an individual licensee as required by KRS 316.125(2)(b)(5) to manage and supervise the establishment.

(2) The establishment shall notify the board of a change of the funeral director or the establishment manager by submitting the Information and Name Change Application signed by the licensed owner and the new establishment manager within five (5) working days of the change.

(3) An establishment manager who leaves the employment of an establishment shall notify the board in writing within five (5) working days of the departure.

Section 7. Transferability. (1) Establishment licenses shall not be transferable.

- (2) If a sale or lease occurs:
  - (a) The existing establishment license may remain in force by mutual consent of the parties for a period of thirty (30) days or until the next regularly scheduled board meeting, whichever occurs first.
  - (b) During the transition period, the establishment shall be operated under the name shown on the existing license until a new license is issued.
  - (c) An application for a new license shall be submitted for review at the next board meeting following the sale or lease.

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(3) If a relocation or name change occurs, an Information and Name Change Application shall be submitted to the board.

(4)(a) Following the death of a Kentucky-licensed owner, funeral director, or embalmer, the establishment may operate for ninety (90) days while under temporary supervision by a licensed funeral director or embalmer. A licensee who is already identified as the establishment manager for another establishment under KRS 316.125(4) may act as the temporary establishment manager for the establishment under this section for the limited ninety (90) day period.

(b) The temporary establishment manager shall be identified to the board in writing by letter within fifteen (15) days of the death of the Kentucky-licensed owner, funeral director, or embalmer.

(c) A licensee may be the temporary establishment manager for only one (1) establishment at a time.

Section 8. Opening of an Establishment. (1) An establishment shall not operate or be opened for business prior to passing an inspection by the state board inspector and the issuance of an establishment license by the board for that establishment.

(2) To apply for an establishment license, the following shall be submitted to the board:

(a) A completed Establishment Application;

(b) The fee required [by] as promulgated in 201 KAR 15:030 administrative regulations;

(c) A picture of the establishment and signage;

(d) A picture of the establishment manager;

(e) If purchasing the establishment, a certified copy of the property deed or other document demonstrating the property transfer and applicant's ownership;

(f) If a corporation, the articles of incorporation;

(g) If a partnership, the partnership agreement;

(h) If a limited liability company, the LLC agreement; and

(i) If the property is not owned by the applicant, a commercial lease, certificate of occupancy, or other legal document that demonstrates that the applicant has possession and control of the premises sufficient to be responsible for the property being configured to meet the requirements of these regulations.

(3) Violation of this section shall be grounds for denial of the application for the license by the board.

(4) All establishment licenses shall expire July 31 of each year. Establishments shall renew by submitting the following to the board:

(a) An Establishment Renewal Application;

(b) The renewal fee established in KRS 316.130(4) and 201 KAR 15:030; and

(c) A list of all licensed funeral directors and embalmers affiliated with the establishment. Section 9. Advertising and Signage. (1) An establishment shall use the exact name listed on the license for the establishment in all advertisements and signage.

(2) Descriptive terms shall be distinctly separated from the name of the establishment in all signage and advertisements unless registered as part of the official name.

(3) Any advertising, designation, or signage for the funeral establishment shall match the classification on the establishment's license.

Section 10. Closure of an Establishment. (1) If an establishment is to be closed, for any reason, the establishment licensee shall notify the board that the establishment is to be closed, and whether the closure is permanent or for a specified period of time.

(2) An establishment that is closing shall give notice of closure to the Office of the Attorney General together with a listing of any pre-need contracts that remain in effect for the closing establishment.

(3) The licensee for a closing establishment shall give written notice of closure to clients with whom the establishment has a pre-need contract, and shall include in that notice how the establishment intends to honor its contractual obligation.

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

(a) "Establishment Application", 9/2019;

(b) "Information and Name Change Application", 9/2019; and

(c) "Establishment Renewal Application", 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Embalmers and Funeral Directors, 9114 Leesgate Rd, Ste 4, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

CHRISTI K. MOFFETT, Executive Director

APPROVED BY AGENCY: June 29, 2021

FILED WITH LRC: June 30, 2021 at 12:56 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2021 at 9:00 a.m., Via ZOOM. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of this hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Christi Moffett, Executive Director of Kentucky Board of Embalmers and Funeral Directors, 9114 Leesgate Road, Suite 4, Louisville, Kentucky 40222, phone 502.426.4589 fax 502.426.4117; email christik.moffett@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christi Moffett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation moves all fees into one regulation

(b) The necessity of this administrative regulation: HB220 removed fees from statutes placing them in administrative regulations. The bill goes into effect 6/29/21. Board renewals start 7/1/21.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation brings all the fees into one regulation for easy access.

(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: All the fees will be located in one regulation

(b) The necessity of the amendment to this administrative regulation: HB220 removed fees from statutes placing them in administrative regulations. The bill goes into effect 6/29/21. Board renewals start 7/1/21.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation removes the inspection fees from 201 KAR 15:110, along with all fees and puts them all in one, easy to access regulation.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Moving all the fees into one regulation will make it easier for readers.

(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:

(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: Pay renewal or fee as defined

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

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question (3):

Apprentices will pay \$75 per license

Establishments will pay the following based on their volume (case count)

Case Counts	Fee
99+	\$ 450
100-299	\$ 550
300-499	\$ 650
500+	\$ 750

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be legally licensed for a period of one year for establishments. Apprentice applications will be processed and presented to the board for consideration.

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

(a) Initially: No additional cost

(b) On a continuing basis: No additional cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? No special or additional funding will be required for implementation or enforcement.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: These fees are not increasing; just being moved to a single regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation gathers all the fees into one regulation. There is a fee increase for establishments based on case counts.

(9) TIERING: Is tiering applied? Yes,

Case Count	%	KBEFD # Est	Fees
99+	54%	275	\$ 450
100-299	40%	204	\$ 550
300-499	4%	20	\$ 650
500+	2%	10	\$ 750

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

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

- Funeral Directors, Embalmers
- Funeral Establishments and Embalming Services
- Funeral Apprentices

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

- 201 KAR 15:030
- KRS 316.030(4)(g)
- KRS 316.030(5)(f)
- KRS 316.125(2)(a)
- 201 KAR 15:040 Section 1(1)
- 201 KAR 15:040 Section 3(3)
- 201 KAR 15:040 Section 4(1)
- 201 KAR 15:050 Section 4(5)
- 201 KAR 15:110 Section 5(5)b
- 201 KAR 15:110 Section 5(5)c
- 201 KAR 15:110 Section 5(5)d
- 201 KAR 15:110 Section 5(5)e
- 201 KAR 15:125 Section 1(2)(b)
- 201 KAR 15:125 Section 2(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. None

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? No additional cost to the agency

(d) How much will it cost to administer this program for subsequent years? 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 (+/-):

**PROPOSED**

Case Calls	KBEFD Facilities	Fee	Income
99+	275	\$ 450	\$ 123,750
100-299	204	\$ 550	\$ 112,200
300-499	20	\$ 650	\$ 13,000
500+	10	\$ 750	\$ 7,500
			\$ 256,450

**EXISTING**

Existing	KBEFD Facilities	Fee	Income
Flat Fee	510	\$ 200	\$ 102,000

Expenditures: None

Other Explanations: None

**BOARDS AND COMMISSIONS**

**Board of Embalmers and Funeral Directors  
(Amendment)**

**201 KAR 15:125. Surface transportation permit.**

RELATES TO: KRS 316.165

STATUTORY AUTHORITY: KRS 316.165, 316.210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.210

authorizes the Board of Embalmers and Funeral Directors to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 316. KRS 316.165(1) authorizes the board to issue a permit to an applicant for the sole and limited purpose of being allowed to provide surface transportation of dead human bodies. This administrative regulation establishes the criteria for issuance of these permits.

Section 1. Application. (1) An applicant seeking a permit to provide surface transportation for dead human bodies shall be of the age of eighteen (18) prior to submitting an application.

(2) An applicant applying for a permit to provide surface transportation and removal services for dead human bodies shall submit:

(a) A completed and signed application form, "Surface Transportation & Removal Permit Application", 9/2019;

(b) A fee in [the amount of \$150] as promulgated in 201 KAR 15:030;

(c) Evidence of training and compliance with the standards of the Occupational Safety and Health Administration for universal precautions and blood-borne pathogens, 29 Code of Federal Regulations (C.F.R.) 1910.1030;

(d) Two (2) passport-sized photographs of the applicant;

(e) An official copy of a criminal justice information system (CJIS) report obtained from the Federal Bureau of Investigation no more than ninety (90) days prior to the application; and

(f) Evidence of possession and control or ownership of an appropriate vehicle and necessary supplies for surface transportation of dead human bodies.

(3)(a) An appropriate vehicle shall have enclosed cargo space of sufficient size to transport a dead human body securely and without exposure to weather.

(b) Necessary supplies shall include:

1. Mortuary or ambulance cot;
2. Collapsible or flexible stretcher;
3. Sheets and cot cover;
4. Pillow or head block;
5. Rubber or plastic sheeting;
6. Towels;

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- 7. Zippered mortuary body bag or disaster pouch;
- 8. Straps;
- 9. Protective clothing; and
- 10. Sanitary accessories.

Section 2. Examination. (1) An applicant seeking a surface transportation permit shall be required to pass an examination on Kentucky laws and transport procedures. The examination fee ~~[shall be seventy-five (75) dollars and may]~~ as promulgated in 201 KAR 15:030, to be paid at the time of application [or at the time of examination].

(2) The examination shall be administered ~~[by the board concurrently with other monthly examinations.]~~ at the conclusion of the course.

(3) The board shall offer a training course related to the subject matter of the examination.

Section 3. Scope of Permit. (1) Permit holders shall only engage in surface transportation of dead human bodies requested by an authorized person from the establishment by which the permit holder is employed. Surface transportation shall be limited to obtaining the dead human bodies from the location from which the transportation services were requested, and transport to the establishment by which the permit holder is employed.

(2) Permit holders shall present a photo identification to the person or establishment requesting transport, to establish that the permit holder is employed by the establishment to which transport is being requested.

(3) Permit holders shall not engage in any services of funeral directing or embalming or distribute any documents or materials related to such services.

(4) Permit holders may only be employed by one (1) establishment at one (1) time.

(5) Permit holders shall not be required to use a casket for transportation of dead human bodies, but shall be required to use a container as may be required by the above referenced OSHA guidelines.

(6) No individual who obtains or holds a permit from this board to transport dead human bodies may use transport removals performed under that permit to accumulate the number of removals required to complete an apprenticeship. All apprenticeship removals shall be performed within the requirements of the apprenticeship and under supervision, to the extent set forth in these administrative regulations. Hours accumulated in performing removals under a Transport Permit will not be counted toward the apprentice's weekly work hours requirement.

Section 4. Permit Issuance and Renewal. (1) The Surface Transportation Permit issued or renewed under this administrative regulation shall be effective for a period of one (1) year from its date of issuance.

(2) Renewal of the Surface Transportation Permit may be effected by sending to the board:

(a) A completed Surface Transportation and Removal Permit Application with the Renewal box checked. An applicant for renewal need not include any information already given on the original application, but shall include on the form any new or changed information;

(b) A renewal fee ~~[of fifty (50) dollars]~~ as promulgated in 201 KAR 15:030; and

(c) Evidence that the permit holder has in his or her possession or control an acceptable vehicle and the requisite equipment and supplies to perform surface transportation of dead human bodies.

Section 5. Incorporation by Reference. (1) "Surface Transportation & Removal Permit Application", 10/2019, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Embalmers and Funeral Home Directors, 9114 Leesgate Rd., Suite 4, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

CHRISTI K. MOFFETT, Executive Director

APPROVED BY AGENCY: June 29, 2021

FILED WITH LRC: June 30, 2021 at 12:56 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2021 at 9:00 a.m., Via ZOOM. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of this hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Christi Moffett, Executive Director of Kentucky Board of Embalmers and Funeral Directors, 9114 Leesgate Road, Suite 4, Louisville, Kentucky 40222, phone 502.426.4589 fax 502.426.4117; email christik.moffett@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christi Moffett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation moves all fees into one regulation

(b) The necessity of this administrative regulation: HB220 removed fees from statutes placing them in administrative regulations. The bill goes into effect 6/29/21. Board renewals start 7/1/21.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation removes the fees from 201 KAR 15:125 to one Fees regulation 201 KAR15:030.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation brings all the fees into one regulation for easy access.

(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: All the fees will be located in one regulation

(b) The necessity of the amendment to this administrative regulation: HB220 removed fees from statutes placing them in administrative regulations. The bill goes into effect 6/29/21. Board renewals start 7/1/21.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Moving all the fees into one regulation will make it easier for readers.

(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:

(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: Pay renewal or fee as defined

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

Apprentices will pay \$75 per license

Establishments will pay the following based on their volume (case count)

Case Counts	Fee
99+	\$ 450
100-299	\$ 550
300-499	\$ 650
500+	\$ 750

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

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period of one year for establishments. Apprentice applications will be processed and presented to the board for consideration.

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

- (a) Initially: No additional cost
- (b) On a continuing basis: No additional cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? No special or additional funding will be required for implementation or enforcement.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: These fees are not increasing; just being moved to a single regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation gathers all the fees into one regulation. There is a fee increase for establishments based on case counts.

(9) TIERING: Is tiering applied? Yes,

Case Count	%	KBEFD # Est	Fees
99+	54%	275	\$ 450
100-299	40%	204	\$ 550
300-499	4%	20	\$ 650
500+	2%	10	\$ 750

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

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

- Funeral Directors, Embalmers
- Funeral Establishments and Embalming Services
- Funeral Apprentices

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

- 201 KAR 15:030
- KRS 316.030(4)(g)
- KRS 316.030(5)(f)
- KRS 316.125(2)(a)
- 201 KAR 15:040 Section 1(1)
- 201 KAR 15:040 Section 3(3)
- 201 KAR 15:040 Section 4(1)
- 201 KAR 15:050 Section 4(5)
- 201 KAR 15:110 Section 5(5)b
- 201 KAR 15:110 Section 5(5)c
- 201 KAR 15:110 Section 5(5)d
- 201 KAR 15:110 Section 5(5)e
- 201 KAR 15:125 Section 1(2)(b)
- 201 KAR 15:125 Section 2(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. None

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

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

(c) How much will it cost to administer this program for the first year? No additional cost to the agency

(d) How much will it cost to administer this program for subsequent years? 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 (+/-):

**PROPOSED**

Case Calls	KBEFD Facilities	Fee	Income
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99+	275	\$ 450	\$ 123,750
100-299	204	\$ 550	\$ 112,200
300-499	20	\$ 650	\$ 13,000
500+	10	\$ 750	\$ 7,500
			\$ 256,450

EXISTING			
Existing	KBEFD Facilities	Fee	Income
Flat Fee	510	\$ 200	\$ 102,000

Expenditures: None  
Other Explanations: None

**BOARDS AND COMMISSIONS**  
**Board of Nursing**  
**(Amendment)**

**201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses.**

RELATES TO: KRS 218A.172, 218A.205(3)(a), (b), 314.011(7), (8), 314.042, 314.193(2), 314.195[-314.196]

STATUTORY AUTHORITY: KRS 218A.205(3)(a), (b), 314.131(1), 314.193(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3)(a) and (b) require the Board of Nursing, in consultation with the Kentucky Office of Drug Control Policy, to establish by administrative regulation mandatory prescribing and dispensing standards for licensees authorized to prescribe or dispense controlled substances, and in accordance with the Centers for Disease Control and Prevention (CDC) guidelines, to establish a prohibition on a practitioner issuing a prescription for a Schedule II controlled substance for more than a three (3) day supply if intended to treat pain as an acute medical condition, unless an exception applies. KRS 314.131(1) authorizes the board to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS Chapter 314.193(2) authorizes the board to promulgate administrative regulations establishing standards for the performance of advanced practice registered nursing to safeguard the public health and welfare. This administrative regulation establishes the scope and standards of practice for an advanced practice registered nurse.

Section 1. Definitions. (1) "Collaboration" means the relationship between the advanced practice registered nurse and a physician in the provision of prescription medication, including both autonomous and cooperative decision-making, with the advanced practice registered nurse and the physician contributing their respective expertise.

(2) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances" or "CAPA-CS" means the written document pursuant to KRS 314.042(10).

(3) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs" or "CAPA-NS" means the written document pursuant to KRS 314.042(8).

(4) "Immediate family" means a spouse, parent, child, sibling, parent-in-law, son-in-law, daughter-in-law, brother in-law, sister in-law, step-parent, step-child, step-sibling, or other relative residing in the same residence as a prescribing practitioner.

(5) "KASPER" means the Kentucky All Schedule Prescription Electronic Reporting System established in KRS 218A. 202.

Section 2. (1) The practice of the advanced practice registered nurse shall be in accordance with the standards and functions established in scope and standards of practice statements adopted by the board in subsection (2) of this section.

(2) The following scope and standards of practice statements shall be adopted:

- (a) AACN Scope and Standards for Acute Care Nurse

Practitioner Practice;

(b) AACN Scope and Standards for Acute Care Clinical Nurse Specialist Practice;

(c) Neonatal Nursing: Scope and Standards of Practice;

(d) Nursing: Scope and Standards of Practice;

(e) Pediatric Nursing: Scope and Standards of Practice;

(f) Psychiatric- Mental Health Nursing: Scope and Standards of Practice;

(g) Scope of Practice for Nurse Practitioners;

(f) Standards of Practice for Nurse Practitioners;

(h) Scope of Nurse Anesthesia Practice;

(i) Standards for Nurse Anesthesia Practice;

(j) Standards for Office Based Anesthesia Practice;

(k) Standards for the Practice of Midwifery;

(l) Oncology Nursing Scope and Standards of Practice;

(m) The Women's Health Nurse Practitioner: Guidelines for Practice and Education; and

(o) Definition of Midwifery and Scope of Practice of Certified Nurse-Midwives and Certified Midwives.

Section 3. In the performance of advanced practice registered nursing, the advanced practice registered nurse shall seek consultation or referral in those situations outside the advanced practice registered nurse's scope of practice.

Section 4. Advanced practice registered nursing shall include prescribing medications and ordering treatments, devices, diagnostic tests, and performing certain procedures that shall be consistent with the scope and standards of practice of the advanced practice registered nurse.

Section 5. Advanced practice registered nursing shall not preclude the practice by the advanced practice registered nurse of registered nursing practice as defined by KRS 314.011(6).

Section 6. (1)(a) A CAPA-NS and a CAPA-CS shall include the:

1. Name;
2. Practice address;
3. Phone number;
4. License number of both the advanced practice registered nurse and each physician who is a party to the agreement; and
5. Population focus and area of practice of the advanced practice registered nurse.

(b) [Pursuant to ~~KRS 314.196(2);~~] An advanced practice registered nurse shall use the Common CAPA-NS form.

(2)(a) To notify the board of the existence of a CAPA-NS pursuant to KRS 314.042(8)(b), the APRN shall file with the board the APRN Prescriptive Authority Notification Form.

(b) To notify the board that the requirements of KRS 314.042(9) have been met and that the APRN will be prescribing nonscheduled legend drugs without a CAPA-NS, the APRN shall file the APRN Prescriptive Authority Notification Form.

(c) To notify the board of the existence of a CAPA-CS pursuant to KRS 314.042(10)(b), the APRN shall file with the board the APRN Prescriptive Authority Notification Form.

(3) For purposes of the CAPA-NS and the CAPA-CS, in determining whether the APRN and the collaborating physician are qualified in the same or a similar specialty, the board shall consider the facts of each particular situation and the scope of the APRN's and the physician's actual practice.

(4)(a) An APRN with a CAPA-CS, shall obtain a United States Drug Enforcement Agency (DEA) Controlled Substance Registration Certificate and shall report all DEA numbers, including a DEA-X Controlled Substance Registration Certificate, and any change in the status of a certificate by providing a copy of each registration certificate to the board within thirty (30) days of issuance.

(b) An APRN ~~[with a CAPA-CS]~~ shall register for a master account with the Kentucky All Schedule Prescription Electronic Reporting System (KASPER) within thirty (30) days of obtaining a DEA Controlled Substance Registration Certificate, and prior to prescribing controlled substances. A copy of the KASPER master

account registration certificate shall be submitted to the board via the online APRN Update portal within thirty (30) days of receipt of confirmation of registration by KASPER. An APRN shall report any changes to a CAPA-NS or a CAPA-CS to the board within thirty (30) days.

(5) An APRN shall report any changes to a CAPA-NS or a CAPA-CS to the board within thirty (30) days.

(6) If an APRN's CAPA-NS ends unexpectedly for reasons outside the APRN's control, the APRN may continue to prescribe non-scheduled legend drugs for thirty (30) days, after documenting in each patient's medical record the applicant's professional determination that the continued prescribing is justified based on the individual facts applicable to the patient's diagnosis and treatment. This thirty (30) day grace period shall not be extended or occur successively. The APRN with a CAPA-CS shall cease prescribing controlled substances if the collaborative agreement unexpectedly ends, until the CAPA-CS is resumed or the APRN enters into a new CAPA-CS. [If the collaborating physician's license is suspended, the APRN shall follow the procedures established in KRS 314.196 for a CAPA-NS. The APRN with a CAPA-CS shall cease prescribing controlled substances until the suspension is lifted or a new collaborating physician signs a new CAPA-CS.]

(7) An APRN with a CAPA-NS or a CAPA-CS shall report a practice address to the board. A change to the practice address shall be reported to the board within thirty (30) days.

(8) All documents and information required to be reported to the board by this section shall be reported by uploading the document or information through the board's Web site, [kbn.ky.gov](http://kbn.ky.gov), utilizing the tab APRN Update. The board shall not accept documents or information sent in any other format.

Section 7. Prescribing medications without a CAPA-NS or a CAPA-CS shall constitute a violation of KRS 314.091(1), except if a CAPA-NS has been discontinued pursuant to KRS 314.042(9) or if the prescribing occurred within the grace period specified in section 6, subsection 6 of this regulation [provisions of KRS 314.196(4)(b) apply].

Section 8. The board may make an unannounced visit to an advanced practice registered nurse to determine if the advanced practice registered nurse's practice is consistent with the requirements established by KRS Chapter 314 and 201 KAR Chapter 20, and patient and prescribing records shall be made available for immediate inspection.

Section 9. Prescribing Standards for Controlled Substances.  
(1)(a) This section shall apply to APRN with a CAPA-CS, if prescribing a controlled substance. It also applies to the utilization of KASPER.

(b) The APRN shall practice according to the applicable scope and standards of practice for the APRN'S role and population focus. This section does not alter the prescribing limits established in KRS 314.011(8).

(2) Prior to the initial prescribing of a controlled substance to a patient, the APRN shall:

(a) Obtain the patient's medical history, including history of substance use, and conduct an examination of the patient and document the information in the patient's medical record. An APRN certified in psychiatric-mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query KASPER for the twelve (12) month period immediately preceding the request for available data on the patient and maintain all KASPER report identification numbers and the date of issuance of each KASPER report in the patient's record;

(c) Develop a written treatment plan stating the objectives of the treatment and further diagnostic examinations required; and

(d) Discuss with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate:

1. The risks and benefits of the use of controlled substances, including the risk of tolerance and drug dependence;

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2. That the controlled substance shall be discontinued once the condition requiring its use has resolved; and

3. Document that the discussion occurred and obtain written consent for the treatment.

(3) The treatment plan shall include an exit strategy, if appropriate, including potential discontinuation of the use of controlled substances.

(4) For subsequent or continuing long-term prescriptions of a controlled substance for the same medical complaint, the APRN shall:

(a) Update the patient's medical history and document the information in the patient's medical record;

(b) Modify and document changes to the treatment plan as clinically appropriate; and

(c) Discuss the risks and benefits of any new controlled substances prescribed, including the risk of tolerance and drug dependence with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate.

(5) During the course of treatment, the APRN shall query KASPER no less than once every three (3) months for the twelve (12) month period immediately preceding the request for available data on the patient. The APRN shall maintain in the patient's record all KASPER report identification numbers and the date of issuance of each KASPER report or a copy or saved image of the KASPER report. If neither an identification number nor an image can be saved to the patient's record as a result of technical limitations of the APRN's electronic health record system, the APRN shall make a concurrent note in the patient's record documenting the date and time that the APRN reviewed the patient's KASPER report.

(6) These requirements may be satisfied by other licensed practitioners in a single group practice if:

(a) Each licensed practitioner involved has lawful access to the patient's medical record;

(b) Each licensed practitioner performing an action to meet these requirements is acting within the scope of practice of his or her profession; and

(c) There is adequate documentation in the patient's medical record reflecting the actions of each practitioner.

(7) If prescribing a controlled substance for the treatment of chronic, non-cancer pain, the APRN. In addition to the requirements of this section, shall obtain a baseline drug screen and further random drug screens if the APRN:

(a) Finds a drug screen clinically appropriate; or

(b) Believes that it is appropriate to determine whether or not the controlled substance is being taken by the patient.

(8) If prescribing a controlled substance for the treatment of a mental health condition, the APRN shall meet the requirements of this section and KRS 314.011(8)(a) and (b).

(9) Prior to prescribing a controlled substance for a patient in the emergency department of a hospital that is not an emergency situation, the APRN shall:

(a) Obtain the patient's medical history, conduct an examination of the patient, and document the information in the patient's medical record. An APRN certified in psychiatric - mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query KASPER for the twelve (12) month period immediately preceding the request for available data on the patient and document the data in the patient's record;

(c) Develop a written treatment plan stating the objectives of the treatment and further diagnostic examinations required; and

(d) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, the patient's legal guardian, or health care surrogate, including the risks of tolerance and drug dependence, and document that the discussion occurred and that the patient consented to that treatment.

(10) For each patient for whom an APRN prescribes a controlled substance, the APRN shall keep accurate, readily accessible, and complete medical records, which include:

(a) Medical history and physical or mental health examination;

(b) Diagnostic, therapeutic, and laboratory results;

(c) Evaluations and consultations;

(d) Treatment objectives;

(e) Discussion of risk, benefits, and limitations of treatments;

(f) Treatments;

(g) Medications, including date, type, dosage, and quantity prescribed;

(h) Instructions and agreements;

(i) Periodic reviews of the patient's file; and

(j) All KASPER report identification numbers and the date of issuance of each KASPER report.

(11) The requirement to query KASPER shall not apply to:

(a) An APRN prescribing or administering a controlled substance immediately prior to, during, or within the fourteen (14) days following an operative or invasive procedure or a delivery if the prescribing or administering is medically related to the operative or invasive procedure of the delivery and the medication usage does not extend beyond the fourteen (14) days;

(b) An APRN prescribing or administering a controlled substance necessary to treat a patient in an emergency situation; or

(c) An APRN prescribing a controlled substance:

1. For administration in a hospital or long-term-care facility with an institutional account, or an APRN in a hospital or facility without an institutional account, if the hospital, long-term-care facility, or licensee queries KASPER for all available data on the patient or resident for the twelve (12) month period immediately preceding the query within twelve (12) hours of the patient's or resident's admission and places a copy of the query in the patient's or resident's medical records during the duration of the patient's stay at the facility;

2. As part of the patient's hospice or end-of-life treatment;

3. For the treatment of pain associated with cancer or with the treatment of cancer;

4. To assist a patient with submitting to a diagnostic test or procedure;

5. Within seven (7) days of an initial prescription pursuant to subsection (1) of this section if the prescriber:

a. Substitutes a controlled substance for the initial prescribing;

b. Cancels any refills for the initial prescription; and

c. Requires the patient to dispose of any remaining unconsumed medication;

6. Within ninety (90) days of an initial prescription pursuant to subsection (1) of this section if the prescribing is done by another licensee in the same practice or in an existing coverage arrangement, if done for the same patient for the same condition;

7. To a research subject enrolled in a research protocol approved by an institutional review board that has an active federal-wide assurance number from the United States Department of Health and Human Services, Office for Human Research Protections if the research involves single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health;

8. During the effective period of any disaster or situation with mass casualties that have a direct impact on the APRN's practice;

9. As part of the administering or ordering of controlled substances to prisoners in a state, county, or municipal correctional facility;

10. That is a Schedule IV controlled substance for no longer than three (3) days for an established patient to assist the patient in responding to the anxiety of a nonrecurring event; or

11. That is classified as a Schedule V controlled substance.

(12) In accordance with 21 C.F.R. 1306.12(b)(1)(iv) - (v), federal regulation 21 C.F.R. 1306.12(b) concerning the issuance of multiple prescriptions for Schedule II controlled substances shall not apply to APRNs in this state.

(13) No less than once every six (6) months, an APRN who holds a DEA Controlled Substance Registration Certificate shall review a reverse KASPER report for the preceding six (6) months to determine if the information contained in KASPER is correct. If the information is incorrect, the APRN shall comply with 902 KAR 55:110 and take the necessary steps to seek correction of the information,

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by:

- (a) First contacting the reporting pharmacy;
- (b) Contacting law enforcement if suspected fraudulent activity;

or

(c) Contacting the Drug Enforcement Professional Practices Branch, Office of Inspector General, Cabinet for Health and Family Services.

(14) An APRN shall not issue a prescription for hydrocodone combination products for more than a three (3) day supply if the prescription is intended to treat pain as an acute medical condition, except if:

(a) The APRN, in his or her professional judgment, believes that more than a three (3) day supply of hydrocodone combination products is medically necessary to treat the patient's pain as an acute medical condition and the APRN adequately documents the acute medical condition and lack of alternative treatment options that justifies deviation from the three (3) day supply limit on the patient's medical records;

(b) The prescription for hydrocodone combination products is prescribed to treat chronic pain;

(c) The prescription for hydrocodone combination products is prescribed to treat pain associated with a valid cancer diagnosis;

(d) The prescription for hydrocodone combination products is prescribed to treat pain while the patient is receiving hospice or end-of-life treatment;

(e) The prescription for hydrocodone combination products is prescribed as part of a narcotic treatment program licensed by the Cabinet for Health and Family Services;

(f) The prescription for hydrocodone combination products is prescribed to treat pain following a major surgery, which is any operative or invasive procedure or a delivery, or the treatment of significant trauma; or

(g) Hydrocodone combination products are administered directly to an ultimate user in an inpatient setting.

(15) Prescriptions written for hydrocodone combination products pursuant to subsection (14)(a) through (g) of this section shall not exceed thirty (30) days without any refill.

(16) An APRN may prescribe electronically. Electronic prescription shall be as established in KRS 218A.171.

(17) For any prescription for a controlled substance, the prescribing APRN shall discuss with the patient the effect the patient's medical condition and medication could have on the patient's ability to safely operate a vehicle in any mode of transportation.

Section 10. Immediate Family and Self-prescribing or Administering Medications. (1) An APRN shall not self prescribe or administer controlled substances.

(2) An APRN shall not prescribe or administer controlled substances to his or her immediate family except as established in subsections (3) and (4) of this section.

(3) An APRN may prescribe or administer controlled substances to an immediate family member:

(a) In an emergency situation;

(b) For a single episode of an acute illness through one (1) prescribed course of medication; or

(c) In an isolated setting, if no other qualified practitioner is available.

(4)(a) An APRN who prescribes or administers controlled substances for an immediate family member pursuant to subsections (3)(a) or (b) of this section shall document all relevant information and notify the appropriate provider.

(b) An APRN who prescribes or administers controlled substances for an immediate family member pursuant to subsection (3)(c) of this section shall maintain a provider-practitioner relationship and appropriate patient records.

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

(a) "AACN Scope and Standards for Acute Care Nurse Practitioner Practice", 2017 Edition, American Association of Critical-Care Nurses;

(b) "ACCN Scope and Standards for Acute Care Clinical Nurse

Specialist Practice", 2014 Edition, American Association of Critical-Care Nurses;

(c) "Neonatal Nursing: Scope and Standards of Practice", 2013 Edition, American Nurses Association/ National Association of Neonatal Nurses;

(d) "Nursing: Scope and Standards of Practice", 2015 Edition, American Nurses Association;

(e) "Pediatric Nursing: Scope and Standards of Practice", 2015 Edition, American Nurses Association/ Society of Pediatric Nursing/ National Association of Pediatric Nurse Practitioners;

(f) "Psychiatric-Mental Health Nursing: Scope and Standards of Practice", 2014, American Nurses Association/ American Psychiatric Nursing Association;

(g) "Scope of Practice for Nurse Practitioners", 2019 Edition, American Association of Nurse Practitioners;

(h) "Standards of Practice for Nurse Practitioners", 2019 Edition, American Association of Nurse Practitioners;

(i) "Scope of Nurse Anesthesia Practice", 2013 Edition, American Association of Nurse Anesthetists;

(j) "Standards for Nurse Anesthesia Practice", 2019 Edition, American Association of Nurse Anesthetists;

(k) "Office Based Anesthesia", 2019 Edition, American Association of Nurse Anesthetists;

(l) "Standards for the Practice of Midwifery", 2011 Edition, American College of Nurse Midwives;

(m) "Oncology Nursing Scope and Standards of Practice", 2019 Edition, Oncology Nursing Society;

(n) "The Women's Health Nurse Practitioner: Guidelines for Practice and Education", 2014 Edition, Association of Women's Health, Obstetric and Neonatal Nurses/Nurse Practitioners in Women's Health;

(o) "Definition of Midwifery and Scope of Practice of Certified Nurse-Midwives and Certified Midwives", 2012 Edition, American College of Nurse Midwives;

(p) "Standards for Professional Nursing Practice in the Care of Women and Newborns", 2019 Edition, Association of Women's Health, Obstetric and Neonatal Nurses;

(q) "APRN Prescriptive Authority Notification Form", 6/2018, Kentucky Board of Nursing; and

(r) "Common CAPA-NS Form", 6/2015, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://kbn.ky.gov/legalopinions/Pages/laws.aspx>.

JESSICA WILSON, President

APPROVED BY AGENCY: June 17, 2021

FILED WITH LRC: July 14, 2021 at 9:12 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, September 21, 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) Thursday, September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 338-2851, email [Jeffrey.Prather@ky.gov](mailto:Jeffrey.Prather@ky.gov)



REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey R. Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets standards for APRN practice.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.042.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting standards of practice.

(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 setting standards of practice.

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

(a) How the amendment will change the existing administrative regulation: The amendment removes references to KRS 314.196, which was repealed on June 29, 2021. See, HB 202 (2021RS). In lieu of the grace period previously identified in KRS 314.196, the amendment specifies a 30 day grace period for securing a CAPA-NS agreement when the APRNs previous CAPA-NS agreement ends unexpectedly for reasons outside the APRN's control. This amendment premises the duty to secure KASPER master account registration on the acquisition of DEA registration, in conformity with KRS 314.042(10)(k) and KRS 218A.202(2). This amendment requires that submission of the KASPER master account registration occur via the online APRN Update portal. Finally, this amendment provides the URL where material incorporated by reference is located, consistent with SB2 (2021RS).

(b) The necessity of the amendment to the administrative regulation: These regulation amendments were necessitated by recently enacted legislation, namely SB2 (2021RS) and HB202 (2021RS).

(c) How the amendment conforms to the content of the authorizing statutes: By clearly stating the requirements.

(d) How the amendment to the administrative regulation will assist in the effective administration of the statutes: APRNs will be informed.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: APRNs who prescribe, approximately 4000.

(4) Provide an analysis of how the entities referenced 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) A detailed explanation of the actions the entities referenced in question (3) will be required to undertake in order to comply with this proposed administrative regulation: APRNs who obtain a DEA registration will be required to obtain and maintain KASPER master account registration; however, this is not a change, as KRS 218A.202(2) for many years. APRNs who submit proof of KASPER master account registration must use the online APRN Update portal.

(b) An estimate of the costs imposed on entities referenced in question (3) in order to comply with this proposed administrative regulation: There is no cost.

(c) The benefits that may accrue to the entities referenced in question (3) as a result of compliance: They will be in compliance with the administrative regulation, and will be authorized to prescribe controlled substances and legend drugs pursuant to the conditions and limitations specified in the regulation and in KRS 314.011(8).

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation, both initially and on a continuing basis: There is no additional cost, either initially or on a continuing basis.

(6) Provide the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment: No increase is needed.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The 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, KRS 314.042, KRS 314.011(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.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS

Board of Nursing  
(Amendment)

201 KAR 20:215. Continuing competency requirements.

RELATES TO: KRS 218A.205(3)(i), 314.011(12), 314.073, 314.991(1)-(3)

STATUTORY AUTHORITY: KRS 218A.205(3)(i), 314.073, 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1), (2), and 314.073 require

the Board of Nursing to promulgate administrative regulations to establish continuing competency requirements for nurses. This administrative regulation establishes the fees, procedures, and requirements for continuing competency for nurses.

Section 1. Definitions. (1) "Contact hour" means fifty (50) minutes of an approved, organized learning experience.

(2) "Earning period" means November 1 through October 31 of a current licensure period.

(3) "Preceptor" means a nurse with demonstrated competence in a specific clinical area who serves as a role model and mentor to assist in the development and validation of the competencies of a nursing student or new employee.

Section 2. (1) A licensee shall choose a method from Section 3 of this administrative regulation to validate his or her continued competency in nursing for each earning period.

(2) A licensee shall maintain the documentation of the method chosen.

(3) A licensee shall provide the documentation if directed by the board.

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Section 3. Methods for continued competency validation shall be as follows:

(1) Fourteen (14) contact hours of continuing education, which shall:

(a) Be from a provider approved by the board pursuant to 201 KAR 20:220;

(b) Be completed during the earning period; and

(c) Include the continuing education required by Section 5 of this administrative regulation;

(2) Current national certification or recertification and the continuing education required by Section 5 of this administrative regulation. The certification shall be related to the nurse's practice role and shall:

(a) Have been initially attained during the earning period;

(b) If issued for a period of time as evidenced by an expiration date, have been in effect during the entire earning period; or

(c) Have been recertified during the earning period;

(3) The continuing education required by Section 5 of this administrative regulation and at least one (1) of the following during the earning period:

(a) Completion of a research project that is nursing-related:

1. As principal investigator, coinvestigator, or project director;

2. That is qualitative or quantitative in nature;

3. That utilizes a research methodology;

4. That increases knowledge, causes an improved outcome, or changes behavior; and

5. That is evidenced by an abstract of the project, which includes a summary of the findings;

(b) Publication of an article in a peer-reviewed health-related journal;

(c) Participation as a preceptor for at least one (1) nursing student or new employee.

1. The preceptorship shall be for at least 120 hours.

2. There shall be a one (1) to one (1) relationship between the preceptor and the student or employee.

3. The preceptor may train more than one (1) student or employee and may combine the hours to total 120 hours.

4. The preceptorship shall be evidenced by submission of the Preceptor Continuing Education Verification Form completed by [written documentation from] the educational institution or preceptor's supervisor; or

(4)(a) Seven (7) hours of continuing education from a provider approved by the board pursuant to 201 KAR 20:220 and earned during the licensure period, which shall include the continuing education required by Section 5 of this administrative regulation if applicable; and

(b) A nursing employment evaluation that is satisfactory for continued employment. The nurse shall submit the Nursing Continuing Education Employer Evaluation Form, completed and signed by the nurse's supervisor or employer, which shall cover a period of at least six (6) months during the earning period. [

1. The evaluation, which shall:

a. Cover a period of at least six (6) months during the earning period;

b. Be signed by the nurse's supervisor; and

c. Include the name, address, and telephone number of the employer; and

2. The Nursing Employment Evaluation Form.]

(5) Contact hours of continuing education earned for subsection (1) or (4) of this section may be earned by:

(a) 1. A nursing continuing education presentation that is:

a. Designed and developed by the presenter;

b. Presented to nurses or other health professionals;

c. Evidenced by a program brochure, course syllabi, or a letter from the offering provider identifying the licensee's participation as the presenter of the offering; and

d. Offered by a provider approved pursuant to 201 KAR 20:220.

2. The number of contact hours that may be earned shall be twice the number of contact hours offered to an attendee of the presentation; or

(b) Successful completion of a postlicensure academic course at a college, university, or postsecondary vocational institution if

relevant to nursing practice as determined by this subsection.

1. Contact hours shall be calculated as follows:

a. One (1) semester or trimester hour of academic credit shall equal fifteen (15) contact hours; or

b. One (1) quarter hour of academic credit shall equal twelve (12) contact hours.

2. The following courses shall be relevant to nursing practice:

a. A nursing course, designated by a nursing course number, and beyond the prelicensure curriculum of the individual licensee; or

b. An academic course that is applicable to the nurse's role and beyond the prelicensure curriculum of the individual licensee.

3. A licensee may request course review for approval of applicable nursing content pursuant to Section 7 of this administrative regulation.

4. If it is an academic course in which grades are given, the licensee shall achieve a grade of "C" or better, or a pass on a pass-fail grading system.

Section 4. (1) A licensee shall provide documentation of the method used to validate continued competency if the licensee is the subject of a disciplinary complaint.

(2) A licensee shall provide documentation of the method used to validate continued competency if requested by the board pursuant to a random audit of licensees.

Section 5. (1)(a) Advanced practice registered nurses who do not have a Collaborative Agreement for Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS) pursuant to KRS 314.042(10) or a waiver and registration issued by the United States Drug Enforcement Administration (DEA) to prescribe buprenorphine for the treatment of opioid use disorder shall earn a minimum of five (5) contact hours in pharmacology.

(b) Advanced practice registered nurses with a Collaborative Agreement for Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS) pursuant to KRS 314.042(10) who do not have a waiver and registration issued by the DEA to prescribe buprenorphine for the treatment of opioid use disorder shall earn a minimum of five (5) contact hours in pharmacology, including at least one and one-half (1.5) contact hours on the dual subjects of pharmacology and either [,- as a part of the requirement of paragraph (a) of this subsection, at least one and one-half (1.5) contact hours related to the use of the KASPER system,-] pain management, or addiction disorders.

(c) Advanced practice registered nurses who have a waiver and registration issued by the DEA to prescribe buprenorphine for the treatment of opioid use disorder shall earn:

1. a minimum of five (5) contact hours annually in pharmacology, of which one and one-half (1.5) pharmacology hours must be on the dual subjects of addiction disorders and pharmacology; and

2. and additional two and one-half (2.5) contact hours annually on addiction disorders.

(d)[(e)] To qualify as pharmacology pursuant to KRS 314.073, content shall include drug specific information, safe prescribing practices, safe medication administration, prescribing methodologies, new administrative regulations, or similar topics.

(e)[(f)] Objectives for the contact hours related to pharmacology shall be identified. Casual mention of medications or medical treatments shall not qualify.

(2) Sexual assault nurse examiners shall earn the continuing education required by 201 KAR 20:411, Section 8.

(3) Registered nurses and licensed practical nurses [licensed after July 15, 2010] shall earn, within three (3) years of licensure, a minimum of one and one-half (1.5) contact hours in pediatric abusive head trauma as required by KRS 314.073(6), and a minimum of three (3) contact hours on domestic violence as required by KRS 194A.540[within three (3) years of licensure].

(4) Registered nurses, licensed practical nurses, and advanced practice registered nurses who hold an active nursing license on July 1, 2022, shall satisfy the continuing competency requirement in subsection (6) of this section on or before July 1, 2023.

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(5) Registered nurses, licensed practical nurses, and advanced practice registered nurses who obtain licensure by examination, endorsement or reinstatement after July 1, 2022, shall satisfy the continuing competency requirements in subsection (6) of this section within three (3) years of licensure.

(6)(a) Nurses shall earn a minimum of two (2) contact hours on the subject of suicide prevention, which shall consist of one (1) contact hour on suicide prevention generally, and one (1) contact hour that addresses:

1. Chronic toxic stress and secondary traumatic stress potentially increasing the incidence of suicide amongst nurses;

2. A confidential and standardized pathway to care for nurses that addresses screening, assessing, safety planning, referrals and follow-up for nurses at risk for suicide;

3. Systems of care, evidence-informed approaches, and best practices to reduce suicide rates; and

4. Ethical legal considerations of caring for patients/nurses who are suicidal.

(b) Nurses shall earn a minimum of one and one-half (1.5) contact hours in implicit bias that addresses:

1. The impact of historical racism and other forms of invidious discrimination on the provision of healthcare;

2. Methods of evaluating the presence and extent of implicit bias; and

3. Measures that can be taken to reduce implicit bias.

Section 6. (1)(a) A licensee shall maintain records to substantiate methods used to validate competency.

(b) All records shall be retained for at least five (5) years following the current licensure period.

(2)(a) A licensee shall, upon request, furnish to the board or its staff, legible copies of the records required to be maintained by subsection (1) of this section, in electronic format to CE Broker, the continuing education tracking system utilized by the board, via <https://cebroker.com>.

(b) Copies shall be furnished within twenty (20) days of the date a written request is ~~sent~~ [mailed by first class] to the last known email address of the licensee or applicant.

(c) Failure to furnish records as required by this administrative regulation shall be cause for the issuance of a complaint pursuant to 201 KAR 20:161 for failure to comply with KRS 314.073(2).

(3)(a) Except as provided by paragraph (b) of this subsection, if a licensee has failed to comply with the continuing competency requirements, the licensee shall be allowed to rectify the noncompliance if he or she:

1. Meets the continuing competency requirements within ten (10) business [~~thirty (30)~~] days of notification of noncompliance; and

2. Enters a consent decree with the board pursuant to 201 KAR 20:161, Section 2(5), within ten (10) days of notification by the board.

(b) The board shall issue a complaint pursuant to 201 KAR 20:161 if:

1. A licensee fails to furnish records as requested pursuant to subsection (2) of this section; or

2. There is evidence of fraud or deceit in procuring or attempting to procure a license to practice nursing.

(4) A licensee who attends continuing education activities, whether as a presenter, participant, or student, shall attend the entire offering to be eligible to receive the number of contact hours for which the activity has been approved.

(5) It shall be the responsibility of each licensee to select and participate in those continuing education activities that will meet the criteria for acceptable continuing education.

(6) A licensee shall not repeat the same continuing education offering within a licensure period. The board shall determine whether a continued education offering is the same offering based upon the certificate of attendance from the offering that includes items such as the activity number, date, topic, and presenter.

Section 7. (1) A licensee may request an individual review of a

nonapproved continuing education activity completed during the earning period if, within thirty (30) days after the expiration of the immediate past licensure period, the licensee has:

(a) Requested the review by submitting an Application for Individual Review; and

(b) Paid a fee of ten (10) dollars.

(2) The review shall be based on generally accepted standards of adult education and shall be applicable to the nurse's role.

(3) Approval of a nonapproved continuing education activity shall:

(a) Qualify it as having been obtained from an approved provider for the licensee requesting the review; and

(b) Be limited to the particular offering upon which the request for individual review is based.

(4) The board may offer continuing education hours for programs sponsored by the board. These continuing education hours shall be deemed to have been obtained from an approved provider. The board shall comply with all applicable provider standards.

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

(a) "Application for Individual Review", 9/2005; [and]

(b) "Nursing Continuing Education Employment Evaluation Form", 6/2021[2016]; and

(c) "Preceptor Continuing Education Verification Form", 6/2021.

(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: June 17, 2021

FILED WITH LRC: July 14, 2021 at 9:12 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, September 21, 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) Thursday, September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 338-2851, email [Jeffrey.Prather@ky.gov](mailto:Jeffrey.Prather@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey R. Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation implements continuing competency education ("CE") requirements for nurses, as mandated by KRS 314.073 and KRS 314.131(1), (2).

(b) The necessity of this administrative regulation: This regulation implements CE requirements for nurses, as mandated by KRS 314.073 and KRS 314.131(1), (2).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation implements KRS 314.073 and KRS 314.131(1), (2) by setting CE requirements for nurses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation guides nurses by identifying the required training subjects and methods necessary to maintain continuing competency.

(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 regulation clarifies the separate pharmacology training requirement that apply to three categories of APRN licensees: (1) those with a DEA X registration, which permits the prescribing of medication assisted therapies to opioid use disorder patients; (2) those who hold a CAPA-CS agreement, but not a DEA X registration; and (3) those who hold neither a DEA X registration or a CAPA-CS agreement. This regulation adds two new CE requirements: suicide prevention (2 hours); and implicit bias (1.5 hours). All RNs, LPNs and APRNs are required to satisfy these two new training requirements once. Those nurses who hold an active license on July 1, 2022, must satisfy the suicide prevention and implicit bias training requirements within one year. Those licensed after July 1, 2022, must satisfy the requirements within three years of licensure. The amendment incorporates a preexisting domestic violence CE requirement into the regulation. See, KRS 194A.540. The regulation requires submission of CE records via CE Broker, a free online CE management portal, and allows requests for such records to be sent to nurses via email. Where a notice of noncompliance is sent to a nurse based upon the nurse's nonresponse to a request for records, the amendment shortens the response period from 30 days to 10 business days. The amendment incorporates a new form to be used when 120 hours of work as a preceptor is the method of satisfying a portion of the continuing competency requirements. The amendment modifies an existing employer evaluation form, where a work performance evaluation is the chosen method of satisfying a portion of the continuing competency requirements.

(b) The necessity of the amendment to the administrative regulation: The amendments are necessary in order to comply with the statutory mandate that the board administer continuing education requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 314.073 and KRS 314.131(1), (2) by setting specific CE requirements for separate categories of licensees.

(d) How the amendment to the administrative regulation will assist in the effective administration of the statutes: The amendment will assist in the effective administration of KRS 314.073 and KRS 314.131(1), (2) by setting specific CE requirements for separate categories of licensees, thereby allowing them to maintain nursing competency.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation applies to the Kentucky Board of Nursing, education providers who train and educate nurses, and approximately 95,000 nurses who hold an active Kentucky nursing license.

(4) Provide an analysis of how the entities referenced 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) A detailed explanation of the actions the entities referenced in question (3) will be required to undertake in order to comply with this proposed administrative regulation: All nurses will be required to undergo a one-time training on suicide prevention (2 hours), and implicit bias (1.5 hours). Those nurses who hold an active license on July 1, 2022, must satisfy the suicide prevention and implicit bias training requirements within one year. Those licensed after July 1, 2022, must satisfy the requirements within three years of licensure. Those nurses who are directed to submit CE records must do so via CE Broker, a free online CE management portal, and the requests may be sent to nurses via email. Where a notice of noncompliance is sent to a nurse based upon the nurse's nonresponse to a request for records, the amendment shortens the response period from 30 days to 10 business days. The amendment incorporates a new form to be used when 120 hours of work as a preceptor is the method of

satisfying a portion of the continuing competency requirements.

(b) An estimate of the costs imposed on entities referenced in question (3) in order to comply with this proposed administrative regulation: Given the varying methods that may be utilized to satisfy the requirements set forth in regulation, and because the cost of CE offerings vary, it is impossible to precisely quantify the cost to nurses arising from the regulation; however, there are multiple online entities that provide CE, either for free or for a flat fee that includes unlimited offerings. For example, the website RN.com provided unlimited CE offerings for nurses on a variety of subjects for a flat fee of fifty dollars (\$50) per year. The cost to the agency is difficult to quantify, because the implementation and the enforcement of 201 KAR 20:215 is tasked to over a dozen agency employees, but only as a partial component of each employee's overall work responsibilities. As to providers of continuing education to Kentucky nurses, the regulation does not impose a cost; rather, the regulation creates a demand for their educational offerings. CE providers that approved by national nursing organizations listed on the KBN website (<https://kbn.ky.gov/ce/Pages/default.aspx>) are not required to pay any fees to KBN; however, other providers must pay a \$400 fee when initially becoming a KBN-approved provider, and a \$100 fee when renewing their providership approval every two years. KRS 314.073(7) authorizes the board to impose reasonable fees to recoup costs incurred in the exercise of its authority related to continuing education.

(c) The benefits that may accrue to the entities referenced in question (3) as a result of compliance: Compliance with the regulation allows Kentucky nurses to maintain both competency and ongoing licensure.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation, both initially and on a continuing basis: No additional agency costs are anticipated as a consequence of the amendment, either initially or on an ongoing basis. The only exception applies if the board undertakes to function as the provider of continuing education content to nurses, as such activity necessitates the expenditure of staff time, and any printing costs incurred. When conducting training at locations of than agency headquarters, the agency incurs costs associated with employee travel. KRS 314.073(7) authorizes the board to impose reasonable fees to recoup costs incurred in the exercise of its authority related to continuing education. Nonprofit organizations such as the Kentucky Nurses Action Coalition, the Kentucky Nursing Deans and Directors, and the Kentucky Nurses Association have indicated their intention to develop and provide training modules to nurses on the subjects of implicit bias and suicide prevention, so agency involvement as a direct provider of these trainings is not anticipated at present.

(6) Provide the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds, except to the extent that the board undertakes a role as the provider of continuing education content to nurses. In such instances, KRS 314.073(7) allow the board to impose reasonable fees to recoup costs incurred associated with the training. The agency recoups some enforcement costs thought the imposition of civil penalties. In FY21, 117 consent decrees were completed as a component of the annual KBN CE audit, which resulted in the collection of civil penalties totaling \$18,100.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment: No increase in fees or funding is anticipated as a consequence of the amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The only fee directly established in this regulation is the \$10 fee specified in 201 KAR 20:215 §7(1)(b), which applies when a licensee seeks approval of a CE offering that was presented by a person or organization that is not on the list of KBN-approved providers and is not approved by a national nursing organization listed on the KBN website: <https://kbn.ky.gov/ce/Pages/default.aspx>. In FY21, only \$20 was collected pursuant to this provision. This regulation indirectly results in fees, when an annual audit identifies licensees who failed to comply with the CE requirements. In FY21, 117 consent decrees were completed as a component of the annual KBN CE audit, which

resulted in the collection of civil penalties totaling \$18,100.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The 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 314.073(7), 314.131(2), 218A.205(3)(i), 194A.540, 314.142.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 increase in fees or funding is anticipated as a consequence of the amendment. This regulation indirectly results in fees, when an annual audit identifies licensees who failed to comply with the CE requirements. In FY21, 117 consent decrees were completed as a component of the annual KBN CE audit, which resulted in the collection of civil penalties totaling \$18,100.

(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 increase in fees or funding is anticipated as a consequence of the amendment. This regulation indirectly results in fees, when an annual audit identifies licensees who failed to comply with the CE requirements. In FY21, 117 consent decrees were completed as a component of the annual KBN CE audit, which resulted in the collection of civil penalties totaling \$18,100.

(c) How much will it cost to administer this program for the first year? No additional agency costs are anticipated as a consequence of the amendment, either initially or on an ongoing basis. The only exception applies if the board undertakes to function as the provider of continuing education content to nurses, as such activity necessitates the expenditure of staff time, and any printing costs incurred. When conducting training at locations of than agency headquarters, the agency incurs costs associated with employee travel. KRS 314.073(7) authorizes the board to impose reasonable fees to recoup costs incurred in the exercise of its authority related to continuing education. Nonprofit organizations such as the Kentucky Nurses Action Coalition, the Kentucky Nursing Deans and Directors, and the Kentucky Nurses Association have indicated their intention to develop and provide training modules to nurses on the subjects of implicit bias and suicide prevention, so agency involvement as a direct provider of these trainings is not anticipated at present.

(d) How much will it cost to administer this program for subsequent years? No additional agency costs are anticipated as a consequence of the amendment, either initially or on an ongoing basis. The only exception applies if the board undertakes to function as the provider of continuing education content to nurses, as such activity necessitates the expenditure of staff time, and any printing costs incurred. When conducting training at locations of than agency headquarters, the agency incurs costs associated with employee travel. KRS 314.073(7) authorizes the board to impose reasonable fees to recoup costs incurred in the exercise of its authority related to continuing education. Nonprofit organizations such as the Kentucky Nurses Action Coalition, the Kentucky Nursing Deans and Directors, and the Kentucky Nurses Association have indicated their intention to develop and provide training modules to nurses on the subjects of implicit bias and suicide prevention, so agency involvement as a direct provider of these trainings is not anticipated at present.

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 increase or decrease in revenues or expenditures are anticipated as a consequence of the amendment.

**BOARDS AND COMMISSIONS**  
**Board of Nursing**  
**(Amendment)**

**201 KAR 20:320. Standards for curriculum of prelicensure registered nurse and practical nurse programs.**

RELATES TO: KRS 314.011(5), 314.021, 314.041(1)(a), 314.111(1), 314.131(1), (2), 194A.540(11), 620.020(8)

STATUTORY AUTHORITY: KRS 314.041(1)(a), 314.051(1)(a), 314.111(1), 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041(1)(a) and 314.051(1)(a) require that an applicant for licensure as a registered or licensed practical nurse complete the basic nursing curriculum in an approved school of nursing. KRS 314.111(1) requires that schools of nursing regardless of delivery models shall meet minimum standards and be approved by the Board of Nursing. KRS 314.131(1) and (2) authorizes the board to promulgate administrative regulations necessary to approve programs of nursing. This administrative regulation establishes the curriculum requirements for prelicensure registered nurse and practical nursing programs.

Section 1. Definitions. (1) "Debriefing" means an activity that follows a simulation experience, is led by a nurse faculty as established in 201 KAR 20:310, Section 2, encourages participant's reflective thinking, and provides feedback regarding the participant's performance.

(2) "Distance learning" means didactic instruction offered by any means where the student and faculty are in separate physical locations.

(3) "External examination" means an examination, quiz, or quiz questions, not produced by the program of nursing or its faculty.

(4) "Practical nursing program" means a program of nursing organized and administered by a vocational, technical, or adult education system or an independent school at a postsecondary level that awards the graduate a diploma in practical nursing upon meeting requirements of the program.

(5) "Program of nursing" means the educational unit that prepares a person for licensure as a registered or licensed practical nurse.

(6) "Registered nursing program" means a program of nursing organized and administered by an institution of higher learning that awards a degree in nursing upon meeting requirements of the program.

(7) "Remediation" means the process by which a student improves or corrects a knowledge deficit through external examinations, other assignments or activities, and which may result in an upward adjustment to a student's final course grade in accordance with Section 4 of this regulation.

(8) "Simulation" means an activity or a technique that replicates actual or potential situations in clinical practice that allows the participant to develop or enhance critical thinking.

Section 2. General. (1) An applicant for licensure shall complete a prelicensure program of nursing that meets the requirements of this administrative regulation.

(2) Length.

(a) A registered nursing program shall be a minimum of two (2) academic years, which may include prior articulated academic credits.

(b) A practical nursing program shall be a minimum of one (1) academic year.

(3) Philosophy, mission, and outcomes. (a) The philosophy, mission, and outcomes of the program of nursing shall be clearly defined in writing by the nursing faculty and be consistent with those of the governing institution.

(b) The program outcomes shall describe the expected competencies of the graduate.

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(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.

(4) Approval.

(a) A curriculum plan shall be approved by the board in accordance with this administrative regulation.

(b) The curriculum plan shall enable the student to develop the nursing knowledge, skills, and competencies for the expected entry level and scope of practice.

(c) Theory and clinical experiences shall provide the student with opportunities to acquire and demonstrate the knowledge, skills, and competencies necessary for safe practice.

(5) Curriculum plan.

(a) The development, implementation, evaluation, and revision of the curriculum shall be the responsibility of the nursing faculty including the program administrator with input from students.

(b) The curriculum of the program of nursing shall assure the development of evidence based practice for the level and scope of nursing practice. This shall include the skills to identify and apply best practices in nursing care by providing client-centered, culturally competent care and respecting client differences, values, preferences, and expressed needs.

(c) A registered nursing program may determine that a portion of the curriculum fulfills the scope of practice for licensed practical nursing and allow students to exit the program and be made eligible for the NCLEX-PN examination. The registered nursing program shall submit its plan to the board for approval.

(6) Organization 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.

(c) There shall be a rationale for the amount of time or credits allocated to course and clinical practice experience.

(d) A course syllabus shall be developed for each nursing course to include outcomes, planned instruction, learning activities, and method of evaluation.

1. Each course shall be implemented in accordance with the established course syllabus.

2. A copy of each course syllabus shall be on file in the program of nursing office and shall be available to the board upon request.

(e) The curriculum plan shall be logical and sequential, and shall demonstrate an increase in difficulty and complexity as the student progresses through the program.

(f) A course may be offered as a distance learning course. A distance learning course shall meet the same standards as established in 201 KAR 20:260 through 201 KAR 20:360 for any other course.

(7) Curriculum components.

(a) The curriculum of a registered nursing program or a practical nursing program shall prepare the graduate for licensure and full scope of practice as defined by current standards for nursing practice and expected competencies of graduates at the appropriate educational level.

(b) The curriculum shall include:

1. Theory and selected clinical practice experiences designed to enable students to provide nursing care to individuals throughout the life span; and

2. Information regarding Kentucky nursing laws, including scope of practice, licensure requirements, and the role of the board of nursing. This subparagraph shall be implemented by January 1, 2020.

(c) Clinical practice settings shall be appropriate for the type of nursing program and the program outcomes and enable the student to observe and practice safe nursing care of persons at each stage of the life span. Experiences shall include opportunities to learn and provide care to diverse ethnic and cultural populations.

(d) Clinical practice experience shall be supervised by board approved nursing faculty in accordance with 201 KAR 20:310.

(e) The curriculum shall have written measurable program outcomes that reflect the role of the graduate.

(f) Students shall have sufficient opportunities in simulated or

clinical settings to develop psychomotor skills essential for safe, effective practice.

(8) Curriculum change.

(a) A program of nursing that is not accredited by a national nursing accrediting body shall submit a written plan for major curriculum revisions to the board a minimum of four (4) months prior to the planned implementation.

1. A request for curriculum revision shall include the present plan and the proposed change with rationale and expected outcomes.

2. The board shall be available to assist if curriculum revisions are being considered.

3. Major curriculum revisions shall include:

a. A change in the philosophy, mission, or outcomes that results in a reorganization or reconceptualization of the entire curriculum; or

b. The addition of tracks or alternative programs of study that provide educational mobility.

(b) A program of nursing that implements a curriculum change shall provide an evaluation of the outcomes of those changes through the first graduating class following full implementation of the curriculum change. The program of nursing shall also submit the evaluation with its annual report.

(9) Integrated practicum.

(a) The curriculum shall include an integrated practicum. The integrated practicum shall consist of a minimum of 120 clock hours of concentrated clinical experience of direct patient care in a health care facility or health care organization.

(b) The integrated practicum shall be completed within a period not to exceed seven (7) consecutive weeks while the governing institution is in session and within seven (7) months of graduation.

Section 3. Simulation Standards. (1)(a) A program of nursing that uses simulation shall adhere to the standards set in this section.

(b) A program of nursing shall not use simulation for more than fifty (50) percent of its total clinical hours required for graduation.

(2)(a) The program of nursing shall provide resources sufficient to support the simulation activities, including training of the faculty, and programmatic outcomes.

(b) Simulation activities shall be managed by a nurse who is academically and experientially qualified in the use of simulation, both in its pedagogical and technical aspects. The managing nurse shall demonstrate his or her qualifications by:

1. Attendance at simulation conferences;

2. Completion of educational activities related to simulation; or

3. Holding a credential issued by the Society for Simulation in Healthcare or a simulation preparation program recognized by the International Nursing Association for Clinical Simulation.

(c) The program of nursing shall have written rationale for the use and purpose of simulation within the curriculum.

(d) The program of nursing shall have an orientation plan for faculty concerning simulation.

(e) The program of nursing shall have a written procedure on the method of prebriefing and debriefing each simulated activity.

(3) The program of nursing shall have appropriate facilities for conducting simulation. This shall include educational and technological resources and equipment to meet the intended objectives of the simulation.

(4) Faculty, both didactic and clinical, that utilize simulation shall:

(a) Have training in the use of simulation; and

(b) Engage in on-going professional development in the use of simulation.

(5) The simulation activities shall be linked to the program of nursing's course objectives and the programmatic outcomes.

(6) Beginning July 1, 2019, a program of nursing shall submit evidence of compliance with these standards in the annual report required by 201 KAR 20:360, Section 3(1) of this administrative regulation.

Section 4. Use of External Examinations. (1) [An] External examinations may be used to assist in the remediation of a student

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~~or as a part of the final course grade. If used as a part of the final course grade, the combined weight of all external examinations, external quizzes and remediation shall not count for more than ten (10) percent of the final course grade [is a standardized or norm referenced examination that is designed to compare and rank test takers in relation to one another and is not produced by the program of nursing].~~

~~(2) With the exception of the impact upon progression or graduation that is allowed pursuant to subsection (1) of this section, a program of nursing shall not use an external examination to determine a student's progression or graduation.~~

~~(3) A curriculum change that includes the implementation of an external examination shall include consideration of multiple evaluation criteria, and shall not be based solely on external examination test results.~~

~~(4[3]) An external examination may be used to assist in the remediation of a student. [The examination shall not be the sole remediation strategy].~~

~~(5[4]) A program of nursing that utilizes an external examinations as [the basis for] a component of [requiring] student remediation shall ensure that completion of remediation occurs within the same semester or quarter.~~

~~(6[5]) The academic progression policy of the program of nursing and course syllabi shall clearly outline the role of [the] an external examination, including the frequency of and schedule for such testing, and the weight to be applied to results when calculating the final course grade. A course syllabus that references an external examination shall include information needed to calculate the impact of test results in any given external examination on the final course grade [in remediation]. If a course syllabus require a specific average test score on all exams as a condition for passing the course, student results on external exams shall be excluded from that calculation.~~

~~(7) With the exception of the impact upon progression or graduation that is allowed pursuant to subsection (1) of this section, and the option of requiring all students in a course to take external examinations.]~~

~~(6)] a program of nursing shall not require students who have completed all requirements for graduation to earn a specific score or benchmark on an external examination as a condition for graduation or for placing the student's name on the Certified List of Kentucky Program of Nursing Graduates pursuant to 201 KAR 20:070.~~

Section 5. Curriculum [Statutory] Additions. (1) Each program of nursing shall include information in its curriculum that meets the requirements of KRS 194A.540 related to domestic violence and elder abuse, neglect, and exploitation.

(2) Each program of nursing shall include information about:

(a) pediatric abusive head trauma as it is defined in KRS 620.020;

(b) Suicide prevention and wellness topics listed in subsection (3) of this section by August 15, 2022; and

(c) Implicit bias topics listed in subsection (4) of this section by August 15, 2022.

(3) Suicide prevention and wellness topics shall include:

(a) Chronic toxic stress and secondary traumatic stress potentially increasing the incidence of suicide amongst nurses;

(b) A confidential and standardized pathway to care for nurses that addresses screening, assessing, safety planning, referrals and follow-up for nurses at risk for suicide;

(c) Systems of care, evidence-informed approaches, and best practices to reduce suicide rates; and

(d) Ethical legal considerations of caring for patients/nurses who are suicidal.

(4) Implicit bias topics shall include:

(a) The impact of historical racism and other forms of invidious discrimination on the provisions of healthcare;

(b) Methods of evaluation the presence and extent of implicit bias; and

(c) Measures that can be taken to reduce implicit bias.

JESSICA WILSON, President

APPROVED BY AGENCY: June 17, 2021

FILED WITH LRC: July 14, 2021 at 9:12 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, September 21, 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) Thursday, September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 338-2851, email Jeffrey.Prather@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey R. Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets standards for curriculum in prelicensure programs of nursing education.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.111.

(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 standards for curriculum in prelicensure programs of nursing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing standards for curriculum in prelicensure programs of nursing education.

(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: It clarifies how and when external examinations may be used by a program of nursing, and it identifies domestic violence, suicide prevention, and implicit bias as required curriculum for all Kentucky based programs of prelicensure RN and LPN education.

(b) The necessity of the amendment to the administrative regulation: The necessity of suicide prevention education in nursing curriculum is supported by recent landmark studies that establish that nurse suicide rates are higher than the general population in the United States (males = 33/100,000 vs 27/100,000; females = 10/100,000 vs 7/100,000). Davidson, J.E., et al., A Longitudinal Analysis of Nurse Suicide in the United States (2005–2016), *Worldviews on Evidence-Based Nursing*, 17: 6-15. doi:10.1111/wvn.12419 (2020). Domestic violence training is already mandated at KRS 194A.540(9). The need for nursing curriculum on the subject of implicit bias is demonstrated in a May 2021 report from the National Academies of Sciences, Engineering, and Medicine 2021. *The Future of Nursing 2020-2030: Charting a Path to Achieve Health Equity*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/25982>. The absolute proscription on the use of external examinations in determinations regarding progression or graduation, which is in the version of the regulation that became effective on February 4, 2021, deprives nursing educators of a valuable educational tool. Based on stakeholder input and a reexamination of the usefulness of external examinations in preparing future nurses for practice readiness, the Board has determined that external examinations should be permitted in nursing

education, subject to the limitation that they not for more than a 10% component of a course grade. It is noted that some programs of nursing education have two requirements for progression or graduation: (1) a passing overall course grade; and (2) a separate requirement that the student attain or exceed a specific score on averaged total on all exams in a course. The Board has determined that a student results on external exams should not be a factor with regard to a requirement that the student attain or exceed a specific average score on all exams in a course.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by expanding curriculum requirements to include subjects that are a needed component of nursing education. The clarification regarding external exams permits programs of nursing education to use external exams as a tool in nursing education, and guides programs of nursing in their use of such examinations.

(d) How the amendment to the administrative regulation will assist in the effective administration of the statutes: By setting curriculum standards for programs of prelicensure RN and LPN education. It is noted that the amendment eliminates the distinction between customized and non-customized external exams, as the proposed definition is premised solely on the involvement of persons or entities other than the educational institution and its faculty in the development of a testing instrument. The Board has also defined external exams to include quizzes and quiz questions that are developed by persons or entities other than the educational institution and its faculty. A school that utilizes external exams as a factor in determining progression or graduation must fully and accurately describe the grade calculation formula in its course syllabi and academic progression policies. Programs of prelicensure RN and LPN education that comply with these publication rules may require, in a syllabus and academic progression policy, that a student participate in an external exam; however, the schools are prohibited from requiring that all students achieve a specific score on an external examination. Even in the absence of an absolute “cut score” that all students must meet, the utilization of cumulative external exam results for up to 10% of a course grade will undoubtedly prevent progression or graduation for some students. The amendment expands the definition of remediation by indicating that remediation may result in an upward adjustment of student’s course grade, subject to the 10% cap for cumulative external exam results; however, all remediation efforts must be completed in the same semester or quarter as the specific course at issue.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Ninety-five (95) prelicensure programs of nursing, RN and LPN nursing students.

(4) Provide an analysis of how the entities referenced 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) A detailed explanation of the actions the entities referenced in question (3) will be required to undertake in order to comply with this proposed administrative regulation: They will have to comply with the permitted uses of external examinations. They will have to incorporate domestic violence, implicit bias, and suicide prevention into their educational curriculum for all prelicensure RN and LPN programs.

(b) An estimate of the costs imposed on entities referenced in question (3) in order to comply with this proposed administrative regulation: The costs associated with the development of curriculum on the subjects of domestic violence, implicit bias, and suicide provision will be minimized as a result of the involvement of the Robert Wood Johnson Foundation, the, National Academies of Sciences, Engineering and Medicine, the Kentucky Nurses Action Coalition, the Kentucky Nursing Deans and Directors, the Kentucky Nurses Association, and the Kentucky Cabinet for Health and Family Services. The regulation does not mandate the use of external exams; however, the decision of a school to utilize external exams may result in such costs being imposed upon student. The cost of one such exam, the ATI Comprehensive Predictor, ranges from \$229-329, depending upon the contractual arrangements between the school and ATI, as well as volume pricing that is available when

numerous students take the exam.

(c) The benefits that may accrue to the entities referenced in question (3) as a result of compliance: They will be in compliance with the standards. Students will be better prepared for nursing practice through their participation in external exams.

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

(a) Initially: There are no additional initial costs.

(b) On a continuing basis: There are no additional costs on a continuing basis.

(6) Provide the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment: No increase is needed.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The 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, 314.111(3), 194A.540, 620.020.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional cost

(d) How much will it cost to administer this program for subsequent years? No additional cost

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No increase or decrease in revenues or expenditures are anticipated as a consequence of the amendment.

BOARDS AND COMMISSIONS

Board of Physical Therapy  
(Amendment)

201 KAR 22:045. Continued competency requirements and procedures.

RELATES TO: KRS 12.355, 327.010(1), (2), 327.070  
STATUTORY AUTHORITY: KRS 327.040(10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(10) authorizes the board to promulgate administrative regulations establishing a measure of continued competency as a condition of license renewal. This administrative regulation establishes continued competency requirements and procedures.

Section 1. Definitions. (1) "Contact hour" means a credit earned based on sixty (60) minutes of participation in a physical therapy-related activity.

(2) "Continued competency" means a planned learning experience relating to the scope of "physical therapy" practice as



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defined by KRS 327.010(1) if the subject is intervention, examination, research, documentation, education, or management of a health care delivery system.

(3) "Jurisprudence Examination" means an open book tutorial provided by the board on KRS Chapter 327 and 201 KAR Chapter 22.

Section 2. (1) A credential holder applying for renewal shall have completed the continued competency requirements established in subsections (2) and (3) of this section during the preceding renewal period. Continued competency shall be based on contact hours awarded.

(a) For a physical therapist, the board shall require thirty (30) contact hours as a condition of licensure renewal. These hours shall be obtained as established in subparagraphs 1. through 3. of this paragraph.

1. Two (2) hours shall be awarded for the successful completion of the Jurisprudence Examination per biennium.

2. At least eighteen (18) hours shall be earned from Category 1 as established in subsection (2) of this section.

3. Hours may be earned from Category 2. If hours are earned from Category 2, hours shall be as established in subsection (3) of this section. Hours earned from Category 2 over ten (10) hours shall not be awarded.

(b) For a physical therapist assistant, the board shall require twenty (20) contact hours as a condition of renewal. These hours shall be obtained as established in subparagraphs 1. through 3. of this paragraph.

1. Two (2) hours shall be awarded for the successful completion of the Jurisprudence Examination per biennium.

2. At least ten (10) hours shall be earned from Category 1 as established in subsection (2) of this section.

3. Hours may be earned from Category 2. If hours are earned from Category 2, hours shall be as established in subsection (3) of this section. Hours earned from Category 2 over eight (8) hours shall not be awarded.

(c) A participant shall not be awarded contact hours for a course that is repeated more than once in the same biennium.

(2) Category 1 continued competency shall be:

(a) Completion of courses, seminars, workshops, symposia, or home study courses consisting of at least three (3) contact hours that have been approved by the board, the board's designee, the Federation of State Boards of Physical Therapy (FSBPT), the American Physical Therapy Association (APTA) or its components, or another physical therapy licensing agency;

(b) Completion of courses, seminars, workshops, symposia, or home study courses consisting of less than three (3) contact hours that have been produced and developed by the American Physical Therapy Association (APTA) or its state chapters and sections;

(c) Completion or auditing of an accredited postsecondary educational institution credit course meeting continued competency as defined by Section 1(2) of this administrative regulation.

1. Twelve (12) contact hours shall be awarded for each semester credit hour completed; and

2. Eight (8) contact hours shall be awarded for each quarter credit hour completed;

(d) Presentation of a continued competency course, workshop, seminar, or symposium that has been approved by the board or its designee. Contact hours shall be awarded equal to contact hours awarded to a participant with a maximum of two (2) events of the same course per biennium;

(e) Authorship of a research article, manuscript, or scientific paper, published in the biennium and related to physical therapy. Fifteen (15) contact hours shall be awarded per event with a maximum of two (2) events per biennium;

(f) A presented scientific poster or scientific platform presentation related to physical therapy. Ten (10) contact hours shall be awarded per event with a maximum of two (2) events per biennium;

(g) Teaching part of a physical therapy or physical therapist assistant credit course if that teaching is not the primary employment of the credential holder. A maximum of twenty (20) contact hours per biennium shall be awarded;

(h) American Board of Physical Therapy Specialties (ABPTS) certification. Twenty-eight (28) contact hours shall be awarded per biennium;

(i) ABPTS recertification or other certifications and recertifications within the scope of physical therapy practice. A maximum of twenty-eight (28) contact hours per biennium shall be awarded;

(j) Completion of a clinical residency program or clinical fellowship program. Not more than five (5) contact hours shall be awarded for each week of residency with a maximum of twenty-eight (28) contact hours per program per biennium;

(k) Engaging in the practice of "physical therapy" as defined by KRS 327.010(1) at least 1,000 hours per biennium. Five (5) contact hours [per biennium] shall be awarded per biennium;

(l) Engaging in the instruction in a CAPTE-accredited physical therapy or physical therapist assistant program at least 1,000 hours per biennium. Five (5) contact hours shall be awarded per biennium;

(m) Appointment to the Kentucky Board of Physical Therapy. Four (4) contact hours shall be awarded per biennium;

(n) Election or appointment to a position ~~with~~of the APTA Kentucky~~[Physical Therapy Association]~~, APTA, or FSBPT as an officer or committee chair. Four (4) contact hours shall be awarded per biennium; ~~or~~

(o) Member of a committee or task force for one (1) of the organizations in paragraph (m) or (n) of this subsection. One (1) contact hour shall be awarded per biennium; ~~[-]~~

(p) Completion of the APTA's PTA Advanced Proficiency Pathways Program (APP). A maximum of ten (10) contact hours shall be awarded in the biennium during which the certification or recertification of the APP is granted; or

(q) Member of the APTA. One (1) contact hour shall be awarded per year and a maximum of two (2) contact hours per biennium.

(3) Category 2 continued competency shall be:

(a) Self-instruction from reading professional literature. One (1) contact hour shall be awarded per biennium;

(b) Attendance at a scientific poster session, lecture, panel, or symposium. One (1) contact hour shall be awarded for each hour of activity. A maximum of two (2) contact hours shall be awarded per biennium;

(c) Clinical instructor for a CAPTE-approved educational program or an APTA credentialed residency or fellowship program. Continued competency shall be one (1) contact hour per sixteen (16) hours of student supervision;

(d) Participation in a physical therapy in-service or study group consisting of two (2) or more physical therapists or physical therapist assistants. A maximum of two (2) contact hours shall be awarded per biennium;

(e) Completion of other unapproved applicable courses. One (1) contact hour for each hour of credit shall be awarded up to a maximum of three (3) hours per course;

(f) Participation in community service related to health care. One (1) contact hour for each hour of participation shall be awarded up to a maximum of two (2) hours per biennium;

(g) Participation as a mentor or mentee in a mentorship program developed by APTA KY. A maximum of one~~[Member of the APTA. One]~~ (1) contact hour shall be awarded per year and a maximum of two (2) contact hours per biennium;

(h) Completion of cardiopulmonary resuscitation initial certification or re-certification. A maximum of two (2) contact hours shall be awarded per biennium; or

(i) Completion of a HIV/AIDS course. A maximum of two (2) contact hours shall be awarded per biennium.

(4) Documentation of compliance.

(a) Each licensee shall retain independently verifiable documentation of completion of all continued competency requirements of this administrative regulation for a period of ~~[at least]~~ three (3) years from the end of the biennium.

(b) The licensee shall, within thirty (30) days of a written request from the board, provide evidence of continued competency activities to the board.

(c) A licensee who fails to provide evidence of the continued

competency activities or who falsely certifies completion of continued competency activities shall be subject to disciplinary action pursuant to KRS 327.070.

(5) Exemption and extension.

(a) A licensee shall be granted a temporary hardship extension for an extension of time, not to exceed one (1) renewal cycle, if the licensee:

1. Files a completed Exemption or Extension for Completion of Continued Competency Form, including a plan describing how the required credits will be met, by April 30 of the odd-numbered year in the renewal cycle for which the extension is sought; and

2. Submits documentation showing evidence of undue hardship by reason of the licensee's:

- a. Age;
- b. Disability;
- c. Medical condition;
- d. Financial condition; or
- e. Other clearly mitigating circumstance.

(b) A licensee shall be granted a temporary nonhardship extension of time if the licensee cannot show undue hardship and if the licensee:

1. Files a completed Exemption or Extension for Completion of Continued Competency Form, including a plan describing how the required credits will be met, by March 31 of the odd-numbered year in the renewal cycle for which the extension is sought;

2. Pays a fee of \$250;

3. Has not received a temporary nonhardship extension of time in the prior renewal cycle; and

4. Files proof of compliance with the continued competency requirements by the following July 1.

(c) A licensee on active military duty shall be granted an exemption from continued competency requirements as established in KRS 12.355.

Section 3. Incorporation by Reference. (1) "Exemption or Extension for Completion of Continued Competency Form", September 2016, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable law, at the Kentucky Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

ED DOBRZYKOWSKI, Jr., PT, DPT, ATC, MHS; Board Chair

APPROVED BY AGENCY: May 20, 2021

FILED WITH LRC: July 14, 2021

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2021, at 3:00 p.m. (EST) at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five 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 cancelled.

This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through the end of the day on September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: M. Keith Poynter, General Counsel, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 210-7112, fax (502) 584-5055, email MartinK.Poynter@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: M. Keith Poynter

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation assists in assuring safe and effective practices for the safety and welfare of the public by implementing continued competency.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS Chapter 327.040(10).

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the procedures for continued competency requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the procedures for renewal 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: By creating additional opportunity for credential holders to earn continued competency credit.

(b) The necessity of the amendment to this administrative regulation. The necessity is to clarify the course approval process for continued competency requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set standards for licensing and renewal procedures.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying the requirements of continued competency.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 6300.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question (3) will be afforded additional opportunity to earn continued competency credit of Contact 1 and Contact 2 contact hours.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will enjoy greater opportunity to earn continuing competency credit.

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

(a) Initially: There will be no additional costs to the board.

(b) On a continuing basis: There will be no additional costs to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Revenue Fund, and costs to implement to be negligible.

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

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

(9) TIERING: Is tiering applied? Tiering does not apply in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.040(10).

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

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? No new costs are anticipated.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**BOARDS AND COMMISSIONS**  
**Board of Durable Medical Equipment Suppliers**  
**(Amendment)**

**201 KAR 47:010. Home medical equipment and supplier licenses, requirements, and fees.**

RELATES TO: KRS [~~17.500, Chapter 209, 224.10-052,~~ 309.404, 309.406, 309.412, 309.414, 309.416, 309.418, 309.420, 324B.030, 324B.040]~~[439.340]~~

STATUTORY AUTHORITY: KRS 309.404, 309.406, 309.412, 309.414, 309.416, 309.418, 309.420, 324B.030, 324B.040

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.404(4) and 309.406(1)(a) authorize the board to promulgate administrative regulations governing home medical equipment and service providers. This administrative regulation establishes the minimum requirements for the licensing of a home medical equipment and services provider.

Section 1. License Required. Unless exempted by KRS 309.412(2), an entity [~~a person~~] engaged in providing home medical equipment and services in the commonwealth shall hold a license.

Section 2. Initial License. (1) An applicant for licensure that does not currently hold or that has not previously held a license in the commonwealth shall submit:

(a) Form 1, [An] Application for Licensure [~~Home Medical Equipment License~~] or Renewal; and

(b) [~~A license fee of \$350; and~~

(c)] Evidence of the ability to comply with KRS 309.400 through KRS 309.422 and 201 KAR Chapter 47. To demonstrate the ability to comply with those provisions, the applicant shall:

1. At the time of application, submit proof of accreditation or exemption by a national accreditation organization approved by the Centers for Medicare and Medicaid Services that accredits suppliers of durable medical equipment; or

2. Within sixty (60) days of application, submit to an inspection by the board to ensure the applicant's ability to comply with the provisions of KRS 309.400 through KRS 309.422 and 201 KAR

Chapter 47. The board shall not consider a license application, a license shall not be issued, and the applicant shall not engage in the business of providing home medical equipment or services until the board is provided a final report from the inspector demonstrating the applicant's ability to comply with the provisions of KRS 309.400 through KRS 309.422 and 201 KAR Chapter 47.

(2)(a) An applicant issued a license based on proof of accreditation by a national accreditation organization approved by the Centers for Medicare and Medicaid Services shall maintain accreditation during the license period.

1. Each licensee shall advise the board in writing of any change in accreditation, including if the accreditation is revoked, suspended, not renewed, or expires.

2. If the accreditation is revoked, suspended, not renewed, or expires, the licensee shall request and submit to an inspection by the board to ensure the applicant's ability to comply with the provisions of KRS 309.400 through KRS 309.422 and 201 KAR Chapter 47.

(b) An applicant that does not maintain an accreditation by a national accreditation organization approved by the Centers for Medicare and Medicaid Services and is issued a license based upon an inspection by the board to ensure the applicant's ability to comply with the provisions of KRS 309.400 through KRS 309.422 and 201 KAR Chapter 47 shall submit to an annual inspection by the board.

Section 3. License Renewals. A licensee seeking to renew a license shall submit:

(1) Form 1, [An] Application for Licensure [~~Home Medical Equipment License~~] or Renewal; and

(2) The evidence required by Section 2(1)(b)(e) of this administrative regulation; and

(3) ~~A license renewal fee of \$350.~~

Section 4. Reciprocal Licenses. An applicant seeking licensure pursuant to KRS 309.420 on the basis of reciprocity shall submit:

(1) Form 1, [An] Application for Home Medical Equipment License or Renewal;

(2) A certified copy of the applicant's license issued in a contiguous state which grants reciprocity to Kentucky licensees [~~another state~~];

(3) A copy of the applicant's discipline history certified by the licensing authority that issued the license referenced in subsection (2) of this section; and

(4) The evidence required by Section 2(1)(b) of this administrative regulation; and

(4) ~~A reciprocal license fee of \$350.~~

Section 5. [~~License Fee Refunds. If an applicant's license is denied or remains incomplete for more than sixty (60) days following submission, \$150 of the license fee shall be refunded to the applicant.~~

~~Section 6.~~(1) Annual Training Requirement. Licenses shall provide to employees and persons engaged in the provision of home medical equipment and services operating under its license at least six (6) hours of annual training related to providing home medical equipment and services, which may be provided in-house by the licensee.

(2) The training shall include programs in:

(a) Infection control and blood borne pathogens;

(b) Occupation Safety and Health Administration (OSHA) [~~OSHA~~] and safety issues to include fire safety, disaster preparedness, and office security;

(c) Health Insurance Portability and Accountability Act of 1996 (HIPAA) [~~HIPAA~~], privacy and security; and

(d) Any new home medical equipment or services the licensee plans to provide.

Section ~~6~~[7]. Safety Requirements. Each licensee shall:

(1) Refrain from modifying home medical equipment in a way that might reasonably cause harm to its user;

(2) Maintain electrical components on licensed premises in a

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manner to prevent fire or shock hazard;

- (3) Provide adequate lighting for the licensed premises;
- (4) Provide adequate ventilation for the licensed premises;
- (5) If essential to maintain life or if the lack of service might reasonably cause harm to the user, provide services twenty-four (24) hours daily if contracted for by supplier and user;
- (6) Ensure that all home medical equipment is free of defects and operates within the manufacturer's specifications;
- (7) Document the chain of custody and possession of home medical equipment;
- (8) Establish, maintain, and adhere to a protocol for retrieving home medical equipment if a recall is initiated;
- (9) Ensure that home medical equipment bears the appropriate labels, including:
  - (a) Warning labels and tags; and
  - (b) A label that contains the licensee's name, [address,]and telephone number;
- (10) Maintain in a secure location all home medical equipment stored on the licensed premises;
- (11) Establish, maintain, and adhere to procedures for accurately and precisely tracking records of all home medical equipment shipped or received that includes the home medical equipment purchased or the services rendered in each transaction, the date of the transaction, the quantity of the transaction, and an itemized description of the home medical equipment and services rendered; and
- (12) Establish, maintain, and adhere to procedures that set forth a detailed description of how the operation will comply with applicable federal, state, or local laws or administrative regulations.

Section 7[8]. Sanitation Requirements. A home medical equipment supplier shall:

- (1) Instruct users of the home medical equipment on proper cleaning techniques as specified by the manufacturer;
- (2) Repair and clean all components of home medical equipment in a confined and properly ventilated area;
- (3) Maintain and store home medical equipment to ensure proper lighting, ventilation, temperature, humidity control, sanitation, space, and security; and
- (4) Establish, maintain, and adhere to a protocol for cleaning and disinfecting home medical equipment that addresses both aerobic and anaerobic pathogens. The protocol shall include:
  - (a) Maintain segregated areas on the licensed premises and in delivery vehicles for clean, dirty, and contaminated home medical equipment; and
  - (b) Cleaning and disinfecting home medical equipment according to manufacturer specifications.

Section 8[9]. Record Retention and Inspection. (1) Licensees shall maintain the following records for a period of at least three (3) years:

- (a) Invoices and receipts for all home medical equipment and services provided;
- (b) A complete and accurate list that includes the following information for the licensee's employees:
  - 1. Names;
  - 2. Addresses;
  - 3. Telephone numbers;
  - 4. Criminal history, if any; and
  - 5. Dates of employment;
- (c) Records of training required by Section 5[6] of this administrative regulation, which shall include:
  - 1. The names of the persons attending the training;
  - 2. The date of attendance;
  - 3. The title of the course;
  - 4. The entity offering the course; and
  - 5. A certificate of completion or similar document;
- (d) Documentation of home medical equipment and services that includes:
  - 1. The types of home medical equipment;
  - 2. The manufacturer;
  - 3. The model number;
  - 4. The serial number;

- 5. Date of repair;
  - 6. Specific repair made; and
  - 7. The name of the person performing the repair;
  - (e) Documentation of any complaints received and how the complaint was resolved;
  - (f) Documentation of a function and safety check of home medical equipment that was performed prior to delivery of the home medical equipment and that the user of the home medical equipment is provided instruction on its proper use, safety, and maintenance; and
  - (g) A [material]safety data sheet (SDS)[(MSDS)] documenting the solutions, products, and procedures used in cleaning and disinfecting home medical equipment.
- (2) A licensee shall provide the records required by subsection (1) of this section to the board for inspection within three (3) business days of a request by the board. The board shall specify the location to which the records shall be delivered and if the board shall require electronic or hard copies of the records.

Section 9.[10. Other fees. Pursuant to KRS 309.406(1)(f), the board shall charge the following fees for services:] Fees. (1) License fees. An applicant for licensure shall pay the following licensing fees:

- (a) An initial license fee of three hundred and fifty dollars (\$350);
  - (b) A renewal license fee of three hundred and fifty dollars (\$350); and
  - (c) A reciprocal license fee of three hundred and fifty dollars (\$350).
- (2) Inspection fees. An applicant for licensure shall pay the following inspection fees:
- (a) If an inspection is required within the Commonwealth, the fee for such inspection shall be three hundred and fifty dollars (\$350);
  - (b) If an inspection is required outside of the Commonwealth, the fee for such inspection shall be the cost of the inspection, including inspector's hourly rate, mileage, and travel expenses; and
  - (c) For any inspection, the sum of three hundred and fifty dollars (\$350) is due before the inspection occurs. Any remaining balance is payable before the license is issued.
- (3) Other fees:
- (a) Duplicate License fee of twenty-five dollars (\$25);
  - (b) License verification fee of ten dollars (\$10);
  - (c) Mailing list fee for a noncommercial purpose of fifteen dollars (\$15); and
  - (d) Mailing list fee for a commercial purpose of seventy-five dollars (\$75).]

Service	Fee
Duplicate license	\$15
Discipline history	\$15
Paper copies of documents	\$.10 per page if for a noncommercial purpose; or \$.25 per page if for a commercial purpose
Disks	\$2.00 per disk if for a noncommercial purpose; or \$10.00 per disk if for a commercial purpose
Mailing lists	\$15.00 per list if for a noncommercial purpose; or \$75.00 per list if for a commercial purpose

Section 10[11]. Department of Professional Licensing. Pursuant to KRS 309.404, 324B.030 and 324B.040[224.10-052], the Department of Professional Licensing may accept payments, employ inspectors, receive complaints, and receive appeals on behalf of the board.

Section 11[12]. Incorporation by Reference. (1) Form 1, "Application for Licensure[Home Medical Equipment License] or Renewal", June 2021[December 2016], is incorporated by reference.

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(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing, 500 Mero Street, 23SC32, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., and is available at <http://kbdmes.ky.gov/>.

CAROLYN R. BASFORD, President and Chairperson

APPROVED BY AGENCY: July 14, 2021

FILED WITH LRC: July 15, 2021

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 1:00 p.m. EST on September 28, 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:

Topic: DME REGULATIONS PUBLIC HEARING

Time: Sep 28, 2021 01:00 PM Eastern Time (US and Canada)

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

<https://us02web.zoom.us/j/82542024981?pwd=Z2cwZVpxYkhSRE>

VKeC9qR1F1NWw4QT09

Password: 420731

Or Telephone:

Dial:

USA 713 353 0212

USA 8888227517 (US Toll Free)

Conference code: 497796

Find local AT&T Numbers:

<https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=7133530212&accessCode=497796>

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)

162.255.36.11 (US East)

115.114.131.7 (India Mumbai)

115.114.115.7 (India Hyderabad)

213.19.144.110 (Amsterdam Netherlands)

213.244.140.110 (Germany)

103.122.166.55 (Australia Sydney)

103.122.167.55 (Australia Melbourne)

149.137.40.110 (Singapore)

64.211.144.160 (Brazil)

149.137.68.253 (Mexico)

69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)

207.226.132.110 (Japan Tokyo)

149.137.24.110 (Japan Osaka)

Meeting ID: 825 4202 4981

Password: 420731

SIP: 82542024981@zoomcrc.com

Password: 420731

Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date (September 21), the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM EST on September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: August L. Pozgay, Attorney for the Board of Durable Medical Equipment Suppliers, 500 Mero Street, 2 SC 32, Frankfort, Kentucky 40601, phone +1 (502) 782-0714, fax +1 (502) 564-4818, email [august.pozgay@ky.gov](mailto: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: This administration clarifies the requirements for a reciprocal license and the fees charged for each type of license. It also adds an inspection fee.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify the requirements for a reciprocal license and the fees charged and to add an inspection fee.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 309.406(1)(a) authorizes the Board to promulgate regulations to regulate matters set forth in KRS 309.400 to 309.422. KRS 309.406(1)(a), KRS 309.406(1)(f), KRS 309.414(1), and KRS 309.416(4) permit the Board to set a reasonable fee schedule. This administrative regulation clarifies the requirements for a reciprocal license and the fees charged and adds an inspection fee.

(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 309 by clarifying the requirements for a reciprocal license and the fees charged and adding an inspection fee.

(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 fee schedule: it increases the cost of duplicate licenses from \$15 to \$25; it removes fees charged for a discipline history and discs and for paper copies of documents; and it establishes a license verification fee of \$10. It establishes inspection fees to cover the Board's costs in sending inspectors, a flat fee of \$350 within the Commonwealth, and the cost of the inspection, including inspector's hourly rate, mileage, and travel expenses, outside of the Commonwealth. The amendment does not change the current licensing and renewal fees, although it does recodify those fees into one section, at Section 9.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to cover the cost of sending inspectors to inspect licensees and prospective licensees and to ensure fiscally responsible use of the Board's revolving fund in accordance with KRS 309.404(9) and 309.408. The regulation is being amended to address the situation where the Board conducts an investigation as requested by an entity in accordance with Section 2(1)(b)2., Section 2(2)(a)2., and Section 2(2)(b), and the inspection identifies such deficiencies that the entity does not qualify for licensure. Under the current regulation, in such an instance, the costs of the investigation are born by the Board, rather than the entity. With this amendment, the Board will be able to recoup the cost of investigation. Additionally, the cost for charging minor fees for discs and copy paper was administratively cumbersome and there is now the option of secure digital transfer by email. Finally, the amendment is necessary to set a fee for license verification.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 309.406(1)(a) authorizes the Board to promulgate regulations to regulate matters set forth in KRS 309.400 to 309.422. KRS 309.406(1)(a), KRS 309.406(1)(f), KRS 309.414(1), and KRS 309.416(4) permit the Board to set a reasonable fee schedule. This administrative regulation establishes a reasonable fee schedule and clarifies the requirements for a reciprocal license.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of KRS Chapter 309 by carrying out the legislative mandate for the Board to set reasonable fees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the Board, 814 licensees of the Board, as well as an unknown number of

businesses that may request inspections for licensure in accordance with Section 2(1)(b)2., Section 2(2)(a)2., and Section 2(2)(b). The Board is an independent state agency and state and local governments are unlikely to be affected by this regulation.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: 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 regular cost to the regulated entities. For entities that do not maintain an accreditation by a national accreditation organization approved by the Centers for Medicare and Medicaid Services that accredits suppliers of durable medical equipment, and therefore require an inspection by the Board in order to obtain licensure in accordance with Section 2(1)(b)2., Section 2(2)(a)2., and Section 2(2)(b), the entity shall now pay a fee for the cost of inspection as set forth in Section 9(2).

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will ensure that inspections that do not result in licensure will not deplete Board funds necessary to fulfill its other duties to licensed entities in ensuring effective oversight of manufacturers and wholesale distributors of home medical equipment and home medical equipment and services providers.

(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 Board 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 indirectly increases the cost of licensure where applicants require an inspection, by requiring the applicant to pay for the Board's inspection. This applies to those licensees that do not maintain an accreditation by a national accreditation organization approved by the Centers for Medicare and Medicaid Services that accredits suppliers of durable medical equipment.

(9) TIERING: Is tiering applied? Tiering is not applied because it only affects the Board of Durable Medical Equipment Suppliers and its licensees.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Durable Medical Equipment Suppliers (the "Board").

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS Chapter 309.400 to 309.422.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 the Board of Durable Medical Equipment Suppliers, but be used to pay the inspector.

(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? All revenue generated will be used to pay the inspector.

(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.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

#### KENTUCKY LOTTERY CORPORATION (Amendment)

##### 202 KAR 3:020. Procurement procedures.

RELATES TO: KRS 154A.060(2)(a), 154A.120

STATUTORY AUTHORITY: KRS 154A.050(1)(d)9, 154A.120(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 154A.120(1) authorizes the Kentucky Lottery Corporation to promulgate an administrative regulation[regulations] establishing its procurement procedures. This administrative regulation establishes the procurement procedures of the Kentucky Lottery Corporation [~~in a manner consistent with KRS Chapter 154A and will apply in lieu of the Kentucky Model Procurement Code, unless otherwise specifically indicated~~].

Section 1. Procurement Procedures. The procurement procedures of the Kentucky Lottery Corporation are established in the "[Kentucky Lottery Corporation Procurement Procedures]". These procedures shall apply in lieu of the Kentucky Model Procurement Code, unless otherwise specifically indicated.

Section 2. Incorporation by Reference.

(1) "Kentucky Lottery Corporation Procurement Procedures", May 14, 2021, [~~4/23/99~~] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to a applicable copyright law, [~~from the General Counsel~~] at the [~~Offices of the~~] Kentucky Lottery Corporation, 1011 West Main Street, Louisville, Kentucky 40202-2623, Monday through Friday, 8 a.m. to 5 p.m. This material may also be viewed on the Kentucky Lottery Corporation's Web site at [www.kylottery.com](http://www.kylottery.com).

This is to certify that the chief executive officer has reviewed and recommended this administrative regulation which was adopted by the Kentucky Lottery Corporation Board of Directors on May 14, 2021, as required by KRS Chapter 154A.050(d).

MARY R. HARVILLE, President & CEO

JENNIFER K. LUHRS, General Counsel & Corporate Secretary

APPROVED BY AGENCY: July 13, 2021

FILED WITH LRC: July 14, 2021 at 10:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2021, at 10:00 a.m., at the Kentucky Lottery Corporation, 1011 West Main Street, Louisville, Kentucky 40202-2623. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written

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comments shall be accepted through September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jennifer Luhrs, Vice President, General Counsel & Corporate Secretary, Kentucky Lottery Corporation, 1011 West Main Street, Louisville, Kentucky 40202-2623, phone (502) 560-1579; fax (502) 560-1532, email jennifer.luhrs@kylottery.com.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Luhrs

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, through the Materials Incorporated by Reference, establishes the Kentucky Lottery Corporation Procurement Procedures.

(b) The necessity of this administrative regulation: KRS 154A.120(1) authorizes the Kentucky Lottery Corporation to promulgate administrative regulations establishing its procurement procedures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 154A.120(1) further provides that the administrative regulations shall be designed to provide for the purchase of supplies, equipment, services, and construction items in such a manner as to provide the greatest long-term benefit to the Commonwealth, the greatest integrity for the corporation, and the best products and services for the public.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the Kentucky Lottery Corporation Procurement Procedures in a manner consistent with KRS 154A.120(1) and will apply in lieu of the Kentucky Model Procurement Code, unless otherwise specifically indicated.

(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: See Summary of Changes to the Materials Incorporated by Reference.

(b) The necessity of the amendment to this administrative regulation: The changes are necessary to update the procurement procedures and to comply with the Commonwealth's Red Tape Reduction Initiative.

(c) How the amendment conforms to the content of the authorizing statutes: The amended administrative regulation establishes the Kentucky Lottery Corporation Procurement procedures in a manner consistent with KRS 154A.120(1) and will apply in lieu of the Kentucky Model Procurement Code, unless otherwise specifically indicated.

(d) How the amendment will assist in the effective administration of the statutes: The amended regulation continues to be designed to provide for the purchase of supplies, equipment, services, and construction items in such a manner as to provide the greatest long-term benefit to the Commonwealth, the greatest integrity for the corporation, and the best products and services to the public as required by KRS 154A.120(1).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amended regulation will affect the Kentucky Lottery Corporation and the vendors doing business and seeking to do business with the Corporation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action will be required by the vendors doing business or seeking to do business with the Corporation.

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

question (3): No additional cost will be incurred by the Corporation or by the vendors doing business or seeking to do business with the Corporation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The increase in the Corporation's small purchase limit will make it easier for vendors seeking to do business with the Corporation.

(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 the amended administrative regulation by the Corporation or its vendors.

(b) On a continuing basis: There will be no ongoing costs to implement the amended administrative regulation by the Corporation or its vendors on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees were established.

(9) TIERING: Is tiering applied? Tiering was not applied. The amended administrative regulation only applies to the Corporation and vendors doing business or seeking to do business with the Corporation.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 amended regulation will only affect the Kentucky Lottery Corporation and the vendors doing business and seeking to do business with the Corporation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 154A.120(1) authorizes the Kentucky Lottery Corporation to promulgate administrative regulations establishing its procurement procedures.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amended administrative regulation will not directly generate any additional revenue for the state or local governments 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? The amended administrative regulation will not directly generate any additional revenue for the state or local governments for subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no initial cost to administer the amended administrative regulation by the Corporation or its vendors for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no initial cost to administer the amended administrative regulation by the Corporation or its vendors for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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### JUSTICE AND PUBLIC SAFETY CABINET Office of the Kentucky State Medical Examiner (Amendment)

#### 500 KAR 12:010. Duplicate records request fee schedule.

RELATES TO: KRS 72.210 - 72.280[72.255]

STATUTORY AUTHORITY: KRS 72.255, 72.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 72.260 authorizes the Justice and Public Safety Cabinet to establish a schedule of fees for issuing duplicate records from the Office of the Kentucky State Medical Examiner[’s Office] and provides that one (1) free copy of the records shall be provided to the coroner and either the county or Commonwealth’s Attorney concerned. This administrative regulation establishes a fee schedule for the duplicate records.

Section 1. Definition. "Special stain" means a stain other than the routine[standard] Hematoxylin and Eosin.

Section 2. Duplicate Records Fees. (1) Kodachromes shall be the cost charged by the third-party vendor. The Office of the Kentucky State Medical Examiner shall deliver the Kodachrome to a local vendor for processing if such facility is available. The requester may contact the Office of the Kentucky State Medical Examiner to request the current vendor for a Kodachrome[one (1) dollar each].

(2) A compact disc (CD) containing a copy of one (1) or more digital photos shall be five (5) dollars per CD[Prints:

(a) Four (4) inch x six (6) inch prints shall be three (3) dollars each.

(b) Five (5) inch x seven (7) inch prints shall be five (5) dollars each.

(c) Eight (8) inch x ten (10) inch prints shall be seven (7) dollars each].

(3) Glass histology slides shall be fifteen[twelve] (15[12]) dollars per slide.

(4) A copy of a digital x-ray[X-rays] shall be ten (10) dollars each.

(5) Written records shall be one (1) dollar per page.

(6) Special stains shall be fifty[forty] (50[40]) dollars per slide.

(7) There shall be a twenty-five (25) dollar [dollars-processing and handling] fee for retrieval, processing, and packaging of any laboratory specimen including histology specimens, DNA specimens, and tissues [each special laboratory testing duplicate record request].

Section 3. Procedure for Requesting Duplicate Records. To obtain duplicate records from the Medical Examiner’s Office, a person shall:

(1) Provide a written request explaining the duplicate being requested in sufficient detail to identify the item to be duplicated or processed for outside testing as in the case of a DNA sample [Complete a "Commonwealth of Kentucky Medical Examiner Duplicate Records Request" form];

(2) Enclose a check or money order made payable to the Kentucky State Treasurer for the amount of the records requested; and

(3) Submit the request [form] and payment to the Office of the Kentucky State Medical Examiner for the regional office that conducted the post-mortem examination at the following addresses:

(a) Louisville Regional Office: The Office of the Kentucky State Medical Examiner, Bingham Building 1st Floor, 10511 LaGrange Road, Louisville, Kentucky 40223;

(b) Frankfort Regional Office: The Office of the Kentucky State Medical Examiner, Central Lab, 100 Sower Boulevard, Suite 202, Frankfort, Kentucky 40601;

(c) Western Kentucky Regional Office: The Office of the Kentucky State Medical Examiner, 25 Brown Badgett Loop, Madisonville, Kentucky 42431; and

(d) Northern Kentucky Regional Office: The Office of the Kentucky State Medical Examiner, Bingham Building 1st Floor, 10511 LaGrange Road, Louisville, Kentucky 40223[appropriate regional Medical Examiner’s Office].]

Section 4. Incorporation by Reference. (1) "Commonwealth of Kentucky Medical Examiner Duplicate Records Request" form, (1/01 edition), Medical Examiner’s Office, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, Monday through Friday, 8 a.m. to 4:30 p.m. at:

(a) The Medical Examiner’s Office, Urban Government Center, 810 Barrett Avenue, Louisville, Kentucky 40204; or

(b) The Medical Examiner’s Office, Central Lab, 100 Sower Boulevard, Suite 202, Frankfort, Kentucky 40601.]

The Advisory Commission for Medical Examination established pursuant to KRS 72.225 has reviewed this administrative regulation at its meeting on July 8, 2021 prior to its filing with the Legislative Research Commission as required by KRS 72.255, 13A.120(3), and 13A.220(6)(a).

JUSTICE MARY C. NOBLE, Ret., Secretary

APPROVE BY AGENCY: July 8, 2021

FILED WITH LRC: July 12, 2021 at 1:36 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2021, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes a schedule of fees for issuing duplicate records of investigations, examinations, autopsies, and other records from the Office of the Kentucky State Medical Examiner (Medical Examiner).

(b) The necessity of this administrative regulation: This administrative regulation sets the fees authorized in KRS 72.260.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 72.255 authorizes promulgation of administrative regulations and KRS 72.260 authorizes a schedule of fees for issuing duplicate records of investigations, examinations, autopsies, and other records from the Medical Examiner.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will provide clear and concise information as to the costs of various duplicate records requested and the process for obtaining them.

(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 adjusts the fees in the schedule for the various records in compliance with KRS 72.260.

(b) The necessity of the amendment to this administrative



regulation: The adjustment of the fees more closely aligns with the costs to the Medical Examiner for the duplicate copies.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 72.255 authorizes promulgation of administrative regulations and KRS 72.260 authorizes a schedule of fees for issuing duplicate records of investigations, examinations, autopsies, and other records from the Medical Examiner. The amendment revises the fees.

(d) How the amendment will assist in the effective administration of the statutes: The amendment revises the schedule of fees for issuing duplicate records of investigations, examinations, autopsies, and other records to address increases in cost.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects attorneys, family members of the deceased, law enforcement agencies, and insurance companies.

(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: They will be informed of the fee for each duplicate record requested from the Medical Examiner and the method to obtain them.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The costs are stated in the fee schedule in the administrative regulation. The only other cost is to provide the written request and the payment of the fee to the Medical Examiner, which is expected to be minimal.

(c) As a result of compliance, what benefits will accrue to the entities: They will obtain duplicate copies of records.

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

(a) Initially: No increase in cost is anticipated.

(b) On a continuing basis: No increase in cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Medical Examiner's budgeted funds for the biennium.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The changes to the administrative regulation is an increase in fees.

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Medical Examiner and any other government agency that requests duplicate records will be impacted by this administrative regulation. The coroner and the County or Commonwealth's Attorney's office are provided a first copy free of charge.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 72.255, 72.260

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for the first year? The administrative regulation will not generate revenue for any government entity other than the Medical Examiner. It is estimated that approximately \$ 5,000.00 will be generated for the Medical Examiner to cover the costs of the duplicate records.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The administrative regulation will not generate revenue for any government entity other than the Medical Examiner. It is estimated that approximately \$ 5,000.00 will be generated for the Medical Examiner to cover the costs of the duplicate records.

(c) How much will it cost to administer this program for the first year? No additional cost is anticipated.

(d) How much will it cost to administer this program for subsequent years? No additional cost is anticipated.

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

Revenues (+/-): NA  
Expenditures (+/-): NA  
Other Explanation: NA

#### JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

#### 501 KAR 2:020. Definitions for 501 KAR Chapter 2.

RELATES TO: KRS 532.060, 532.100

STATUTORY AUTHORITY: KRS 196.035, 197.020, 532.100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 532.100(5)(4) requires [the Department of Corrections to house] qualifying Class D and Class C felons to serve their sentences in [county] jails [and promulgate administrative regulations establishing required programs for the jails where they are housed]. This administrative regulation establishes the definitions used in 501 KAR Chapter 2 for the Class C and D felons serving their sentences in the jails pursuant to the statute instead of in a state correctional institution, which implements the required housing program].

Section 1. Definitions. (1) "Assessment and Classification Center" or "AC Center" means the units at Roederer Correctional Complex, [and] Kentucky Correctional Institution for Women, and Ross Cash Center that initially receive all convicted felons, except for those sentenced to the death penalty, who are committed to the Kentucky Department of Corrections.

(2) "Class C felon" means an inmate convicted of a Class C felony that meets the requirements established in KRS 532.100(5)(c)[532.100(4)(c)4-]

(3) "Class D felon" means an inmate convicted of a Class D felony that meets the requirements established in KRS 532.100(5)(4) (a), (b), or (c).

(4) ["Classification branch manager" means the Department of Corrections employee who approves inmates for placement in jails and in halfway house facilities throughout the state and oversees the prerelease programs.

(5) "Close custody" means that the inmate meets the requirements for that classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501-KAR-6:080.

(6) "Community custody" means that the inmate meets the requirements for that classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6:080.

(7) "Controlled intake inmate" means a convicted felon who is entering into the Kentucky adult correctional system.

(8) "Deaf or hard of hearing inmate" means an inmate who is unable to hear well enough to rely on hearing as a means of processing information, who relies on auxiliary aids and services to effectively communicate, and who qualifies as an individual with a

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disability under the Americans with Disabilities Act (ADA), including deaf, hard of hearing, or hearing impaired person. See 42 U.S.C. § 12102(4).

(7) "Department" is defined by KRS 441.005(5).

(8) "Director of Population Management" means the Department of Corrections employee who approves inmates for placement in jails and in halfway house facilities throughout the state.

(9) "Educational good time" means a credit on an inmate's sentence for an educational accomplishment pursuant to KRS 197.045(1)(a)2.

(10) "Escape" is defined by KRS 520.010(5).

(11) "Jail" means a jail as defined by KRS 441.005(1) or a regional jail as defined KRS 441.005(7).

(12) "Jail administrator" means the official appointed by a regional jail authority and charged with the responsibility of administering the regional jail.

(13) "Jail personnel" is defined by KRS 441.005(6).

(14) "Jailer" means:

(a) The official duly elected or appointed pursuant to Section 99 or 152 of the Kentucky Constitution, charged with the responsibility of administering the jail;

(b) The administrator or executive director of a department as defined by KRS 67B.020(1); [or]

(c) The administrator or director of a correctional services division as described by KRS 67A.028; or

(d) The administrator of a regional jail as defined by KRS 441.005(7).

(15) "KOMS" means Kentucky Offender Management System.

(16) "Maximum custody" means that the inmate meets the requirements for that classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6:080.

(17) "Medium custody" means that the inmate meets the requirements for that classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6:080.

(18) "Meritorious good time" means a credit on an inmate's sentence pursuant to KRS 197.045(1)(b)2.

(19) "Minimum custody" means that the inmate meets the requirements for that classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6:080.

(20) "Qualified inmate" means an inmate that may be housed in [county] jails electing to house state inmates as described in KRS 532.100(5)(4).

(21) [~~"Restricted custody" means that the inmate meets the requirements for that subcategory of the minimum custody classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6:080.~~]

(22) "Statutory good time" means a credit on an inmate's sentence pursuant to KRS 197.045(1)(b)1.

(23) "Waiver" means that the department has granted the county an exemption from housing any Class D or Class C felons in its county jail pursuant to KRS 532.100.

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: July 1, 2021

FILED WITH LRC: July 14, 2021 at 1:48 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on September 22, 2021, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Any person who wishes to be heard at this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If a notice of intent to attend the hearing is not received by that date, the hearing may be cancelled. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2021. Send written notice of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, Justice.RegContact@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for 501 KAR Chapter 2, governing the housing of Class C and D felons in county jails.

(b) The necessity of this administrative regulation: Definitions are needed to explain terms used in the chapter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 196.035 gives authority to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes definitions for the operation of the Class C and D felon program.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds the Ross Cash Center as an assessment center location, removes definitions for Classification Branch Manager, Close Custody, and Restricted Custody that are no longer necessary, adds Director of Population Management, adds additional definitions to the term Jailer as outlined in KRS 67B.020(1), 67A.028 and KRS441.005(7), and rennumbers the remaining definitions.

(b) The necessity of the amendment to this administrative regulation: The administrative regulation provides definitions for use in the chapter and standardizes words used for the Class C and D program in local jails.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 196.035 gives authority to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. It removes definitions for close and restricted custody since they will no longer be used for the operation of the Class C and D felon program required by KRS 532.100 and adds new definitions needed for the chapter.

(d) How the amendment will assist in the effective administration of the statutes: It provides current and clear definitions for the administration of the Class C and D program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 74 county and regional jails that house Class C and D felons and their staff, approximately 50 Department of Corrections employees, including 15 Local Facilities staff, and approximately 5,585 Class C and D felons in the jails.

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will all receive better understanding of the program and its requirements by having updated and clarified definitions.

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

(a) Initially: No increase in cost is anticipated.

(b) On a continuing basis: No increase in cost is anticipated.

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

implementation and enforcement of this administrative regulation: State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

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

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendment impacts the Department of Corrections and jails that house state inmates.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020, 532.100

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment does not create any revenue for the Department of Corrections, the counties, or other government entity.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment does not create any revenue for the Department of Corrections, the counties, or other government entity.

(c) How much will it cost to administer this program for the first year? The amendment is not expected to increase cost for the Department of Corrections, the counties, or other government entity.

(d) How much will it cost to administer this program for subsequent years? The amendment is not expected to increase cost for the Department of Corrections, the counties, or other government entity.

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:

**JUSTICE AND PUBLIC SAFETY CABINET  
Department of Corrections  
(Amendment)**

**501 KAR 2:050. Transfer requests.**

RELATES TO: KRS 532.100

STATUTORY AUTHORITY: KRS 196.035, 197.020(1), 532.100(6)(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 532.100(6)(5) establishes the circumstances in which a [county] jailer may request the Department of Corrections to transfer a Class D or Class C felon housed in the [county] jail to a state correctional [corrections] institution. This administrative regulation establishes the process for the jailer to request a transfer.

Section 1. Transfer Requests. (1) To request a transfer of a Class D or Class C felon housed in a [county] jail to a state correctional [corrections] institution pursuant to KRS 532.100(6)(5), the [county] jailer shall:

(a) Request the transfer on an "Inmate Priority Movement

Form"; and

(b) Submit the form to the Classification Branch, which shall review the form.

(2) The commissioner or his designee shall approve or deny the request.

(a) If approved, the Director of Population Management[~~Classification Branch Manager~~] shall arrange an appropriate transfer.

(b) If denied, a copy of the form shall be returned to the jailer who may appeal the denial as provided by KRS 532.100(6)(5).

Section 2. Incorporation by Reference. (1) "Inmate Priority Movement Form." 2021[6/97], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Corrections, Division of Population Management, 275 East Main Street, [Local Facilities, 2439 Lawrenceburg Road,] P.O. Box 2400, Frankfort, Kentucky 40602-2400, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections Web site at <https://corrections.ky.gov/About/Pages/lrcfilings.aspx>.

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: July 1, 2021

FILED WITH LRC: July 14, 2021 at 1:48 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on September 22, 2021, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Any person who wishes to be heard at this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If a notice of intent to attend the hearing is not received by that date, the hearing may be cancelled. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2021. Send written notice of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process for a jailer to request a transfer of a Class C or D state inmate in a jail pursuant to KRS 532.100(6).

(b) The necessity of this administrative regulation: The administrative regulation provides jailers with the process and form to request the move of a Class C or D inmate from a jail to a state correctional institution for security or medical reasons.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 532.100(6) authorizes a jailer to request the transfer of a Class C or D inmate for specific reasons. KRS 196.035 gives authority to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation provides jailers with the process and form to request the move of a Class C or D inmate from a jail to a state correctional 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 revises cites to address statute changes and a position title to match a personnel change. It updates the form to be used for transfer requests.

(b) The necessity of the amendment to this administrative regulation: The changes need to be reflected in the administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The changes are within the authority granted by the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: It provides clarity for those who use the transfer process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 74 county and regional jails that house Class C and D felons and their staff, approximately 50 Department of Corrections' employees, including 15 Local Facilities staff, and approximately 5,585 Class C and D felons in the jails.

(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: They will need to use the revised form and send it to the correct position.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The changes will allow for efficient processing of the transfer requests.

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

(a) Initially: No increase in cost is anticipated.

(b) On a continuing basis: No increase in cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

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

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendment impacts the Department of Corrections and jails that house state inmates.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 532.100

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment does not create any revenue for the Department of Corrections, the counties, or other government entity.

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

Department of Corrections, the counties, or other government entity.

(c) How much will it cost to administer this program for the first year? The amendment modifies the administration of the transfer process. The amendment is not expected to increase cost for the Department of Corrections, the counties, or other government entity.

(d) How much will it cost to administer this program for subsequent years? The amendment modifies the administration of the transfer process. The amendment is not expected to increase cost for the Department of Corrections, the counties, or other government entity.

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:

#### JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

#### 501 KAR 2:060. Procedures for housing of Class C and D [and Class C] felons.

RELATES TO: KRS 196.035, 197.020, 197.045, 431.215, 441.045, 441.075, 441.510, 532.100

STATUTORY AUTHORITY: KRS 196.035, 197.020, 532.100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 532.100(5) [532.100(4)] requires the Department of Corrections to house qualifying Class C and D [and Class C] felons in [county] jails. This administrative regulation establishes the procedures to implement the required housing program.

Section 1. Eligibility. Any county housing qualified inmates pursuant to KRS 532.100(5) [532.100(4)] shall be eligible to continue to do so unless the department, through its minimum jail standards enforcement procedures established by KRS 441.075, orders a [county] jail to cease housing Class C and D [and Class C] felons.

Section 2. Submission of Documents for Class D Felons. In any [county] jail housing Class D felons, the jailer shall forward to the assessment and classification center the following documents, within ten (10) working days of receipt of the judgment, for each Class D felon for whom a transfer has not been requested:

(1) Picture, which shall be updated annually in accordance with Section 13 of this administrative regulation;

(2) Any detainers;

(3) Any incident or disciplinary reports; and

(4) Body identification sheet.

Section 3. Custody Assignment for Class D Felons. (1) The assessment and classification center staff shall, within ten (10) working days of receipt of the presentence investigation and the judgment documents, review the inmate file and assign a custody classification level to the Class D felon.

(2) The AC Center staff shall notify the jailer of the custody classification level assignment. Offender Information Services[Branch], Central Office, shall audit the file within five (5) working days of receipt.

(3) If the custody level assigned is minimum or community, the Class D felon may:

(a) Participate in community service work or any program offered inside or outside the secure perimeter of the jail; and

(b) Be housed inside the secure perimeter of the jail, in the restricted custody area of the jail, or in a restricted custody center.

(4) If the custody level assigned is [restricted, the Class D felon:

(a) May only participate in community service work under direct supervision of jail personnel;

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(b) Shall not participate in any outside program; and

(c) Shall be housed:

1. Inside the secure perimeter of the jail;
2. In a restricted custody area with a barrier fence; or
3. In a restricted custody center with a barrier fence.

(5) If the custody level assigned is medium[, close,] or maximum, the Class D felon:

(a) Shall not be eligible to participate in any program or work outside the secure perimeter of the jail; and

(b) Shall be housed in the secure perimeter of the jail.

(6) The jailer may request the department to review the assignment ninety (90) days from the date of the last assignment. Any additional custody review may be completed as deemed necessary by the Director of Population Management [Classification Branch Manager].

Section 4. Assignment of Class C Felons. (1) The assessment and classification center shall identify and inform the jailer of a Class C felon who qualifies under KRS 532.100(5)(c)1. [532.100(4)(e)1.] to be housed in a county jail.

(2) The AC center shall notify the jailer when an inmate has been assigned as a Class C felon.

Section 5. Parole Board[Assessment Summary Reports]. (1) Prior to the meeting of the Parole Board, jail personnel shall provide each inmate scheduled for review by the board with a Jail Offender Information form. Jail personnel shall submit the completed form to the Division of Local Facilities[prepare and submit an assessment summary report on each qualified inmate to the Offender Information Branch] via KOMS or electronically, as requested by the Parole Board.

(2) Jail personnel shall inquire if a qualified inmate scheduled for review by the board would like to waive his or her Parole Board hearing and request a serve out if the qualified inmate scheduled to meet the Parole Board has ninety (90) days or less remaining until his or her minimum expiration date. If the qualified inmate decides to waive his or her Parole Board hearing and request a serve out, jail personnel shall have the inmate sign the Request Declining Parole form and submit it to the Parole Board via KOMS or electronically.

(3) Deaf or Hard of Hearing Inmate.

(a) If a deaf or hard of hearing inmate has a hearing before the Parole Board, the jail shall assist the Parole Board with appropriate accommodation for the inmate for the hearing.

(b) The jail shall provide headphones or work with the Parole Board to provide other hearing accommodation services for the Parole Board hearing.

Section 6. Transportation. Jail personnel shall be responsible for the transportation of a qualified inmate except as specified in KRS 431.215(1) and 441.510.

Section 7. Release Procedures. (1) The release of a qualified inmate shall follow the procedure established by CPP 25.6, incorporated by reference in 501 KAR 6:020.

(2)(a) Jail personnel shall not release a qualified inmate to any other county jail or agency without submission of external movement information to the Director of Local Facilities or designee. The information shall include:

1. Name;
2. Inmate number;
3. Facility transferring felon;
4. Facility receiving felon; and
5. Date transferred and received.

(b) Any jail that is under order of the department relating to restrictions on state inmates shall receive prior authorization from the Director of Local Facilities before requesting state inmates from the department or any other [county] jail.

(c) A qualified inmate shall not be released to another state or to federal authorities without advance notice and approval of the Director of Local Facilities or designee.

(3) Jail personnel shall notify the Director of Local Facilities or the Offender Information Services[Branch] of any detainer or

holder lodged against the qualified inmate by another jurisdiction.

Section 8. [Furlough Program. (1) The Classification Branch Manager shall have the authority and responsibility to grant and monitor any furloughs of a qualified inmate.

(2) Eligibility for a furlough shall be determined in accordance with this subsection.

(a) The furlough of a qualified inmate shall be a privilege, not a right.

(b) To be considered for a furlough, a community or minimum custody qualified inmate shall have spent at least sixty (60) days in the county jail since the date of the custody assignment.

(c) A Class D felon who is community custody or minimum custody or a Class C felon, who meets the requirement established in paragraph (b) of this subsection, may be considered for a forty-eight (48) hour furlough each quarter, beginning six (6) months after his final sentencing date. The total time on furlough shall not exceed eight (8) days each calendar year. There shall be a minimum of sixty (60) days between furloughs.

(d) To be considered for a furlough, a probation or parole violator who is a community or minimum custody qualified inmate shall have spent at least sixty (60) days in the county jail since the date of the custody assignment.

(e) A probation or parole violator who is a community or minimum custody qualified inmate, who meets the requirement established in paragraph (d) of this subsection, may be considered for a forty-eight (48) hour furlough each quarter, beginning six (6) months after his commitment date. The total time on furlough shall not exceed eight (8) days each calendar year. There shall be a minimum of sixty (60) days between furloughs.

(f) To be considered for a furlough, a qualified inmate shall meet the furlough criteria established in CPP 25.4, incorporated by reference in 501 KAR 6:020, with the exception of the six (6) continuous months of minimum or community custody requirement.

Section 9.] Escape. If a qualified inmate escapes, the jailer, jail administrator, or jail personnel shall immediately:

(1) Notify the Division of Local Facilities jail inspector;

(2) Notify Kentucky State Police (KSP) or local law enforcement;

(3) Activate VINE through use of the Emergency Override Line (EOL); and

(4) Enter the prisoner's escape status into the jail management system.

Section 9[40]. Medical Needs. The department shall pay each jail a per diem for state prisoners as established by KRS 532.100(7) [532.100(6)]. The jail shall pay for routine medical and medication expenses. If the inmate requires an admission to a hospital with at least one (1) night stay or outpatient surgery in which a general anesthesia is used, the cost shall be paid by the department. The jailer, jail administrator, or jail personnel shall notify the Department of Corrections Medical Division designee if any qualified inmate is admitted to the hospital for twenty-four (24) hours or longer.

Section 10[44]. Inmate Pay. A qualified inmate on a work assignment shall be paid in accordance with CPP 19.3.

Section 11[42]. Good Time. For a qualified inmate housed in a county jail, the awarding of good time or sentence credit shall be in accordance with this section.

(1) Statutory good time shall follow the procedures established in KRS 197.045(1)(b)1.

(2) Meritorious good time shall follow procedures established in KRS 197.045(1)(b)2. and CPP 15.3, incorporated by reference in 501 KAR 6:020.

(3) Educational good time shall follow procedures established in KRS 197.045(1)(a)2. and CPP 20.1, incorporated by reference in 501 KAR 6:020.

(4) If the jail has a substance abuse program approved by the department, then the felon shall receive credit to his sentence allowed by KRS 197.045(1)(a)3.

Section 12[13]. Annual Photograph. The jailer, jail administrator, or jail personnel shall take a photograph each year of each qualified inmate and immediately send it by United States mail, [or] electronically, or via KOMS to Department of Corrections, Offender Information Services, [Central Office,] P.O. Box 2400, Frankfort, Kentucky 40602.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Information to the Kentucky Parole Board" (2021), is incorporated by reference; and

(b) "Request Declining Parole" (2021).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Corrections, Division of Population Management, 275 East Main Street, P.O. Box 2400, Frankfort, Kentucky 40602-2400, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections Web site at <https://corrections.ky.gov/About/Pages/Ircfilings.aspx>.

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: July 1, 2021

FILED WITH LRC: July 14, 2021 at 1:48 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on September 22, 2021, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Any person who wishes to be heard at this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If a notice of intent to attend the hearing is not received by that date, the hearing may be cancelled. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2021. Send written notice of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, [Justice.RegContact@ky.gov](mailto:Justice.RegContact@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for housing Class C and D felons in jails.

(b) The necessity of this administrative regulation: This administrative regulation provides the procedures required for KRS 532.100(5) for Class C and D felons housed in jails.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 196.035 gives authority to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. The administrative regulation establishes the procedures necessary for Class C and D felons housed in jails as authorized by KRS 196.035 and required by KRS 532.100(5).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the procedures for housing Class C and D felons in county jails.

(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: It revises statute citations because of amendments to the statute. It adds a provision (with forms) for an inmate with 90 days or less to serve out to decide whether to be considered for parole or to waive parole consideration to complete the inmate's sentence. The furlough provision is deleted and revisions are made to classification categories to match classification changes within the Department of Corrections.

(b) The necessity of the amendment to this administrative regulation: It complies with statute changes and Classification Manual changes.

(c) How the amendment conforms to the content of the authorizing statutes: The changes are within the authority granted by the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: It makes revisions in compliance with the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 74 county and regional jails that house Class C and D felons and their staff, approximately 50 Department of Corrections' employees, including 15 Local Facilities staff, and approximately 5,585 Class C and D felons in the jails.

(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: Jails will need to follow the revised process for inmates being considered for parole and classification provisions and shall not furlough state inmates.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The classification levels will be consistent for inmates committed to the Department of Corrections. Inmates nearing the end of their sentences will be able to determine if they want to complete the remainder of their sentence or possibly receive parole and be under supervision for the period of parole.

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

(a) Initially: No increase in cost is anticipated.

(b) On a continuing basis: No increase in cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are not established or increased.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendment impacts the Department of Corrections and jails that house state inmates.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 196.035, 197.020, 532.100

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

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

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of Corrections, the counties, or other government entity.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment does not create any revenue for the Department of Corrections, the counties, or other government entity.

(c) How much will it cost to administer this program for the first year? The amendment makes limited modifications to some of the operational procedures for housing Class C and D inmate in jails. The amendment is not expected to increase cost for the Department of Corrections, the counties, or other government entity.

(d) How much will it cost to administer this program for subsequent years? The amendment makes limited modifications to some of the operational procedures for housing Class C and D inmate in jails. The amendment is not expected to increase cost for the Department of Corrections, the counties, or other government entity.

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:

JUSTICE AND PUBLIC SAFETY CABINET  
Department of Corrections  
(Amendment)

501 KAR 2:070. Work release.

RELATES TO: KRS 532.100, 533.010, 533.025

STATUTORY AUTHORITY: KRS 196.035, 197.020, 533.010(14)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 requires the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 532.100(9) authorizes the commissioner to approve work release for Class D state prisoners serving their sentences in jails. KRS 197.020 requires the Department of Corrections to promulgate administrative regulations for the character of the labor and the length of time during which the prisoners shall be employed daily. KRS 533.010(14) requires the Department of Corrections to promulgate an administrative regulation to develop written criteria for work release privileges for offenders serving probation with an alternate sentence granted by the statute. This administrative regulation establishes work release procedures.

Section 1. (1) The criteria to be used in the determination of granting work release shall be the following:

(a) The defendant granted work privileges shall have a suitable job placement, at a lawful wage, as approved by the sentencing court.

(b) The defendant's job placement shall be within the boundaries of the Commonwealth and shall not require travel outside of the Commonwealth.

(c) The defendant shall provide or arrange transportation to and from the employment site in a lawful manner.

(d) The defendant's employer shall be willing to cooperate with all law enforcement agencies in the verification of the conditions of the defendant's work release.

(2) If the defendant is paying for a part of his incarceration through court-ordered work release, it shall be the responsibility of the jailer or designee to notify the department. The amount paid by the defendant toward his incarceration shall be forwarded to the department on a monthly basis along with the jail housing bill.

Section 2. The jailer may deny work release privileges to a defendant for violating any duly promulgated or adopted rule of the jail governing inmate conduct or work release including:

- (1) Returning to the jail under the influence of drugs or alcohol;
- (2) Promoting or attempting to promote contraband; and
- (3) Failing to notify the jailer of any change in the status of his employment.

Section 3. Upon denial of work release privileges, a written report shall be completed stating the reasons for the suspension of these privileges and citing the rule or regulation that has been violated.

(1) The jailer shall provide a copy of the report to the defendant within twenty-four (24) hours.

(2) The jailer shall file the report and supporting documentation with the court of jurisdiction within the time specified in KRS 533.010(13).

Section 4. State inmates may participate in work release in accordance with KRS 532.100(9). The jailer may elect to provide work release for state inmates, pursuant to the requirements outlined in Corrections Policy and Procedure (CPP) 19.4 incorporated by reference in 501 KAR 6:020.

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: July 1, 2021

FILED WITH LRC: July 14, 2021 at 1:48 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on September 22, 2021, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Any person who wishes to be heard at this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If a notice of intent to attend the hearing is not received by that date, the hearing may be cancelled. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2021. Send written notice of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes work release procedures for Class D state prisoners serving their sentences in jails pursuant to KRS 532.100(9) and establishes the criteria for work release for offenders serving probation with an alternate sentence pursuant to KRS 533.010(14).

(b) The necessity of this administrative regulation: The administrative regulation complies with the requirement to have work release procedures pursuant to KRS 532.100(9) and KRS 533.010(14).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 533.010(14) requires promulgation of an administrative regulation for written criteria for work release privileges and KRS 532.100(9) authorizes inmate participation in a community work program with approval of the commissioner.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation provides jailers with criteria for participation in work release.

(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 adds provisions for KRS 532.100(9).

(c) How the amendment conforms to the content of the authorizing statutes: The changes are within the authority granted

by the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: It provides clarity for those involved in work release.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 74 county and regional jails that house Class C and D felons and their staff, approximately 50 Department of Corrections' employees, including 15 Local Facilities staff, and approximately 5,585 Class C and D felons in the jails.

(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 additional work release procedures will need to be followed. Many are similar to prior provisions, but these apply to a different category of prisoner in the jail.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Another group of prisoners may be involved in work release.

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

(a) Initially: No increase in cost is anticipated.

(b) On a continuing basis: No increase in cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State budgeted funds for the Department of Corrections and county budgeted funds for jail operating expenses.

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

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendment impacts the Department of Corrections and jails.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020, 532.100, 533.010

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment does not create any revenue for the Department of Corrections, the counties, or other government entity.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment does not create any revenue for the Department of Corrections, the counties, or other government entity.

(c) How much will it cost to administer this program for the first year? The amendment adds an additional group of prisoners to the list of eligibility to participate in work release. The amendment is

not expected to increase cost for the Department of Corrections, the counties, or other government entity.

(d) How much will it cost to administer this program for subsequent years? The amendment adds an additional group of prisoners to the list of eligibility to participate in work release. The amendment is not expected to increase cost for the Department of Corrections, the counties, or other government entity.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Department for Libraries and Archives  
Archives and Records Management Division  
(Amendment)**

**725 KAR 1:010. Records officers; duties.**

RELATES TO: KRS Chapter 171

STATUTORY AUTHORITY: KRS 171.450

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.450 requires the department to prescribe administrative regulations governing the procedures for retention scheduling of public records, disposal of public records, and for the transfer of public records to the State Archives or Records Centers. This administrative regulation is to assure uniformity and continuity in these procedures.

Section 1. Each constitutional, statutory, and executive authority of state and local government shall designate a member of the staff as records officer, whose duty shall be to represent that[his] unit of government in its relations with the Archives and Records Management Division[Public Records Division].

Section 2. Duties and responsibilities of each records officer are as follows:

(1) The records officer[He] shall assist the Archives and Records Management Division[Division of Archives and Records] in inventorying, analyzing, and scheduling disposition of records of the records officer's[his] unit of government, or in any manner [as] approved by the agency head that[as] may tend to establish an efficient system of records management.

(2) The records officer[He] shall keep a record of the destruction of public records, noting the authorization for said destruction and the amount and date span of records destroyed. [He shall make an annual report of this record to a designated superior and to the Director of the Public Records Division.]

Section 3. The records officer shall keep a record of the transfer of public records to the State Archives and Records Centers, including the records transferred, date of transfer, and location in the State Archives and Records Centers.

Section 4[3]. (1) A state or local agency shall not destroy any original records after the records are microfilmed, digitized, duplicated, or reformatted without written approval[No original documents may be destroyed by any political unit of state or local government after being microfilmed or otherwise duplicated without written approval] of the Department for Libraries and Archives.

(2) He shall keep a record of the destruction of public records, noting the authorization for said destruction and the amount of records destroyed. He shall make an annual report of this record to a designated superior and to the Director of the Public Records Division.

TERRY MANUEL, Commissioner

APPROVED BY AGENCY: July 2, 2021

FILED WITH LRC: July 6, 2021 at 11:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A



public hearing on this administrative regulation shall be held on September 21, 2021, at 10:00 a.m. Eastern Time at the Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, Commission Room. 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 September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Terry Manuel, Commissioner, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601. phone 502-564-8303. fax 502-564-5773, email Terry.Manuel@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Terry Manuel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies the duties of records officers, who are appointed by agency heads to act as liaisons with the Archives and Records Management Division.

(b) The necessity of this administrative regulation: KRS 171.680 requires agencies to implement a sound and ongoing records management program, and to cooperate with the Department for Libraries and Archives in doing so. This regulation facilitates that cooperation. KRS 171.450 requires the department to prescribe administrative regulations governing the procedures for retention scheduling of public records, disposal of public records, and for the transfer of public records to the State Archives and Records Centers. This regulation helps standardize these processes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 171.680 requires agencies to implement a sound and ongoing records management program, and to cooperate with the Department for Libraries and Archives in doing so. This regulation facilitates that cooperation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation facilitates cooperation between state and local government agencies and the Department for Libraries and Archives in implementing effective and efficient records management programs at agencies.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the nature of the duties of records officers and the name of the Archives and Records Management Division.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure the regulation is current and up-to-date.

(c) How the amendment conforms to the content of the authorizing statutes: The statute facilitates cooperation between agencies and the Department for Libraries and Archives.

(d) How the amendment will assist in the effective administration of the statutes: The amendment of this regulation will ensure that agencies have the most complete information in carrying out their records management programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state and local agencies must follow this regulation, as all have a responsibility to implement ongoing records management programs.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no new responsibilities added to those already existing for public agencies under this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no new costs added to those already existing for public agencies under this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Agencies who comply with this regulation will recognize more effective and efficient business practices, will recognize cost savings from reduced records storage costs, and will document agency history more effectively.

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

(a) Initially: There will be no costs for agencies to implement this regulation. This regulation

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The activities involved in this regulation are already undertaken by public agencies.

(7) Provide an assessment of whether an 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 required increase is projected.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies uniformly to all public agencies.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state and local government entities are required to appoint the records officers whose duties are enumerated in this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 171.680(2)(b) requires agencies to cooperate with the Department for Libraries and Archives in managing its records. This regulation facilitates that cooperation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no net effect on agencies' expenditures and revenues. Continued good records management results in cost savings for government and a more efficient operation of government.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenues generated for the first year because of this 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? There will be no additional revenues generated for subsequent years because of this regulation.

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

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

Note: If specific dollar estimates cannot be determined, provide

## VOLUME 48, NUMBER 2– AUGUST 1, 2021

a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): \$0

Expenditures (+/-): \$0

Other Explanation: N/A

### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department for Libraries and Archives Archives and Records Management Division (Amendment)

#### 725 KAR 1:020. Recording and reproducing public records.

RELATES TO: KRS 61.870, 141.420(3), 171.450(1)(c), 171.600, 171.670

STATUTORY AUTHORITY: KRS 171.450(1)(c), 171.660

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.450(1)(c) requires the department to establish standards and procedures for recording, managing and preserving public records, and for the reproduction of public records. KRS 171.660 requires that [a] state and local agencies shall reproduce and preserve public records according to administrative regulations promulgated by the department. KRS 171.420(3) provided that the State Libraries, Archives, and Records Commission~~[State Archives and Records Commission]~~ shall be the final authority for the disposition of all public records in Kentucky. This administrative regulation establishes the standards to be followed for the recording or reproducing of public records.

Section 1. Recording shall be done on paper, microform~~[microfilm]~~, or in a digital format.

Section 2. If the recording is done on paper, it shall be done on thirty-two (32) weight, 100 percent linen paper~~[or its equivalent in accordance with specifications established by the National Institute of Standards and Technology]~~.

Section 3. If the recording is done on microfilm, microfiche, or some other type of microform, the agency shall follow the standards and procedures in Microfilming and Digital Imaging of Public Records: A Procedural Guide.

Section 4. If the recording is in a digital format or reformatted to a digital image, the agency shall follow the standards in Microfilming and Digital Imaging of Public Records: A Procedural Guide, Policy Memorandum on the Storage of Public Records as Scanned Images, and Ensuring [the] Long-term Accessibility and Usability of Textual Records Stored as Digital Images: Guidelines for State and Local Government Officials.

Section 5. (1) A state or local agency shall not destroy any original records after the records are microfilmed, digitized, duplicated, or reformatted without written approval of the State Archivist~~[and Records Administrator]~~ as established in 725 KAR 1:030.

(2) A state or local agency shall follow the retention and disposition schedules established by the State Libraries, Archives, and Records Commission~~[State Archives and Records Commission]~~ in 725 KAR 1:061.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Microfilming and Digital Imaging of Public Records: A Procedural Guide", January 2010;

(b) "Policy Memorandum on the Storage of Public Records as Scanned Images, PM 2010-01", January 2010; and

(c) "Ensuring [the] Long-term Accessibility and Usability of Textual Records Stored as Digital Images: Guidelines for State and Local Government Officials", January 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Archives and Records

Management Division~~[Public Records Division]~~, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, Monday through Friday, 9:00 a.m.~~[8 a.m.]~~ to 4:00 p.m.~~[4:30 p.m.]~~

TERRY MANUEL, Commissioner

APPROVED BY AGENCY: July 2, 2021

FILED WITH LRC: July 6, 2021 at 11:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2021, at 10:00 a.m. Eastern Time at the Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, Commission Room. 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 September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Terry Manuel, Commissioner, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601. phone 502-564-8303. fax 502-564-5773. email Terry.Manuel@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Terry Manuel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards to be followed for the recording or reproducing public records.

(b) The necessity of this administrative regulation: KRS 171.450(1)(c) requires the department to establish standards and procedures for recording, managing and preserving public records, and for the reproduction of public records. KRS 171.660 requires that a state and local agencies shall reproduce and preserve public records according to administrative regulations promulgated by the department. KRS 171.420(3) provided that the State Libraries, Archives, and Records Commission shall be the final authority for the disposition of all public records in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 171.450(1)(c) requires the department to establish standards and procedures for recording, managing and preserving public records, and for the reproduction of public records. KRS 171.660 requires that a state and local agencies shall reproduce and preserve public records according to administrative regulations promulgated by the department. KRS 171.420(3) provided that the State Libraries, Archives, and Records Commission shall be the final authority for the disposition of all public records in Kentucky. This administrative regulation establishes the standards to be followed for the recording or reproducing public records.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the standards to be followed for the recording or reproducing public records.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates agency names, document titles, and retention decisions.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure the regulation is current and up-to-date.

(c) How the amendment conforms to the content of the authorizing statutes: The statute requires the department to establish standards and procedures for recording, managing, and preserving

public records and for the reproduction of public records by photographic or microphotographic process.

(d) How the amendment will assist in the effective administration of the statutes: The amendment of this regulation will ensure that agencies have the most complete information in carrying out their records management programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state and local government agencies must follow this regulation, as all have a responsibility to implement ongoing records management programs.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no new responsibilities added to those already existing for public agencies under this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no new costs added to those already existing for public agencies under this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Agencies who comply with this regulation will ensure that permanently valuable records are preserved, protected, and accessible.

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

(a) Initially: There will be no costs for agencies to implement this regulation. This regulation

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The activities involved in this regulation are already undertaken by public agencies.

(7) Provide an assessment of whether an 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 required increase is projected.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies uniformly to all public agencies.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state and local government entities are required to appoint the records officers whose duties are enumerated in this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 171.450(1)(c) requires the department to establish standards and procedures for recording, managing and preserving public records, and for the reproduction of public records. KRS 171.660 requires that a state and local agencies shall reproduce and preserve public records according to administrative regulations promulgated by the department. KRS 171.420(3) provided that the State Libraries, Archives, and Records Commission shall be the final authority for the disposition of all public records in Kentucky. This administrative regulation establishes the standards to be followed for the recording or reproducing public records.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no net effect on agencies' expenditures and revenues. Continued good records management results in cost savings for government and a more efficient operation of government.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenues generated for the first year because of this 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? There will be no additional revenues generated for subsequent years because of this regulation.

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

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

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

Revenues (+/-): \$0.00

Expenditures (+/-): \$0.00

Other Explanation: N/A

#### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department for Libraries and Archives Archives and Records Management Division (Amendment)

##### 725 KAR 1:025. Transfer of public records.

RELATES TO: KRS 61.878, 171.420, 171.470, 171.480, 171.500, 171.520, 171.550, 171.580, 171.590

STATUTORY AUTHORITY: KRS 171.520(1), (3), 171.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.560 requires the department to promulgate administrative regulations governing the transfer of public records. This administrative regulation establishes the requirements for the transfer of public records from governmental agencies to the department.

Section 1. Definitions. (1) "Intellectual custody" means legal ownership and responsibility for governing access to materials, regardless of their physical location.

(2) "Physical custody" means actual care and control of records for storage, security, and preservation.

(3) "Public record" is defined by KRS 171.410(1).

(4) "Transmittal documentation" means a list of records being transferred from an agency to the State Archives or the State Records Centers.

Section 2. For physical transfer of public records from government agencies to one (1) of the facilities of the Department for Libraries and Archives, the agency shall follow the standards and procedures in Transfer of Public Records: A Procedural Guide. Transmittal documentation shall confirm the transfer of government records in all instances.

Section 3. (1) Intellectual custody of records in the physical custody of the State Records Center shall remain with the originating agency.

(2) Physical and intellectual custody of records in the State Archives Center and the Kentucky State Digital[Electronic] Archives shall be transferred to the Department for Libraries and Archives upon accession into the Archives, in accordance with KRS 171.590.

(3) Records fifty (50) years or older that are not in the department's custody may be directed for transfer for continuing preservation and public access in accordance with KRS 171.580(2), subject to the exemptions of KRS 61.878.

Section 4. Incorporation by Reference. (1) "Transfer of Public Records: A Procedural Guide", January 2010, is incorporated by reference.

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(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Archives and Records Management Division~~[Public Records Division]~~, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, Monday through Friday, 9:00 a.m.~~[8 a.m.]~~ to 4:00 p.m.~~[4:30 p.m.]~~

TERRY MANUEL, Commissioner

APPROVED BY AGENCY: July 2, 2021

FILED WITH LRC: July 6, 2021 at 11:30 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on September 21, 2021, at 10:00 a.m. Eastern Time at the Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, Commission Room. 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 September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Terry Manuel, Commissioner, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601. phone 502-564-8303. fax 502-564-5773. email Terry.Manuel@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Terry Manuel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the processes for the transfer of public records from a public agency to the Department for Libraries and Archives.

(b) The necessity of this administrative regulation: KRS 171.560 requires the department to promulgate administrative regulations governing the transfer of public records.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 171.560 requires the department to promulgate administrative regulations governing the transfer of public records. This administrative regulation establishes the requirements for the transfer of public records from governmental agencies to the department.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation facilitates the safe storage and permanent retention of public records by establishing procedures for their transfer to the State Archives Center, the State Records Center, or the Kentucky State Digital Archives.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the name of the division, changing it from Public Records Division to Archives and Records Management Division.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure the regulation is current and up-to-date.

(c) How the amendment conforms to the content of the authorizing statutes: The statute requires the department to promulgate administrative regulations governing the transfer of public records.

(d) How the amendment will assist in the effective administration of the statutes: The amendment of this regulation will ensure that agencies have the most complete information in carrying out their records management programs.

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: All state and local government agencies must follow this regulation, as all have a responsibility to establish a sound records management program, including safe storage of records and preservation of records with ongoing historical value.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no new responsibilities added to those already existing for public agencies under this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no new costs added to those already existing for public agencies under this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Agencies who comply with this regulation will recognize more effective and efficient business practices and will document agency history more effectively.

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

(a) Initially: There will be no costs for agencies to implement this regulation. This regulation

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The activities involved in this regulation are already undertaken by public agencies.

(7) Provide an assessment of whether an 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 required increase is projected.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies uniformly to all public agencies.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state and local government entities are required to follow the procedures established in this regulation in order to be compliant with the public records law.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 171.560 requires the department to promulgate administrative regulations governing the transfer of public records.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no net effect on agencies' expenditures and revenues, unless agencies choose to transfer records to the State Records Center. In those cases, the agency will have to pay forty-three cents (\$.43) per cubic foot per month for as long as the box is stored at the State Records Center. Continued good records management results in cost savings for government and in more efficient operation of government.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenues generated for the first year because of this 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? There will be no additional revenues generated for subsequent years because of this regulation.

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

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

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

Revenues (+/-): \$0.00  
Expenditures (+/-): \$0.00  
Other Explanation: N/A

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET**  
**Department for Libraries and Archives**  
**Archives and Records Management Division**  
**(Amendment)**

**725 KAR 1:030. Scheduling public records for retention and disposal; procedures.**

RELATES TO: KRS 171.450

STATUTORY AUTHORITY: KRS 171.450, 171.580

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.450(1)(a) and (b) ~~require~~requires the department to establish procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal and to establish procedures for the disposal or destruction of public records authorized for disposal or destruction. KRS 171.580 authorizes the department to accept for deposit in the State Archives ~~Center~~ the records of any state or local agency that are determined by the department to have sufficient historical or other value ~~to warrant their procedures for the scheduling of public records for retention and disposal and for the uniform destruction of public records~~.

Section 1. State and local agencies shall follow the procedures for scheduling public records for retention and disposal described in Records Retention Scheduling: A Procedural Guide.

Section 2. State and local agencies shall follow the procedures for disposing of eligible public records described in Destruction of Public Records: A Procedural Guide.

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

(a) "Records Retention Scheduling: A Procedural Guide", July 2008; and

(b) "Destruction of Public Records: A Procedural Guide", July 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Archives and Records Management Division~~Public Records Division~~, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, Monday through Friday, 9:00 a.m.~~8 a.m.~~ to 4:00 p.m.~~4:30 p.m.~~

TERRY MANUEL, Commissioner

APPROVED BY AGENCY: July 2, 2021

FILED WITH LRC: July 6, 2021 at 11:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2021, at 10:00 a.m. Eastern Time at the Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, Commission Room. 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 September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Terry Manuel, Commissioner, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601. phone 502-564-8303. fax 502-564-5773. email Terry.Manuel@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Terry Manuel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for compilation of records retention and disposition schedules to be approved for use by state and local agencies for retention and disposition of public records.

(b) The necessity of this administrative regulation: KRS 171.450(1)(a) requires the Department for Libraries and Archives (department) to establish procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal. KRS 171.450(2) requires the department to enforce the provision of KRS 171.410 to 171.740 by promulgating administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 171.450(1)(a) and (b) require the department to establish procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal and for the disposal or destruction of public records authorized for disposal or destruction.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation facilitates the permanent retention, disposal or destruction of public records by establishing the processes for drafting schedules public agency personnel shall use in meeting their responsibilities related to public records management. The retention and dispositions mandated by the State Libraries, Archives, and Records Commission are documented on approved records retention schedules.

(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 language and updates the agency's name from Public Records Division to Archives and Records Management Division.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure the regulation is current and up-to-date.

(c) How the amendment conforms to the content of the authorizing statutes: The statute requires that retention schedules be created for public agency records.

(d) How the amendment will assist in the effective administration of the statutes: The amendment of this regulation will ensure that agencies have the most complete information in carrying out their records management programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state and local government agencies must follow this regulation, as all have a responsibility to dispose of records according to decisions of the State Libraries, Archives, and Records Commission, outlined in the records retention schedules.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no new responsibilities added to those already existing for public agencies under this regulation.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET**  
**Department for Libraries and Archives**  
**Archives and Records Management Division**  
**(Amendment)**

**725 KAR 1:040. Collection and distribution of reports and publications.**

RELATES TO: KRS 171.500

STATUTORY AUTHORITY: KRS 171.450

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.450

requires the department to establish procedures for collection and distribution by the central depository of all reports and publications issued by any department, board, commission, officer or other agency of the commonwealth for general public distribution. This administrative regulation establishes collection and distribution procedures for reports and publications.

Section 1. Definitions. (1) "Department" is defined in KRS 171.410(2).

(2) "Division" is Archives and Records Management Division~~[Public Records Division]~~ in the Department for Libraries and Archives.[]

~~(3) "Nonstate publication" means a brochure, public agency press release, internal procedure manual, internal newsletter, inter- and intraoffice correspondence and memorandum, and material designated by law as confidential.~~

~~(4) "Publication number" means a unique identifier assigned to state publications in the department's collection.~~

~~(3) [(5)]~~ "Records officer" is the public agency employee who represents that~~his~~ unit of government in its relations with the division, as defined in 725 KAR 1:010.

~~(4) [(6)]~~ "State publication" means a publication in any format that is produced by the authority of, or at the total or partial expense of, a state agency, and is required to be distributed under law by the agency, is publicly distributed outside the agency,~~[-or]~~ is displayed on a public agency website,~~[Web site]~~ or is made available electronically by any other means.

Section 2. (1) The records officer of each agency or department of state government shall be responsible for depositing with the Department for Libraries and Archives, Archives and Records Management Division~~[Public Records Division]~~, three (3) copies of each report and publication issued on paper by that agency for general public distribution or one (1) electronic copy. Publications shall be forwarded to the division on the date of issue.

(2) The records officer of each agency shall be responsible for depositing with the division one (1) copy of each state publication held in electronic format or issued for general public distribution on the agency's Web site. Publications shall be forwarded to the division on the date of issue. Agencies shall forward electronic publications to the division in Adobe Portable Document Format (PDF)~~[-, as attachments to an email message, or as documents on a disc]~~. Agencies shall follow the guidelines contained in Kentucky Information Technology Standards (KITS)~~["Enterprise Standards: 2000 Software Domain Category: 2330 Electronic Documents: NonAlterable."]~~

Section 3. (1) Each agency shall notify the division in writing of the name of its records officer, as the agency employee who represents that~~his~~ unit of government in its relations with the division, within thirty (30) days after the effective date of this administrative regulation and upon any change of that personnel thereafter. The records officer shall furnish the division in writing with a complete list of the agency's current state publications in all formats, annually, at the end of each fiscal year, and upon request.

(2) If a records officer is unsure whether particular published material constitutes a state publication, the records officer may consult the Archives and Records Management Division~~[division's coordinator of state publications]~~.

Section 4. (1) Once submitted, state publications in all formats shall be reviewed for addition to the State Publications Collection

(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 new costs added to those already existing for public agencies under this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Agencies who comply with this regulation will recognize more effective and efficient business practices, will recognize cost savings from reduced records storage costs, and will document agency history more effectively.

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

(a) Initially: There will be no costs for agencies to implement this regulation. This regulation

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The activities involved in this regulation are already undertaken by public agencies.

(7) Provide an assessment of whether an 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 required increase is projected.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies uniformly to all public agencies.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state and local government entities are required to use the appropriate documents enumerated in this regulation in order to be compliant with the public records law.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 171.450(1)(a) requires the department to establish procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no net effect on agencies' expenditures and revenues. Continued good records management results in cost savings for government and a more efficient operation of government.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenues generated for the first year because of this 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? There will be no additional revenues generated for subsequent years because of this regulation.

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

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

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

Revenues (+/-): \$0.00  
 Expenditures (+/-): \$0.00  
 Other Explanation: N/A

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at the department. Nonstate publications or paper copies in excess of the required three (3) shall be discarded.

(2) Once added to the State Publications Collection, publications shall be [assigned a publication number and] listed on the department's Web site for general public access.

~~Section 5. Incorporation by Reference. (1) "Enterprise Standards: 2000 Software Domain Category: 2330 Electronic Documents: Non-Alterable" is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:00 p.m. 4:30 p.m.~~

TERRY MANUEL, Commissioner

APPROVED BY AGENCY: July 2, 2021

FILED WITH LRC: July 6, 2021 at 11:30 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on September 21, 2021, at 10:00 a.m. Eastern Time at the Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, Commission Room. 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 September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Terry Manuel, Commissioner, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601. phone 502-564-8303. fax 502-564-5773. email Terry.Manuel@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Terry Manuel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the transfer of reports and publications from agencies to the Department for Libraries and Archives.

(b) The necessity of this administrative regulation: KRS 171.450 requires the department to establish procedures for collection and distribution by the central depository of all reports and publications issued by any department, board, commission, officer or other agency of the commonwealth for general public distribution.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 171.450 requires the department to establish procedures for collection and distribution by the central depository of all reports and publications issued by any department, board, commission, officer or other agency of the commonwealth for general public distribution. This administrative regulation establishes collection and distribution procedures for reports and publications.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation facilitates the transfer of reports and publications from agencies to the Department for Libraries and Archives as required in KRS 171.500.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the name of the division and brings requirements into line with current practice.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure the regulation is current and up-to-date.

(c) How the amendment conforms to the content of the authorizing statutes: The statute requires that reports and publications be transferred, and that the Department for Libraries and Archives promulgate regulations establishing transfer procedures.

(d) How the amendment will assist in the effective administration of the statutes: The amendment of this regulation will ensure that agencies have the most complete information in carrying out their records management programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state and local government agencies must follow this regulation, as all have a responsibility to transfer reports and publications to the Department for Libraries and Archives.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no new responsibilities added to those already existing for public agencies under this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no new costs added to those already existing for public agencies under this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Agencies who comply with this regulation will comply with the law and will document agency history more effectively.

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

(a) Initially: There will be no costs for agencies to implement this regulation. This regulation

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The activities involved in this regulation are already undertaken by public agencies.

(7) Provide an assessment of whether an 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 required increase is projected.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies uniformly to all public agencies.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state and local government entities are required to transfer reports and publications to the Department for Libraries and Archives.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 171.450 requires the department to establish procedures for collection and distribution by the central depository of all reports and publications issued by any department, board, commission, officer or other agency of the commonwealth for general public distribution.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no net effect on agencies' expenditures and revenues. Continued good records management results in cost savings for government and a more efficient operation of government.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,

fire departments, or school districts) for the first year? There will be no additional revenues generated for the first year because of this 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? There will be no additional revenues generated for subsequent years because of this regulation.

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

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

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

Revenues (+/-): \$0.00  
Expenditures (+/-): \$0.00  
Other Explanation: N/A

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET**  
**Department for Libraries and Archives**  
**Archives and Records Management Division**  
**(Amendment)**

**725 KAR 1:050. Records management program.**

RELATES TO: KRS Chapter 171  
STATUTORY AUTHORITY: KRS 171.450(2), 171.520  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.450(2) requires that the department shall enforce the provisions of KRS 171.410 to 171.740 by appropriate rules and administrative regulations. KRS 171.520 requires the department to prescribe the policies and principles to be followed by state and local agencies in the conduct of their records management programs; to ensure the maintenance and security of records deemed appropriate for preservation; to facilitate the segregation and disposal of records of temporary value and to promote the effective and economical use of space, equipment and supplies needed for the purpose of creating, maintaining, and servicing records. KRS 171.520 also authorizes the department to administer and grant any money appropriated to it for providing and improving records management programs of state and local agencies. This [proposed] administrative regulation is to assure uniform policies in the administration of grants to local governments for the improvement of records management programs.

Section 1. Eligibility of Applicants. Any local government office interested in improving the management and preservation of its public records may apply for a grant under the local records program by completing application forms available through the department. For the purposes of this program, a local government office should conform to the definition of "public agency" as cited in KRS 61.870(1).

Section 2. Application Procedures. All applications must be submitted on the official application form and include a detailed project description, plan of work, and budget request. Entries on the application form and any required supporting documents should be typed and completed as fully as possible, with additional sheets attached if necessary. In signing the application and in accepting a grant award, applicants agree, in carrying out their projects, to abide by specific conditions set by the department.

Section 3. Categories for Funding. Any project which seeks to improve the management and preservation of local public records will be considered. Categories for funding include, but are not limited to:

(1) Security microfilming vital (critical for the functioning of the office) or historically significant records using Archives and

Records Management Division[~~Public Records Division~~] standards. Security microfilming carried out with local records grant funds must be done through a micrographics laboratory or vendor[~~service bureau~~] certified by the department and officially recognized by the State Libraries, Archives, and Records Commission[~~State Archives and Records Commission~~]. A list of the names of currently certified laboratories or vendors can be obtained from the department.

(2) Rerecording projects, for rerecording damaged records or records[~~originally recorded with a nonpermanent process and~~] now losing their image, using archivally acceptable methods of recording on paper or microfilm.

(3) Document preservation projects, to carry out preservation or conservation measures on endangered records of major historical significance.

(4) Purchasing document conservation supplies.

(5) Establishing a local government records management program or archives. This could include hiring or partially subsidizing the salary of a qualified archivist who will work with department personnel in initiating a specific, time-limited project according to department standards. Requests for salary support will be evaluated on a case-by-case basis. Such funds are not designed for ongoing support, and they cannot be used to re-place salary funds already being expended by the local government. They can be used as short term salary supplements.

(6) Arranging and describing archival holdings, according to standards and/or formats approved by the department.

(7) Purchasing supplies and equipment which promote preservation of or access to archival materials, including acid-free boxes and folders, shelving, and cabinets, [~~and equipment to read microfilm.~~]

~~(8) Improving storage conditions, rehabilitating storage areas, installing physical security systems, or providing for adequate environmental conditions in areas where records are stored.]~~

~~(8) [(9)]~~ Codification of ordinances for cities and counties, using a codification services vendor approved by the department. Funds are available for production of initial codes but not for code supplements.

Section 4. Grant Award Periods. Grants are awarded on a state fiscal year basis, and applicants are encouraged to design projects which can be completed during that period. Applicants with longer term needs are encouraged to identify phases into which their projects can conveniently be divided, and they are urged to carry out their work in stages, each of which could be eligible for grant support in future grant cycles, pending satisfactory completion of each stage.

Section 5. Grant Review and Evaluation. Applications are reviewed by the Local Records Grant Review Committee and the State Libraries, Archives, and Records Commission[~~State Archives and Records Commission~~]. Recommendations of these groups are forwarded to the commissioner of the department, who makes the final decision on grant awards.

Section 6. Grant Review Criteria. In reviewing applications and recommending the funding of specific projects, reviewers judge the projects by criteria which may include the following:

(1) Urgency of the problem, significance and age of the records. The commission and other evaluation groups will pay special attention to those local government applicants with critical records problems and to those with older records and with chronologically complete groupings of records.

(2) Value as a model and type for size and geographical location of the local government. The program strives to assure equity in the geographic distribution of grant projects. The program includes projects in various types and sizes of local governments, and a major goal is to provide model projects in all areas of the state.

(3) Soundness of the proposed methods. The methods of handling the records should conform to generally accepted professional standards of records management and archival theory and practice.

(4) Commitment of local government resources to the project. The commission and other evaluation groups will give preference to



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local governments which commit some local resources to the proposed projects. Such support might take the form of adequate office, storage, or working space; personnel; supplies; equipment; or a monetary contribution. Evidence of previous concern or commitment of support to improved local records management and preservation will also be important factors in the reviewers' evaluation.

(5) Commitment by the local government to maintain the ~~program~~~~[pre-program]~~ or the lasting benefit of a specific project. This could include provisions for maintaining the accuracy and currency of a grant-funded code of ordinances with annual supplements, providing adequate storage space, designating of a person or persons responsible for maintaining and adding to a local archives, adhering to all standards for archival microfilming, or being willing to assume the cost of future security microfilming of relevant records.

(6) Adequate security and protection of records. Local governments should house records in secure, fire resistant facilities, or should state how the proposed project will safeguard the records in question. Applicants should take into account the requirements of KRS 171.710 regarding the safeguarding of public records.

(7) Compliance with all legal requirements regarding custody and public access. This would include complying with the requirements of the state's Open Records Law (KRS 61.870-876) and providing access to the general public in an area with proper security and supervision.

(8) Commitment by the local government to a comprehensive records management program. This would include regular legal disposition of ~~[obsolete]~~ records in accordance~~[accord]~~ with the records retention~~[control]~~ schedules covering the records of a local government agency, and might also include files control, segregation of inactive or noncurrent material from active files, selective microfilming (where appropriate), and training of records personnel in records management techniques.

Section 7. Local governments which are awarded grants shall enter into a grant contract~~[agreement]~~ with the department which shall specify performance and reporting requirements. Failure to fulfill the requirements can result in the return of the grant to the department.

Section 8. Selection of Codification Services Vendors. The department, in approving established codification services vendors to participate in codification work funded with local records grants, wants to ensure~~[insure]~~ that basic criteria and professional standards are met. Criteria which may include, but are not limited to, the following are used as essential measures to approve prospective codification services vendors:

(1) Corporate stability and/or a history of reliable service, preferably to client governments in Kentucky.

(2) Experienced legal and editorial staff conversant with local government law and the technical and editorial requirements which must be met in producing accurate, usable codes of ordinances.

(3) Access to online~~[on-line]~~ statutory databases~~[data-bases]~~.~~[~~

~~(4) Modern word processing or computer-assisted composition and typesetting capacity.]~~

~~(4) [(5) The ability to provide code supplement services on a continuing basis, through the use of subsection (4) of this section].~~ Applications from prospective codification services vendors are reviewed by an ad hoc advisory committee to the State Libraries, Archives, and Records Commission~~[State Archives and Records Commission]~~.

TERRY MANUEL, Commissioner

APPROVED BY AGENCY: July 2, 2021

FILED WITH LRC: July 6, 2021 at 11:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2021, at 10:00 a.m. Eastern Time at the Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, Commission Room. 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 September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Terry Manuel, Commissioner, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601. phone 502-564-8303. fax 502-564-5773. email Terry.Manuel@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Terry Manuel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation outlines how the Department for Libraries and Archives will provide state and local agencies records management policies and guidelines, help ensure the maintenance and security of records and the proper retention and disposal of non-permanent records, and administer grant money to state and local agencies.

(b) The necessity of this administrative regulation: KRS 171.450 requires the department to enforce the provisions of 171.410 to 171.740 and KRS 171.520 requires the department to prescribe records management policies and principles for state and local agencies. KRS 171.520 authorizes the department to administer grant money to state and local agencies to improve records management programs. This administrative regulation will assure uniform policies in the administration of the grants to local governments.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 171.680 requires agencies to implement a sound and ongoing records management program, and to cooperate with the Department for Libraries and Archives in doing so. This regulation facilitates that cooperation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation facilitates cooperation between state and local government agencies and the Department for Libraries and Archives in implementing effective and efficient records management programs at agencies. It assures uniform policies in the administration of grants to local governments.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the responsibilities if the department in the administration of records management programs and the administration of grant money. It updates the name of the Archives and Records Management Division.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure the regulation is current and up-to-date.

(c) How the amendment conforms to the content of the authorizing statutes: The statute facilitates the establishment of records management programs by the department and the administration of grant money.

(d) How the amendment will assist in the effective administration of the statutes: The amendment of this regulation will ensure that agencies have the most complete information in carrying out their records management programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state and local government agencies must follow this regulation, as all have a responsibility to implement ongoing records management programs.

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

amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no new responsibilities added to those already existing for public agencies under this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no new costs added to those already existing for public agencies under this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Agencies who comply with this regulation will recognize more effective and efficient business practices, will recognize cost savings from reduced records storage costs, and will document agency history more effectively.

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

(a) Initially: There will be no costs for agencies to implement this regulation. This regulation

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The activities involved in this regulation are already undertaken by public agencies.

(7) Provide an assessment of whether an 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 required increase is projected.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies uniformly to all public agencies.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state and local government entities are required to follow records management guidelines made by the department enumerated in this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 171.680(2)(b) requires agencies to cooperate with the Department for Libraries and Archives in managing its records. This regulation facilitates that cooperation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no net effect on agencies' expenditures and revenues. Continued good records management results in cost savings for government and a more efficient operation of government.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenues generated for the first year because of this 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? There will be no additional revenues generated for subsequent years because of this regulation.

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

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

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

Revenues (+/-): \$0.00  
Expenditures (+/-): \$0.00  
Other Explanation: N/A

#### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department for Libraries and Archives Archives and Records Management Division (Amendment)

#### 725 KAR 1:061. Records retention schedules; authorized schedules.

RELATES TO: KRS 171.420(3), 171.450

STATUTORY AUTHORITY: KRS 171.450

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.420(3) provides that the State Libraries, Archives, and Records Commission~~[State Archives and Records Commission]~~ shall be the final authority for the disposition of all public records in Kentucky. KRS 171.450(1)(a) requires the department to establish procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal. KRS 171.450(2) requires the department to promulgate administrative regulations to enforce the provision of KRS 171.410 to 171.740. This administrative regulation identifies records retention and disposition schedules approved by the commission that state and local agencies shall follow for retention and disposition of public records.

Section 1. Schedules. (1) A Kentucky state government agency shall comply with:

(a) Records Retention Schedule, General Schedule for State Agencies;

(b) Records Retention Schedule, General Schedule for Electronic and Related Records; and

(c) The approved applicable schedule for the specific agency from among the following:

1. Records Retention Schedule, Department of Agriculture;
2. Records Retention Schedule, Auditor of Public Accounts;
3. Records Retention Schedule, Economic Development Cabinet;
4. Records Retention Schedule, Education and Workforce Development Cabinet;
5. Records Retention Schedule, Energy and Environment Cabinet;
6. Records Retention Schedule, Finance and Administration Cabinet;
7. Records Retention Schedule, General Government;
8. Records Retention Schedule, Office of the Governor;
9. Records Retention Schedule, Cabinet for Health and Family Services;
10. Records Retention Schedule, Justice and Public Safety Cabinet;
11. Records Retention Schedule, Department of Law;
12. Records Retention Schedule, Labor Cabinet;
13. Records Retention Schedule, Legislative Branch;
14. Records Retention Schedule, Office of the Lieutenant Governor;
15. Records Retention Schedule, Personnel Cabinet;
16. Records Retention Schedule, Public Protection Cabinet;
17. Records Retention Schedule, Office of the Secretary of State;
18. Records Retention Schedule, Tourism, Arts and Heritage Cabinet;
19. Records Retention Schedule, Transportation Cabinet; or
20. Records Retention Schedule, Department of the Treasury.

(2) State universities and the Kentucky Community and Technical College System shall comply with the Records Retention Schedule, State University Model.

(3) Kentucky local government agencies shall comply with:

(a) Records Retention Schedule, Local Government General Records Schedule;

(b) Records Retention Schedule, General Schedule for

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Electronic and Related Records; and

(c) The approved applicable schedule for the specific agency from among the following:

1. Records Retention Schedule, Area Development District;
2. Records Retention Schedule, County Attorney;
3. Records Retention Schedule, County Clerk;
4. Records Retention Schedule, County Coroner;
5. Records Retention Schedule, County Judge Executive;
6. Records Retention Schedule, County Sheriff;
7. Records Retention Schedule, County Treasurer;
8. Records Retention Schedule, County Jailer;
9. Records Retention Schedule, Lexington Fayette Urban County Government;
10. Records Retention Schedule, Public Library and Library Board;
11. Records Retention Schedule, Local Health Department;
12. Records Retention Schedule, Louisville Metro Government;
13. Records Retention Schedule, Municipal Government;
14. Records Retention Schedule, Public School District (K-12/Central Office); or
15. Records Retention Schedule, Kenton County Airport Board.

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

- (a) "Records Retention Schedule, General Schedule for State Agencies", 2014;
- (b) "Records Retention Schedule, General Schedule for Electronic and Related Records", 2014;
- (c) "Records Retention Schedule, Department of Agriculture", 2014;
- (d) "Records Retention Schedule, Auditor of Public Accounts[~~Ac-counts~~]", 2014;
- (e) "Records Retention Schedule, Economic Development Cabinet", 2014;
- (f) "Records Retention Schedule, Education and Workforce Development Cabinet", 2014;
- (g) "Records Retention Schedule, Energy and Environment Cabinet", 2014;
- (h) "Records Retention Schedule, Finance and Administration Cabinet", 2014;
- (i) "Records Retention Schedule, General Government", 2014;
- (j) "Records Retention Schedule, Office of the Governor", 2014;
- (k) "Records Retention Schedule, Cabinet for Health and Family Services", 2014;
- (l) "Records Retention Schedule, Justice and Public Safety Cabinet", 2014;
- (m) "Records Retention Schedule, Department of Law", 2014;
- (n) "Records Retention Schedule, Labor Cabinet", 2014;
- (o) "Records Retention Schedule, Legislative Branch", 2014;
- (p) "Records Retention Schedule, Office of the Lieutenant Governor", 2014;
- (q) "Records Retention Schedule, Personnel Cabinet", 2014;
- (r) "Records Retention Schedule, Public Protection Cabinet", 2014;
- (s) "Records Retention Schedule, Office of the Secretary of State", 2014;
- (t) "Records Retention Schedule, Tourism, Arts and Heritage Cabinet", 2014;
- (u) "Records Retention Schedule, Transportation Cabinet", 2014;
- (v) "Records Retention Schedule, Department of the Treasury", 2014;
- (w) "Records Retention Schedule, State University Model", 2014;
- (x) "Records Retention Schedule, Local Government General Records Schedule", 2014;
- (y) "Records Retention Schedule, Area Development District", 2014;
- (z) "Records Retention Schedule, County Attorney", 2014;
- (aa) "Records Retention Schedule, County Clerk", 2014;
- (bb) "Records Retention Schedule, County Coroner", 2014;

- (cc) "Records Retention Schedule, County Judge Executive", 2014;
- (dd) "Records Retention Schedule, County Sheriff", 2014;
- (ee) "Records Retention Schedule, County Treasurer", 2014;
- (ff) "Records Retention Schedule, County Jailer", 2014;
- (gg) "Records Retention Schedule, Lexington Fayette Urban County Government", 2014;
- (hh) "Records Retention Schedule, Public Library and Library Board", 2014;
- (ii) "Records Retention Schedule, Local Health Department", 2014;
- (jj) "Records Retention Schedule, Louisville Metro Government", 2014;
- (kk) "Records Retention Schedule, Municipal Government", 2014;
- (ll) "Records Retention Schedule, Public School District (K-12/Central Office)", 2014; and
- (mm) "Records Retention Schedule, Kenton County Airport Board", 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Archives and Records Management Division, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, Monday through Friday, 9:00 a.m.[~~8 a.m.~~] to 4:00 p.m.[~~4:30 p.m.~~]

TERRY MANUEL, Commissioner

APPROVED BY AGENCY: July 2, 2021

FILED WITH LRC: July 6, 2021 at 11:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2021, at 10:00 a.m. Eastern Time at the Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, Commission Room. 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 September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact person: Terry Manuel, Commissioner, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601. Phone 502-564-8303. Fax: 502-564-5773. Email: Terry.Manuel@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Terry Manuel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies records retention and disposition schedules approved for use by state and local agencies for retention and disposition of public records.

(b) The necessity of this administrative regulation: KRS 171.450(1)(a) requires the Department for Libraries and Archives (department) to establish procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal. KRS 171.450(2) requires the department to enforce the provision of KRS 171.410 to 171.740 by promulgating administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 171.450(1)(a) and (b) require the department to establish procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal or destruction of public records authorized for disposal or destruction. This regulation identifies those schedules.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation facilitates the permanent retention, disposal, or destruction of public records by identifying schedules public agency personnel shall use in meeting their responsibilities related to public records management. The retention and dispositions mandated by the State Libraries, Archives, and Records Commission are documented on approved records retention schedules.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates agency names, document titles, and retention decisions.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure the regulation is current and up-to-date.

(c) How the amendment conforms to the content of the authorizing statutes: The statute requires that schedules be created for public agency records.

(d) How the amendment will assist in the effective administration of the statutes: The amendment of this regulation will ensure that agencies have the most complete information in carrying out their records management programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state and local government agencies must follow this regulation, as all have a responsibility to dispose of records according to decisions of the State, Archives, and Records Commission, outlined in the records retention schedule.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no new responsibilities added to those already existing for public agencies under this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no new costs added to those already existing for public agencies under this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Agencies who comply with this regulation will recognize more effective and efficient business practices, will recognize cost savings from reduced records storage costs, and will document history more effectively.

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

(a) Initially: There will be no costs for agencies to implement this regulation. This regulation merely identifies schedules utilized in activities agencies are undertaking already.

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The activities involved in this regulation are already undertaken by public agencies.

(7) Provide an assessment of whether an 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 required increase is projected.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies uniformly to all public agencies.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state and local government entities are required to use the appropriate documents enumerated in this regulation in order to be compliant with the public

records law.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 171.450(1)(a) requires the department to establish procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no net effect on agencies' expenditures and revenues. Continued good records management results in cost savings for government and a more efficient operation of government.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenues generated for the first year because of this 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? There will be no additional revenues generated for subsequent years because of this regulation.

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

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

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

Revenues (+/-): \$0.00  
Expenditures (+/-): \$0.00  
Other Explanation: N/A

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Department for Libraries and Archives  
Division of Library Services  
(Amendment)**

**725 KAR 2:015. Public library facilities construction.**

RELATES TO: KRS Chapter 13B, 171.027, 171.125, 173.040, 173.340, 173.480, 173.725, 198B.032 [498B-020], 198B.050, 227.300, 322.010(3), 323.010(1), (2), 323.020, Chapters 341, 342, 344, 42 U.S.C. 12101

STATUTORY AUTHORITY: KRS 171.027

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.027 establishes The Public Library Facilities Construction Fund to assist local public libraries and other governing bodies in debt service payments relating to library construction or renovation projects. KRS 171.027 requires the Department for Libraries and Archives to promulgate administrative regulations to establish: (1) the application process; (2) the criteria for project selection; (3) the minimum level of local participation required; and (4) the process to be followed in the construction of facilities. This administrative regulation: (1) defines terms; (2) states general requirements for eligibility; (3) establishes application procedures for the applicant and the department; (4) establishes the construction process; and (5) provides for the payment of funds.

Section 1. Definitions. (1) "Application packet" means the packet of materials KDLA sends to each applicant library, containing:

- (a) A copy of the MOA currently being used;
  - (b) A copy of this administrative regulation;
  - (c) The criteria used to determine minimum matching requirements; and
  - (d) Other relevant material needed for completion of an application for assistance.
- (2) "Architect" is defined by KRS 323.010(2).

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(3) "Available local revenue" means, as determined by the public library and approved by KDLA, the annual local funds available to pay down debt, not expected to decrease the level of normal and customary programs and services offered by the public library.

(4) "Award of assistance" means the annual grant payment awarded, for a period of not more than twenty (20) years, to a local public library to pay down debt incurred to construct or renovate a local public library facility.

(5) "Construction grant coordinator" means a [specialized] consultant designated [employed] by KDLA for the purpose of coordinating and consulting with Kentucky public libraries on construction grant issues.

(6) "Engineer" means "professional engineer" as defined by KRS 322.010(3).

(7) "KDLA" means the Kentucky Department for Libraries and Archives.

(8) "Local board" means:

(a) The local public library board of trustees established under KRS 173.040, 173.340, 173.480, or 173.725; or

(b) The official local governing body responsible for the operations of a local public library.

(9) "MOA" or "memorandum of agreement" means the written, long-term agreement between KDLA and a library awarding a PLFC Fund Grant to pay down debt incurred to finance a library facilities construction or renovation project, including each term and condition agreed to and stipulated by each party on the memorandum of agreement.

(10) "PLFC fund grant" means the annual grant awarded by KDLA, over a period of not more than twenty (20) years, to a local public library or governing body to assist in the payment of debt incurred to construct or renovate local public library facilities.

(11) "Public library" is defined by KRS 171.125(2).

(12) "Punch list" means an inventory of work that remains to be completed and signed by the owner, the architect, and the contractor, to show that they agree the items on the list represent the work that remains to be done.

(13) "Responsible bidder" means a person, business, or organization that has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

(14) "State librarian" means the official described at KRS 171.130.

(15) "Written building program" means a textual description, often in bullet-point form, of the proposed facility and the spaces within the facility. It will delineate square footages, building systems, building materials & finishes, space adjacencies, utility & data requirements, furniture needs, collection spaces, etc.

Section 2. Stipulations and Conditions. (1) A public library building shall be constructed in compliance with the following:

(a) Uniform State Building Code, KRS 198B.050, as administered by the Kentucky Office of Housing, Buildings and Construction, KRS 198B.032 [~~198B.029~~];

(b) Standards of Safety related to fire prevention and protection, KRS 227.300;

(c) The Americans With Disabilities Act of 1990, 42 U.S.C. 12101;

(d) Workers' Compensation and Unemployment Insurance, KRS Chapters 341 and 342; and

(e) ~~State Prevailing Wage Law, KRS 337.505 through 337.550; and~~

(e) [(f)] The Civil Rights Act, KRS Chapter 344.

(2) The local board of a public library applying for assistance from the PLFC fund shall comply with the following KDLA requirements:

(a) A building or renovation shall be planned, and construction shall be supervised by an architect or engineer whose credentials have been confirmed by KDLA.

(b) A contract for an architectural or construction service shall be in a standard form used by the American Institute of Architects[.]. Information about American Institute of Architects forms and where they may be obtained is available on the

Institute's Web site [~~www.aia.org~~] and on the Web site of the Kentucky Society of the American Institute of Architects[~~www.aia-ky.org~~]. An architect shall maintain professional liability insurance, including errors and omission insurance, in accordance with the limits set forth in the construction grant contract.

(c) Each plan and site selected for construction shall be approved by KDLA.

(d) The site and facility shall be owned by the local board. KDLA shall approve an alternative facility ownership or use arrangement if it is determined by KDLA to be in the best interest of the state, the local board, and the population served by that library. An applicant shall request KDLA approval for a proposed site prior to purchasing the site. A letter indicating approval or disapproval shall be sent to the local board by KDLA. Property not approved shall be ineligible for construction funds. A building owned by a local county or city government shall be approved if an authoritative letter is obtained establishing the local board's right of possession and use of the building for at least twenty (20) years.

(e) Purchase of an existing building for conversion to library use shall qualify for a PLFC fund grant if:

1. A structural engineer or architect certifies that the building is structurally sound and suitable for conversion;

2. The existing building is of open construction, supportive of a functionally flexible library; and

3. The service and economic considerations for conversion outweigh the service and economic considerations for construction of a new building.

(f) A library building constructed using KDLA funds shall:

1. Remain open to the public; and

2. Maintain appropriately-qualified library personnel.

(g) An application shall include:

1. A written building program; and

2. A current long-range plan.

(h) A project shall:

1. Demonstrate a plan for future growth; and

2.a. Meet KDLA minimum standards for a public library facility;

or

b. Be included in a countywide master facility plan designed to meet KDLA minimum standards within a reasonable time, with reference to the Kentucky State Data Center's ten (10) year median population projection.

(i) A local board shall provide free countywide library services, without discrimination, to the citizens of the county in which the public library facility is located.

Section 3. Application for Assistance. (1) Preceding each fiscal year [~~Each fall preceding a fiscal year~~] that funding is available through the PLFC fund, KDLA shall distribute an "Intent to Apply" notice to every public library in the Commonwealth. A library intending to apply for assistance for the following fiscal year shall submit to KDLA a Notification of Intent to Apply.

(2) KDLA shall send the following to each public library requesting fund assistance:

(a) Notification of the amount of funds available for PLFC grants; and

(b) An application packet.

(3) An incomplete or late application shall not be considered unless the delay will not interfere with the awarding of the PLFC grants and there is a documented, unusual circumstance.

(4) An unusual circumstance shall include a delay by a third party in certifying that the proposed site is not located [~~on a historic site, or~~] in a flood plain[.], or other documented circumstance beyond the control of the local board.

Section 4. Review of Applications for Assistance From the PLFC Fund. (1) KDLA shall establish a construction review committee to:

(a) Review applications; and

(b) Recommend to the state librarian the applicants considered eligible for a PLFC fund award.

(2) The committee shall be composed of five (5) members, as follows:

(a) The state librarian shall appoint two (2) Division of Library

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~~Services [Field Services Division]~~ consultants, to serve a term of one (1) year;

(b) The state librarian ~~[Director of Field Services]~~ shall appoint two (2) members each of whom has been involved, within the previous eight (8) years, in the completion of a building project valued at a minimum of \$500,000. Each member shall be a:

1. Library director;
2. Trustee; or
3. Staff member;

(c) The construction grant coordinator shall serve:

1. For the duration of his or her position; and
2. As nonvoting chair of the committee; and

(d) The state librarian ~~[Director of Field Services]~~ shall appoint a replacement for a member unable to complete his or her term.

(3) KDLA shall establish:

- (a) Procedures for the construction review committee; and
- (b) A ranking system for the PLFC fund award.

(4) The criteria for award shall be:

(a) Need:

1. Assessment of existing facilities and service;
2. Analysis of population data;
3. Minimum square footage;
4. Available local revenue; and

~~5. General policies established for state assistance under the Public Library Services Improvement and Equalization Fund; and~~

~~5. [6.] State library and library association standards.~~

(b) Planning: the extent to which the proposed facility addresses the applicant library's long-range plan for services.

(c) Partnerships: the extent to which the project strengthens the applicant library's relationship with other organizations in the service area.

(d) Project budget: the ~~[The]~~ extent to which the applicant library's project budget addresses anticipated expenditures, including at least five (5) percent for contingency.

(e) Local contribution to the annual debt retirement shall be as follows: ~~[match, if required: the extent to which the local board of a county with adequate income to qualify for matching assistance under the PLFC fund shows funds available to match the state award and to complete the project.]~~

1. For applicant libraries with annual revenue from all sources of less than one hundred thousand dollars (\$100,000), a minimum yearly contribution to the annual debt retirement payments for this project shall be one thousand dollars (\$1,000);

2. For applicant libraries with annual revenue from all sources of at least one hundred thousand dollars (\$100,000) but less than five hundred thousand dollars (\$500,000), a minimum yearly contribution to the annual debt retirement payments for this project shall be ten thousand dollars (\$10,000); or

3. For applicant libraries with annual revenue from all sources of five hundred thousand dollars (\$500,000) or greater, a minimum yearly contribution to the annual debt retirement payments for this project shall be thirty thousand dollars (\$30,000).

(f) Sustainability: the extent to which the local board can realistically afford to operate the proposed project.

(g) Completeness of application: the extent to which the applicant library has fairly and accurately provided required information on the application form.

(h) Timeliness of meeting required reporting deadlines: the extent to which the applicant library has filed the KDLA annual report and Department for Local Government reports on or before the designated deadlines in the past two (2) years.

(5) The state librarian shall take one (1) of the following actions, based on the recommendation of the construction review committee:

(a) Approve the application and offer an award of assistance;

(b) Approve the application at a reduced level or based upon funds availability;

(c) Approve the application with restrictive conditions; or

(d) Reject the application.

(6) KDLA shall notify each applicant, in writing, of the result of the state librarian's action approving or rejecting the application.

Section 5. Informal Appeals. (1) An applicant aggrieved by a

decision of the state librarian may file an informal appeal with KDLA.

(2) Procedures.

(a) The local board shall notify KDLA of its intent to appeal:

1. Within twenty-one (21) days of the date of the letter of notification;

2. In writing;

3. Stating the basis for appeal; and

4. By registered mail to the state librarian, return receipt requested.

(b) Upon receipt of a notice of intent to appeal, the state librarian shall:

1. Convene a board of appeals composed of three (3) members. The board shall be composed of: ~~[one (1) each having been nominated by:]~~

a. One (1) public library user nominated by the State Libraries, Archives, and Records Commission; ~~[The State Advisory Council on Libraries;]~~

b. One (1) public library director nominated by the Kentucky Public Library Association; and ~~[The Kentucky Library Association; and]~~

c. One (1) certified public library trustee nominated by the State Board for the Certification of Librarians; and ~~[The Trustees Round Table; and]~~

2. Designate one (1) of the appointees to serve as chair.

(c) The board of appeals shall notify the appellant and the state librarian, in writing, of the date and place of the hearing. Within twenty-one (21) calendar days after the hearing the appeals board shall notify the state librarian and the local board of its recommendation.

(d) The state librarian shall consider the recommendation of the appeals board and shall, within fourteen (14) calendar days of receipt, either adopt the recommendation without comment or adopt the recommendation with modifications. If the appeals board's decision is modified, the state librarian shall provide a written explanation of the rationale for the modifications to the libraries impacted by the decision. ~~[render a final decision.]~~

(3) A party aggrieved by a final decision of the state librarian may file a formal appeal in accordance with KRS Chapter 13B.

Section 6. Award of Assistance. (1) The state librarian shall notify each eligible library of:

(a) The amount of assistance it will receive; and

(b) The requirements to be met in order to accept the award.

(2) ~~[KDLA may make an award to a public library as long as the total of all awards of assistance do not exceed the amount of PLFC funding that is available. An award of assistance shall be subject to availability of funds appropriated for this purpose in each biennium.~~

(3) Within thirty (30) days of receipt of notice of the award, the public library board shall notify KDLA of acceptance or rejection of the award of assistance. A public library not responding within thirty (30) days shall be declared ineligible and the award of assistance withdrawn and redistributed to the eligible recipients. Upon written request within the original thirty (30) day period, the state librarian may grant a single thirty (30) day extension if extenuating circumstances exist. Extenuating circumstances include problems with:

(a) Finalizing the terms of financing;

(b) Obtaining title to the property;

(c) Obtaining surveys of the property; and

(d) Similar circumstances beyond the control of the local board.

Section 7. Procedures After Acceptance. (1) After a local board decides to accept an award of assistance, the local board shall:

(a) Establish a building committee, the meetings of which shall be attended by the regional librarian and the construction grant coordinator, if possible; and

(b) Complete the following:

1. An agreed-upon MOA between KDLA and the local board, signed by both;

2. The building committee membership list and schedule of meeting dates;

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3. Holding company contract, if needed;
4. Construction plans approved by KDLA; and
5. Other documentation as specified by KDLA such as financial documents and engineering reports necessary to ensure compliance with this administrative regulation.

~~(2) Files for the project shall be kept at KDLA as directed in the appropriate public record retention schedule.]~~

~~(2) [(3)] Funds for projects receiving assistance shall be distributed according to a payment and reporting schedule contained in the MOA between KDLA and the local board.~~

Section 8. Construction Procedures. (1) The local board shall retain an attorney to act as advisor on contracts and other legal matters during the term of the construction project.]

~~(2) The project architect shall submit, to the U.S. Department of Labor, a list of construction trades that may be involved in order to establish the wage rate which the contractor shall be required to pay.]~~

~~(2) [(3)] The architect shall proceed with the working drawings and specifications for submission to KDLA for final approval by KDLA before the project is advertised for bids.~~

~~(3) [(4)] After KDLA has approved the working drawings, the plans shall be completed and advertised publicly for construction bids. The advertisement shall include notice that a builder's risk policy shall be required as part of the construction contract.]~~

~~(5) The bid opening date shall be coordinated with KDLA and the local library.~~

~~(6) The contract shall be awarded to the "lowest and best" responsible bidder, as mutually determined by the local board, the architect, and KDLA.]~~

~~(4) [(7)] The architect shall notify the construction grant coordinator at least one (1) week before the building is ready for inspection and punch list. The completed building shall be inspected by KDLA's designated official. A KDLA representative may make site visits during the project term.]~~

~~(8) A copy of each change order, invoice, and documentation of payment made shall be kept by the library in accordance with the Local Government General Records Retention Schedule established by KDLA and submitted to KDLA if requested.]~~

~~(5) [(9)] KDLA may, upon request of the local board, assist in selecting and ordering the furniture and equipment for the project in accordance with state law governing state agency advertisement, bidding, and purchase from a state price contract. [A prospective vendor shall furnish a bid and performance bond for each purchase over \$50,000.]~~

~~(6) [(10)] Each payment to a contractor or supplier shall be made promptly, upon approval by the architect. Retainage shall comply with KRS 371.410. [Before substantial completion of the project, the board shall withhold ten (10) percent as retainage. After substantial completion of the project, the retainage may be reduced to five (5) percent if certified by the architect and approved by the board. If, after receipt of the punchlist, a reason for reduction of the retainage is certified, in writing, by the architect and approved by the board, the retainage may be reduced below five (5) percent. The minimum lump sum amount retained shall be twice the estimated cost to correct the punch list items.]~~

Section 9. Expenditure of Funds. (1) Funds from a PLFC grant shall be used only to pay a cost directly related to the construction or renovation of a local public library facility.

(2) A cost may include:

- (a) Site acquisition;
- (b) Architectural and engineering services;
- (c) Financial and legal services; and
- (d) Equipment.

(3) Site acquisition cost shall be limited to the lesser of:

- (a) The actual cost of acquiring a site; or
- (b) The fair market value of the site as determined by a qualified appraiser approved by KDLA.

(4) Construction cost shall:

- (a) Include fixed or movable equipment; and
- (b) Not include consumable supplies.

Section 10. Incorporation by Reference. (1) The following

material is incorporated by reference:

(a) "Memorandum of Agreement", 7/21; [4/06;]

(b) "Notification of Intent to Apply for State Fiscal Year \_\_\_\_\_ Public Library Facility Construction Funds", 7/21; [6/06;]

(c) "Public Library Facility Construction Fund Application for Fiscal Year \_\_\_\_\_ Construction Grants", 7/21. [8/06; and

(d) "Local Government General Records Retention Schedule", 9/99.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Libraries and Archives, 300 Coffee Tree Road, [Box 537,] Frankfort, Kentucky 40601 [40602-0537], Monday through Friday, 9 a.m. to 4 p.m. [8 a.m. to 4:30 p.m.]

TERRY MANUEL, Commissioner

APPROVED BY AGENCY: July 14, 2021

FILED WITH LRC: July 14, 2021 at 3:40 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2021, at 1:00 p.m. Eastern Time, at the Kentucky Department for Libraries Hearing Room, 300 Coffee Tree Road, Frankfort, KY. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Milburn, Deputy Commissioner, PO Box 537, 300 Coffee Tree Road, Frankfort, Kentucky 40602-0537, phone 502-564-8325, email beth.milburn@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Milburn

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation (725 KAR 2:015) establishes the application process, criteria for selecting projects for assistance, a minimum level of local participation, and the process to be followed in the construction of library facilities.

(b) The necessity of this administrative regulation: KRS 171.027 establishes The Public Library Facilities Construction Fund to assist local public libraries and other governing bodies in debt service payments relating to library construction or renovation projects.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute requires the department to promulgate regulations relating to the application process; the criteria and method for selection projects for assistance; the level of local participation and the process to be followed in the construction or renovation of local public library facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides a structure for the effective administration of state assistance under the Public Library Facilities Construction Fund.

(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 defines a written building program. It requires a prescribed local match. This amendment outlines how the state librarian renders decision for an appeal. It also updates the name of the Division of Library Services.

(b) The necessity of the amendment to this administrative regulation: The amended regulations will help ensure equity and transparency in the grant process in so far as local participation and recipient selection, clearing ambiguities that exist in current regulations.

(c) How the amendment conforms to the content of the

authorizing statutes: The statute requires the department to promulgate regulations relating to the application process; the criteria and method for selection projects for assistance; the level of local participation and the process to be followed in the construction or renovation of local public library facilities.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide essential guidance for the grant selection committee and ensure that all applicants and proposed projects are treated fairly and equitably. Clarity gained in the regulation should also speed the grant review process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department for Libraries and Archives and the legally established public libraries in 119 counties.

(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: Any legally established public library seeking to assistance will need to file an "Intent to Apply" form by the deadlines prescribed; if those forms are accepted, they will be asked to submit an application for a grant on the forms prescribed and submit the application in the time frame established for this step. If they are awarded a grant, they will need to establish a specific account for the project and document all actions taken to complete the process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The only costs will be determined by the project budget and that will vary for each project.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will receive financial assistance from the state which will be used to retire debt incurred to complete the project.

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

(a) Initially: No new costs will be incurred.

(b) On a continuing basis: No new costs will be incurred by the department.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds appropriated by the legislature.

(7) Provide an assessment of whether an 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 required increase is projected.

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

(9) TIERING: Is tiering applied? Recipient libraries will be required to make a minimum local match as the sole burden of the annual debt retirement payments for these projects should not be put upon state government. The tiering system is based on the annual revenue from all sources that the public library receives. Libraries with annual revenue from all sources of less than \$100,000 shall contribute a minimum yearly contribution to the annual debt retirement payments for the project at \$1,000. Libraries with annual revenue from all sources of at least \$100,000 but less than \$500,000 shall contribute a minimum yearly contribution to the annual debt retirement payments for the project at \$10,000. Libraries with annual revenue from all sources of \$500,000 or greater shall contribute a minimum yearly contribution to the annual debt retirement payments for the project at \$30,000.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 for Libraries and Archives and the legally established public libraries in 119 counties.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 171.027

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 only impact will be in counties where the public library is engaged in a construction project. Each project varies in the amount of state funding they will receive. Recipient libraries will also be required to make a local match. Libraries with annual revenue from all sources of less than \$100,000 shall contribute a minimum yearly contribution to the annual debt retirement payments for the project at \$1,000. Libraries with annual revenue from all sources of at least \$100,000 but less than \$500,000 shall contribute a minimum yearly contribution to the annual debt retirement payments for the project at \$10,000. Libraries with annual revenue from all sources of \$500,000 or greater shall contribute a minimum yearly contribution to the annual debt retirement payments for the project at \$30,000.

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

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

(c) How much will it cost to administer this program for the first year? There will be minimal impact on the cost of administering this administrative regulation. This is an ongoing grant program which has been in place since 2000.

(d) How much will it cost to administer this program for subsequent years? There will be minimal impact on the cost of administering this administrative regulation. This is an ongoing grant program which has been in place since 2000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Department for Libraries and Archives  
Division of Library Services  
(Amendment)**

**725 KAR 2:080. Interstate Library Compact.**

RELATES TO: KRS 171.221

STATUTORY AUTHORITY: KRS 171.221

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.221 authorizes the Department for Libraries and Archives to enter into agreements with other states for the purpose of providing cooperative library services. The function of this administrative regulation is to establish such an agreement.

Section 1. "Compact administrator" means the state librarian as designated in KRS 171.130.

Section 2. Incorporation by Reference. (1) "Interstate Library Compact" (1998), is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, telephone (502) 564-8300, Monday through Friday, 9[8] a.m. to 4[30] p.m.

TERRY MANUEL, Commissioner



## VOLUME 48, NUMBER 2– AUGUST 1, 2021

APPROVED BY AGENCY: July 15, 2021

FILED WITH LRC: July 15, 2021 at 11:05 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on September 21, 2021, at 1:00 p.m. Eastern Time, at the Kentucky Department for Libraries and Archives Hearing Room, 300 Coffee Tree Road, Frankfort, KY. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Beth Milburn, Deputy Commissioner, PO Box 537, 300 Coffee Tree Road, Frankfort, Kentucky 40602-0537, phone 502-564-8325, email beth.milburn@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Milburn

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation (725 KAR 2:080) establishes the Interstate Library Compact.

(b) The necessity of this administrative regulation: KRS 171.221 authorizes the Department for Libraries and Archives to enter into agreements with other states for the purpose of providing cooperative library services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute empowers the Department for Libraries and Archives to enter into an agreement with any state for the purpose of providing cooperative library services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the document that the contracting states may use to enter into agreements to provide cooperative library 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: This amendment updates the times that the Department for Libraries and Archives is open to the public to allow for the viewing of the material incorporated by reference which is the Interstate Library Compact.

(b) The necessity of the amendment to this administrative regulation: The amended regulation will help ensure accurate accessibility information to all.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments to this regulation reflect the actual times that the facility is open to the public.

(d) How the amendment will assist in the effective administration of the statutes: Amended regulation reflects the actual times that the facility is open to the public. This provides transparency, improves public service, and allows staff time to perform non-public duties.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department for Libraries and Archives and the legally established public libraries in 119 counties.

(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 is necessary by any listed party.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is envisioned by this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Amended regulation reflects the actual times that the facility is open to the public. This provides transparency, improves public service, and allows staff time to perform non-public duties.

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

(a) Initially: No new costs will be incurred.

(b) On a continuing basis: No new costs will be incurred by the department.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds appropriated by the legislature.

(7) Provide an assessment of whether an 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 required increase is projected.

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

(9) TIERING: Is tiering applied? Tiering is not applied because the Interstate Library Compact is available to all legally established public libraries 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 Kentucky Department for Libraries and Archives and the legally established public libraries in 119 counties.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 171.221

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Libraries entering into this agreement will provide for the allocation of costs and other financial responsibilities.

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

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

(c) How much will it cost to administer this program for the first year? There will be minimal impact on the cost of administering this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There will be minimal impact on the cost of administering 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:

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE  
SYSTEM  
Kentucky Fire Commission  
(Amendment)

**739 KAR 2:060. Certification and qualifications of fire and emergency services [protection] instructors.**

RELATES TO: KRS 75.400(2), 95.010(1)(c), 95A.040(3)(b)(1), 95A.210(1)

STATUTORY AUTHORITY: KRS 95A.050(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 95A.040(3)(b) authorizes the Kentucky Fire Commission ~~[on Fire Protection Personnel Standards and Education]~~ to certify fire and emergency services~~[protection]~~ instructors. This administrative regulation sets forth the criteria for instructor certification, including the training and educational requirements of applicants for certification.

Section 1. Definitions. (1) ~~["Bridge course" means an educational program provided by the commission to update out-of-state fire protection instructors seeking Kentucky instructor certification through reciprocity on paperwork and legal requirements specific to fire protection instructors certified in the Commonwealth of Kentucky.~~

(2) ~~["Certified"] "Professional firefighter" means a firefighter who meets the requirement of KRS 95A.210 [and 95A.230].~~

(2) [(3)] ~~["Certified"] "Volunteer firefighter" means an individual who meets the requirements of 739 KAR 2:100. [has received at least 150 hours of certified training as recognized by the Commission on Fire Protection Personnel Standards and Education and who receives at least twenty (20) hours of certified training annually to maintain certification.]~~

(3) [(4)] ~~"Commission" means the Kentucky Fire Commission [Commission on Fire Protection Personnel Standards and Education] as defined by KRS 95A.210(1).~~

(4) [(5)] ~~"Fire and Emergency Services [protection] instructor" means an individual trained and certified pursuant to KRS 95A.040(1)(c) [(2)(b)], this administrative regulation, and the National Fire Protection [International Fire Service Training] Association, as a person qualified to instruct fire protection personnel or supervise the training of fire protection personnel. This term is synonymous with the term "fire and emergency services instructor" as referenced in [the International Fire Service Training Association curricula and] the National Fire Protection Association 1041 standard.~~

(5) [(6)] ~~"Fire department" means a fire department, fire protection district, or fire taxing district recognized by the commission as defined in [by] KRS 75.400(2), (4) and (5) and 95.010(1)(c).~~

(6) [(7)] ~~"Firefighter I" means an individual who has demonstrated the knowledge and skills to function as an integral member of a firefighting team under direct supervision in hazardous conditions and is certified by the commission as accredited by [through] the International Fire Service Accreditation Congress within the Commonwealth of Kentucky.~~

(7) [(8)] ~~"Firefighter II" means an individual who has demonstrated the skills and depth of knowledge to function under general supervision and is certified by the commission as accredited by [through] the International Fire Service Accreditation Congress within the Commonwealth of Kentucky.~~

(8) [(9)] ~~"IFSAC" means the International Fire Service Accreditation Congress.~~

(9) [(10)] ~~"KCTCS" means the Kentucky Community and Technical College System.~~

(10) [(11)] ~~"MOI" means an educational methodology course meeting the job performance requirements within [the objectives of] NFPA 1041 and conducted by:~~

- (a) The Kentucky Fire Commission/State Fire Rescue Training;
- (b) KCTCS;
- (c) [(b)] A regionally accredited [Kentucky] college or university;

or  
(c) The National Fire Academy;

~~(d) A governmental entity authorized by the National Fire Academy to train within its jurisdiction and approved by the commission; or~~

(d) [(e)] ~~An agency approved by the commission to train within its jurisdiction.~~

(11) [(12)] ~~"Reciprocity" means the recognition of an accredited [IFSAC] certification from another state, territory, province, or nation following verification that the certification is current, valid, and without restriction.~~

(12) [(13)] ~~"Train the Trainer course" means a pedagogy program intended to educate certified fire and emergency services [protection] instructors on the specialized curricula, training aides, [primary highlights] and uses of courses taught to fire protection personnel.~~

Section 2. Levels of Certification and Scope. (1) The commission shall certify fire and emergency services [protection] instructors at the following levels:

- (a) Fire and Emergency Services Instructor Level I;
- (b) Fire and Emergency Services Instructor Level II; [and]
- (c) Live Fire Instructor; and [Instructor Level III.]
- (d) Live Fire Instructor-In-Charge.

(2) A [n] fire and emergency services instructor shall only teach a fire service related curricula [protection subject] upon meeting all requirements for certification mandated by this administrative regulation. An [certified fire protection] instructor shall [may] only teach curricula [subjects] within the scope of the instructor's respective fire and emergency services [protection] instructor level, subject to the conditions set forth in this section [of this administrative regulation].

(3) An instructor certified as a Level I fire and emergency services [protection] instructor shall be authorized to conduct firefighter training at any fire department or agency located in the Commonwealth pursuant to paragraphs (a) and (b) of this subsection.

(a) Training shall only be conducted at the request of a fire department or agency.

(b) Upon invitation, a person certified as a Level I fire and emergency services [protection] instructor shall conduct training using curricula approved by the commission.

(4) A person certified as a Level II fire and emergency services [protection] instructor shall be authorized to conduct firefighter training at any fire department or agency located in the Commonwealth pursuant to paragraphs (a) through (d) [(e)] of this subsection.

(a) Training shall only be conducted at the request of a fire department or agency.

(b) Upon invitation, a person certified as a Level II fire and emergency services instructor may conduct training using curricula approved by the commission or curricula developed by a Level II fire and emergency services instructor.

1. ~~At a fire department of which the Level II fire protection instructor is not a member, the Level II fire protection instructor may personally conduct training using lesson plans that he or she has developed; or~~

(c) [2.] ~~At a fire department of which the Level II fire and emergency services [protection] instructor is a member, the Level II fire and emergency services [protection] instructor may allow a Level I fire and emergency services [protection] instructor to conduct training under the Level II fire and emergency services [protection] instructor's direction, using lesson plans developed by the Level II fire and emergency services [protection] instructor.~~

(5) A Level III fire and emergency services [protection] instructor shall meet the intent of NFPA 1041 and have the ability to develop fire service related curricula. [be authorized to:

- (a) Develop comprehensive training curricula and programs for use by single or multiple organizations;
- (b) Conduct organization needs analysis;
- (c) Design record keeping and scheduling systems;
- (d) Develop training goals and implementation strategies; and
- (e) Conduct firefighter training and Level I and II fire protection instructor training at any fire department or agency located in the Commonwealth. Training shall only be conducted at the request of

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a fire department or agency.

(6) An instructor shall successfully complete the commission's Train the Trainer course and shall thereafter teach only from lesson plans developed by the commission or State Fire Rescue Training, or curricula approved by the commission prior to instruction.]

Section 3. Instructor Certification Requirements. (1) An instructor shall not be authorized to teach without first meeting all requirements for certification established in this administrative regulation.

(2) An applicant for initial certification as a Level I fire [protection] and emergency services instructor shall complete and submit:

(a) A [completed] Kentucky Fire and Emergency Services Instructor Level I webform [Level I Fire Service Instructor Application signed by the applicant's fire chief or designee];

(b) Verification of active member status of a Kentucky fire department, degree program at an institution of higher education within the Commonwealth, or a recognized federal fire department within the Commonwealth;

(c) Verification of one (1) year of [two (2) years' continuous] experience as a certified professional or volunteer firefighter in the Commonwealth of Kentucky, or in another state, preceding the application date for Level I fire and emergency services [protection] instructor certification;

(d) [(e)] Verification [Copies] of IFSAC accredited Kentucky, or IFSAC accredited Kentucky reciprocity, Firefighter I and II certificates on which the applicant's seal numbers shall be denoted and provides proof of completion of both written and skill performance tests; and [-];

(e) First verification of MOI of IFSAC accredited Kentucky, or IFSAC accredited Kentucky reciprocity, Fire Instructor I certification on which the applicant's seal numbers shall be denoted and provides proof of completion of both written and skill performance tests;

(f) Second verification of MOI of a Bachelor's degree in education issued by a regionally accredited institution of higher education;

(g) Third verification of MOI of holds a position as an instructor or instructional faculty member of a regionally accredited institution of higher education in the subject of fire service or a related field; or

(h) A copy of the applicant's high school diploma or transcript, general equivalency diploma (GED), college degree, or transcript from a regionally accredited institution of higher learning.]

1. Certification seal numbers shall be denoted in the designated portion of the instructor Level I application; and

2. IFSAC accredited Kentucky, or IFSAC accredited Kentucky reciprocity, certification shall provide documentation of successful completion of both written and skills performance tests; or

(d) A copy of the applicant's high school diploma or general equivalency diploma (GED), and one (1) of the following MOI:

1. First MOI: Certification as an IFSAC accredited Kentucky, or IFSAC accredited Kentucky Reciprocity, Instructor I;

2. Second MOI: A Bachelor's degree in education issued by an accredited institution of higher education; or

3. Third MOI: Holds a position as an instructor or instructional faculty member of an institution of higher education in the subject of fire service, or a related field.]

(3) An applicant for initial certification as a Level II fire [protection] and emergency services instructor shall complete and submit:

(a) A [completed] Kentucky Fire and Emergency Services Instructor Level II webform [Level II Fire Service Instructor Application signed by the applicant's fire chief or designee, with the applicant's IFSAC accredited Kentucky, or IFSAC accredited Kentucky Reciprocity certification seal number or numbers denoted as indicated];

(b) Verification of active member status of a Kentucky fire department, degree program at a regionally accredited institution of higher education, or a recognized federal fire department within the Commonwealth; and

(c) Verification of IFSAC accredited Kentucky or IFSAC accredited reciprocity certification as a Level I Fire and Emergency Services Instructor for one (1) year.

(4) Fire and Emergency Services Instructor Level III will no longer be necessary for issuance within the Commonwealth. A previously approved, recognized, and currently active Fire and Emergency Services Level III instructor shall retain Level III status for as long as he or she is recognized as active status.

(5) An applicant for certification as a Live Fire Instructor shall complete and submit:

(a) A Kentucky Live Fire Instructor webform;

(b) Verification of active member status of a Kentucky fire department, degree program at an institution of higher education within the Commonwealth, or a recognized federal fire department within the Commonwealth;

(c) Verification of IFSAC accredited Kentucky or IFSAC accredited reciprocity certification as a Fire and Emergency Services Level I instructor for two (2) years; and

(d) Proof of successful completion of the commission approved NFPA 1403 class and written examination.

(6) An applicant for certification as a Live Fire Instructor-In-Charge shall complete and submit:

(a) A Kentucky Live Fire Instructor-In-Charge webform;

(b) Verification of active member status of a Kentucky fire department, degree program at an institution of higher education within the Commonwealth, or recognized federal fire department within the Commonwealth;

(c) Verification of IFSAC accredited Kentucky or IFSAC accredited reciprocity certification as a Fire and Emergency Services Level I instructor for two (2) years; and

(d) Proof of successful completion of the commission approved NFPA 1403 class and written examination.]

(b) Verification of four (4) years' continuous experience as a certified professional or volunteer firefighter in the Commonwealth of Kentucky, or in another state, preceding the application date for Level I fire protection instructor certification;

(c) Proof of two (2) years' experience as a Level I fire protection instructor; and

(d) Verification of completion of all Level I fire protection instructor renewal requirements as set forth in this administrative regulation.

(4) An individual desiring initial certification as a Level III fire protection instructor shall submit:

(a) A Level III Fire Service Instructor Application completed on the applicant's behalf by the fire department for which the applicant has served as an active member for at least six (6) consecutive years and signed by the applicant's fire chief or designee, with the applicant's IFSAC accredited Kentucky, or IFSAC accredited Kentucky Reciprocity certification seal number(s) denoted as indicated;

(b) Service as a fire protection Level II instructor for a minimum of two (2) years prior to the application date for fire protection Level III instructor certification;

(c) Positive recommendations following interviews with the commission, the Fire Commission Division Director of Operations, and the State Fire Rescue Training Division Director, or the director's designee;

(d) Verification of completion of all Level II fire protection instructor renewal requirements as set forth in this administrative regulation; and

(e) Evidence of previous assistance with the delivery of at least two (2) MOI approved by the commission.]

Section 4. Reciprocity. (1) Individuals seeking certification as a Level I or Level II [-, II, or III] fire and emergency services [protection] instructor through reciprocity from any state, territory, or country [or territory in the United States] shall be granted approval by the commission if the applicant meets all certification requirements for Level I or Level II fire and emergency services [-, II, or III] instructor certification pursuant to Section 3 of this administrative regulation.

(2) The applicant shall complete and provide proof of completion of eight (8) hours of methodology continuing education

taught by Kentucky State Fire Rescue Training, if:

(1) The two (2), four (4), or six (6) year continuous work periods mandated by Section 3(2)(b), (3)(b), and (4)(a) of this administrative regulation shall have been completed while certified by and in good standing with the certifying agency of the state in which the firefighter served for the period of time necessary to qualify for reciprocity in the Commonwealth of Kentucky;

(2) The applicant's continuous work periods mandated by Section 2(2)(b), (3)(b), and (4)(a) of this administrative regulation shall immediately precede the date on which the applicant applies for Level I, II, or III fire protection instructor certification in the Commonwealth of Kentucky; or

(3) The individual shall complete the commission's bridge course prior to certification as a fire protection instructor by the commission.]

Section 5. Instructor Certification Terms and Renewal. (1) Unless renewed, certification for Levels I, II, and III fire and emergency services [protection] instructors shall expire after four (4) years from the date of certification and approval, and every four (4) years thereafter. [a period of two (2) years in a cyclical pattern based upon the last number of the instructor's Kentucky fire instructor number. All instructors with a Kentucky fire instructor number ending in zero (0) or an even number shall recertify by January 1, 2017, and all instructors with a Kentucky fire protection instructor number ending in an odd number shall recertify by January 1 of the subsequent year.]

(2) The commission shall grant certification renewal for Level I and II fire and emergency services instructors who submit:

(a) Documentation of twenty (20) hours of training per year during the renewal cycle; and [instructional time using curricula developed or approved by the commission and completed prior to the expiration of the instructor's current certification period;]

(b) Verification of attendance of at least eight (8) hours of methodology training during the renewal cycle. [twenty (20) student training hours, at least four (4) hours of which shall consist of an MOI approved by the commission; and

(c) A Fire Service Renewal Application provided by the commission and signed by both the applicant and the applicant's fire chief or designee.

(3) The forty (40) instructional and student training hours mandated by subsection (2)(a) and (b) of this section may also be used to complete the instructor's firefighter recertification hours.

(4) The commission shall grant certification renewal for Level III instructors who submit:

(a) A Fire Service Renewal Application provided by the commission and signed by both the applicant and the applicant's fire chief or designee;

(b) Documentation that the applicant has instructed a minimum of one (1) MOI or instructional technique class during the two (2) year certification period; and

(c) Verification of completion of a minimum of one (1) instructor training workshop lasting at least eight (8) hours and approved by the commission.

(5) A fire protection instructor who obtained instructor certification prior to the effective date of this administrative regulation shall be required to meet the renewal requirements as set forth in this administrative regulation subsequent to the completion of one (1) full recertification period.]

Section 6. Suspension or Revocation of Certification and Appeal. (1) The commission's Education and Eligibility [State-Aid] Committee shall revoke or suspend an instructor's certification if, after reasonable notice and a hearing, it is determined that the instructor committed misconduct with regard to fire and emergency services [protection] instructor certification or job duties. Misconduct shall include, but not be limited to: [-Examples include, for example:]

(a) A material misstatement or misrepresentation in any document furnished to the commission to obtain the issuance or renewal of certification;

(b) Falsification of training records; or

(c) An act of negligence or malfeasance.

(2) An [fire protection] instructor whose certification is subject to suspension or revocation shall be entitled to thirty (30) days' notice and a hearing before the commission's [Education and] Eligibility [State-Aid] Committee.

(3) If the commission's [Education and] Eligibility [State-Aid] Committee hearing results in a decision to revoke or suspend an instructor's certification, the instructor shall be notified in writing of the action and the right to appeal before the commission no later than ten (10) days following the hearing.

(4) An instructor shall request an appeal in writing within fifteen (15) days of receipt of the notification of the commission's intent to revoke or suspend the instructor's certification.

(5) If the individual appeals the commission's intent to revoke or suspend his or her instructor certification, a hearing shall be conducted at the next regular meeting of the commission, or within thirty (30) days of the appeal request, whichever is first.

(6) If the commission's hearing results in a decision to revoke or suspend an instructor's certification, the instructor shall be notified in writing of the action and the right to appeal pursuant to KRS Chapter 13B no later than ten (10) days following the hearing of the appeal.

(7) The certification of an instructor who fails to maintain active status with a commission recognized Kentucky fire department, degree program, federal fire department, or Kentucky State Fire Rescue Training shall be automatically suspended until active status with a commission recognized Kentucky fire department, degree program, federal fire department, or Kentucky State Fire Rescue Training is reinstated and all requirements for recertification are met.

Section 7. Reinstatement of Certification. (1) The commission shall reinstate the certification of an instructor whose certification has lapsed for a period not exceeding one (1) year, unless the applicant has been subjected to discipline that would prevent reinstatement upon submission of:

(a) A completed Kentucky Fire and Emergency Services Instructor Reinstatement webform;

(b) Proof of completion of eight (8) hours of methodology training provided by State Fire Rescue Training; and

(c) Verification of attendance of twenty (20) hours of recognized fire service training following the date of reactivation by a commission recognized Kentucky fire department of which the applicant is a member. [application.]

(2) The commission shall reinstate the certification of an instructor whose certification has lapsed for a period of more than one (1) year but not exceeding three (3) years, provided the instructor meets all recertification requirements and has attend a commission recognized bridge course.]

(2) [(3)] The commission shall not reinstate the certification of an instructor whose certification has lapsed for a period exceeding one (1) [three (3)] year[s].

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

(a) "Fire and Emergency Services Instructor, Eighth Edition" 2012;]

(a) [(b)] "Kentucky Fire and Emergency Services Instructor Level I webform" 2021 [1-Certification Application"-2014];

(b) [(c)] "Kentucky Fire and Emergency Services Instructor Level II webform" 2021 [2-Certification Application"-2014];

(c) [(d)] "Kentucky Live Fire Instructor webform" 2021;

(d) "Kentucky Live Fire Instructor-In-Charge webform" 2021; and ["Kentucky Fire Service Instructor Level 3 Certification Application"-2014; and]

(e) [(e)] "Kentucky Fire and Emergency Services Instructor Reinstatement webform" 2021 [Certification Renewal Application"-2014].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Fire Commission office, 110 Cleveland Drive, Paris, Kentucky 40361 [Commission on Fire Protection Personnel Standards and Education, 1049 U.S. 127 South, Suite #5, Frankfort, Kentucky 40604], Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained at: <http://kyfires.acadisonline.com/>.

RICKY KING, Chairman

APPROVED BY AGENCY: June 17, 2021

FILED WITH LRC: July 15, 2021 at 10:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2021 at 1:00 p.m. Eastern Standard Time at 110 Cleveland Drive, Paris, Kentucky 40361. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jonathan L. Gay, Counsel for the Kentucky Fire Commission, 163 E. Main Street, Suite 200, Lexington, Kentucky 40507, phone (859) 225-4714, fax (859) 225-1493, email [administrativeregulations@wgmfirm.com](mailto:administrativeregulations@wgmfirm.com)

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan L. Gay

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria for fire and emergency services instructor certification, including the training and educational requirements of applicants.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for fire and emergency services instructors.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 95A.040(3)(b) authorizes the Kentucky Fire Commission to certify fire protection instructors. This administrative regulation conforms to the content of this authorizing statute by establishing the criteria for instructor certification, including the training and educational requirements of applicants for certification.

(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 requirements for fire and emergency services instructors.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the terminology and requirements of instructors to be consistent with National Fire Protection Association standards.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish instructor requirements consistent with National Fire Protection Association standards.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 95A.040(3)(b) authorizes the Kentucky Fire Commission to certify fire protection instructors. This amendment conforms to the content of this authorizing statute by establishing the criteria for instructor certification, including the training and educational requirements of applicants for certification.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by establishing requirements for fire and emergency services instructors.

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

administrative regulation: The Commission, Kentucky professional and volunteer fire departments, Kentucky emergency medical services providers, and fire and emergency services instructors will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Commission will be required to implement this amendment, Kentucky professional and volunteer fire departments and Kentucky emergency medical services providers will be required to use instructors on fire protection who are certified pursuant to this amendment, and fire and emergency services instructors must satisfy the requirements established 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 will be no cost to any entity identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All entities will benefit from instructors who are certified based on requirements consistent with National Fire Protection Association standards.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no cost to the administrative body to implement this administrative regulation initially or in the future.

(a) Initially: The above paragraph is accurate for initial costs. This administrative regulation will not add any further cost to the administrative body.

(b) On a continuing basis: The above paragraph is accurate for continuing costs. This administrative regulation will not add any further 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 Commission is a state agency that receives its annual budget from the state government. The implementation and enforcement of this administrative regulation will be funded through the Commission's general funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied in this administrative regulation because all fire and emergency services instructors are required to meet the standards mandated by this administrative regulation.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Commission, Kentucky professional and volunteer fire departments, Kentucky emergency medical services providers, and fire and emergency services instructors 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 95A.040(3)(b) authorizes the Kentucky Fire Commission to certify fire protection instructors.

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not impose any costs on state or local government.

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. This administrative regulation will not impose any costs on state or local government.

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not impose any costs on state or local government.

Other Explanation:

**LABOR CABINET  
Office of Unemployment Insurance  
(Amendment)**

**787 KAR 1:010. Application for employer account; reports.**

RELATES TO: KRS 341.070, 341.190, 341.243, 341.250, 341.262

STATUTORY AUTHORITY: KRS 336.015, 336.050[454B.020], 341.115, 2021 Ky Acts ch. 169 Part 1(I)(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations for the proper administration of KRS Chapter 341. KRS 341.190(2) requires each employing unit to keep specified work records and authorizes the secretary to require additional reports. This administrative regulation establishes the application requirements for an employer account and the requirements for other additional reports required by the office[division].

Section 1. Each employing unit that has met one (1) or more of the requirements for coverage set forth in KRS 341.070 shall use the Unemployment Insurance Self-Service Web Portal located at <https://kewes.ky.gov> to complete and electronically file with the Office[Division] of Unemployment Insurance an Application for Unemployment Insurance Employer Reserve Account UI-1 no later than the last day of the calendar quarter in which the coverage requirements are first met.

Section 2. Each employing unit shall use the Unemployment Insurance Self-Service Web Portal located at <https://kewes.ky.gov> to complete and electronically file with the Office[Division] of Unemployment Insurance the following electronic reports as required in accordance with the instructions contained on Unemployment Insurance Self-Service Web Portal [the forms]:

(1) UI-1S, Supplemental Application for Unemployment Insurance Employer Reserve Account;[

(2) UI-3, Employer's Quarterly Unemployment Wage and Tax Report;]

~~(2)[(3)] UI-3.2, Account Status Information; and~~

~~(3)[(4)] UI-21, Report of Change in Ownership or Discontinuance of Business in Whole or Part;]~~

~~(5) UI-35, Termination of Coverage;~~

~~(6) UI-74, Application for Partial Payment Agreement;~~

~~(7) UI-412A, Notice to Employer of Claim for Unemployment Insurance Benefits; and~~

~~(8) UI-203, Overpayment and Fraud Detection.]~~

Section 3. Each employing unit shall complete and file with the Office of Unemployment Insurance the following reports as required in accordance with the instructions contained on the forms:

(1) UI-3, Employer's Quarterly Unemployment Wage and Tax

Report:

~~(2) UI-74, Application for Partial Payment Application;~~

~~(3) UI-203, Overpayment and Fraud Detection; and~~

~~(4) UI-412A, Notice to Employer of Claim for Unemployment Insurance Benefits.~~

Section ~~(4)~~[3]. If an employing unit elects to submit the information required in any report listed in Section ~~3[1 or 2]~~ of this administrative regulation through the Web site provided by the Office[Division] of Unemployment Insurance for that purpose, the requirement for the filing of that report shall have been satisfied.

Section 5[4]. Incorporation by Reference. (1) The following material is incorporated by reference:[]

~~(a) UI-1, "Application for Unemployment Insurance Employer Reserve Account", Rev. 3/05;~~

~~(b) UI-1S, "Supplemental Application for Unemployment Insurance Employer Reserve Account", Rev. 5/11];~~

~~(a)[(e)] UI-3, "Employer's Quarterly Unemployment Wage and Tax Report", Rev. 11/20[7/18];~~

~~(d) UI-3.2, "Account Status Information", Rev. 7/18;~~

~~(e) UI-21, "Report of Change in Ownership or Discontinuance of Business in Whole or Part", Rev. 3/05;~~

~~(f) UI-35, "Termination of Coverage", Rev. 5/11;]~~

~~(b)[(g)] UI-74, "Application for Partial Payment Agreement", Rev. 5/11;~~

~~(c)[(h)] UI-203, "Overpayment and Fraud Detection", Rev. 01/2021[9/44]; and~~

~~(d)[(i)] UI-412A, "Notice to Employer of Claim for Unemployment Insurance Benefits", Rev. 09/18[9/44].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director of Unemployment Insurance, Mayo-Underwood Building, 500 Mero Street[275 E. Main Street, 2E], Frankfort, Kentucky 40601[40624], Monday through Friday, 8 a.m. to 4:30 p.m.

BUDDY HOSKINSON, Executive Director

JAMIE LINK, Secretary

APPROVED BY AGENCY: July 1, 2021

FILED WITH LRC: July 2, 2021 at 10:11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2021 at 2:00 (ET). This hearing will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph 8(b) (R.S. 2020) and the continuing state of emergency due to the novel coronavirus pandemic. Public access to the meeting will be available at <https://us02web.zoom.us/j/88991458931?pwd=eTZYMEo0V3Qydnk0aB3MFFyYmZVUT09>, password 358248 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 September 30, 2021. Send notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email [buddy.hoskinson@ky.gov](mailto:buddy.hoskinson@ky.gov).

REGULATORY IMPACT AND TIERING STATEMENT

Contact Person: Buddy Hoskinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes application requirements for an employer

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account and the requirements for other additional reports required by the office.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the necessary reports an employer is required to file with the office.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary to adopt regulations deemed necessary or suitable for the proper administration of KRS Chapter 341. This administrative regulation establishes required reports pursuant to KRS 341.190(2).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets required forms and reports an employer is required to file with the office.

(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 statutory authority, updates language to reflect the office is now the Office of Unemployment and its new address. This amendment also updates material incorporated by reference by removing some material incorporated reference, updating materials incorporated by reference and clarifies that some reports may be filed electronically.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update statutory authority, terminology used by the office and to update the materials incorporated by reference to reflect the changes in how reports are filed.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary to adopt regulations deemed necessary or suitable for the proper administration of KRS Chapter 341. This amendment updates required reports pursuant to KRS 341.190(2).

(d) How the amendment will assist in the effective administration of the statutes: This amendment ensures the use of updated terminology and reports utilized by the office.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects any employing unit meeting the definition of "subject employer" in KRS 341.070.

(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): Compliance with this administrative regulation helps protect employee and employer rights.

(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: KRS 341.240 establishes the unemployment compensation administration fund, the funds in which are available to the secretary for administration of the UI program and are deposited to defray the cost of the administration of this chapter.

(7) Provide an assessment of whether an 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. This administrative regulation equally effects all regulated entities.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Most state and local governmental entities are subject to unemployment insurance coverage and thus potentially affected by this administrative regulation.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 336.015, KRS 336.050, KRS 341.115 and 2021 Ky Acts ch. 169 Part 1(1)(7).

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

(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

#### Office of Unemployment Insurance (Amendment)

**787 KAR 1:020. Change of status; discontinuance of business.**

RELATES TO: KRS 341.070, 341.115, 341.190(2)

STATUTORY AUTHORITY: KRS 336.015, 336.050[454B-020], 341.115, 2021 Ky Acts ch. 169 Part 1(1)(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. KRS 341.190(2) requires each employing unit to keep specified working records and authorizes the secretary to require additional reports.

This administrative regulation establishes the requirement for subject employers to notify the office[division] of any change of ownership or control of their business.

Section 1. A subject employer shall notify the Office[Division] of Unemployment Insurance within fifteen (15) days of any change in ownership or control of his business, whether in whole or in part, or of the discontinuance of the business by submitting an electronic Report of Change in Ownership or Discontinuance of Business in Whole or in Part via the Unemployment Insurance Self Service Web Portal located at <https://kewes.ky.gov>.

BUDDY HOSKINSON, Executive Director

JAMIE LINK, Secretary

APPROVED BY AGENCY: July 1, 2021

## VOLUME 48, NUMBER 2– AUGUST 1, 2021

FILED WITH LRC: July 2, 2021 at 10:11 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on September 27, 2021 at 2:00 (ET). This hearing will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph 8(b) (R.S. 2020) and the continuing state of emergency due to the novel coronavirus pandemic. Public access to the meeting will be available at <https://us02web.zoom.us/j/88991458931?pwd=eTZYMEo0V3Qydnk0a1B3MFFyYmZVUT09>, password 358248 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 September 30, 2021. Send notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email [buddy.hoskinson@ky.gov](mailto:buddy.hoskinson@ky.gov).

### REGULATORY IMPACT AND TIERING STATEMENT

Contact Person: Buddy Hoskinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires that subject employers notify the office of any change of ownership or control of the business within 15 days of the action.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure the office has up to date information on subject employers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary to adopt regulations deemed necessary or suitable for the proper administration of KRS Chapter 341. KRS 341.190(2) specifies that the secretary may require information that is deemed necessary for the proper administration of KRS Chapter 341.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides requirements for subject employers to be in compliance with KRS 341.190(2). This administrative regulation ensures the Office of Unemployment Insurance will have the correct information for subject employers pursuant to KRS Chapter 341 to determine accurate liability of the employers.

(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 language to reflect the current terminology utilized by the office and updates how notices should be provided to the office. Further, it updates the statutory authority to reflect that the Office of Unemployment Insurance is now within the Labor Cabinet pursuant to 2021 Ky Acts ch. 169 Part 1(l)(7).

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update statutory authority, terminology used by the office, and to reflect how subject employers can provide the notice of change in ownership of control of the business.

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

establishes a necessary report pursuant to KRS 341.190(2).

(d) How the amendment will assist in the effective administration of the statutes: The administrative regulation is necessary to provide guidance for subject employers on the requirements for notifications and the method of notification when there is a change in ownership of the business or if the business is discontinued. This administrative regulation allows the office to receive updated information on subject employers, which is necessary to enforce KRS Chapter 341.

(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.

(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): This administrative regulation enables the office to maintain current records of the ownership and control of subject employers, which helps the office determine any liability of the employer and allows for the employer to determine the tax liability of their company.

(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: KRS 341.240 establishes the unemployment compensation administration fund, the funds in which are available to the secretary for administration of the UI program and are deposited to defray the cost of the administration of this chapter.

(7) Provide an assessment of whether an 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 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 unemployment insurance coverage and thus potentially affected by this administrative regulation.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 336.015, 336.050, 340.050(10(d)), 341.115(1), 341.190(2), and 2021 Ky Acts ch. 169 Part 1(l)(7).

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

(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 (+/-): None  
Expenditures (+/-): None  
Other explanations:

**LABOR CABINET  
Office of Unemployment Insurance  
(Amendment)**

**787 KAR 1:060. Separation for cause; reports.**

RELATES TO: KRS 341.190, 341.360, 341.370, 341.530  
STATUTORY AUTHORITY: KRS 336.015, 336.050[451B-020], 341.115(1), 2021 Ky Acts ch. 169 Part 1(l)(7)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of KRS Chapter 341. This administrative regulation establishes requirements for employer notification of a claim for benefits, and information the employer shall provide to the Office[Division] of Unemployment Insurance.

Section 1. Notice to Employers. (1) If an initial claim for benefits is filed by a claimant or if a reopened claim for benefits is filed by a claimant who has been employed since last claiming benefits, the Office[Division] of Unemployment Insurance shall immediately notify the claimant's most recent employer in writing of the filing.

(2) If the claimant has worked for his most recent employer in less than ten (10) weeks, the office[division] shall also notify his next most recent employer in writing of the claim filing.

(3) If the claimant worked for neither his most recent nor next most recent employer in each of ten (10) weeks, the most recent employer for whom the claimant worked in each of ten (10) weeks shall be notified in writing of the filing.

Section 2. If the claimant was separated from any notified employer's employ for a reason other than lack of work, the employer shall notify the office[division] at its central office in writing of the reason for separation, within the time frame specified in the notice provided pursuant to Section 1 of this administrative regulation. The employer may use the UI-412A, incorporated by reference in 787 KAR 1:010, to provide this notification to the office[division] or by providing notice at <https://uidataexchange.org/sew-s/views/login>

BUDDY HOSKINSON, Executive Director  
LARRY L. ROBERTS, Secretary

APPROVED BY AGENCY: June 21, 2021

FILED WITH LRC: June 21, 2021 at 1:43 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2021 at 2:00 (ET). This hearing will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph 8(b) (R.S. 2020) and the continuing state of emergency due to the novel coronavirus pandemic. Public access to the meeting will be available at <https://us02web.zoom.us/j/88991458931?pwd=eTZYMEo0V3Qydnk0a1B3MFFyYmZVUT09>, password 358248 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 September 30, 2021. Send notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email [buddy.hoskinson@ky.gov](mailto:buddy.hoskinson@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Buddy Hoskinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for employer notification when a claim for benefits is filed by a former worker and identifies the information the employer shall provide to the Office of Unemployment Insurance.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide the employer with a timely notification that a claim for benefits has been filed to allow the employer the legally allotted time to protest the claim or charges.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation allows the employer opportunity to protest the claim or changes. That in turn generates a disputed claim investigation, allowing the interests of the employer to be represented in the unemployment insurance process.

(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 language utilized by the office and updates how an employer may provide required information to the office. This amendment also adds KRS 341.190(2) in the Related To section. Further, it updates the statutory authority to reflect that the Office of Unemployment Insurance is now within the Labor Cabinet pursuant to 2021 Ky Acts ch. 169 Part 1(l)(7).

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the statutory authority, update terminology utilized by the office and to add an alternative method for employers to provide required information to the office.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary to amend regulations deemed necessary or suitable for the proper administration of KRS Chapter 341.

(d) How the amendment will assist in the effective administration of the statutes: This amendment ensures that most updated language is utilized and allows employers an alternative method for providing the required information to the office.

(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.

(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): This administrative regulation allows the employer opportunity to protest claims and charges, which provides protection to the employer from erroneous or fraudulent claims.

(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: KRS 341.240 provides for the establishment of the unemployment compensation administration fund and establishes that all of the money in this fund shall be expended solely to defray the cost of the administration of KRS Chapter 341.

(7) Provide an assessment of whether an 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 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 unemployment insurance coverage and thus potentially affected by this administrative regulation.

(2) Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 336.015, 336.050, 341.115, 341.190, KRS 341.370, 2021 Ky Acts ch. 169 Part 1(l)(7).

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

(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 (+/-): None
Expenditures (+/-): None
Other explanations:

LABOR CABINET
Office of Unemployment Insurance
(Amendment)

787 KAR 1:080. Labor dispute or strike; notification.

RELATES TO: KRS 341.360

STATUTORY AUTHORITY: KRS 336.015, 336.050 [151B.020], 341.115, 2021 Ky Acts ch. 169 Part 1(l)(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. This administrative regulation establishes reporting requirements for an employer to notify the office[division] when a labor dispute or strike begins and ends.

Section 1. (1) If an initial claim for benefits or a reopened claim for benefits is filed by a claimant, the Office[Division] of Unemployment Insurance shall immediately notify the claimant's most recent employer of the filing.

(2) If the claimant is unemployed because of a strike or other bona fide labor dispute, the employer, in addition to the notice required under KRS 341.360(1), shall:

(a) Indicate on [the] form UI-412A, incorporated by reference in 787 KAR 1:010, the reason for the claimant's unemployment; and

(b) Return the form to the office[division] within ten (10) days after the date appearing on the form as the date of mailing.

(3) In computing the ten (10) day period:

(a) The day following the date of mailing of the notice shall be considered the first day; and

(b) if the tenth day falls on a day during which the [division's] office is closed, the next day thereafter on which the office is open shall be considered the tenth day.

Section 2. Within ten (10) days after the termination of an alleged strike or labor dispute, the employer shall notify the office[division] in writing of the termination. In computing the ten (10) day period:

(1) The day following the termination of the alleged strike or labor dispute shall be considered the first day; and

(2) If the tenth day falls on a day during which the [division's] office is closed, the next day thereafter on which the office is open shall be considered the tenth day.

BUDDY HOSKINSON, Executive Director
LARRY L. ROBERTS, Secretary

APPROVED BY AGENCY: June 21, 2021

FILED WITH LRC: June 21, 2021 at 1:43 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2021 at 2:00 (ET). This hearing will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph 8(b) (R.S. 2020) and the continuing state of emergency due to the novel coronavirus pandemic. Public access to the meeting will be available at https://us02web.zoom.us/j/88991458931?pwd=eTZYMEo0V3Qydnk0alB3MFFyYmZVUT09, password 358248 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 September 30, 2021. Send notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

## VOLUME 48, NUMBER 2– AUGUST 1, 2021

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email buddy.hoskinson@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Buddy Hoskinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a reporting requirement for subject employers to notify the office when a labor dispute or strike begins.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the office to make accurate determinations of worker eligibility for unemployment insurance benefits, because within the time duration of a strike, a worker is not considered unemployed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary to adopt regulations deemed necessary or suitable for the proper administration of KRS Chapter 341. KRS 341.360(1)(a) states that no worker may be paid benefits for any week of unemployment is caused by a strike or other bona fide labor dispute which causes him to leave or lose his employment while it is in progress. This administrative regulation makes it possible for the office to determine the duration of the strike or labor dispute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that the office will have timely and accurate information regarding strikes or labor disputes and will thus be able to make accurate determinations of worker eligibility.

(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 terminology utilized by the office and clarifies reference to form UI-412A. Further, it updates the statutory authority to reflect that the Office of Unemployment Insurance is now within the Labor Cabinet pursuant to 2021 Ky Acts ch. 169 Part 1(I)(7).

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the statutory authority and language to what is currently utilized by the office and to clarify the form referenced in the administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary to amend regulations deemed necessary or suitable for the proper administration of KRS Chapter 341. KRS 341.360(1)(a) states that no worker may be paid benefits for any week of unemployment is caused by a strike or other bona fide labor dispute which causes him to leave or lose his employment while it is in progress. This administrative regulation makes it possible for the office to determine the duration of the strike or labor dispute.

(d) How the amendment will assist in the effective administration of the statutes: This amendment ensures that the office will have timely and accurate information regarding strikes or labor disputes and will thus be able to make accurate determinations of worker eligibility.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation potentially affects operating union shops in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: 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): Subject employers and claimants will have claims benefits determined accurately.

(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: KRS 341.240 provides for the establishment of the unemployment compensation administration fund and establishes that all of the money in this fund shall be expended solely to defray the cost of the administration of this chapter.

(7) Provide an assessment of whether an 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 applied in that the administrative regulation applies only to union employers.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 unemployment insurance coverage. A small number of governmental entities recognize employee unions and thus could be potentially affected by this administrative regulation.

(2) Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 336.015, 336.050, 341.115, KRS 341.360, and 2021 Ky Act ch. 169 Part 1(I)(7).

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

(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 to subject employers.

**LABOR CABINET**  
**Office of Unemployment Insurance**  
**(Amendment)**

**787 KAR 1:090. Unemployed worker's reporting requirements.**

RELATES TO: KRS 341.350, 341.360, 341.370, 341.380  
 STATUTORY AUTHORITY: KRS ~~336.015, 336.050~~[~~454B-020~~, 341.115(1), 2021 Ky Acts ch. 169 Part 1(I)(7)]~~[341.125(1)]~~  
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of KRS Chapter 341. This administrative regulation establishes the registration and reporting requirements that an unemployed worker shall meet to draw benefits, the date when a claim shall be valid, the length of time a claim may be backdated, the procedures for electronic, telephone, and mail claims, and the requirement for random audits.

Section 1. Registration for Work. (1) An unemployed worker shall be registered for work with a state employment service before he is eligible to receive benefits. A registration shall be considered filed if the unemployed worker completes the registration process.

(2) When an unemployed worker completes an initial application for benefits or reopens a claim, he shall be assigned a group classification code A or B based upon his reemployment prospects.

(a) Group A shall consist of any worker who is unemployed and is not subject to definite recall within a period of twelve (12) weeks from the date of filing of the initial or reopened claim.

(b) Group B shall include any worker who is:

1. Unemployed and has definite return prospects with his last employer within a period of twelve (12) weeks from the date of filing of the initial or reopened claim;

2. Unemployed because of a labor dispute in the establishment where he has been employed; or

3. A member of a union which shall be responsible for securing future employment.

(3) During any benefit year, an unemployed worker shall be assigned a different group classification code if review of his reemployment prospects reveals that a different classification is appropriate.

(4) The completion of an initial application for benefits shall serve as work registration for any group "B" unemployed worker.

Section 2. Initial or Reopened Claims for Benefits. (1) In order for an unemployed worker to file an initial or reopened claim for benefits, he shall complete the Initial Claim Application[~~Form 404~~] by using:

(a) An internet claim registration through the Web site provided by the agency for that purpose at [uiclaimsportal.ky.gov](https://uiclaimsportal.ky.gov)[~~https://uiclaims.des.ky.gov/ebenefit~~];(b) A telephone claim registration through the call center provided by the agency for that purpose; or

(c) An in person claim registration by reporting to a state employment service office that provides unemployment insurance assistance.

(2) If any issues regarding the unemployed worker's eligibility as provided by KRS 341.350 or a potentially disqualifying circumstance as provided by KRS 341.360 or 341.370 are detected, a fact finding investigation shall be conducted during which the unemployed worker shall:

(a) Provide picture identification and valid proof of the worker's Social Security number from the Social Security Administration; and

(b) Present all facts in support of the application.

(3) The initial or reopened claim shall be dated as of the first day of the week in which the unemployed worker completes the procedure established in subsection (1) of this section.

(4) Upon the presentation by the unemployed worker of reasons found to constitute good cause for failure to file at an earlier date, the secretary shall backdate the initial or reopened

claim to the first day of the week in which the worker became unemployed, or the second calendar week preceding the date the worker filed, whichever is later.

(5) An unemployed worker whose unemployment insurance benefit check has been lost or stolen shall notify the office in writing[~~file a UI-480, Lost or Stolen Check Statement, to initiate the process to issue a new check~~].

Section 3. Claiming Weeks of Benefits. (1) Once an unemployed worker has filed an initial claim and established a benefit year, he shall claim his benefits on a biweekly basis by one (1) of the methods and within the time frames established in subsection (2) of this section.

(a) The unemployed worker shall claim either one (1) or both of the weeks of benefits.

(b) Except as provided in paragraph (c) of this subsection, for every two (2) week period of benefits being claimed following the effective date of the initial or reopened claim, the unemployed worker shall claim his benefits during the calendar week following the second week of the period.

(c) Upon the presentation by the unemployed worker of reasons the secretary finds to be good cause for the failure of the worker to claim his benefits during the prescribed week, the secretary shall allow the worker to claim benefits for the two (2) calendar weeks preceding the date on which the worker claimed his benefits. In this case the worker shall next be eligible to claim benefits for the two (2) calendar weeks following the weeks of benefits claimed late.

(2) Except as provided in subsection (3) of this section, the unemployed worker shall complete a claim for benefits:

(a) Through the Web site provided by the agency for that purpose at [uiclaimsportal.ky.gov](https://uiclaimsportal.ky.gov)[~~https://uiclaims.des.ky.gov/ebenefit~~], with the claim completed before 7 p.m. Eastern Time on the Friday of the calendar week following the second week of the period claimed; or

(b) By telephone through the interactive voice response system provided by the agency for that purpose, with the claim completed between the hours of 10 a.m. and 9 p.m. Eastern Time on the Sunday, or between the hours of 7 a.m. and 7 p.m. Eastern Time on the Monday through the Friday of the calendar week following the second week of the period claimed.

(3)(a) The secretary shall direct an unemployed worker to claim benefits by mail if it is not possible for the worker to claim by either option provided in subsection (2) of this section due to:

1. Unavailability of those options for the type of benefits claimed;

2. Unavailability of those options due to technical problems; or

3. A physical or mental condition preventing the worker from using those options.

(b) A continued claim shall cover the week or weeks indicated on the Continued Claim Form.

(c) Any claim filed by mail shall be considered filed on the day it is deposited in the mail and postmarked as established in 787 KAR 1:230, Section 1(2).

(d) The provisions of this administrative regulation governing the dating and backdating of a continued claim shall also apply to a claim filed by mail, and unless the claim is filed within the prescribed time, it shall not be allowed.

Section 4. Employer Filed Claims. (1) An employer may file a claim on behalf of an unemployed worker if:

(a) The worker has definite recall rights within four (4) calendar weeks;

(b) The employer has a workforce of at least 100 workers at the time of the layoff;

(c) The employer submits the claim information in the required electronic format using the Directions for Submitting an Employer Mass Electronic Claim (E-claim) File and the E-claim – Template[~~Mass Electronic Filing Call Data and Formatting Guide~~]; and

(d) Prior to the first time an employer files a claim on behalf of a worker, the employer submits a test sample of claim information and receives confirmation from the Office of Unemployment

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Insurance [Division] that the information is in the required format prior to the date the period of unemployment will begin.

(2) The effective date of an employer filed claim shall be the first day of the week in which the period of unemployment began.

(3) An unemployed worker who does not file a continued claim for benefits established under an employer filed claim may file a new initial claim within the period of one (1) year from the effective date of the employer filed claim.

Section 5. Eligibility Review. The secretary may require an unemployed worker claiming benefits to report for the purpose of continued benefit eligibility review as a condition for payment of benefits. The requirement and interval for eligibility review shall be determined by:

(1) The worker's classification as established in Section 1(2) of this administrative regulation;

(2) The worker's individual employment and earning history; and

(3) The local labor market.

Section 6. (1) The secretary shall notify an unemployed worker if the secretary determines that the unemployed worker failed to file a claim for benefits or register for work within the specified time due to:

(a) The employer's failure to comply with 787 KAR Chapter 1;

(b) Coercion or intimidation exercised by the employer to prevent the prompt filing of a claim; or

(c) Failure by the Office of Unemployment Insurance[Division's] personnel to discharge necessary responsibilities.

(2)(a) Except as provided in paragraph (b) of this subsection, an unemployed worker shall have fourteen (14) days after receipt of the notification required by subsection (1) of this section from the secretary within which to file a claim.

(b) A claim shall not be filed later than thirteen (13) weeks subsequent to the end of the actual or potential benefit year involved.

Section 7. The secretary shall conduct random audits of claims. Each random audit shall include one (1) or more of the eligibility requirements provided by KRS 341.350.

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

(a) Directions for Submitting an Employer Mass Electronic Claim (E-claim) File, 03/20 [~~Initial claim application, "Form 401", 8/40; and~~

(b) E-Claim – Template, 03/20, [~~UI-480, "Lost or Stolen Check Statement", 06/13;~~

(c) "Continued Claim Form", 10/95; and

(d) "Mass Electronic Filing Cell Data and Formatting Guide", 03/07.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director of the Office[Division] of Unemployment Insurance, Mayo-Underwood Building, 500 Mero Street[~~275 East Main Street, 2-CD~~], Frankfort, Kentucky 40601[~~40624~~], Monday through Friday, 8 a.m. to 4:30 p.m.

BUDDY HOSKINSON, Executive Director

JAMIE LINK, Secretary

APPROVED BY AGENCY: July 1, 2021

FILED WITH LRC: July 2, 2021 at 10:11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2021 at 2:00 (ET). This hearing will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph 8(b) (R.S. 2020) and the continuing state of emergency due to the novel coronavirus pandemic. Public access to the meeting will be available at <https://us02web.zoom.us/j/88991458931?pwd=eTZYMEo0V3Qydnk0a1B3MFFYmZVUT09>, password 358248 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 September 30, 2021. Send notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email [buddy.hoskinson@ky.gov](mailto:buddy.hoskinson@ky.gov).

### REGULATORY IMPACT AND TIERING STATEMENT

Contact Person: Buddy Hoskinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the registration and reporting requirements that an unemployed worker shall meet to receive benefits, the date when a claim shall be valid, the length of time a claim may be backdated, the procedures for electronic, telephone and mail claims, and random audits.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for unemployment workers while receiving unemployment insurance benefits as well as the authorization of random audits of claims.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary to adopt regulations deemed necessary for the proper administration of KRS Chapter 341. This regulation establishes requirements to help in the administration of KRS Chapter 341.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the office in determining when an unemployed worker is eligible to draw benefits, the date when a claim shall be valid, the length of time a claim may be backdated, the procedures for electronic, telephone, and mail claims, and the requirements for random audits.

(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 language to match what is currently utilized by the office, removes materials incorporated by reference that are no longer in use, removes the requirement for unemployed workers to complete Form UI-480 when they need to request a reissuance of a lost or stolen UI check, adds current materials incorporated by reference and updates web site addresses. Further, this amendment updates the statutory authority to reflect that the Office of Unemployment is now within the Labor Cabinet pursuant to 2021 Ky Acts ch. 169 Part 1(l)(7).

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update statutory authority, language and materials incorporated by reference and to ensure that web site addresses are accurate.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary to amend regulations deemed necessary for the proper administration of KRS Chapter 341. This regulation establishes requirements to help in the administration of KRS Chapter 341.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will continue to ensure that unemployed workers may apply for unemployment insurance benefits.

(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

unemployment insurance claimants and subject employers in the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are 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): Compliance with this administrative regulation helps to facilitate the reentry 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: KRS 341.240 provides for the establishment of the unemployment compensation administration fund and establishes that all of the money in this fund shall be expended solely to defray the cost of the administration of this chapter.

(7) Provide an assessment of whether an 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 unemployment insurance claimants are treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 336.015, 336.050, 341.115(1), 341.350, 341.360, 341.370, 341.080, and 2021 Ky Act ch. 169 Part 1(l)(7).

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

(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  
Office of Unemployment Insurance  
(Amendment)

787 KAR 1:110. Appeals.

RELATES TO: KRS 131.570(1), 341.420(2), 341.430(2), 341.440, 341.450

STATUTORY AUTHORITY: KRS 336.015, 336.050[454B.020(3)(e)+], 341.115(1), 2021 Ky Acts ch. 169 Part 1(l)(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. KRS 13B.020(3)(e)1 exempts unemployment insurance hearings from the provisions of KRS Chapter 13B. This administrative regulation establishes the appeals process and general rules for the conduct of hearings.

Section 1: Definition. "Interested party" means a claimant or employer identified in a notice of determination.

Section 2[4]. Appeals to Referee. (1) The presentation of an appeal to a referee.

(a) Any interested party wishing to appeal to a referee from a determination issued pursuant to KRS 131.570(1) or 341.420(2) shall file with the Office[Division] of Unemployment Insurance or its authorized representative a written statement clearly indicating the party's intention to appeal within the time limits prescribed by KRS 131.570(1) or 341.420(2).

(b) An appeal to a referee shall be considered filed as of the date it is received by the department as established in 787 KAR 1:230.

(2) Notification of hearings.

(a) Except as provided in paragraph (b) or (c) of this subsection, the Office[Division] of Unemployment Insurance shall schedule all hearings promptly and shall mail notices to the parties specifying the date, time, and place of the hearing at least ten (10) days prior to the hearing date.

(b) The referee may conduct a hearing without ten (10) days' notice if the parties to the hearing agree to waive the notice of hearing.

(c) Any party to a hearing may request that the hearing be rescheduled. The office[division] shall reschedule the hearing upon presentation by a party of good cause. Examples of good cause for rescheduling shall include:

- 1. A claimant's inability to attend the hearing due to current employment;
- 2. Medical emergency;
- 3. Death of a family member; or
- 4. Acts of God.

(3) Disqualification of referees.

(a) A referee shall not participate in the hearing of an appeal in which the referee has an interest.

(b) Challenges to the interest of any referee shall be heard and decided by the commission.

(4)(a) Hearing of appeals.

1. The claimant and any other party to the appeal may present evidence as may be pertinent and may question the opposite party and witnesses.

2. The referee shall, if necessary to secure full information on the issues, examine each party who appears and witnesses.

3. The referee may take any additional evidence that is necessary.

4. If additional evidence is taken, all interested parties shall be afforded an opportunity of examining and refuting the evidence.

(b)1. The parties to an appeal, with the consent of the referee, may stipulate the facts involved, in writing.

2. The referee shall:

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a. Decide the appeal on the basis of the stipulation; or  
b. Schedule a hearing and take further evidence.  
(c) Except as provided in paragraph (d) of this subsection, the hearing shall be scheduled in-person or via teleconference in order to provide the earliest possible hearing date.

(d) The hearing shall be scheduled via teleconference if an in-person hearing would:

1. Create undue expense for any party;
2. Require any party to travel more than fifty (50) miles;
3. Put either party or the referee at personal risk; or
4. Create a security risk for the public or office[division] staff.

(e) The referee may grant a continuance of a hearing in order to secure necessary evidence.

(f)1. Parties to a teleconference hearing who wish to introduce documents or written materials into the record at the referee hearing shall provide copies of the documents to the referee and the opposing party prior to the hearing.

2. Failure to provide both the referee and the opposing party with copies of the evidence shall result in its being excluded from the record.

(5) Decisions.

(a)1. After the hearing is concluded, the referee shall set forth in writing the referee's finding of facts on the issues involved, the decision, and the reasons for the decision.

2. If the appellant fails to appear and prosecute an appeal, the referee shall summarily affirm the determination.

(b) Copies of the decision shall be mailed to the claimant and other parties to the appeal, and a copy shall be retained in the office's[division's] files.

(c)1. The recording of the hearing shall be retained in the office's[division's] files pending further appeal.

2. If an appeal is not initiated, the recording may be deleted ninety (90) days from the date the final administrative decision is mailed.

(d)1. Any referee decision may be superseded and amended after being released in order to correct obvious technical errors or omissions.

2. The corrected decision shall have the same appeal rights as the decision that it amends or corrects.

(e) If the decision is to deny previously awarded benefits either retroactively or forthwith, a stop payment directive shall be issued to the office[division] by the referee on the date the decision is mailed to the claimant.

Section 3[2]. Appeals to the Commission From a Referee Decision. (1) Presentation of an appeal to the commission.

(a)1. Any interested party wishing to appeal to the commission from a decision of a referee shall give notice in writing to the commission, the office[division], or the office's[division's] authorized representative in any form that clearly indicates the party's intention to appeal.

2. The appeal shall be mailed by the office[division] to other interested parties.

(b) An appeal, based on the conformity of the appeal with the requirements of KRS 341.420(4), shall be considered initiated and filed as of the date it is received by the department as established in 787 KAR 1:230.

(c) The commission shall:

1. Grant or deny the application for leave to appeal without a hearing; or

2. Notify the parties to appear at a specified place and time for appeal on the application.

(2) Hearing of appeals.

(a)1. Except if the commission orders cases removed to it from a referee, all appeals to the commission shall be heard upon the records of the office[division] and the evidence and exhibits introduced before the referee.

2. In the hearing of an appeal on the record, the parties may present written arguments and present oral arguments.

3.a. The party presenting an appeal to the commission (appellant) shall have ten (10) days from the date of mailing of the commission's notification of appeal receipt within which to file a written argument.

b. The appellee shall have seven (7) days thereafter within which to file response.

4. Written argument shall be considered filed as of the date it is received by the department as established in 787 KAR 1:230.

5. The commission may extend the time for filing written argument upon a showing of good cause, in accordance with the examples listed in Section 3(2)(c)1 through 4 of this administrative regulation. by either party to the appeal.

(b)1. The commission may direct the taking of additional evidence before it, if needed, in order to determine the appeal.

2. If additional evidence is necessary to determine the appeal, the parties shall be notified of the time and place the evidence shall be taken at least seven (7) days prior to the date on which the evidence will be taken.

(c)1. The commission may return any case or issue to a referee for the taking of additional evidence.

2. The referee shall take the testimony in the manner prescribed for the hearing of appeals before referees and shall return the record to the commission for its decision.

(3) Any case ordered by the commission to be removed to it from a referee shall be heard and decided by the commission in the manner prescribed in Section 3 of this administrative regulation.

(4) The determination of appeals before the commission.

(a)1. Following the conclusion of a hearing, the commission shall issue a written decision, which shall affirm the decision of the referee or present a separate finding of facts, decision, and reasons.

2. The decision shall be signed by members of the commission who heard the appeal.

3.a. The commission may designate a decision a precedent for future cases of similar circumstance if the decision:

- (i) Is a matter of first impression;
- (ii) Clarifies or defines the application of statutory language;
- (iii) Reverses a previous precedential commission decision; or
- (iv) Adopts a court decision.

b. A decision designated a precedent shall be binding on all lower levels of determination.

(b)1. If a decision of the commission is not unanimous, the decision of the majority shall control.

2. The minority may file a dissent from the decision of the majority setting forth the reasons why it fails to agree with the majority.

(c) Copies of the decision shall be mailed to all interested parties.

(d) Ninety (90) days after the administrative remedies have been exhausted, the commission may delete the recording of the hearing under review unless the commission has previously been served with summons and complaint pursuant to KRS 341.450.

(5) Reconsideration.

(a) A party adversely affected by a decision of the Kentucky Unemployment Insurance Commission may, within ten (10) days of the mailing date of the decision, request in writing a reconsideration of the commission's decision.

1. The commission shall grant or deny the request for reconsideration based on the conformity of the request to this paragraph.

2. A request for reconsideration shall be considered initiated and filed as of the date it is received by the department as established in 787 KAR 1:230.

(b) A request for reconsideration of a decision of the commission shall not stay the running of time for appeal to the circuit court.

(6) Precedent decision process and digest.

(a) The Kentucky Unemployment Insurance Commission shall develop, distribute, and maintain a manual or digest containing all precedent decisions currently valid.

(b) Individual decisions shall be available on request without charge.

Section 4[3]. Appeals to the Commission From an Employing Unit.

(1) Presentation of an appeal to the commission.

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(a) Any employing unit wishing to make application for review of any administrative determination pursuant to KRS 131.570(1) or 341.430(2) shall do so by filing with the commission, the office[division], or the office[s[division]s] authorized representative a written statement clearly indicating the employing unit's intention to appeal within the time limits prescribed by KRS 131.570(1) or 341.420(2).

(b) An appeal shall be considered initiated and filed as of the date it is received by the department as established in 787 KAR 1:230.

### (2) Notification of hearings.

(a) Except as provided in paragraph (b) or (c) of this subsection, upon receipt of an appeal under this section, the commission shall:

1. Deny the appeal as untimely; or

2. Promptly schedule a hearing and mail notices to all interested parties specifying the date, time, and place of the hearing at least ten (10) days prior to the hearing date.

(b) The commission or its representative may conduct a hearing without ten (10) days' notice if the parties to the hearing agree to waive the notice of hearing.

(c) Any party to a hearing may request that the hearing be rescheduled. The commission shall reschedule the hearing upon presentation by a party of good cause. Examples of good cause for rescheduling shall include:

1. A claimant's inability to attend the hearing due to current employment;

2. Medical emergency;

3. Death of a family member; or

4. Acts of God.

(3) Appointment of commission representative.

(a) The commission may direct that any hearing be conducted on its behalf by an authorized representative.

(b) A representative shall not participate in the hearing of an appeal in which the representative has an interest.

(c) Challenges to the interest of any representative shall be heard and decided by the commission.

(4) Hearing of appeals.

(a) Any party to the appeal may present pertinent evidence and may question the opposite party and witnesses.

1. The commission shall, if it deems it necessary to secure full information on the issues, examine each party who appears and witnesses.

2.a. The commission may take any additional evidence which is necessary.

b. If additional evidence is taken, all interested parties shall be afforded an opportunity of examining and refuting the evidence.

(b)1. The parties to an appeal, with the consent of the commission or its authorized representative, may stipulate the facts involved, in writing.

2. The commission shall:

a. Decide the appeal on the basis of the stipulation; or

b. Schedule a hearing and take further evidence.

(c) Except as provided in paragraph (d) of this subsection, the hearing shall be scheduled in-person or via teleconference in order to provide the earliest possible hearing date.

(d) The hearing shall be scheduled via teleconference if an in-person hearing would:

1. Create undue expense for any party;

2. Require any party to travel more than fifty (50) miles;

3. Put either party or the referee at personal risk; or

4. Create a security risk for the public or office[division] staff.

(e) The commission may grant a continuance of a hearing in order to secure necessary evidence.

(f)1. Parties to a teleconference hearing who wish to introduce documents or written materials into the record at the hearing shall provide copies of the documents to the commission and to the opposing party prior to the hearing.

2. Failure to provide both the commission and the opposing party with copies of this evidence shall result in its being excluded from the record.

(5) Decisions.

(a)1. Following the conclusion of a hearing, the commission

shall set forth in writing its finding of the facts, its decision, and its reasons for the decision.

2. If the appellant fails to appear and prosecute an appeal, the commission shall summarily affirm the administrative determination from which the appeal was made.

3. The decision shall be signed by the members of the commission who considered the appeal.

4. The commission may designate a decision a precedent for future cases of similar circumstance if the decision:

a. Is a matter of first impression;

b. Clarifies or defines the application of statutory language;

c. Reverses a previous precedential commission decision; or

d. Adopts a court decision.

5. A decision designated a precedent shall be binding on all lower levels of determination.

(b)1. If a decision of the commission is not unanimous, the decision of the majority shall control.

2. The minority may file a dissent from the decision of the majority setting forth the reasons why it fails to agree with the majority.

(c) Copies of the decision shall be mailed to all interested parties.

(d) Ninety (90) days after the administrative remedies have been exhausted, the commission may delete the recording of the hearing under review unless the commission has previously been served with summons and complaint pursuant to KRS 341.450.

(e)1. Any commission decision may be superseded and amended after being released in order to correct obvious technical errors or omissions.

2. The corrected decision shall have the same appeal rights as the decision which it amends or corrects.

(6) Reconsideration.

(a) Any party adversely affected by a decision of the commission may, within ten (10) days of the mailing date of the decision, file a request in writing for reconsideration of the commission's decision.

1. The commission shall grant or deny the reconsideration based on the conformity of the request to this paragraph.

2. A reconsideration shall be considered initiated and filed as of the date it is received by the department as established in 787 KAR 1:230.

(b) A request for reconsideration of a decision of the commission shall not stay the running of time for appeal to the circuit court.

Section 5[4]. General Rules for Referee and Commission Appeals. (1) Issuance of subpoenas. Subpoenas requested by a claimant or an employer to compel the attendance of witnesses or the production of records for any hearing of an appeal shall be issued only on a sworn statement by the party applying for the issuance setting forth the substance of the anticipated proof to be obtained and the need for the proof.

(2) Appeal record.

(a) All reports, forms, letters, transcripts, communications, statements, determinations, decisions, orders, and other matters, written or oral, from the worker, employer, or personnel or representative of the office[division] that have been written, sent, or made in connection with an appeal shall constitute the record with respect to the appeal.

(b) Pursuant to KRS 341.440, a digital recording shall be made of any hearing conducted by the office[division] or commission.

(3) Supplying information from the records of the Office[Division] of Unemployment Insurance.

(a) Information from the records of the office[division] shall be furnished to an interested party or representative to the extent necessary for the proper presentation of the party's case, only upon written request.

(b) All requests for information shall state, as clearly as possible, the nature of the information desired.

(c) An interested party or representative may examine a record in the possession of a referee, the commission, or its authorized representative at a hearing.

(4) Conduct of hearings.



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(a) All hearings shall be conducted informally without regard to common law, statutory or technical rules, or procedure and in a manner as to determine the substantial rights of the parties.

(b) The parties and their witnesses shall testify under oath or affirmation.

(c) All issues relevant to the appeal shall be considered and passed upon.

(5) Reopening hearings.

(a) Any party to an appeal who fails to appear at the scheduled hearing may, within seven (7) days from the hearing date, request a rehearing.

(b) The request shall:

1. Be granted if the party has shown good cause, in accordance with the examples listed in Section 3(2)(c)1 through 4 of this administrative regulation, for failure to appear;

2. Be in writing;

3. Set forth the reasons for the failure to attend the scheduled hearing; and

4. Be mailed or delivered to the office where the appeal was filed, to the Appeals Branch, Office[Division] of Unemployment Insurance, Frankfort, Kentucky, or to the Unemployment Insurance Commission, Frankfort, Kentucky.

(c) Upon the rehearing being granted, notice of the time and place of the reopened hearing shall be given to the parties or to their representatives.

(6) Providing a digital recording of testimony to interested parties.

(a) Parties or their authorized representatives may secure a duplicate of the recording of testimony made at a hearing. To request a duplicate, the party or authorized representative shall:

1. Contact the Kentucky Unemployment Insurance Commission at the address listed on the decision; and

2. Include with the request a CD-R, CD-RW, or USB flash drive, with the appropriately stamped return envelope.

(b) There shall not be a charge for this service, if the party included with the request a CD-R, CD-RW, or USB flash drive and appropriately stamped return envelope.

(7) Retention and destruction of recordings. Ninety (90) days after the administrative remedies have been exhausted, the commission may delete the recording of the hearing under review unless the commission has previously been served with summons and complaint pursuant to KRS 341.450.

Section 6[5]. Service of Process. The Branch Manager, Kentucky Unemployment Insurance Commission, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4<sup>th</sup> Floor, Frankfort, Kentucky 40601~~[Cabinet for Workforce Development, 275 East Main Street, Frankfort, Kentucky 40624]~~, is hereby designated, by the Kentucky Unemployment Insurance Commission, as the person for receipt of Service of Process (Summons) in Civil Actions filed under the provisions of KRS 341.450(2).

BUDDY HOSKINSON, Executive Director

LARRY L. ROBERTS, Secretary

APPROVED BY AGENCY: June 21, 2021

FILED WITH LRC: June 21, 2021 at 1:43 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2021 at 2:00 (ET). This hearing will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph 8(b) (R.S. 2020) and the continuing state of emergency due to the novel coronavirus pandemic. Public access to the meeting will be available at <https://us02web.zoom.us/j/88991458931?pwd=eTZYMEo0V3Qydnk0alB3MFFyYmZVUT09>, password 358248 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 September 30, 2021. Send notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email [buddy.hoskinson@ky.gov](mailto:buddy.hoskinson@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Buddy Hoskinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the procedures for the administration of appeals to unemployment insurance determinations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide the rights and responsibilities of parties affected by determinations of the Office of Unemployment Insurance and the Kentucky Unemployment Insurance Commission and establish rules and time frames for the conduct of appeals hearings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 13B.020(3)(e)1 exempts unemployment insurance hearings from provisions of KRS Chapter 13B. KRS 341.115(1) authorizes the secretary to adopt administrative necessary for the proper administration of KRS Chapter 341.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration by providing the means by which the agency conducts appeals hearings.

(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 adds a definition for the term "interested party", updates statutory authority, updates language to reflect the current name of the Office of Unemployment Insurance, and updates the address for the Kentucky Unemployment Insurance Commission.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the administrative regulation to reflect the current statutory authority and current address for the Kentucky Unemployment Insurance Commission.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary to amend administrative regulations necessary for the proper administration of KRS Chapter 341. KRS 341.440(1) provides that the secretary shall prescribe the rules of conduct for appeals hearings by administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment ensures the correct address for service of process for the appeals process. Further, it will ensure the interested parties are able to participate in the appeals process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation potentially affects all subject employers and unemployment insurance claimants in the Commonwealth.

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

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

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): Compliance with this administrative regulation ensures unemployment insurance claimants and subject employers receive the opportunity to appeal a determination that has adversely affected them.

(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: KRS 341.240 provides for the establishment of unemployment compensation administration fund and establishes that all of the money in this fund shall be expended solely to defray the cost of the administration of this chapter.

(7) Provide an assessment of whether an 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 unemployment insurance claimants and subject employers 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 unemployment insurance coverage and thus are potentially affected by this administrative regulation.

(2) Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 336.015, 336.050, 341.115, 341.430(2), 341.440, 341.450(2), and 2021 Ky Acts ch. 169 § 1(l)(7).

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

(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  
Office of Unemployment Insurance  
(Amendment)

787 KAR 1:140. Unemployment insurance fund payments.

RELATES TO: 341.500, 341.510  
STATUTORY AUTHORITY: KRS 336.015,  
336.050, [454B.020], 341.115, 2021 Ky Acts ch. 169, Part 1, l.(7),  
2021 Ky Acts ch. 3

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. This administrative regulation establishes the procedure to be used between the Office[Division] of Unemployment Insurance, the treasurer of the unemployment insurance fund, the Finance and Administration Cabinet and the Secretary of the Labor[Education] Cabinet for the certification of checks to be written and paid for benefits under the program.

Section 1. All transfers to the state's account in the Unemployment Trust Fund or refund payments made from the clearing account shall be made by the treasurer of the unemployment insurance fund immediately upon receipt of a written order for the action signed by the Director of the Office[Division] of Unemployment Insurance or a person designated by the commissioner and approved by the Secretary of the Labor[Education] Cabinet.

Section 2. Requisitions from the state's account in the Unemployment Trust Fund for claimant benefits or employer refunds shall be made by the treasurer within twenty-four (24) hours after the receipt of a written order for the requisition signed by the Director of the Office[Division] of Unemployment Insurance or a person designated by the commissioner and approved by the Secretary of the Labor[Education] Cabinet. Withdrawals for benefits, shall immediately be deposited in the benefit account. Withdrawals for employer refunds shall immediately be deposited in the clearing account.

Section 3. (1) A benefit payment register for the payment of benefits shall be prepared and presented to the treasurer and certified as correct to the Finance and Administration Cabinet by the Director of the Office[Division] of Unemployment Insurance or a person designated by the commissioner and approved by the Secretary of the Labor[Education] Cabinet. The benefit payment register shall show:

- (a) The claimant's name;
- (b) The claimant's Social Security account number;
- (c) The amount of payment to be made;
- (d) The compensable period for which payment is made;
- (e) The date of issuance and check number or transaction number [The check number and the date of issuance];
- (f) The program type; and
- (g) The claimant's earnings.

(2) After approval by the Secretary of the Finance and Administration Cabinet, the secretary shall present to the treasurer of the unemployment insurance fund a warrant for the issuance of benefit payment vouchers. Upon presentation, the treasurer shall issue benefit payment vouchers with his signature affixed thereto and they shall become a demand upon the depository bank for payment of the amounts specified on the vouchers.

BUDDY HOSKINSON, Executive Director

LARRY L. ROBERTS, Secretary

APPROVED BY AGENCY: June 21, 2021

FILED WITH LRC: June 21, 2021 at 1:43 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2021 at 2:00 (ET). This hearing will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph 8(b) (R.S. 2020) and the continuing state of emergency due to the novel coronavirus pandemic. Public

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access to the meeting will be available at <https://us02web.zoom.us/j/88991458931?pwd=eTZYMEo0V3Qydnk0a1B3MFFyYmZVUT09>, password 358248 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 September 30, 2021. Send notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email [buddy.hoskinson@ky.gov](mailto:buddy.hoskinson@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Buddy Hoskinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure to be used between the office, the unemployment insurance fund, the Finance and Administration Cabinet and the Labor Cabinet for certifying checks to be written and paid for benefits under the program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the system by which funds are requested, benefits and refunds paid and the fiscal integrity maintained.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.500 designates the State Treasurer as the treasurer and custodian of the unemployment insurance fund with authority to administer the fund in accordance with the direction of the secretary to pay all vouchers approved by the Finance and Administration Cabinet and drawn upon the fund in accordance with regulations prescribed by the secretary. KRS 341.510 stipulates the appropriate use of funds in the unemployment insurance trust fund account as for the payment of benefits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the system by which funds are requested, benefits and refunds are paid, and the fiscal integrity maintained.

(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 statutory authority and language currently utilized by the office and updates language to include direct deposit information to be on the benefit payment register.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update statutory authority and to add direct deposit information that is required on the benefit payment register.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 341.115 authorizes the secretary to amend regulations deemed necessary or suitable for the proper administration of KRS Chapter 341.

(d) How the amendment will assist in the effective administration of the statutes: This amendment ensures that all appropriate information is included on the benefit payment register.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Unemployed workers are indirectly affected annually by the administrative regulation in that it

prescribes the method by which funds are drawn for payment of their unemployment insurance benefits. Similarly, contributory employers are potentially and indirectly affected by the provision for drawing down funds for payment of refunds. This administrative regulation also affects the Labor Cabinet, Office of Unemployment and the Finance and Administration Cabinet.

(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): Compliance clarifies the availability of funds to pay employer refunds when due and benefits when due and further, it ensures that fiscal integrity is maintained.

(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: KRS 341.240 provides for the establishment of the unemployment compensation administration fund and establishes that all of the money in this fund shall be expended solely to defray the cost of the administration of KRS Chapter 341.

(7) Provide an assessment of whether an 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 affected agencies, employers and unemployed insurance claimants 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 unemployment insurance coverage and thus potentially affected by this administrative regulation.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 336.015, 336.050, 341.115(1), KRS 341.500, KRS 341.510, and 2021 Ky Acts ch. 169, Part 1, I.(7), and 2021 Ky Acts ch. 3.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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  
Office of Unemployment Insurance  
(Amendment)**

**787 KAR 1:150. Interstate claimants.**

RELATES TO: KRS 341.145, 341.350, 341.360, 341.370, 341.380

STATUTORY AUTHORITY: KRS 336.015, 336.050~~[454B-020]~~, 341.115, 2021 Ky Acts ch. 169 § 1(l)(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. KRS 341.145(1) provides that the secretary may enter into arrangements with other states for the provision of services to unemployed workers. KRS 341.380(1) provides that benefits shall be paid in accordance with administrative regulations promulgated by the secretary. This administrative regulation governs the ~~office~~~~division~~ in its administrative cooperation with other states for the payment of benefits to interstate claimants.

Section 1. Definitions. (1) "Agent state" means a state from which an individual files a claim for benefits payable by another state.

(2) "Benefits" means the compensation payable to an individual, with respect to his unemployment, under the unemployment insurance law of a state.

(3) "Interstate benefit payment plan" means the plan approved by the National Association of State Workforce Agencies under which benefits shall be payable to unemployed individuals absent from the state or states in which benefit credits have been accumulated.

(4) "Interstate claimant" means an individual, including an interstate combined wage claimant, who claims benefits under the unemployment insurance law of one (1) or more liable states from an agent state and shall not include an individual who customarily commutes from a residence in an agent state to work in a liable state unless the secretary finds that:

(a) Kentucky is the liable state; and

(b) The individual is not seeking employment in Kentucky.

(5) "Liable state" means a state against which an individual files a claim for benefits if filed from another state.

(6) "State" means one (1) of the fifty (50) states in the United States of America, or Canada, the Virgin Islands, Puerto Rico, or the District of Columbia.

Section 2. The secretary shall apply the terms of the interstate benefit payment plan in his administrative cooperation with other states that have similar administrative provisions in effect for the payment of benefits to interstate claimants.

Section 3. Kentucky as liable state. An interstate claimant filing against Kentucky as the liable state shall follow the procedures for filing a claim and for claiming benefits as established in 787 KAR 1:090, Sections 2 and 3.

Section 4. Registration for Work. Each interstate claimant filing against Kentucky as the liable state shall be registered for work, through any Kentucky Career Center~~[public employment office]~~ in the agent state when and as required by the law, regulations, and

procedures of the agent state. The registration shall be accepted as meeting the registration requirements of KRS 341.350(2) if proof of registration in the agent state is provided by the interstate claimant.

Section 5. Benefit Rights of Interstate Claimants. (1) If a claimant files a claim against a state, and the claimant has available benefit credits in that state, claims shall be filed only against that state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits.

(2) Benefit credits shall be deemed to be unavailable if benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or if benefits are affected by the application of a seasonal restriction.

(3) The benefit rights of an interstate claimant established by this administrative regulation shall apply only with respect to a new claim (notice of unemployment).

Section 6. Appellate Procedure. (1) If Kentucky is the agent state, it shall afford all reasonable cooperation in taking of evidence in connection with appealed interstate benefit claims on behalf of the liable state.

(2) With respect to the time limits imposed by KRS 341.420(2) upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to Kentucky on the date it is received by the agent state.

Section 7. Failure to Comply with Administrative Regulations. The provisions of 787 KAR 1:090, Section 6, shall apply to interstate claimants.

BUDDY HOSKINSON, Executive Director

LARRY L. ROBERTS, Secretary

APPROVED BY AGENCY: June 21, 2021

FILED WITH LRC: June 21, 2021 at 1:43 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2021 at 2:00 (ET). This hearing will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph 8(b) (R.S. 2020) and the continuing state of emergency due to the novel coronavirus pandemic. Public access to the meeting will be available at <https://us02web.zoom.us/j/88991458931?pwd=eTZYMEo0V3Qydnk0aB3MFFyYmZVUT09>, password 358248 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 September 30, 2021. Send notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email [Buddy.Hoskinson@ky.gov](mailto:Buddy.Hoskinson@ky.gov).

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Buddy Hoskinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation outlines the authority of the office in relationship to other states in the payment of benefits to interstate claimants.

(b) The necessity of this administrative regulation: This administrative regulation defines the terms that apply in interstate claims, interstate claimants, lists the requirements for filing interstate claims, and locates the responsibility for determination of claim determination and appellate procedures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary to adopt regulations deemed necessary or suitable for the proper administration of KRS Chapter 341. This administrative regulation provides guidance pursuant to KRS 341.380(1).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides for the consistent treatment of unemployment insurance claimants across state boundaries.

(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 statutory authority and the names of the Office of Unemployment Insurance and Kentucky Career Centers.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the statutory authority and to update language to reflect names changes for the Office of Unemployment Insurance and Kentucky Career Centers.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary to amend regulations deemed necessary or suitable for the proper administration of KRS Chapter 341. This administrative regulation provides guidance pursuant to KRS 341.380(1).

(d) How the amendment will assist in the effective administration of the statutes: This amendment does not make any substantive changes to the administrative regulation. This administrative regulation provides for the consistent treatment of unemployment insurance claimants across state boundaries.

(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 interstate claimants 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: 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): Interstate claimants are able to file for unemployment insurance benefits.

(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: KRS 341.240 provides for the establishment of the unemployment compensation administration fund establishes that all of the money in this fund shall be expended solely to defray the cost of the administration of KRS Chapter 341.

(7) Provide an assessment of whether an 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. Tiering is applied in that this administrative regulation only affects interstate claimants.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 unemployment insurance coverage and thus potentially affected by this administrative regulation.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 336.015, 336.050, 341.115(1), 341.145, and 2021 Ky Acts ch. 169 § 1(l)(7) and 2021 Ky Acts ch. 3.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 to employers.

#### LABOR CABINET Office of Unemployment Insurance (Amendment)

#### 787 KAR 1:210. Employer contribution rates.

RELATES TO: KRS 341.270, 341.272

STATUTORY AUTHORITY: KRS 336.115, 336.050[454B-020], 341.115, 341.270(3), to 2021 Ky Acts ch. 169 Part 1(l)(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. KRS 341.270(3) requires the ~~secretary~~[Secretary of the Education and Workforce Development Cabinet] to determine the rate schedule for employer contributions. This administrative regulation establishes the method by which the secretary shall publish the rate schedule in effect each year.

Section 1. Annual Employer Rate Notice. (1) On or before December 15 of each year, the ~~Office~~[Division] of Unemployment Insurance, on behalf of the secretary, shall issue to each active employer liable to pay unemployment contributions for the next calendar year a "Notice of Contribution Rate".

(2) The notice shall:

(a) Set forth the rate schedule determined by the secretary pursuant to KRS 341.270(3) to be in effect for the next calendar year;

(b) Inform each employer of:

1. The rate applicable to the employer's account for the next calendar year;

2. The tax, wage, and benefit charge information regarding the employer's account; and

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3. The statutory provisions used to calculate and assign the rate in accordance with KRS 341.270 and 341.272; and

(c) Be issued in either paper or electronic format.

Section 2. Incorporation by Reference. (1) The "Notice of Contribution Rate", UI-29, September 2011, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director of the Office[Division] of Unemployment Insurance, Mayo-Underwood Building, 500 Mero Street[275 E. Main Street, 2E], Frankfort, Kentucky 40601[40624], Monday through Friday, 8 a.m. to 4:30 p.m.

BUDDY HOSKINSON, Executive Director

LARRY L. ROBERTS, Secretary

APPROVED BY AGENCY: June 21, 2021

FILED WITH LRC: June 21, 2021 at 1:49 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on September 27, 2021 at 2:00 (ET). This hearing will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph 8(b) (R.S. 2020) and the continuing state of emergency due to the novel coronavirus pandemic. Public access to the meeting will be available at <https://us02web.zoom.us/j/88991458931?pwd=eTZYMEo0V3Qydnk0alB3MFFyYmZVUT09>, password 358248 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 September 30, 2021. Send notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email: [Buddy.Hoskinson@ky.gov](mailto:Buddy.Hoskinson@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Buddy Hoskinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the method by which the secretary shall publish the rate schedule in effect each year.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the method and timeline for notifying employers of their contribution tax rate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary to adopt administrative regulation deemed necessary or suitable for the proper administration of KRS Chapter 341. KRS 341.270(3) requires the secretary to determine the rate schedule for employer contributions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures the office can notify all active employers of the current rate schedule for employer contributions.

(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 address for the office and the statutory authority.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure the address for

the office is current and to reflect current statutory authority.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary to amend administrative regulation deemed necessary or suitable for the proper administration of KRS Chapter 341. KRS 341.270(3) requires the secretary to determine the rate schedule for employer contributions.

(d) How the amendment will assist in the effective administration of the statutes: This amendment ensures a correct address for the office for where the material incorporated by reference may be inspected.

(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.

(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): Employers will receive notice of their contribution tax rate with detailed factors outlining the factors necessary to make a voluntary payment.

(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: KRS 341.240 establishes the unemployment compensation administration fund, the funds in which are available to the secretary for administration of the UI program and are deposited to defray the cost of the administration of this chapter.

(7) Provide an assessment of whether an 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 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? Only those employers who have elected to pay quarterly unemployment taxes will be impacted. Most elect to reimburse benefits paid out in lieu of paying quarterly taxes.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 336.115, 336.050, 341.115, 341.270(3), 2021 Ky Acts ch. 169 Part 1(l)(7).

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

(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  
Office of Unemployment Insurance  
(Amendment)**

**787 KAR 1:220. Required reports and due dates.**

RELATES TO: KRS 341.070, 341.250(2), 341.190, 341.262

STATUTORY AUTHORITY: KRS ~~336.015, 336.050~~~~[454B-020]~~, 341.115(1), 341.190(2), 2021 Ky Acts ch. 169 Part 1(I)(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of KRS Chapter 341. KRS 341.190(2) authorizes the ~~secretary~~~~[Secretary of the Education Cabinet]~~ to require an employing unit to furnish information and records concerning wages paid, employment and other related matters. This administrative regulation establishes the required filing options, information, and reporting due dates.

Section 1. Definition. "Required report" means the Employer's Quarterly Unemployment Wage and Tax Report (UI-3), which is incorporated by reference in 787 KAR 1:010 and may be filed electronically.

Section 2. (1) Except as provided in subsection (2) of this section, an employer shall file the report required in Section 1 of this administrative regulation by submitting an electronic report via the Internet at <https://kewes.ky.gov>;

~~(a) Submitting a paper form UI-3; or~~

~~(b) Submitting an electronic report via the Internet at <https://kewes.ky.gov>.~~

(2) An employer with fewer than ten (10) [or more] workers performing service in covered employment during any month within a quarter being reported and who is unable to file the report electronically, may submit a paper form UI-3~~[shall submit an electronic report via the Internet at <https://kewes.ky.gov>].~~

Section 3. Due Dates. (1) Except as provided in subsection (2) of this section, the due date for the filing of a required report shall be the last day of the month following the close of the calendar quarter in which wages are paid in covered employment.

(2)(a) The initial due date for the filing of a required report by an employing unit newly subject under the provisions of KRS 341.070 shall be the last day of the month following the quarter in which the employing unit is first given notice by the department of its liability as a subject employer.

(b) An employing unit shall not be considered newly subject if:

1. Prior to beginning employment in Kentucky, it has previously been determined subject under the unemployment compensation law of any other state; however, it shall be considered newly subject if all wages paid in covered employment in Kentucky were reported to another state unemployment compensation program by the due date specified by that state; or

2. It has previously been determined subject under the provisions of KRS 341.070 but subsequently terminated

subjectivity under the provisions of KRS 341.250(2),

(c) If an employing unit has failed to file a required report due to willful intent to evade filing, the provisions of subsection (1) of this section shall apply.

Section 4. Reports shall be considered received by the department as established in 787 KAR 1:230.

BUDDY HOSKINSON, Executive Director

JAMIE LINK, Secretary

APPROVED BY AGENCY: July 1, 2021

FILED WITH LRC: July 2, 2021 at 10:11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2021 at 2:00 (ET). This hearing will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph 8(b) (R.S. 2020) and the continuing state of emergency due to the novel coronavirus pandemic. Public access to the meeting will be available at <https://us02web.zoom.us/j/88991458931?pwd=eTZYMEo0V3Qydnk0aB3MFFYmZVUT09>, password 358248 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 September 30, 2021. Send notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email [buddy.hoskinson@ky.gov](mailto:buddy.hoskinson@ky.gov).

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Buddy Hoskinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the required filing options, information, and due dates for the Employer's Quarterly Wage and Tax Report (UI-3) and stipulates the requirement for electronic filing for those employers with more than 10 workers.

(b) The necessity of this administrative regulation: This administrative regulation provides that the information and payments necessary to operate and fund the Unemployment Insurance Program are made available to the office in a timely manner.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115(1), authorizes the secretary to adopt regulations deemed necessary or suitable for the proper administration of KRS Chapter 341. KRS 341.190(2) authorizes the secretary to require an employing unit to furnish information and records concerning wages paid, employment and other related matters.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the methods and time frames for employer tax reporting.

(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 statutory authority for the administrative regulation

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reflect current

statutory authority for the administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 341.115(1), authorizes the secretary to amend regulations deemed necessary or suitable for the proper administration of KRS Chapter 341. KRS 341.190(2) authorizes the secretary to require an employing unit to furnish information and records concerning ages paid, employment and other related matters.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies the statutory authority.

(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.

(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): Employers ensure that accurate tax liability assessments are being calculated against the entity.

(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: KRS 341.240 provides for the establishment of the unemployment compensation administration fund and establishes that all of the money in this fund shall be expended solely to defray the cost of the administration of KRS Chapter 341.

(7) Provide an assessment of whether an 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 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 unemployment insurance coverage and thus are affected by this administrative regulation.

(2) Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 336.015, 336.050, 341.115(1), 341.190(2) and 2021 Ky Acts ch. 169 Part 1(l)(7).

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

(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 (+/-): None.

Expenditures (+/-): None.

Other explanations:

**LABOR CABINET  
Office of Unemployment  
(Amendment)**

**787 KAR 1:260. Voluntary election of coverage.**

RELATES TO: KRS 341.070(9), 341.250(3)  
STATUTORY AUTHORITY: KRS 336.015, 336.050[454B-020], 341.115, 2021 Ky Acts ch. 169 § 1(l)(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. KRS 341.250(3) provides that an employer may voluntarily elect to cover employment not otherwise covered by the chapter, subject to approval by the secretary. This administrative regulation establishes the process for approval of voluntary election of coverage.

Section 1. An employing unit seeking election of coverage under KRS 341.250(3) shall include in its written election the following information:

(1) For the two (2) calendar years preceding the date of election, or for the total length of existence of the organization, whichever is less:

(a) A list of all funding sources, the revenues received from each, and duration of funding provided from each, accompanied by supporting documentation including grant applications, funding approval letters, and any other relevant material; and

(b) A list of all employees along with gross salaries paid; and

(2) Projections for the two (2) calendar years following the date of election, including:

(a) A list of all anticipated funding sources, the revenues expected from each, and expected duration of funding from each, accompanied by any available documentation supporting these projections; and

(b) The number of workers anticipated, and projected salaries for each position.

Section 2. Except as provided in Section 3 of this administrative regulation, a voluntary election of coverage shall be approved if the information submitted in accordance with Section 1 of this administrative regulation indicates that the number of employees and the total amount of funding are projected to remain the same or increase over the time period covered by the information.

Section 3. An employing unit shall not be granted for voluntary election in any calendar year if, in the preceding calendar year, the employer contributions deposited to the Unemployment Trust Fund were less than the total benefits paid.

BUDDY HOSKINSON, Executive Director  
LARRY L. ROBERTS, Secretary

APPROVED BY AGENCY: June 21, 2021

FILED WITH LRC: June 21, 2021 at 1:39 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on



## VOLUME 48, NUMBER 2– AUGUST 1, 2021

September 27, 2021 at 2:00 (ET). This hearing will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph 8(b) (R.S. 2020) and the continuing state of emergency due to the novel coronavirus pandemic. Public access to the meeting will be available at <https://us02web.zoom.us/j/88991458931?pwd=eTZYMEo0V3Qydnk0a1B3MFFyYmZVUT09>, password 358248 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 September 30, 2021. Send notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email: [Buddy.Hoskinson@ky.gov](mailto:Buddy.Hoskinson@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Buddy Hoskinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process and conditions for approval of voluntary election coverage.

(b) The necessity of this administrative regulation: This administrative regulation lists the steps and information required is an employer who is not covered wants to provide unemployment insurance coverage for wither a worker or business.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes secretary to adopt administrative regulations to administer KRS Chapter 341. KRS 341.070(9) defines the voluntary employer as one classification of subject employer. KRS 341.250(3) provides for voluntary election coverage with the approval of the secretary.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation defines the process by which an employer may elect to voluntarily cover wither his business or employees.

(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 statutory authority and clarifies Section 3 of the administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify statutory authority and to add omitted language in Section 3.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes secretary to amend administrative regulations to administer KRS Chapter 341. KRS 341.070(9) defines the voluntary employer as one classification of subject employer. KRS 341.250(3) provides for voluntary election coverage with the approval of the secretary.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies when voluntary election will not be granted by clarifying Section 3.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to employing unit in the Commonwealth that might wish to elect unemployment insurance coverage.

(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): Employing units wishing to elect unemployment insurance coverage will be able to provide the required information in order for the secretary to make a determination.

(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: KRS 341.240 provides for the establishment of the unemployment compensation administration fund and establishes that all of the money in this fund shall be expended solely to defray the cost of the administration of KRS Chapter 341.

(7) Provide an assessment of whether an 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 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 unemployment insurance coverage and thus are potentially affected by this administrative regulation.

(2) Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 336.015, 336.050, 341.070(9), 341.115, KRS 341.250(3), and 2021 Ky Acts ch. 169 § 1(l)(7).

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

(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.

## VOLUME 48, NUMBER 2– AUGUST 1, 2021

### LABOR CABINET Office of Unemployment Insurance (Amendment)

#### 787 KAR 1:290. Contract construction rates.

RELATES TO: KRS 341.070, 341.272

STATUTORY AUTHORITY: KRS 336.015, 336.050, 341.115, 2021 Ky Acts ch. 169 § 1(l)(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.272(1) requires entities engaged in the contract construction trades to pay contributions equal to the maximum rate of contributions under KRS 341.270. KRS 341.115(1) authorizes the secretary to promulgate administrative regulations to implement KRS Chapter 341. This administrative regulation establishes requirements for contract construction for the purposes of rate assignment under KRS 341.272.

Section 1. For the purpose of rate assignment, a service shall be considered as contract construction if the service is listed in the United States North American Industry Classification System Manual, Part 1 Sector 23 subsections 236, 237 and 238, 2017 [~~United States North American Industry Classification System Manual, 2012, under Major Section 23, Subsections 236, 237, and 238~~].

Section 2. To be considered a contract construction employer, one-half (1/2) or more of the service upon which liability is established under KRS 341.070 shall be in contract construction.

Section 3. Incorporation by Reference. (1) “United States North American Industry Classification System Manual”, Part 1 Sector 23 subsections 236, 237 and 238, 2017 [~~“United States North American Industry Classification System Manual”, 2012, Major Section 23, Subsections 236, 237 and 238~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Labor [~~Education and Workforce Development~~] Cabinet, Tax Enforcement Branch [~~Tax Status and Accounting Branch~~], Mayo-Underwood Building, 500 Mero Street, Frankfort, KY 40601 [~~275 East Main Street, Frankfort, Kentucky 40624~~], Monday through Friday, 8 a.m. to 4:30 p.m.

BUDDY HOSKINSON, Executive Director

LARRY L. ROBERTS, Secretary

APPROVED BY AGENCY: June 21, 2021

FILED WITH LRC: June 21, 2021 at 1:49 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2021 at 2:00 (ET). This hearing will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph 8(b) (R.S. 2020) and the continuing state of emergency due to the novel coronavirus pandemic. Public access to the meeting will be available at <https://us02web.zoom.us/j/88991458931?pwd=eTZYMEo0V3Qydnk0a1B3MFFyYmZVUT09>, password 358248 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 September 30, 2021. Send notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email:

Buddy.Hoskinson@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Buddy Hoskinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirement that entities engaged in contract construction trades pay contributions equal to the maximum rate of contributions under KRS 341.270. The regulation further sets forth the method by which an entity is determined to be engaged in the contract construction trade.

(b) The necessity of this administrative regulation: This administrative regulation uses the NAICS Manual to determine whether service is considered a “contract construction trade.” The 2012 NAICS Manual has been incorporated by reference into the regulation. In order to receive federal funds to administrate portions of its research and statistics programs, the state must use the NAICS manual for assigning classifications.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary to adopt administrative regulations deemed necessary or suitable for the proper administration of KRS Chapter 341. This administrative regulation establishes requirements pursuant to KRS 341.272.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the method for determining entities engaged on contract construction. The regulation identifies the entities that will be required to pay contribution rates for contract construction trades as required by 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: This amendment updates the material incorporated by reference, the current name and address of the office and branches within the office. Further, this amendment updates the statutory authority to reflect the office is now within the Labor Cabinet pursuant to 2021 Ky Acts ch. 169 Part 1(l)(7).

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to accurately reflect updated statutory authority, office address and to update the material incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary to amend administrative regulations deemed necessary or suitable for the proper administration of KRS Chapter 341. This administrative regulation establishes requirements pursuant to KRS 341.272.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that entities are classified correctly for purposes of rate assignment pursuant to KRS 341.270.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Entities engaged in contract construction trades will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: If an entity is classified as a contract construction trade, its contribution rate will be set by KRS 341.270. The entity will be required to pay its contributions at that rate.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will be the amount of the contributions based on the maximum contribution rate.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The contributions will be included in the entity’s unemployment insurance reserve account for use in paying unemployment insurance claims charged against the entity.

(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: KRS 341.240 establishes the unemployment compensation administration fund, the funds in which are available to the secretary for administration of the UI program and are deposited to defray the cost of the administration of this chapter.

(7) Provide an assessment of whether an 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 taxpayers identified by this administrative regulation 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? Only those employers who are engaged in contract construction trades will be impacted by this administrative regulation.

(2) Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 336.015, 336.050, 341.115, KRS 341.272, 2021 Ky Acts ch. 169 § 1(l)(7).

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

(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 (+/-): None.

Expenditures (+/-): None.

Other explanations:

LABOR CABINET

Office of Unemployment Insurance  
(Amendment)

787 KAR 1:300. Successorship.

RELATES TO: KRS 341.070, 341.540

STATUTORY AUTHORITY: KRS 336.015, 36.050[454B-020], 341.115, 341.540(2), 2021 Ky Acts ch. 169 Part 1(l)(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. KRS 341.540(2) provides that the basis for successorship, other than transfers between employing units with common ownership, shall be determined in accordance with administrative regulations

promulgated by the secretary. This administrative regulation establishes the conditions under which an employing unit shall be found to be successor to another.

Section 1. Definitions. (1) "Domestic employing unit" means an employing unit for which service is provided as described in KRS 341.050(1)(g).

(2) "Going concern" means an employing unit that is providing goods or services, maintaining a staff or meeting payroll.

(3) "Negotiation" means dealings conducted between two or more parties for the purpose of reaching an understanding.

Section 2. Except as provided in Section 3 of this administrative regulation, successorship shall be deemed to have occurred between two (2) employing units if:

(1) Negotiation occurs to bring about the transfer, either directly between the parties to the transfer, or indirectly through a third party intermediary; and

(2) At least two (2) of the conditions established in the subsection are met, except this requirement shall not be satisfied if only paragraphs (c) and (d) of this subsection are met:

(a) The employing unit was a going concern at the time negotiations for the transfer began;

(b) The subsequent owner or operator continued or resumed basically the same type of employing unit in the same location;

(c) The subsequent owner employed fifty (50) percent or more of the previous owner's workers in covered employment;

(d) The previous owner employed fifty (50) percent or more of the subsequent owner's workers in covered employment; or

(e) The subsequent owner acquired work contracts or commitments from the previous owner.

Section 3. Successorship for a domestic employing unit shall be deemed to have occurred if two (2) of the conditions established under Section 2(2)(a) through (e) of this administrative regulation exist.

BUDDY HOSKINSON, Executive Director

LARRY L. ROBERTS, Secretary

APPROVED BY AGENCY: June 21, 2021

FILED WITH LRC: June 21, 2021 at 1:43 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2021 at 2:00 (ET). This hearing will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph 8(b) (R.S. 2020) and the continuing state of emergency due to the novel coronavirus pandemic. Public access to the meeting will be available at <https://us02web.zoom.us/j/88991458931?pwd=eTZYMEo0V3Qydnk0a1B3MFFyYmZVUT09>, password 358248 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 September 30, 2021. Send notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email: [Buddy.Hoskinson@ky.gov](mailto:Buddy.Hoskinson@ky.gov).

## VOLUME 48, NUMBER 2– AUGUST 1, 2021

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Buddy Hoskinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes conditions under which an employing unit shall be found to be successor to another.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish when an employing unit is determined to be successor to another.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary to adopt administrative regulations deemed necessary or suitable for the proper administration of KRS Chapter 341. KRS 341.540(2) authorizes the secretary to determine when an employing unit is determined to be successor to another.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the office in determining when an employer should be found to be successor to another.

(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 statutory authority and adds a definition for "negotiation."

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the statutory authority and to clarify when negotiation is determined to have occurred.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary to amend administrative regulations deemed necessary or suitable for the proper administration of KRS Chapter 341. KRS 341.540(2) authorizes the secretary to determine when an employing unit is determined to be successor to another.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist the office in determining when an employer should be found to be successor to another.

(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.

(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): Employing units will have correct reserve account credited to their business and will have the correct tax rate applied.

(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: RS 341.240 provides for the establishment of the unemployment compensation administration fund and establishes that all of the money in this fund shall be expended solely to defray the cost of the administration of KRS Chapter 341.

(7) Provide an assessment of whether an 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 employing units 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 unemployment insurance coverage and thus are potentially affected by this administrative regulation, though in practice the incidence of successor ship between governmental entities are rare.

(2) Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 336.015, 336.050, 341.115, 341.540, and 2021 Ky acts ch. 169 Part 1(l)(7).

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

(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 (+/-): None.

Expenditures (+/-): None.

Other explanations:

### LABOR CABINET Office of Unemployment Insurance (Amendment)

#### 787 KAR 1:310. Claimant profiling.

RELATES TO: KRS 194.030(9), 341.350(2), 42 U.S.C. 503(a)(10), (j)

STATUTORY AUTHORITY: KRS 336.015, 336.050[454B-020], 341.115, 341.350(2)(b), 2021 Ky Acts ch. 169 Part 1(l)(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulation necessary to administer KRS Chapter 341. 42 U.S.C. 503(a)(10) and 503(j) require states to establish profiling systems to identify unemployment claimants who are likely to exhaust regular benefits for referral to reemployment services, and to hold claimants ineligible to receive unemployment benefits if they fail to participate in reemployment services after having been so identified. KRS 341.350(2)(b) provides that the ~~secretary~~[Secretary of the Education Cabinet] shall establish a profiling system. This administrative regulation establishes conditions, consistent with the provisions of 42 U.S.C. 503(a)(10) and (j), under which a claimant shall participate in reemployment services as a condition of receiving benefits.

Section 1. Definition. "Profiling" means a method by which the secretary shall determine if an unemployment claimant is likely to exhaust benefits.

Section 2. Profiling System. (1) Except as provided in subsection (2) of this section, all unemployment claimants shall be subject to profiling as a condition of receiving benefits.

(2) A claimant shall be exempted from profiling if the claimant:

(a) Is applying for extended benefits or special federal program benefits including Trade Adjustment Assistance and Disaster Unemployment Assistance;

(b) Is classified as a "Group B" claimant as established in 787 KAR 1:090, Section 1(2)(b);

(c) Is in approved training as provided in KRS 341.350(6);

(d) Has weekly pension deductions in excess of the benefit amount; or

(e) Is receiving reemployment services through a union hiring hall.

(3) The secretary shall utilize a statistical model of worker profiling as the basis for the identification of claimants for referral for reemployment services. The profiling system shall identify a claimant as unlikely to return to his previous industry or occupation through the consideration of employment related variables. These variables shall not include the claimant's age, gender, race, ethnicity or national origin.

(4) A claimant shall be profiled when issued a first benefit payment, including a zero amount due to excessive earnings or other reason.

(5) A claimant identified by the profiling system as likely to exhaust benefits shall be referred for reemployment services from the Office of Unemployment Insurance ~~[Office of Employment and Training]~~ based on the availability of services. A claimant who is not referred for services within four (4) weeks after identification by the profiling system shall not be referred and shall be considered to have satisfied the requirements of KRS 341.350(2)(b) for the receipt of benefits.

Section 3. Eligible dislocated worker. A claimant determined to be an "eligible dislocated worker" under the Workforce Innovation and Opportunity Act, 29 U.S.C. 3102 et seq. ~~[Workforce Investment Act, 29 U.S.C. 2801 et seq.]~~, may participate in the profiling system.

BUDDY HOSKINSON, Executive Director

LARRY L. ROBERTS, Secretary

APPROVED BY AGENCY: June 21, 2021

FILED WITH LRC: June 21, 2021 at 1:43 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2021 at 2:00 (ET). This hearing will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph 8(b) (R.S. 2020) and the continuing state of emergency due to the novel coronavirus pandemic. Public access to the meeting will be available at <https://us02web.zoom.us/j/88991458931?pwd=eTZYMEO0V3Qydnk0alB3MFFyYmZVUT09>, password 358248 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 September 30, 2021. Send notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 564-2199, fax (502) 564-7850, email: [Buddy.Hoskinson@ky.gov](mailto:Buddy.Hoskinson@ky.gov).

Contact Person: Buddy Hoskinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes conditions, consistent with the provisions of 42 U.S.C. 503(a)(10) and (j), under which a claimant shall participate in reemployment services as a condition of receiving benefits.

(b) The necessity of this administrative regulation: This administrative regulation, in conjunction with the provisions of KRS 341.350(2), fulfills the requirements of 42 U.S.C. 503(a)(10).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary to adopt administrative regulations deemed necessary and suitable for the proper administration of KRS Chapter 341. This administrative regulation provides for the fulfillment of the requirement of KRS 341.350(2) for selected claimants to participant in reemployment services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the bases for determining that a profiled claimant has satisfied the requirement to participate in reemployment services.

(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 statutory authority and federal authority cited in Section 3.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update statutory references and to update the federal authority cited in section 3.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary to amend administrative regulations deemed necessary and suitable for the proper administration of KRS Chapter 341. This administrative regulation provides for the fulfillment of the requirement of KRS 341.350(2) for selected claimants to participant in reemployment services.

(d) How the amendment will assist in the effective administration of the statutes: This amendment ensures that Section 3 identifies the correct federal statute for where the definition of "eligible dislocated worker" is found.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts unemployment insurance claimants who are profiled for reemployment services.

(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): The office will provide job employment services to profiled claimants.

(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: KRS 341.240 provides for the establishment of the unemployment compensation administration fund and establishes that all of the money in this fund shall be expended solely to defray the cost of the

administration of this chapter.

(7) Provide an assessment of whether an 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 profiled unemployment insurance claimants 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? None.

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

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

(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?

(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?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

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

Revenues (+/-): None.  
Expenditures (+/-): None.  
Other explanations:

**PUBLIC PROTECTION CABINET**  
**Department of Insurance**  
**Division of Financial Standards and Examinations**  
**(Amendment)**

**806 KAR 11:020. Multiple employer welfare arrangements.**

RELATES TO: KRS 304.1-120, 304.1-050, 304, 304.2-160, 304.2-165, 304.5-040, 304.9-020, 304.9-051, 304.11-030, 304.11-045, 304.99-020, 304.17A-005(22), 304.17A-410(7), 304.17A-600, 304.17A-633, 304.17A-802, 304.17A-812, 304.99-020, 29 U.S.C. §1002(40).

STATUTORY AUTHORITY: KRS 304.2-110, 304.4-010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes [provides] that the Commissioner [Executive Director] of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.4-010 requires the commissioner to prescribe the fees charged by the Department and the services for which fees shall be charged by administrative regulation. This administrative regulation requires multiple employer welfare arrangements to provide information to the Commissioner [Executive Director] of Insurance so the Commissioner [Executive Director] of Insurance can enforce applicable laws. This administrative regulation also identifies the provisions of the Insurance Code that will be applicable to multiple employer welfare arrangements.

Section 1. Definitions. As used in this administrative regulation:

(1) "Administrator" has the meaning as defined by KRS 304.9-051(1).

(2) "Agent" has the meaning as defined by KRS 304.9-020(1).

(3) "Commissioner" ["Executive director" means the Executive Director of the Kentucky Office] of Insurance] is defined by KRS 304.1-050(1).

(4) "Department" is defined by KRS 304.1-050(2).

(5)(2) "Doing business" [has the meaning] is defined by set forth in KRS 304.11-030(2).

(6) "Health benefit plan" is defined by KRS 304.17A-005(22).

(7) "Health insurance policy" has the meaning of "health benefit plan" as defined by KRS 304.5-040.

(8) "Health insurance stop-loss policy" as defined by KRS 304.17A-410(7).

(9)(3) (a) "MEWA" [means a] or "multiple employer welfare arrangement"[, which is any arrangement which is established or maintained for the purpose of offering or providing health care benefits (other than life insurance benefits) to the employees of two (2) or more employers, or to their beneficiaries] is defined by 29 U.S.C. §1002(40).

(b) [A] "MEWA" does not mean an arrangement under which health care benefits are fully insured by an insurer authorized to do business in Kentucky.

(10) "Person" is defined by KRS 304.1-020.

(11) "Private review agent" is defined by KRS 304.17A-600(11).

~~Section 2. Information to be Provided to the Commissioner [Executive Director]. [(4)] Prior to doing business in Kentucky, a MEWA shall file with the commissioner an Application for a Certificate of Registration of a Multiple Employer Welfare Arrangement (MEWA) and obtain registration approval from the commissioner pursuant to Section 4 of this administrative regulation. A MEWA shall submit an application fee of \$500 at the time of application. The application shall include the information required in Section 3 of this administrative regulation. [A MEWA now doing business in Kentucky shall, within twenty (20) days after the effective date of this administrative regulation, file with the executive director in writing the information set forth in Section 3 of this administrative regulation. The executive director will then decide which laws apply to the MEWA and direct the MEWA to comply. If the MEWA does not comply with applicable laws of Kentucky, the executive director shall take appropriate enforcement action.]~~

~~(2) A MEWA not now doing business in Kentucky shall, prior to doing business in Kentucky, file with the executive director the written information set forth in Section 3 of this administrative regulation. The executive director will then decide which laws apply to the MEWA and direct the MEWA to comply. If the MEWA does not comply with the applicable laws of Kentucky, the executive director shall take appropriate enforcement action.]~~

Section 3. Written Information to be Filed with the Commissioner [Executive Director]. The information required to be filed in writing with the commissioner [executive director] in support of an application for a certificate of registration pursuant to Section 2 of this administrative regulation shall be [is] as follows:

(1) The employer identification number assigned by the Internal Revenue Service to the MEWA;

(2) A copy of any trust document used by the MEWA;

(3) A copy [Copies] of any health benefits or life benefits plan documents;

(4) A copy [Copies] of the most recent [all annual] Form 5500 and M-1 filing [reports] made by the MEWA to the United States Department of Labor [(Form 5500)];

(5) A copy [Copies] of any audits conducted with respect to the MEWA;

(6) A copy of any [Copies of] actuarial reports prepared for the MEWA;

(7) A copy [Copies] of any summary annual reports published for participants in the MEWA;

(8) A copy [Copies] of any contracts with agents or administrators;

(9) The names of insurers and policy numbers for bonds covering fiduciaries of the MEWA;

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(10) A copy [Copies] of any stop-loss, excess, or reinsurance policies held by the MEWA;

(11) The AM Best rating of the stop-loss insurer issuing a policy to the MEWA;

(12) A list of all Kentucky employers participating in the MEWA, including full mailing addresses;

(13[+2]) A list of the names, addresses, official positions, and biographical information of all officers and trustees of the MEWA;

(14[+3]) A copy [Copies] of any marketing materials and rate manuals; and

(15[+4]) The total number of employees, dependents, and beneficiaries participating in the MEWA.

### Section 4. Issuance of Certificate of Registration.

(1) Upon receipt of an application for a certificate of registration submitted in accordance with Section 2 and the written information submitted in accordance with Section 3 of this administrative regulation, the commissioner shall issue or deny the application. A certificate of registration shall be issued only if the commissioner finds the following conditions are met:

(a) The persons responsible for the conduct of the affairs of the MEWA are competent, trustworthy, and possess good reputations; and

(b) The MEWA is financially responsible and may reasonably be expected to meet its obligations to participants and prospective participants. In making this determination the commissioner may consider:

1. The adequacy of working capital;

2. Any agreement with an insurer, a government, or any other organization for insuring the payment of health claims or the provisions for automatic applicability of an alternative coverage in the event of discontinuance of the coverage offered through the MEWA; and

3. Compliance with KRS 304.17A-812, as a guarantee that the financial solvency obligations of the MEWA will be met.

(2) A MEWA that is issued a certificate of registration shall comply with the requirements as defined by KRS 304.17A-600 through 304.17A-633. A MEWA may contract with a registered private review agent that is licensed in Kentucky to fulfill these requirements.

(3) A MEWA that is issued a certificate of registration shall be subject to the commissioner's authority to investigate complaints pursuant to KRS 304.2-160 and KRS 304.2-165.

### Section 5. Renewal of Certificate of Registration.

(1) A MEWA shall annually renew a certificate of registration by submitting:

(a) The application required by Section 2 of this administrative regulation;

(b) The information required by Section 3 of this administrative regulation.

(2) The information required by subsection (1) of this section shall be submitted to the Department no later than March 1 of each year.

### Section 6. Responsibility to Exercise Due Diligence.

(1) Requirements of an Agent. Prior to engaging in or assisting any person to engage in, offering health care benefits to an employer or person located in this state, an insurance agent shall perform appropriate due diligence and apply professional judgment to establish that:

(a) The entity providing the policy is:

1. A MEWA registered in accordance with Section 4 of this administrative regulation;

2. An insurer holding a certificate of authority to offer health insurance in this state;

3. An entity otherwise licensed to offer health insurance in this state; or

4. An entity exempt from regulation in accordance with KRS 304.1-120 or KRS 304.11 045; and

(b) The coverage is as represented in the marketing documents or other documents provided to potential enrollees explaining the terms of coverage.

(2) Requirements of an Administrator. Prior to entering into any administrative contract to assist any person with administration of health care benefits covering employees of an employer or a person located in this state, an administrator shall carry out appropriate due diligence and apply professional judgment to establish that:

(a) The entity providing the health care benefits is:

1. A MEWA registered in accordance with Section 4 of this administrative regulation;

2. An insurer holding a certificate of authority to offer health insurance in this state;

3. An entity otherwise licensed to offer health insurance in this state; or

4. An entity exempt from regulation in accordance with KRS 304.1-120 or KRS 304.11-045; and

(b) The coverage is as represented in the marketing documents or other documents provided to potential enrollees explaining the terms of coverage.

(3) Requirements of an Insurer. Prior to issuing a stop-loss policy for a health insurance policy covering employees, employee dependents, or individuals located in this state, an insurer shall carry out appropriate due diligence and apply professional judgment to establish that:

(a) The entity providing the health care benefits is:

1. A MEWA registered in accordance with Section 4 of this administrative regulation;

2. An insurer holding a certificate of authority to offer health insurance in this state;

3. An entity otherwise licensed to offer health insurance in this state; or

4. An entity exempt from regulation in accordance with KRS 304.1-120 or KRS 304.11-045; and

(b) The coverage is as represented in the marketing documents or other documents provided to potential enrollees explaining the terms of coverage.

### Section 7. Reporting Requirement.

(1) An insurance agent, administrator, or insurer shall file a written complaint with the department pursuant to KRS 304.2-160 and KRS 304.2-165 if, as a result of the due diligence requirement in Section 6 of this administrative regulation, the insurance agent, administrator, or insurer knows or has reason to know that:

(a) A health insurance policy is, or is about to be, offered to the public in this state by an entity that is not permitted to offer health insurance in this state;

(b) The coverage is not as represented in the marketing documents or other documents provided to potential enrollees explaining the terms of coverage; or

(c) The health insurance policy has not been filed with, and approved by, the department and is not otherwise exempt from filing requirements.

(2) The written complaint required by subsection 1 of this section shall be filed within fourteen (14) days of discovering activity prohibited by this regulation, determination of improper registration, or otherwise unauthorized business.

### Section 8. Penalties and Liability.

(1) A person who violates Section 2 of this administrative regulation is subject to a civil penalty of one thousand dollars (\$1000) for each violation.

(2) An insurance agent, administrator, or insurer that fails to file a written complaint in accordance with Section 7 of this administrative regulation shall be subject to administrative penalties, up to and including revocation, suspension, or civil penalty for each violation pursuant to KRS 304.99-020.

Section 9. Exemptions. The provisions of this administrative regulation shall not apply to a self-insured employer organized association group as defined in KRS 304.17A-802(10). [Effective Date. This administrative regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.]

Section 10. Incorporated by Reference. (1) The following

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information is incorporated by reference:

(a) Application for a Certification of Registration of a MEWA (CoR MEWA Form), 7/2021;

(b) United States Department of Labor Form 5500, 2020;

(c) United States Department of Labor Form M-1, 2020; and

(d) Kentucky Designation of Person to Receive Legal Process (Form 800), 1/2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's internet Web site at <http://insurance.ky.gov/>.

SHARON P. CLARK, Commissioner

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: July 8, 2021

FILED WITH LRC: July 9, 2021 at 1:19 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held at 9:00 a.m. on September 21st, 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 September 30th, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

**CONTACT PERSON:** Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email [abigail.gall@ky.gov](mailto:abigail.gall@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets for the requirements and process for multiple employer welfare arrangements to apply for a certificate of registration in the state of Kentucky. This administrative regulation requires multiple employer welfare arrangements to provide information to the Commissioner of Insurance in order to enforce applicable laws. This administrative regulation also identifies the provisions of the Insurance Code that will be applicable to multiple employer welfare arrangements.

(b) The necessity of this administrative regulation: KRS 304.2-110 authorizes that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.4-010 requires the commissioner to prescribe the fees charged by the Department and the services for which fees shall be charged by administrative regulation.

(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.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation defines multiple employer welfare agreement, sets forth the require documentation that is to be submitted to the Commissioner so the Commissioner may enforce applicable laws.

(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 extensive so that the applicable laws can be better interpreted and

prescribed by the Commissioner. These include requiring MEWAs to file with the Commissioner an application for certification of registration, along with a \$500 filing fee. The regulation would now require any MEWA offering stop-loss policies to have an AM Best rating, any MEWA must submit personal and biographical information for its' officers and trustees. The administrative regulation has added sections that set forth reporting requirements, penalties and liabilities for MEWAs and exemptions to the regulation. The amendments also incorporate an internal application form (Form CoR MEWA) as well as the federal reporting forms to the Department of Labor (Form 5500 and M-1). There are also several technical amendments to adhere to the drafting requirements set forth in Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The necessity of this administrative regulation is prescribed by KRS 304.2-110 and 304.4-010. This administrative is necessary to implementing the Insurance Code as well as properly regulating multiple employer welfare agreements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.4-010 requires the commissioner to prescribe the fees charged by the Department and the services for which fees shall be charged by administrative regulation. KRS Chapter 13A sets forth the drafting and formatting requirements for administrative regulations. The amendments to this administrative regulation conforms to the authority granted in the above statutes.

(d) How the amendment will assist in the effective administration of the statutes: The amendments assist in the Commissioner's authority to make administrative regulations to aid in the provision of the Kentucky Insurance Code, and help better regulate multiple employer welfare agreements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There is only 1 MEWA listed in the Commonwealth today.

(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: MEWAs will need to file for an application for a certificate of registration with the Commissioner, and a \$500 filing fee. The entity acting as a MEWA must also submit additional written information as prescribed by Section 3. Any MEWA offering stop-loss policies will need to have an AM Best rating. MEWAs will need to have on file with the Commissioner the US Department of Labor M-1 and 5500 forms for consideration, as well as submitting personal and biographical information of the officers and trustees of the MEWA.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: A \$500 filing fee is required.

(c) As a result of compliance, what benefits will accrue to the entities: If all procedures and requirements are met the Commissioner may then make an informed decision on whether to approve a certificate of registration or deny the applicant. If any entity fails to comply with Section 2 then a \$1000 fine will be applied.

(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: Yes, this administrative regulations establishes a \$500 filing fee for MEWAs.

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation effects all MEWAs.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 17:350. Guaranteed Acceptance Program (GAP) reporting requirements.

RELATES TO: KRS 304.2-100, 304.17B-001, 304.17B-021(2), 304.17B-023

STATUTORY AUTHORITY: KRS 304.2-110(1), [304.17B-031(4)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) provides that the commissioner [executive director] may 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 304.17B-023 establishes reporting requirements for the Guaranteed Acceptance Program. This administrative regulation prescribes the form and the time schedule for submitting reports to the Office of Health and Data Analytics within the Cabinet for Health and Family Services [office] for each calendar year.

Section 1. Definitions. (1) ["Office" is defined in KRS 304.1-050(2).

- (2) "Earned premium" is defined by [in] KRS 304.17B-001(8).
(2) [(3)] "Guaranteed Acceptance Program" or "GAP" is defined by [in] KRS 304.17B-001(11).
(3) [(4)] "Guaranteed Acceptance Program Electronic Report

Format-A" or HIPMC-GAPERF-A-1 means [a three and five tenths (3.5) inch diskette in] a Microsoft Excel spreadsheet formatted document [format] with written procedural instructions for reporting annual data pertaining to insurer premiums and GAP individuals.

(4) [(5)] "Guaranteed Acceptance Program Electronic Report Format-M" or HIPMC-GAPERF-M-1 means [a three and five tenths (3.5) inch diskette in] a Microsoft Excel spreadsheet formatted document [format] with written procedural instructions for reporting monthly data pertaining to insurer premiums and GAP individuals.

(5) [(6)] "Guaranteed Acceptance Program participating insurer" is defined by [in] KRS 304.17B-001(12).

(6) [(7)] "Health benefit plan" is defined by [in] KRS 304.17A-005(22).

(7) [(8)] "Insurer" is defined by [in] KRS 304.17A-005(29) [304.17A-005(27)].

(8) "Office" is defined by KRS 304.17B-001(24)

(9) "Supporting Insurer" is defined by [in] KRS 304.17B-001(28) [(27)].

Section 2. GAP Participating Insurer's Monthly Report. A GAP participating insurer shall submit a OHDA-GAPERF-M-1, 07/21 [HIPMC-GAPERF-M-1 (04/01)], incorporated by reference in this administrative regulation, to the office within thirty (30) calendar days after the end of each calendar month.

Section 3. Supporting Insurer's and Stop-Loss Carrier's Quarterly Reports. A supporting insurer and stop-loss carrier shall submit a OHDA-GAPQ-2 [HIPMC-GAPQR-2 (04/01)], incorporated by reference in this administrative regulation, to the office within thirty (30) calendar days after the end of each calendar quarter.

Section 4. GAP Participating Insurer's Annual Reports. A GAP participating insurer shall submit a OHDA-HIPMC-GAPERF-A-1 [HIPMC-GAPERF-A-1 (12/00)], incorporated by reference in this administrative regulation, to the office within forty-five (45) calendar days after the end of each calendar year.

Section 5. Certification. A GAP participating insurer shall complete and attach a OHDA-GAPC-1 [HIPMC-GAPC-1], incorporated by reference in this administrative regulation, to the following reports, when submitted to the office:

- (1) OHDA-GAPERF-M-1 [HIPMC-GAPERF-M-1 (04/01)]; and
(2) OHDA-GAPERF-A-1 [HIPMC-GAPERF-A-1 (12/00)].

Section 6. Annual Premium Verification. (1) After the end of a calendar year, the office may request in writing that a supporting insurer verify the amount of premiums reported by the insurer for that calendar year.

(2) If a premium verification is requested pursuant to subsection (1) of this section, a supporting insurer shall submit the following documentation:

- (a)1. Confirmation that the reported health benefit plan or stop-loss premium amounts are correct; or
2. Corrections of reported health benefit plan or stop-loss premium amounts; and
(b) A OHDA-GAPAFF-1, 07/21 [HIPMC-GAPAFF-1 (06/01)], incorporated by reference into this administrative regulation.

Section 7. Material Incorporated by Reference. (1) The following material is incorporated by reference:

- (a) Guaranteed Acceptance Program Affidavit, OHDA-GAPAFF-1, 07/21 [HIPMC-GAPAFF-1 (06/01)];
(b) Guaranteed Acceptance Program (GAP) Data Certification Form, OHDA-GAPC-1, 07/21 [HIPMC-GAPC-1 (12/00)];
(c) Guaranteed Acceptance Program Electronic Report Format - Annual for GAP Participating Insurers, OHDA-GAPERF-A-1, 07/21 [HIPMC-GAPERF-A-1 (12/00)];
(d) Guaranteed Acceptance Program Electronic Report Format - Monthly for GAP Participating Insurers, OHDA-GAPERF-M-1, 07/21 [HIPMC-GAPERF-M-1 (04/01)]; and
(e) Supporting Insurer's and Stop-Loss Carrier's Quarterly Report, HIPMC-GAPQR-2, 04/01 [(04/01)].
(2) This material may be inspected, copied, or obtained,

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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 website at <http://insurance.ky.gov>. [Forms may also be obtained on the office's Internet Web site at <http://doi.ppr.ky.gov/kentucky/>]

SHARON P. CLARK, Commissioner

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: July 8, 2021

FILED WITH LRC: July 9, 2021 at 1:19 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held at 9:00 AM on September 21st, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on September 30th, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

**CONTACT PERSON:** Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email [abigail.gall@ky.gov](mailto:abigail.gall@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes the form and the time schedule for submitting reports to the Department for each calendar year.

(b) The necessity of this administrative regulation: KRS 304.2-110(1) provides that the Commissioner may promulgate administrative regulations necessary or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.17B-023 establishes reporting requirements for the Guaranteed Acceptance Program. This administrative regulation prescribes the form and the time schedule for submitting reports to the Department for each calendar year.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) provides that the Commissioner may promulgate administrative regulations necessary or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.17B-023 establishes reporting requirements for the Guaranteed Acceptance Program. This administrative regulation prescribes the form and the time schedule for submitting reports to the Department for each calendar year.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 304.2-110(1) provides that the Commissioner may promulgate administrative regulations necessary or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.17B-023 establishes reporting requirements for the Guaranteed Acceptance Program. This administrative regulation prescribes the form and the time schedule for submitting reports to the Department for each calendar year.

(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 two (3) GAP participating insurers, and one hundred fifty (150) supporting insurers in the state of Kentucky.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Insurers 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. This administrative regulation requires Guaranteed Acceptance Program (GAP) participating and supporting insurers to report specific information regarding its GAP participating insureds, information about GAP participating insurers, and information about supporting insurers.

(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 insurers participating in GAP will be in compliance with regulations and statutes prescribed by the state and will be allowed to participate in the program.

(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 administrative regulation applies to all insurers issuing health insurance benefit plans in the state of Kentucky.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department 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), 304.17B-031(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

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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 39:070. Proof of motor vehicle insurance.**

RELATES TO: KRS 186.021(3), 186A.040, 186A.042, 186A.095, 304.39-080, 304.39-083, 304.39-085, 304.39-087, 304.39-090, 304.39-117

STATUTORY AUTHORITY: KRS 186.021(3), 304.2-110(1), 304.39-117(1), 304.39-300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.021(3) authorizes [requires] the commissioner of the Department of Insurance to promulgate an administrative regulation to establish the manner for presenting proof of motor vehicle insurance to a county clerk. KRS 304.2-110(1) and 304.39-300 authorize the commissioner to promulgate administrative regulations necessary for or as an aid to enforce the insurance code. KRS 304.39-117(1) requires the Department of Insurance to promulgate an administrative regulation that establishes the requirements for the proof of insurance that an insurer shall give to an insured. This administrative regulation establishes the requirements for the proof of insurance; the methods for reporting coverage provided for personal motor vehicles insured on a personal lines motor vehicle policy; the methods for presenting proof of motor vehicle insurance to a county clerk or peace officer; and the requirements for notifying the Department of Vehicle Regulation if a binder, contract, or commercial policy of motor vehicle insurance is cancelled or not renewed.

Section 1. Definitions. (1) "Commissioner" is defined by KRS 304.1-050(1).

(2) "Department" is defined by KRS 304.1-050(2).

(3) "Insurer" means an insurer defined by [under] KRS 304.1-040.

(4) "Motor vehicle insurance policy" means an insurance contract that provides security covering a motor vehicle required to be registered pursuant to KRS 186.020 and insured pursuant to KRS 186.021 and 304.39-080.

(5) "Person" is defined by KRS 304.1-020.

(6) "Personal lines motor vehicle policy" means an insurance policy, issued by an insurance carrier authorized to do business in the Commonwealth of Kentucky, which insures a personal motor vehicle.

(7) "VIN" means the vehicle identification number of a motor vehicle.

Section 2. Proof of Insurance to be Provided by Insurers. (1) The proof of insurance required by KRS 304.39-117 shall be provided to the insured when a policy is issued, renewed, or amended to include a vehicle. An insurer electing to provide proof of insurance in an electronic format shall provide a printed proof of insurance unless the insured requests to receive proof of insurance

in electronic format.

(2) Printed proof of insurance card.

(a) Two (2) copies of the printed proof of insurance card shall be provided for each motor vehicle insured under a motor vehicle insurance policy.

(b) Size and format of the printed proof of insurance card.

1. The printed proof of insurance card shall be:

a. A two and one-fourth (2 1/4) inch by three and one-half (3 1/2) inch card;

b. A two and one-fourth (2 1/4) inch by seven (7) inch card with a vertical fold resulting in a two and one-fourth (2 1/4) inch by three and one-half (3 1/2) inch card;

c. A four and one-half (4 1/2) inch by three and one-half (3 1/2) inch card with a horizontal fold resulting in a two and one-fourth (2 1/4) inch by three and one-half (3 1/2) inch card; or

d. A substantially similar size to the dimensions established in clauses a. through c. of this subparagraph.

2. The printed insurance card shall be on white paper with black or blue ink.

(3) Proof of insurance in an electronic format.

(a) Proof of insurance in an electronic format shall be downloaded from or transmitted by the insurer or agent to the insured.

(b) Proof of insurance in an electronic format shall not include a photographic copy of a paper insurance card on a portable electronic device.

(4) Mandatory contents of the proof of insurance. In either paper or electronic format, the proof of insurance shall prominently display the following information, in the order listed:

(a) Title: "COMMONWEALTH OF KENTUCKY PROOF OF INSURANCE";

(b) The name of the insurance company and its five (5) digit code number assigned by the National Association of Insurance Commissioners (NAIC), or the name of the Self-Insured Group and the group ID number provided by the department;

(c) The name of the named insured;

(d) The effective date and expiration date of coverage. If the policy is amended to add an identified vehicle mid-term, the effective date on the card shall be the effective date of the amendment;

(e) The policy number;

(f) The type of policy:

1. If the policy is a personal lines motor vehicle policy for which premium is reported on the NAIC Annual Statement line 19.1 or 19.2, the insurer shall indicate the policy type as "Personal" or "PL"; or

2. If the policy is a commercial lines motor vehicle policy for which premium is reported on the NAIC Annual Statement line 19.3 or 19.4, the insurer shall indicate the policy type as "Commercial" or "CL"; and

(g) The vehicle or vehicles insured:

1. If the type of policy is personal lines (PL), the year, make, model, and VIN of each motor vehicle; or

2. If the type of policy is commercial lines (CL), and:

a. If the insurance contract covers four (4) or fewer vehicles, the year, make, model and VIN of each motor vehicle; or

b. If the insurance contract covers five (5) or more motor vehicles, it may state "Fleet" or the insurer may elect to include the year, make, model, and the VIN of each motor vehicle.

(5) Other information to be provided to the insured. The insurer shall:

(a) Include the following information on the proof of insurance if the information required by subsection (4) of this section is not obscured:

1. The insurer's logo;

2. A statement that establishes the procedure for contacting the insurer concerning a claim; and

3. The insurer's address; or

(b) Include the information listed in paragraph (a) of this subsection on a separate document or electronic image provided with the proof of insurance.

(6) An insurer shall furnish with the proof of insurance the following information:

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(a) Instructions that the insured shall keep a copy of the proof of insurance in each motor vehicle covered by the policy at all times;

(b) Information as to whether or not the policy is a personal lines motor vehicle policy and whether or not the vehicle has been reported as an insured personal motor vehicle;

1. If so, the insured shall be informed that:

a. The proof of coverage information has been reported electronically to the Department of Vehicle Regulation; and

b. If the VIN does not appear in the database, the insured may be required to present proof of insurance to the county clerk for issuance of a replacement plate, decal, or registration certificate or renewal as alternative evidence of proof of coverage; or

2. If not, the insured shall be instructed to present proof of insurance to the county clerk for issuance of a replacement plate, decal, or registration certificate or renewal as evidence of proof of coverage; and

(c) Instructions to compare the VIN appearing on the registration, insurance policy and proof of insurance to the VIN affixed to the vehicle.

1. If the VIN on the motor vehicle title and registration and the VIN on the motor vehicle do not match, the policyholder shall contact the county clerk to have the title and registration corrected.

2. If the VIN on the proof of insurance and the motor vehicle do not match, the policyholder shall contact the insurer to have the insurance policy and card corrected. The insurer shall provide the name, address, and telephone number of an insurer representative to contact concerning a discrepancy. The telephone number shall be:

a. The phone number of a local agent of the insurer; or

b. A toll-free telephone number of the insurer.

Section 3. Methods of Proving Motor Vehicle Insurance. One (1) of the following methods shall be used to prove that motor vehicle insurance is in effect when registering a motor vehicle:

(1) The VIN appears as an insured motor vehicle in the Department of Vehicle Regulation's database;

(2) Proof of current insurance in paper or electronic format:

(a) If the database does not list the VIN of a vehicle insured on a personal lines motor vehicle (PL) policy, the proof of coverage shall indicate the proof was effective no more than forty-five (45) days prior to submission to the county clerk; and

(b) The county clerk may require the proof of coverage to be sent directly to the clerk by the agent or company;

(3) A certificate of insurance issued by an insurance agent with a casualty line of authority licensed by Kentucky;

(4) An insurance contract with a declaration page attached showing that the policy is in effect when the motor vehicle is being registered or transferred;

(5) A letter from the Kentucky Automobile Insurance Plan serving as prima facie evidence of insurance in force;

(6) If the owner of the motor vehicle is serving in the armed forces outside Kentucky, an affidavit by the provost marshal of the base where the person is stationed stating that the motor vehicle is covered by an automobile liability insurance policy; or

(7) A letter from the Kentucky Department of Insurance serving as prima facie evidence of self-insurance pursuant to KRS 304.39-080(7).

Section 4. Beginning January 1, 2006, and each month thereafter, an insurer shall submit information on each vehicle covered by a personal lines motor vehicle policy according to the rules contained in Section 2.1 of the Kentucky Automobile Liability Insurance Reporting Guide.

Section 5. For motor vehicles insured under a commercial lines or fleet policy, each insurer shall report cancellations pursuant to Part 2.2 of the Kentucky Automobile Liability Insurance Reporting Guide.[]

~~Section 6. An insurance agent shall submit to the Department of Vehicle Regulation a completed Form TC96-30 if the purchaser of a binder or temporary insurance contract cancels the binder or~~

~~contract before the agent has submitted the application to the insurance company.]~~

Section 6 [Z]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Automobile Liability Insurance Reporting Guide", Transportation Cabinet, Department of Vehicle Regulation, Version 1.6, 8/15/2005 [~~Version 1.6, 8/15/2005 edition~~]; and

(b) ~~"Form No. TC 96-30, Motor Vehicle Insurance Agent Insurance Binder Cancellation Form (5/05 edition)", Kentucky Transportation Cabinet, Department of Motor Vehicle Regulation.~~]

(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 [Vehicle Regulation, P. O. Box 2014, 200 Mero Street,] Frankfort, Kentucky 40601 [40622], Monday through Friday, 8 a.m. to 4:30 p.m. [~~The material may also be obtained at the Transportation Cabinet Web site: <http://transportation.ky.gov/mvl/home.htm>.~~] The material may also be obtained at the Department of Insurance Web site: <http://insurance.ky.gov>.

SHARON P. CLARK, Commissioner

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: July 8, 2021

FILED WITH LRC: July 9, 2021 at 1:19 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held at 9:00 AM on September 21st, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on September 30th, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email [abigail.gall@ky.gov](mailto:abigail.gall@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for proof of motor vehicle insurance, the methods for reporting coverage provided for personal motor vehicles insured on a personal lines motor vehicle policy, the methods for presenting proof of motor vehicle insurance to a county clerk or peace officer, and the requirements for notifying the Department of Vehicle Regulation if a binder, contract, or commercial policy of motor vehicle insurance is cancelled or not renewed.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the manner for presenting proof of motor vehicle insurance to a county clerk, to establish the requirements for the proof of motor vehicle insurance that an insurer is required to give to an insured, and to establish how an insurer or agent is to notify the Department of Vehicle Regulation if a binder, other contract for temporary insurance, or a policy is terminated by cancellation or nonrenewal.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 186.021 requires the Commissioner of the Department of Insurance to promulgate an administrative regulation to establish the manner for presenting proof of motor vehicle insurance to a county clerk. KRS 304.39-117 requires the Department of Insurance to promulgate an

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administrative regulation that establishes the requirements for the proof of insurance that an insurer is required to give to an insured. KRS 304.39-083 and 304.39-085 require notification to the Department of Vehicle Regulation if a binder or other contract for temporary insurance or a policy is terminated by cancellation or nonrenewal.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs all insurers regulated by the Department of Insurance of the policies and procedures for providing proof of insurance in conformity with the intent of the statutes. This administrative regulation informs County Clerks of the acceptable means of proof 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: This amendment reflects the removal Form No. TC 96-30, Motor Vehicle Insurance Agent Insurance Binder Cancellation Form from the regulation as it is no longer a required filing with the Kentucky Department of Transportation. There reference to Kentucky Department of Transportation's web site was also removed as the "Kentucky Automobile Liability Insurance Reporting Guide" is no longer housed on their web site.

(b) The necessity of the amendment to this administrative regulation: KRS 13A.3102 sets forth the expiration requirements of all Kentucky Administrative Regulations. This regulation is being amended to meet the expiration filing requirement and to make appropriate changes to ensure the regulation requires the proper reporting processes.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 186.021 requires the Commissioner of the Department of Insurance to promulgate an administrative regulation to establish the manner for presenting proof of motor vehicle insurance to a county clerk. KRS 304.39-117 requires the Department of Insurance to promulgate an administrative regulation that establishes the requirements for the proof of insurance that an insurer is required to give to an insured. KRS 304.39-083 and 304.39-085 require notification to the Department of Vehicle Regulation if a binder or other contract for temporary insurance or a policy is terminated by cancellation or nonrenewal.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to this administrative regulation inform all insurers and producers regulated by the Department of Insurance of the proof of insurance which must be provided to the each vehicle owner, the methods by which a vehicle owner shall present proof of insurance to their county clerk or a peace officer, and the methods by which the insurers and producers shall report coverage information to the Transportation Department of Vehicle Regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Every motor vehicle insurer issuing a policy which covers a vehicle registered in Kentucky must provide proof of insurance for each insured vehicle.

(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: All of the above groups are currently impacted by the current administrative regulation. Specifically regarding the amendments, some insurers will be interested in providing electronic proof of insurance apps to their customers as the insurers already deliver policies and complete transactions electronically.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In order to comply with this administrative regulation, insurers wanting to offer electronic proof of insurance need to ensure that the proof of insurance is available for download to a customer's portable electronic device in a manner that depicts current, valid, in-force coverage. Consumers opting to use electronic proof of insurance need to ensure that they maintain proof of coverage, whether electronic or paper, in their vehicle at all times. Law enforcement and county clerks need to be aware that electronic proof of insurance meeting the requirements

of this administrative regulation is an appropriate manner to demonstrate that an insured has met their obligation to maintain insurance on their motor vehicle.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to law enforcement or county clerks to implement this administrative regulation. Because offering electronic proof of insurance is optional, there is no cost to an insurer. For insurers that voluntarily choose to offer electronic proof of insurance, the costs will vary based on their current system capabilities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The primary benefits of offering electronic proof of insurance are the ability of insurers to streamline business operations by using less paper and the ability of consumers to use current technology to fulfill their ability to demonstrate motor vehicle insurance.

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

(a) Initially: There will be no cost to implement, no mass mailing, no new filings, and no additional staff needed. The P&C Division will alert insurers via SERFF about the reg revisions. A notice will also be prepared to inform Transportation and the county clerks.

(b) On a continuing basis: There is no additional cost to DOI to implement this regulation on an ongoing basis. Insurers are not currently required to file the printed proof of insurance, nor will they be required to file a printed image of the optional electronic proof of insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of the amendments to this administrative regulation will continue to be funded by the existing filing fees charged by the Department of Insurance pursuant to 806 KAR 4:010.

(7) Provide an assessment of whether an 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 the amendments to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendments to this administrative regulation do not establish any new fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is applied by the statutory distinctions between personal and commercial motor vehicle policies.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation and, specifically, the Department's Property and Casualty Division.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 186.021, 186A.042, 304.2-110(1), 304.39-083, 304.39-085, 304.39-087, 304.39-117, 304.39-300

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

(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 Department of Insurance for the first year.

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

(c) How much will it cost to administer this program for the first year? There should not be a cost to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? There should not be a cost to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(Amendment)**

**810 KAR 4:040. Running of the race.**

RELATES TO: KRS 230.215(2), 230.260(1)

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation sets forth the standards and requirements governing the running of a horse race.

Section 1. Post Time. Post time for the first race on each racing day shall be approved by the commission. Post time for subsequent races on the same program shall be fixed by the pari-mutuels manager. No race shall start after 11:55 p.m.

Section 2. Horses in paddock not to be touched. Only the following persons may touch a horse while in the paddock:

- (1) Licensed owner;
- (2) Licensed trainer;
- (3) Authorized stable personnel;
- (4) Paddock judge;
- (5) Horse identifier;
- (6) Assigned valet;
- (7) Steward;
- (8) Farrier; [or]
- (9) Outrider; or
- (10) Jockey.

Section 3. Trainer Responsibility. The trainer shall be responsible for:

- (1) Arrival in the paddock, at the time prescribed by the paddock judge, of each horse entered;
- (2) Supervising the saddling of each horse entered; and
- (3) Providing his or her assistant trainer or another licensed trainer to serve as a substitute if absent from a track where the trainer's horses are participating in races.

Section 4. Withdrawal of a Horse. A horse whose starting is mandatory shall run the course, except that the stewards may order the withdrawal of a horse at any time up to the actual start of a race.

Section 5. Walkover. If at the time for saddling, only one (1) horse, or horses owned by only one (1) stable, will be weighed out, the horse or horses of single ownership shall be ridden past the stewards' stand, go to the post, and then move over the course before determination of the winner.

Section 6. Parade to the Post; Time.

(1) All horses shall parade and carry their declared weight from the paddock to the starting post.

(a) The parade shall pass the stewards' stand.

(b) After passing the stewards' stand once, horses may break formation and canter, warm up, or go as they please to the post.

(c) With the permission of the stewards, a horse may be excused from parading with the other horses.

(2) The parade to the post shall not exceed twelve (12) minutes from the time the field enters upon the track, except in cases of unavoidable delay.

(3) If a jockey is thrown on the way to the post:

(a) The jockey shall remount at the point at which thrown; or

(b) If the jockey is so injured as to require a substitute jockey, the horse shall be returned to the paddock where the horse shall be remounted by a substitute jockey.

Section 7. Lead Pony. A horse may be led to the post by a lead pony. Lead ponies may be excluded from the paddock or walking ring, at the discretion of the stewards.

Section 8. Control of Horses and Jockeys by Starter. Horses and jockeys shall be under the control of the starter from the moment they enter the track until the race is started.

(1) The starter may grant a delay if an injury occurs to any jockey or if a jockey's equipment malfunctions. During the delay, the stewards may require all jockeys to dismount.

(2) The starter shall unload the horses in the gate when instructed by the stewards if:

(a) A horse breaks through the gate or unseats its jockey after any of the field is loaded in the starting gate; and

(b) The horse is not immediately taken in hand by the outrider and brought back for reloading.

(3) The starter shall reload the horses in their proper order upon order of the stewards.

(4) The starter shall report all causes of delay to the stewards.

(5) A person other than the jockey, starter, or assistant starter shall not strike a horse or attempt, by shouting or other means, to assist the horse in getting a start.

Section 9. Starting Gate. Races on the flat shall use a starting gate approved by the commission unless exempted by the stewards. Exempted races shall not start until the assistant starter has dropped the flag in answer to the starter.

Section 10. Horses Left at Post.

(1) If a door at the front of the starting gate fails to open properly and timely when the starter dispatches the field, or if a horse has inadvertently not been loaded in the starting gate when the field is dispatched, thereby causing the horse to be left at the post, the starter shall immediately report the circumstance to the stewards who shall:

(a) Immediately post the "inquiry" sign;

(b) Advise the public to hold all pari-mutuel tickets; and

(c) Determine, after consulting with the starter and viewing the race replay, whether or not the horse was precluded from obtaining a fair start.

(2) If the stewards determine that the horse was precluded from obtaining a fair start, the stewards shall rule the horse a nonstarter and shall order money wagered on the horse deducted from the pari-mutuel pool and refunded to holders of pari-mutuel tickets on the horse, unless the horse ruled a nonstarter is part of a pari-mutuel[mutuel] entry and another horse in the entry is not left at the post, in which case there shall not be a pari-mutuel refund.

(3) Stakes fees for a ruled nonstarter shall be refunded to the owner.

(4) The starter may, in his or her discretion, place an unruly or fractious horse on the outside of the starting gate and one (1) length behind the starting line. If the horse so stationed outside the starting gate by the starter dwells or refuses to break with the field and is thereby left at the post, there shall not be a refund of pari-mutuel wagers on the horse nor refund of stakes fees paid for the horse.

Section 11. Horses Failing to Finish. Any horse that starts in a race but does not cross the finish line or is not ridden across the finish line by the jockey with whom it starts the race shall be declared unplaced and shall receive no portion of the purse money.

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### Section 12. Fouls.

- (1) A leading horse if clear is entitled to any part of the track.
- (2) If a leading horse or any other horse in a race swerves or is ridden to either side so as to interfere with, intimidate, or impede any other horse or jockey, or to cause the same result, this action shall be deemed a foul.
- (3) If a jockey strikes another horse or jockey, it is a foul.
- (4) If, in the opinion of the stewards, a foul alters the finish of a race, an offending horse may be disqualified by the stewards.

### Section 13. Stewards to Determine Foul Riding.

- (1) A jockey shall make a best effort to control and guide his or her mount in such a way as not to cause a foul.
- (2) The stewards shall take cognizance of riding that results in a foul, irrespective of whether or not an objection is lodged.
- (3) If, in the opinion of the stewards, a foul is committed as a result of a jockey not making a best effort to control and guide his or her mount to avoid a foul, whether or not intentionally or through carelessness or incompetence, the jockey may be penalized at the discretion of the stewards.

### Section 14. Horses to be Ridden Out.

- (1) Every horse in every race shall be ridden so as to win or finish as near as possible to first and demonstrate the best and fastest performance of which it is capable at the time, while in compliance with Section 15 of this administrative regulation.
- (2) A horse shall not be eased up without adequate cause, even if it has no apparent chance to earn a portion of the purse money.
- (3) A jockey who unnecessarily causes a horse to shorten stride may be penalized at the discretion of the stewards.
- (4) Stewards shall take cognizance of any marked reversal of form of a horse and shall conduct inquiries of the licensed owner, licensed trainer, and all other persons connected with the horse.
- (5) If the stewards find that the horse was deliberately restrained or impeded in any way or by any means so as not to win or finish as near as possible to first, any person found to have contributed to that circumstance may be penalized at the discretion of the stewards.

### Section 15. Use of Riding Crops.

- (1) Although the use of a riding crop is not required, a jockey who uses a riding crop during a race shall do so only in a manner consistent with exerting his or her best efforts to win.
- (2) In any race in which a jockey will ride without a riding crop, an announcement of that fact shall be made over the public address system.
- (3) An electrical or mechanical device or other expedient designed to increase or retard the speed of a horse, other than a riding crop approved by the stewards pursuant to 810 KAR 4:010, Section 11 shall not be possessed by anyone, or applied by anyone to a horse at any time at a location under the jurisdiction of the racing commission.
- (4) A riding crop shall not be used on a two (2) year-old horse in races before April 1 of each year.
- (5) Allowable uses of a riding crop include the following:
  - (a) The riding crop may [shall only] be used at any time, without penalty, if, in the opinion of the stewards, the riding crop is used to avoid a dangerous situation or preserve the safety of other riders or horses in a race:
    - (b) If necessary during a race, a riding crop may be used in a backhanded or underhanded fashion from the 3/8 pole to the finish line. This use will not be counted toward the use of the crop six (6) times in the overhand fashion, as allowed in Section 15(6). At no point shall the use of the crop rise above the rider's helmet [for safety, correction, and encouragement.
  - (6) A rider who uses a riding crop];
  - (c) Tapping[shall:
    - (a) Show] the horse on the shoulder with the crop in the down position while both hands are holding onto the reins[riding crop] and both hands are touching the neck of[give] the horse; and
    - (d) Showing or waving the crop without contact with the horse

and giving the horse time to respond before striking the horse.];

- (6) Use of]
  - (b) Having used] the riding crop to make contact with a horse to maintain focus and concentration, to control the horse for safety of the horse and rider, or to encourage a horse is allowed, with the following exceptions:
    - (a) Use of the crop in any manner, other than underhanded or backhanded as set forth in Section 15(5)(b), or tapping on the shoulder as set forth in Section 15(5)(c), resulting in more than six (6) times in the overhand manner;
    - (b) Use of the crop and making contact with the horse more than two (2) successive strikes without allowing[, give] the horse a chance to respond,[before using it again; and]
    - (c) Use of the crop with the rider's wrist above helmet height;
    - (d) Use of the crop [
      - (e) Use the riding crop in rhythm with the horse's stride.;
    - (7) A riding crop shall not be used to strike a horse:
      - (a) on the head, flanks, or on any other part of its body other than the shoulders or hindquarters;
      - (e) Use of the crop [hind quarters except if necessary to control a horse;
        - (b) during the post parade or after the finish of the race except if necessary to control the horse;
        - (f) Excessive or brutal use of the crop causing injury to the horse [
          - (c) Excessively or brutally];
          - (g) Use of the crop [
            - (d) causing welts or breaks in the skin;
            - (h) Use of the crop [
              - (e) if the horse is clearly out of the race or has obtained its maximum placing; and
              - (i) Use of the crop [
                - (f) Persistently] even though the horse is showing no response [under the riding crop].
                - (7) (8)] A riding crop shall not be used to strike another person.
                - (8) [(9)] After the race, a horse shall [may] be subject to inspection by a racing official or official veterinarian looking for cuts, welts, or bruises in the skin. Any adverse findings shall be reported to the stewards.
                - (9) [(10)] Use of the crop during workouts shall be permitted so long as such use does not violate section 6(c) through (i).
                - (11) The giving of instructions by any licensee that, if obeyed, would lead to a violation of this section may result in disciplinary action also being taken against the licensee who gave the instructions.
                - (12) Only padded/shock absorbing riding crops which have not been modified in any way may be carried in a race.
                - (13) During a race, if a jockey rides in a manner contrary to this rule, the stewards shall impose a minimum fine of \$500, a minimum suspension of three (3) days, or both, if in the opinion of the stewards, the violation is egregious or intentional. Factors in determining whether a violation is egregious include at least the following:
                  - (a) Recent history of similar violations;
                  - (b) Number of uses over the total and consecutive limits described in this section; and
                  - (c) Using the crop in the overhanded position more than six (6) times.

Section 16. Other Means of Altering Performance. An electrical or mechanical appliance, other than a riding crop, shall not be used to affect the speed of a horse in a race or workout. A sponge or other object shall not be used to interfere with the respiratory system of a horse. Use or nonuse of ordinary racing equipment shall be consistent and any change of equipment shall be approved by the stewards.

Section 17. Official Order of Finish as to Parimutuel[Parimutuel] Payoff. Once satisfied that the order of finish is correct and that the race has been properly run in accordance with the rules and KAR Title 810[Titles 810 and 811], the stewards shall order that the official order of finish be confirmed and the official

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sign posted for the race. The decision of the stewards as to the official order of finish for pari-mutuel wagering purposes shall be final, and no subsequent action shall set aside or alter the official order of finish for the purposes of pari-mutuel wagering.

JONATHAN RABINOWITZ, Chair  
KERRY HARVEY, Secretary

APPROVED BY AGENCY: June 24, 2021

FILED WITH LRC: June 24, 2021 at 12:57 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held at September 21, 2021 at 9:00 a.m. local time at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

**CONTACT PERSON:** Jennifer Wolsing, General Counsel, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone +1 (859) 246-2040, fax: +1 (859) 246-2039, email jennifer.wolsing@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the rules concerning the running of the race in Thoroughbred and other flat racing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide specific rules concerning the running of the race in Thoroughbred and other flat racing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation prescribes the conditions relating to the running of the race in Thoroughbred and other flat racing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth requirements and rules concerning the running of the race in Thoroughbred and other flat racing that enhance the integrity of racing.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendments change the existing regulation by specifying precisely when a crop can and cannot be used during a race.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to preserve the integrity of horse racing and ensure that all equine athletes are treated with dignity and respect during a race.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This proposed amendment prescribes the conditions relating to the use of the crop in Thoroughbred and other flat racing.

(d) How the amendment will assist in the effective administration of the statutes: KRS 230.215(2) and 230.260(8) authorize the

Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This proposed amendment provides necessary rules relating to the appropriate use of the crop during flat racing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky's five licensed Thoroughbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the conduct of racing. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to year.

(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: Participants in horse racing, and particularly jockeys, will be required to use the crop according to the guidelines set forth in this proposed amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities: Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no continuing cost 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: No funding will be necessary to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Explain why or why not. Tiering was not applied because this administrative regulation will apply to all similarly situated entities in an equal manner.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission will be impacted 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 230.215, 230.225, 230.240, 230.260, 230.290, 230.310, 230.320, 230.370.

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

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



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administrative regulation will not generate revenue for state or local government for subsequent years.

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

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

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

**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings and Construction**  
**Division of Building Code Enforcement**  
**(Amendment)**

**815 KAR 4:010. Annual inspection of elevators, chairlifts, fixed guideway systems, and platform lifts.**

RELATES TO: KRS 198B.400, 198B.470, 198B.480, 198B.500, 198B.510, 198B.540

STATUTORY AUTHORITY: KRS 198B.060(18), 198B.490  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.490 requires [the commissioner of] the Department of Housing, Buildings and Construction to promulgate administrative regulations governing the safety and inspection of elevators as defined by KRS 198B.400(1) and fixed guideway systems as defined by KRS 198B.400(11). KRS 198B.490(1) authorizes the department to prescribe, by administrative regulation, a reasonable fee to be charged for each inspection. KRS 198B.060(18) authorizes the department to establish a schedule of fees for the functions performed under KRS Chapter 198B. This administrative regulation establishes the annual inspection requirements and fees for elevators, chairlifts, fixed guideway systems, and platform lifts within the Commonwealth.

Section 1. Annual Inspection of Elevators, Chairlifts, Fixed Guideway Systems, and Platform Lifts. An annual inspection of an elevator, chairlift, fixed guideway system, or platform lift shall be conducted in accordance with the standards as established and incorporated by reference in 815 KAR 7:120, Kentucky Building Code.

Section 2. Inspection Fees. (1) The annual inspection fee for the issuance of a certificate of operation shall be as follows:

| Elevators   | Inspection Fee   |
|---|--|
| <del>Stair Lift, Chairlift, [Stair Chair Lift or]</del><br><del>Platform Lift, or Fixed Guideway System</del> | <del>[\$75]</del> \$100  |
| Dumbwaiter  | <del>[\$85]</del> \$110  |
| Limited Use, Limited Access (Lula)  | <del>[\$100]</del> \$125   |
| Moving Sidewalk   | <del>[\$100]</del> \$125   |
| Passenger   | <del>[\$100]</del> \$125   |
| Hydraulic   | <del>[\$100]</del> \$125   |
| Special Purpose (private residential or vertical reciprocating conveyor)                                      | <del>[\$100]</del> \$125   |
| Escalator   | <del>[\$120]</del> \$145   |
| Freight   | <del>[\$200]</del> \$225   |
| Traction  | <del>[\$100]</del> \$125 for initial ten (10) stories; plus \$10 for each additional ten (10) stories or portion thereof |

(2) The fee for an inspection conducted at the request of the owner or user of a unit, other than an inspection made pursuant to a construction, installation, or alteration permit, or annual inspection, shall be subject to the same fee schedule as an annual

inspection in subsection (1) of this section.

Section 3. Certificate of Approval. The department shall issue a certificate of approval after successful completion of a final inspection. ~~[Upon demonstration during final inspection of compliance with applicable codes and standards for the elevator, chairlift, or platform lift, a certificate of approval shall be issued by the department.]~~

KERRY B. HARVEY, Secretary  
RICK W. RAND, Commissioner,

APPROVED BY AGENCY: July 6, 2021  
FILED WITH LRC: July 6, 2021 at 12:27 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2021 at 10:00 a.m., eastern time, in the Department of Housing, Buildings and Construction, 500 Mero Street, First Floor, Frankfort, Kentucky 40601. Individuals interest in being heard at this hearing shall notify this agency in writing by 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. The 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 September 30, 2021 at 11:59 p.m., eastern time. Send written notification of the intent to be head at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person below:

CONTACT PERSON: Benjamin Siegel, General Counsel, Department of Housing, Buildings and Construction, 500 Mero Street, 1st Floor, Frankfort, Kentucky 40601, phone (502) 782-0604, fax (502) 573-1057, email benjamin.siegel@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Benjamin Siegel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the annual inspection requirements and fees for elevators, chairlifts, fixed guideway systems, and platform lifts within the Commonwealth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the administrative regulations governing the safety and inspection of elevators, chairlifts, fixed guideway systems and platform lifts within the Commonwealth pursuant to KRS 198B.490(1).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.490 requires the Department of Housing, Buildings and Construction to promulgate administrative regulations governing the safety and inspection of elevators as defined by KRS 198B.400(1) and fixed guideway systems as defined by KRS 198B.400(11). KRS 198B.490(1) authorizes the department to prescribe, by administrative regulation, a reasonable fee to be charged for each inspection. KRS 198B.060(18) authorizes the department to establish a schedule of fees for the functions performed under KRS Chapter 198B.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the fee schedule and inspection requirements for elevators, chairlifts, and platform lifts within 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 will change the existing administrative regulation by including the term “fixed guideway systems” to the list of items regulated for clarification and by increasing the annual inspection fees for issuance of a certificate of operation for elevators, chairlifts, fixed guideway systems, and platform lifts.

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(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that the spectrum of items which need to be inspected pursuant to the authorizing statute are included in this administrative regulation. This amendment is also necessary to increase fees for annual inspections to address growing financial and personnel concerns within the Elevator Inspection Division. In order to keep up with the current annual inspection workload, approximately 18,456 units, the elevator inspection section will need to add an additional three (3) inspectors to its staff and create an additional supervisor position that will be filled through an internal register.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.490 requires the Department of Housing, Buildings and Construction to promulgate administrative regulations governing the safety and inspection of elevators as defined by KRS 198B.400(1) and fixed guideway systems as defined by KRS 198B.400(11). KRS 198B.490(1) authorizes the department to prescribe, by administrative regulation, a reasonable fee to be charged for each inspection. KRS 198B.060(18) authorizes the department to establish a schedule of fees for the functions performed under KRS Chapter 198B.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that all applicable items are inspected by including the term "fixed guideway systems" in this administrative regulation. The increased fees will be utilized to ensure that annual inspections for elevators, chairlifts, fixed guideway systems, and platform lifts within the Commonwealth are completed in a timely and thorough manner to ensure safety of all passengers, operators, and materials.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, and state and local governments that operate or own elevators, chairlifts, fixed guideway systems, and platform lifts within the Commonwealth will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in Question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not impose any additional requirements on any of the regulated entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each of the entities identified in question (3) that operate an elevator, chairlift, fixed guideway system, or platform lift will continue to be responsible to pay the annual inspection fees identified in the fee schedule in this administrative regulation. The fee will increase by \$25 per inspection.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Upon successful passage of an annual inspection, the entities identified in question (3) will receive a certificate of operation to continue to operate their elevators, chairlifts, fixed guideway systems, and platform lifts.

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

(a) Initially: There are no anticipated additional costs to implement this administrative regulation initially.

(b) On a continuing basis: There are no anticipated additional costs to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amendment is anticipated to result in no additional costs to the department. Any cost resulting from this amendment will be met with existing agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment increases annual inspection fees for certificates of operation for elevators, chairlifts, fixed guideway systems, and platforms by \$25.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes the fees for annual inspections of elevators, chairlifts, fixed guideway systems, and platform lifts within the Commonwealth, this amendment increases the annual inspection fees by \$25.

(9) TIERING: Is tiering applied? Tiering is not applied as all entities affected by this administrative regulation must receive annual inspections for as many applicable items they operate.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All units, parts and divisions of state and local government that operate or own elevators, chairlifts, fixed guideway systems, and platform lifts within the Commonwealth 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 198B.490 requires the Department of Housing, Buildings and Construction to promulgate administrative regulations governing the safety and inspection of elevators as defined by KRS 198B.400(1) and fixed guideway systems as defined by KRS 198B.400(11). KRS 198B.490(1) authorizes the department to prescribe, by administrative regulation, a reasonable fee to be charged for each inspection. KRS 198B.060(18) authorizes the department to establish a schedule of fees for the functions performed under KRS Chapter 198B.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 anticipated to generate an additional \$461,400 annually for the Department of Housing, Buildings and Construction for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment is anticipated to generate approximately an additional \$461,400 annually for the Department of Housing, Buildings and Construction for subsequent years. This number will likely increase if the number of new units that are installed in the Commonwealth exceed the number of units that are scrapped or removed.

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

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this regulatory amendment 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 (+/-): \$461,400

Expenditures (+/-): None

Other Explanation: Revenues generated will be utilized to fund additional elevator inspector and supervisor positions within the Department of Housing, Buildings and Construction as well as general operating costs.

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**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings and Construction**  
**Division of Building Code Enforcement**  
**(Amendment)**

**815 KAR 4:025. Permit and inspection fees for new and altered elevators, chairlifts, fixed guideway systems, and platform lifts.**

RELATES TO: KRS 198B.050, 198B.400-198B.540  
 STATUTORY AUTHORITY: KRS 198B.060, 198B.4009, 198B.490, 198B.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.420 requires the Department of Housing, Buildings and Construction to administer all aspects of the State Elevator and Fixed Guideway System Inspection Program. KRS 198B.520 requires a permit to be obtained prior to the construction, installation, or alteration of an elevator or fixed guideway system. KRS 198B.490 requires the department to promulgate administrative regulations governing the safety and inspection of elevators and fixed guideway systems and authorizes the department to prescribe reasonable fees to be charged for each inspection. KRS 198B.060(18) authorizes the department to establish a schedule of fees for the functions performed under KRS Chapter 198B. [KRS 198B.490 authorizes the Commissioner of the Department of Housing, Buildings and Construction to make inspections and prescribe the associated fees to be charged for each elevator, chairlifts, and platform lifts constructed, installed, or altered within the Commonwealth.] This administrative regulation establishes the permit [permitting] and inspection fees for passenger elevators, freight elevators, [and initial installation fees for] chairlifts, fixed guideway systems, and platform lifts.

Section 1. Definitions. (1) "Alteration" means a change that:

- (a) Is made to an elevator, elevator equipment, elevator device, chairlift, fixed guideway system or platform lift; and
- (b) Does not include maintenance, repair, or replacement of parts in kind.

- (2) "Elevator" is defined by KRS 198B.400(1).
- (3) "Fixed guideway system" is defined by KRS 198B.400(11).

Section 2. Issuance of Permits. (1) Permits to construct, install, or alter an elevator, chairlift, fixed guideway system, or platform lift shall only be issued to a Kentucky licensed elevator contractor.

(2) A Kentucky licensed elevator mechanic shall not construct, install, or alter an elevator, chairlift, fixed guideway system, or platform lift unless the work is performed under the supervision of a Kentucky licensed elevator contractor or exempt from supervision under the provisions of KRS 198B.4009(2).

Section 3. Permit Required. (1) An application shall be made for a permit prior to construction, installation, or alteration of an elevator, chairlift, fixed guideway system, or platform lift on one (1) of the following:

- (a) Form EV-1, Elevator Construction and Installation Permit Application; or
- (b) Form EV-2, Elevator Alteration Permit Application.

(2) An application shall be submitted to the department[Department of Housing, Buildings and Construction, Division of Building Code Enforcement, Elevator section] before commencing elevator, chairlift, fixed guideway system, or platform lift work which requires[requiring] a permit.

Section 4. [~~Passenger Elevator~~] Construction, Installation, and Alteration Permit Fees. Permit and inspection fees for passenger elevators, freight elevators, chairlifts, fixed guideway systems, and platform lifts shall be as follows:

| Horsepower (per unit) | Permit Fee  |
|-----------------------|---|
| Zero (0) to five (5)  | \$85  |
| Six (6) to ten (10)   | \$100   |
| More than ten (10)    | \$100 plus \$10 for each additional horsepower exceeding ten (10) |

~~Section 5. Freight Elevator Construction, Installation, and Alteration Permit Fees. Permit and inspection fees for freight elevators shall be as follows:~~

| Horsepower (per unit) | Permit Fee  |
|-----------------------|---|
| Zero (0) to five (5)  | \$85  |
| Six (6) to ten (10)   | \$100   |
| More than ten (10)    | \$100 plus \$10 for each additional horsepower exceeding ten (10) |

~~Section 6. Inspection Fees. (1)(a) Each passenger elevator, freight elevator, chairlift, fixed guideway system, or platform lift permit shall include up to two (2) inspections [(one (1) final and one (1) supplemental, if necessary)] at no additional cost.~~

~~(b) All passenger elevator, freight elevator, chairlift, fixed guideway system, or platform lift inspections in excess of the two (2) provided with the purchase of the permit shall be performed at the rate of the original permit fee per inspection.~~

~~(2)(a) Each freight elevator permit shall include two (2) inspections (one (1) final and one (1) supplemental) at no additional cost.~~

~~(b) All freight elevator inspections in excess of the two (2) provided with the purchase of the permit shall be performed at the rate of the original permit fee per inspection.~~

~~(3) The inspection fee for a newly installed or altered chairlift or platform lift shall be eighty-five (85) dollars for the first two (2) inspection and eighty-five (85) dollars per each additional inspection required prior to approval of the installation or alteration.~~

~~(4) Payment for all necessary permits and inspections shall be received by the department~~[the elevator section] prior to final approval of an elevator, chairlift, fixed guideway system, or platform lift construction, installation, or alteration being granted.

Section 6. Elevator Inspection Checklist. Prior to requesting a final inspection of the constructed, installed, or altered elevator, the elevator contractor shall submit a completed Elevator Inspection Violation Reference List for New and Existing Elevator Devices and Scheduling Checklist, Form EV-3, to the department.

Section 7. Certificate of Approval. Upon the satisfactory completion of final inspection of the constructed, installed, or altered elevator, chairlift, fixed guideway system, or platform lift a certificate of approval shall be issued by the department.

Section 8. Expiration of Permits. An elevator permit issued pursuant to this administrative regulation shall be subject to revocation, expiration, or extension pursuant to the provisions of KRS 198B.520.

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

- (a) "Elevator Construction and Installation Permit Application", Form EV-1, May 2020; and
- (b) "Elevator Alteration Permit Application", Form EV-2, May 2020.
- (c) "Elevator Inspection Violation Reference List for New and Existing Elevator Devices and Scheduling Checklist", Form EV-3, May 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Housing, Buildings[;] and Construction; 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KERRY B. HARVEY, Secretary  
 RICK W. RAND, Commissioner,

APPROVED BY AGENCY: July 6, 2021  
 FILED WITH LRC: July 6, 2021 at 12:27 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2021 at 10:00 a.m., eastern time, in the Department of Housing, Buildings and Construction, 500 Mero Street, First Floor, Frankfort, Kentucky 40601. Individuals interest in being heard at this hearing shall notify this agency in writing by 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. The 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 September 30, 2021 at 11:59 p.m., eastern time. Send written notification of the intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person below:

**CONTACT PERSON:** Benjamin Siegel, General Counsel, Department of Housing, Buildings and Construction, 500 Mero Street, 1st Floor, Frankfort, Kentucky 40601, phone (502) 782-0604, fax (502) 573-1057, email benjamin.siegel@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Benjamin Siegel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the permit and inspection fees for passenger elevators, freight elevators, chairlifts, fixed guideway systems, and platform lifts.

(b) The necessity of this administrative regulation: KRS 198B.420 requires the Department to administer all aspects of the State Elevator and Fixed Guideway System Inspection Program; KRS 198B.520 requires a permit to be obtained prior to the construction, installation, or alteration of an elevator or fixed guideway system; and KRS 198B.490 requires the department to promulgate administrative regulations governing the safety and inspection of elevators and fixed guideway systems and authorizes the department to prescribe reasonable fees to be charged for each inspection. KRS 198B.060(18) authorizes the department to establish a schedule of fees for the functions performed under KRS Chapter 198B. This administrative regulation is necessary to establish permitting and inspection requirements for the construction, installation, or alteration of an elevator or fixed guideway system.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.420 requires the Department to administer all aspects of the State Elevator and Fixed Guideway System Inspection Program; KRS 198B.520 requires a permit to be obtained prior to the construction, installation, or alteration of an elevator or fixed guideway system; and KRS 198B.490 requires the department to promulgate administrative regulations governing the safety and inspection of elevators and fixed guideway systems and authorizes the department to prescribe reasonable fees to be charged for each inspection. KRS 198B.060(18) authorizes the department to establish a schedule of fees for the functions performed under KRS Chapter 198B.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the permit and inspection fees for passenger elevators, freight elevators, chairlifts, fixed guideway systems, and platform lifts.

(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 adds a definition for "fixed guideway systems," clarifies what is included/required in each fee schedule, restructures the administrative regulation into a format that is easy for the reader to follow, creates a new section requiring the Pre-Inspection Checklist be submitted to the Department before the request for a final inspection, and adds a newly incorporated elevators pre-inspection checklist form.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to make clear what is included for each fee schedule and to require a Pre-Inspection Checklist prior to the final inspection and to incorporate the Pre-Inspection Checklist by reference.

(c) How the amendment conforms to the content of the

authorizing statutes: KRS 198B.420 requires the Department of Housing, Buildings and Construction to administer all aspects of the State Elevator and Fixed Guideway System Inspection Program. KRS 198B.520 requires a permit to be obtained prior to the construction, installation, or alteration of an elevator or fixed guideway system. KRS 198B.490 requires the department to promulgate administrative regulations governing the safety and inspection of elevators and fixed guideway systems and authorizes the department to prescribe reasonable fees to be charged for each inspection. KRS 198B.060(18) authorizes the department to establish a schedule of fees for the functions performed under KRS Chapter 198B. This amendment provides clarity as to what each fee schedule is applicable to.

(d) How the amendment will assist in the effective administration of the statutes: This amendment makes clear what is included for each fee schedule and requires a Pre-Inspection Checklist prior to the final inspection and to incorporate the Pre-Inspection Checklist by reference.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, and state and local governments that install, alter, or repair elevators, Chairlifts, fixed guideway systems, and platform lifts (elevator contractors) and Department of Housing, Buildings and Construction personnel will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in Question (3) will have to take to comply with this administrative regulation or amendment: Elevator contractors will be required to submit the Pre-Inspection Checklist prior to the final inspection.

(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 complying with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By utilizing the pre-inspection checklist, the entities identified in question (3) will reap the benefit of fewer issues during final inspections.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There are no anticipated additional costs to implement this administrative regulation initially.

(b) On a continuing basis: There is no ongoing cost associated with the implementation of this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amendment is anticipated to result in no additional costs to the department. Any cost resulting from this amendment will be met with existing agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment will not necessitate an increase in fees or require funding from the department for implementation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees directly or indirectly increased by this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all regulated entities are subject to the same amended 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 of Housing, Buildings and Construction, Division of Building Code Enforcement, Elevator Inspection section 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 198B.420 requires the Department of Housing, Buildings and Construction to administer all aspects of the State Elevator and Fixed Guideway System Inspection Program. KRS 198B.520 requires a permit to be obtained prior to the construction, installation, or alteration of an elevator or fixed guideway system. KRS 198B.490 requires the department to promulgate administrative regulations governing the safety and inspection of elevators and fixed guideway systems and authorizes the department to prescribe reasonable fees to be charged for each inspection. KRS 198B.060(18) authorizes the department to establish a schedule of fees for the functions performed under KRS Chapter 198B.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 anticipated to generate additional revenue for the state or local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment is not anticipated to generate additional revenue for the state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs to administer this regulatory amendment for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Neutral  
Expenditures (+/-): Neutral  
Other Explanation: None

**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings and Construction**  
**Division of Building Code Enforcement**  
**(Amendment)**

**815 KAR 4:027. Reporting incidents involving personal injury or death.**

RELATES TO: KRS 198B.400(1), (11), 198B.490  
STATUTORY AUTHORITY: KRS 198B.490  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.490[(+) requires the Department of Housing, Buildings and Construction to promulgate administrative regulations to establish standards for the safety of elevators and fixed guideway systems. This administrative regulation establishes the reporting requirements for personal injury or death involving elevators or fixed guideway systems.

Section 1. Definitions. (1) "Elevator" is defined by KRS 198B.400(1).

(2) "Fixed guideway system" is defined by KRS 198B.400(11).

(3) "Personal injury" means hurt or damage to a person's body, such as a cut or broken bone, as distinguished from injury to property or reputation.

Section 2. Elevators and Fixed Guideway System Incidents Reporting Requirements. (1) If personal injury for which medical care is received or death occurs from the use, attempted use, or maintenance of an elevator or fixed guideway system, the owner or the owner's designee shall:

(a) Immediately notify the department of the incident;

(b) Allow the authorized elevator inspector to inspect any part[and all parts] of the elevator or fixed guideway system; and

(c) Prevent removal of any of the parts of the elevator or fixed guideway system until the investigating elevator inspector grants permission for removal.

(2) Use of the elevator or fixed guideway system shall be immediately discontinued following the occurrence of a personal injury for which medical care was received or death occurred[incurred] from use, attempted use, or maintenance of an elevator or fixed guideway system.

(a) The elevator or fixed guideway system shall not be used until the investigating elevator inspector examines the elevator or fixed guideway system and grants approval for use.

(b) Within twenty-four (24) hours of the incident being reported, the investigating elevator inspector shall investigate and examine the elevator or fixed guideway system.

KERRY B. HARVEY, Secretary  
RICK W. RAND, Commissioner,

APPROVED BY AGENCY: July 6, 2021

FILED WITH LRC: July 6, 2021 at 12:27 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2021 at 10:00 a.m., eastern time, in the Department of Housing, Buildings and Construction, 500 Mero Street, First Floor, Frankfort, Kentucky 40601. Individuals interest in being heard at this hearing shall notify this agency in writing by 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. The 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 September 30, 2021 at 11:59 p.m., eastern time. Send written notification of the intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person below:

CONTACT PERSON: Benjamin Siegel, General Counsel, Department of Housing, Buildings and Construction, 500 Mero Street, 1st Floor, Frankfort, Kentucky 40601, phone (502) 782-0604, fax (502) 573-1057, email benjamin.siegel@ky.gov.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Benjamin Siegel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reporting requirements for personal injury or death involving elevators or fixed guideway systems.

(b) The necessity of this administrative regulation: KRS 198B.490(1) requires the Department to promulgate administrative regulations to establish standards for the safety of elevators and fixed guideway systems.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.490(1) requires the Department to promulgate administrative regulations to establish standards for the safety of elevators and fixed guideway systems.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulations establishes the reporting requirements for personal injury or death involving elevators or fixed guideway systems.

(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 makes grammatical and technical changes to clarify that the personal injury

referenced in this administrative regulation means personal injury for which medical care was received.

(b) The necessity of the amendment to this administrative regulation: This amendment makes grammatical and technical changes. The added language is necessary to clarify that personal injury means injury for which medical care was received.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.490 requires the Department of Housing, Buildings and Construction to promulgate administrative regulations to establish standards for the safety of elevators and fixed guideway systems. This amendment makes technical changes and clarifies the reporting requirements for personal injury or death involving elevators or fixed guideway systems.

(d) How the amendment will assist in the effective administration of the statutes: This administrative amendment clarifies the reporting requirements for personal injury or death involving elevators or fixed guideway systems.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, and state and local governments who operate elevators and fixed guideway systems in the Commonwealth will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in Question (3) will have to take to comply with this administrative regulation or amendment: This amendment does not require any additional action from the entities identified in question (3).

(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 for the entities identified in question (3) to comply with the amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will be easier to understand for the entities identified in question (3).

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no initial cost associated with implementing this administrative regulation initially.

(b) On a continuing basis: There is no continuing cost associated with implementing this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amendment is anticipated to result in no additional costs to the department. Any cost resulting from this amendment will be met with existing agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment will not necessitate an increase in fees or require funding to the department for implementation.

(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 amendment. There are no fees directly or indirectly increased by this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as it is not necessary for this administrative regulation. All entities have the same criteria and processes.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All units, parts or divisions of state or local government that operate elevators

and fixed guideway systems in the Commonwealth will be affected by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 198B.490.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 anticipated to generate additional revenue for the state or local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment is not anticipated to generate additional revenue for the state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this regulatory amendment for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Neutral  
Expenditures (+/-): Neutral  
Other Explanation: None

**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings and Construction**  
**(Amendment)**

**815 KAR 7:080. Licensing of fire protection sprinkler contractors.**

RELATES TO: KRS 198B.550-198B.630  
STATUTORY AUTHORITY: KRS 198B.555  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.555 requires the commissioner[~~Commissioner~~] of the Department of Housing, Buildings and Construction to promulgate[~~adopt~~] reasonable administrative regulations necessary for the administration of KRS 198B.550 to 198B.630[~~a Fire Protection Sprinkler Contractors Law~~]. This administrative regulation establishes the qualifications, responsibilities, procedures, and fees for licensing fire protection sprinkler contractors and for certifying certificate of competency holders[~~these contractors. This amendment is necessary to increase contractor licensing and certificate of competency fees to support the program. These fees have not been increased since the program was established in 1984~~].

Section 1. Definitions. (1) "Department"["Office"] is defined in KRS 198B.550(1).

(2) "Certificate of competency" means the certificate of registration issued by the department[office] to an individual who demonstrates competency to design fire suppression systems by successfully completing the minimum requirements of the[this] administrative regulation.

(3) "Certificate holder" is defined in KRS 198B.550(5).

(4) Commissioner"[~~Executive Director~~"] is defined in KRS 198B.550(2).

(5) "Fire protection sprinkler contractor" is defined in KRS 198B.550(3).

(6) "Fire protection sprinkler system" is defined in KRS 198B.550(6).

(7) "Inspection" means a physical and visual examination of a

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sprinkler system installation.

(8) "Installation" means the initial placement of a system or its extension or alteration after initial placement.[]

(9) "NICET" is defined in KRS 198B.570.[]



Section 2. Responsibilities of the Commissioner[Executive Director]. The commissioner [executive director] shall review applications, accept fees and issue certificates and licenses to qualified persons and firms pursuant to this administrative regulation. He or she shall conduct investigations upon receipt of written complaints which allege that a certificate holder or licensed fire protection sprinkler contractor has acted in violation of KRS Chapter 198B or of this administrative regulation.

Section 3. Applicability. Except as exempted by KRS 198B.560, this administrative regulation shall apply to all firms and persons who engage in the business of design and preparation of technical drawings, installation, repair, alteration, extension, maintenance or inspection of a fire protection sprinkler system.

Section 4. Application for Certificate of Competency. (1) An applicant for certificate of competency shall comply with the examination requirements in KRS 198B.570 for the type of system for which the applicant seeks certification.

(2) An applicant[Application] for a fire protection sprinkler system certificate of competency shall submit to the department:[be submitted on Forms FPS-SC-2 and 2a;]

(a) Completed forms FPS-SC-2 and 2a;

(b) Proof of current National Institute for Certificate in Engineering Technologies (NICET) certification in fire protection engineering technology automatic sprinkler system design, level III, or higher; and

(c) A nonrefundable, prorated certificate fee of \$125.

(3) An applicant[Application] for a range hood suppression system certificate of competency shall submit to the department:

(a) Completed[Be submitted on] Forms FPS-RC-2 and 2a;

(b) Proof of[Include] current manufacturer's training certification; and[]

(c) A nonrefundable, prorated certificate fee of \$125.

(4) Application for a chemical system certificate of competency shall be as follows:

(a) An applicant for a pre-engineered[For preengineered] chemical systems (limited) certificate of competency shall submit to the department:

1. Completed[Submit application on] Forms FPS-CC-2 and 2a;

2. Proof of[Include] current manufacturer's training certification; and

3. A nonrefundable, prorated certificate fee of \$125.

(b) An applicant for[For] an engineer chemical systems (unlimited) certificate of competency shall submit to the department:

1. Completed[Submit application on] Forms FPS-CC-2 and 2a;

2. Proof of[Include] current NICET certification in special hazard systems layout technician, level III; and

3. A nonrefundable, prorated certificate fee of \$125.

Section 5. Application for [Licensed Fire Protection Sprinkler Contractor's License][Contractors]. (1) An applicant for a contractor's license[for licensure] shall submit to the department:

(a) Proof of having[Have] a certificate holder in his or her employ; and

(b) Proof[Show proof] of financial responsibility as required by KRS 198B.595.[]

(2) Application shall be made as follows:[]

(c)[(a)] For fire protection sprinkler contractors, a

completed[contractor on] Form FPS-SL-1;

(d)[(b)] For rangehood suppression system contractors, a completed[contractor on] Form FPS-RL-1;

(e)[(c)] For chemical suppression system contractors a completed[on] Form FPS-CL-1.

(3)(a) Each application shall be accompanied by a fee of \$250;

(b) The initial license fee shall be prorated [on a quarterly basis upon the first renewal].

Section 6. Certificate Holder Seal. Each certificate holder shall obtain and use a seal for all work prepared by him or her or under his or her direct supervision. The design shall be as follows:

Section 7. Certification and Licensure. (1) Upon completion of the requirements of KRS 198B.595, the certificate of competency shall be issued by the commissioner [executive director] in the name of the [certificate holder] applicant.

(2) All fire protection sprinkler contractor licenses shall be issued in the name of the firm listed on the application and shall state the name of the certificate holder on the face of the license.

(3) Each license and certificate shall expire on the last day of the licensee or certificate holder's birth month[June 30 of each year].

(4) To renew[Renewal of] a certificate of competency, a certificate holder shall submit to the department[be submitted]:

(a) The completed applicable form[Using the appropriate application forms] listed in Section 4(1)(a)-(c) of this administrative regulation; and

(b) A renewal fee of \$250[\$125] for each certificate.

(5) To renew[Renewal of] a contractor's license, a licensee shall submit to the department[be submitted]:

(a) The completed applicable form[Using the appropriate application forms] listed in Section 5(2)(a)-(c) of this administrative regulation; and

(b) A renewal fee of \$250 for each license.

Section 8. Duties and Responsibilities of a Licensed Contractor and [a] Certificate Holder. (1) A person shall not represent himself as a fire protection sprinkler contractor without first being licensed by the department[office] in accordance with this administrative regulation.

(2) The design of a system shall be prepared [and submitted] by either a licensed professional engineer or a licensed fire protection sprinkler contractor as required by KRS 198B.565.

(3) A person other than a certificate holder shall not engage in any activity listed in Section 3(1) of this administrative regulation unless he is supervised by or has in his employ a lawfully authorized certificate holder.

Section 9. Procedures for Administrative Disciplinary Hearings. Disciplinary action authorized by KRS 198B.620 shall conform to the following procedures:

(1) Upon receipt of a written complaint that a licensee or certificate holder has engaged in any prohibited behavior or failed to satisfy his responsibilities as set forth in this administrative regulation, the commissioner[executive director] shall cause an investigation to be made of the matter.

(2) If the commissioner[executive director] determines that there is reason[probable cause] to believe the violations[charges] alleged, the commissioner[executive director] shall conduct a hearing in accordance with KRS Chapter 13B.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form FPS-SC-2 and 2a, Application for Certificate of Competency; Fire Protection Sprinkler Systems, May 2021[2004];

(b) Form FPS-SL-1, Application for Contractor License; Fire Protection Sprinkler Systems, May, 2001;

(c) Form FPS-RC-2 and 2a, Application for Certificate of Competency; Fire Protection Rangehood, May 2021[2004];

(d) Form FPS-RL-1, Application for Contractor License; Fire Protection Rangehood, May 2001;

(e) Form FPS-CC-2 and 2a, Application for Certificate of

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Competency; Fire Protection Chemical, May, 2021[2004]; and

(f) Form FPS-CL-1, Application for Contractor License; Fire Protection Chemical, May, 2001.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department[Office] of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky 40601, between 8 a.m. and 4:30 p.m., Monday through Friday.

KERRY B. HARVEY, Secretary

RICK W. RAND, Commissioner

APPROVED BY AGENCY: July 6, 2021

FILED WITH LRC: July 6, 2021 at 12:27 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on September 27, 2021 at 10:00 a.m., eastern time, in the Department of Housing, Buildings and Construction, 500 Mero Street, First Floor, Frankfort, Kentucky 40601. Individuals interest in being heard at this hearing shall notify this agency in writing by 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. The 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 September 30, 2021 at 11:59 p.m., eastern time. Send written notification of the intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person below:

**CONTACT PERSON:** Benjamin Siegel, General Counsel, Department of Housing, Buildings and Construction, 500 Mero Street, 1st Floor, Frankfort, Kentucky 40601, phone (502) 782-0604  
fax (502) 573-1057, email benjamin.siegel@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Benjamin Siegel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the qualifications, responsibilities, procedures, and fees for licensing fire protection sprinkler contractors and for certifying certificate of competency holders.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the qualifications, responsibilities, procedures, and fees for licensing fire protection sprinkler contractors and for certifying certificate of competency holders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.555 requires the commissioner of the Department of Housing, Buildings and Construction to promulgate reasonable administrative regulations necessary for the administration of KRS 198B.550 to 198B.630. This administrative regulation establishes the qualifications, responsibilities, procedures, and fees for licensing fire protection sprinkler contractors and for certifying certificate of competency holders.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the qualifications, responsibilities, procedures, and fees for licensing fire protection sprinkler contractors and for certifying certificate of competency holders.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment updates definitions and references to the agency and agency head, makes grammatical and technical changes, and clarifies the requirements for certification and

licensure.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to keep the administrative regulation up to date, easier to read, and more user friendly.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.555 requires the commissioner of the Department of Housing, Buildings and Construction to promulgate reasonable administrative regulations necessary for the administration of KRS 198B.550 to 198B.630. This administrative regulation establishes the qualifications, responsibilities, procedures, and fees for licensing fire protection sprinkler contractors and for certifying certificate of competency holders.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates definitions and references to the agency and agency head, makes grammatical and technical changes, and clarifies the requirements for certification and licensure. This amendment will make the administrative regulation easier to read and more user friendly for the department and the public.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Fire protection sprinkler contractors, licensees and certificate holders, applicants, and Department of Housing, Buildings and Construction personnel.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in Question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not impose any additional requirements on any of the regulated entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): 815 KAR 7:080 will be more clear, up to date, and user friendly.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There are no anticipated initial additional costs to administer this amendment.

(b) On a continuing basis: There are no anticipated additional costs to administer this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amendment is anticipated to result in no additional costs to the department. Any cost resulting from this amendment will be met with existing agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment will not necessitate an increase in fees or require funding to the department for implementation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees directly or indirectly increased by this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all licensees, certificate holders, and applicants will be subject to the same amended 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 of Housing, Buildings and Construction will be affected by this administrative regulation.



(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 198B.555 requires the commissioner of the Department of Housing, Buildings and Construction to promulgate reasonable administrative regulations necessary for the administration of KRS 198B.550 to 198B.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? This amendment is not anticipated to generate additional revenue for the state or local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment is not anticipated to generate additional revenue for the state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this amendment for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Neutral  
Expenditures (+/-): Neutral  
Other Explanation: None

**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings and Construction**  
**Division of Building Code Enforcement**  
**(Amendment)**

**815 KAR 7:110. Criteria for expanded local jurisdiction.**

RELATES TO: KRS 67A, 67C, 82.105(1), 83, 83A, 198B.040(7), 198B.050, 198B.060, 198B.070, 212.626(5), 227.489  
STATUTORY AUTHORITY: KRS 198B.050(5), 198B.060(5), (6), (18)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.060(5) and (6) authorize a local government to petition the commissioner to request additional plan review and inspection functions. This administrative regulation establishes the requirements for local governments to request and be granted expanded jurisdiction for building code plan review and inspection.

Section 1. Definitions. (1) "Local governing body" means the chief governing body of a city, county, consolidated local government, or urban-county having legislative powers.

(2) "Local government" means:

- (a) A city, as established by KRS Chapters 67A, 67C, 83, and 83A;
- (b) A county, as defined by KRS 212.626(5);
- (c) A consolidated local government; or
- (d) An urban-county government.

Section 2. Uniform Criteria for Granting Expanded Jurisdiction.

(1) Inspector requirements. A local government shall employ or execute a ~~local~~<sup>legal</sup> contract with at least one (1):

- (a) Individual certified as a building inspector, level III, in accordance with 815 KAR 7:070. The building inspector, level III, shall be responsible for reviewing plans, reviewing specifications, and performing building inspections; and
- (b) Certified electrical inspector in accordance with KRS 227.489 and 815 KAR 35:015. The certified electrical inspector shall enforce the National ~~Electrical~~<sup>Electric</sup> Code (NFPA 70) as adopted and incorporated into the Kentucky Building Code and

Kentucky Residential Code.

(2) Record retention.

(a) The local government shall be responsible for maintaining all records in compliance with the department's record retention schedule in accordance with 725 KAR 1:061.

(b) If the local government contracts with a person, firm, or company to perform plan ~~ad~~<sup>and</sup> specification inspections or building inspection functions pursuant to KRS 198B.060(15), the local government shall be responsible for the records produced by the person, firm, or company in compliance with paragraph (a) of this subsection.

(3) Minimum jurisdiction responsibilities. The local government shall maintain the minimum responsibilities required by KRS 198B.060(2), unless additional responsibilities are specifically agreed upon in writing between the local government and the department pursuant to KRS 198B.060(5) and this administrative regulation.

(4) State jurisdiction. The department shall retain plan review, inspection, and enforcement responsibility pursuant to the Kentucky Building Code, 815 KAR 7:120, for all buildings that are:

- (a) Institutional buildings;
- (b) Educational buildings, unless specifically agreed in writing by the local government and the department;

(c) Licensed facilities as mandated by the Cabinet for Health and Family Services, including day care centers, hospitals, and nursing homes;

(d) State-owned and state-leased buildings and facilities;

(e) High-hazard occupancies, unless specifically agreed in writing by the local government and the department; and

(f) Industrialized building systems (including modular homes), except for site placement and assembly of individual modular homes. A local government may permit placement and assembly locally. Local placement and assembly shall not commence until the local government submits written notification to the department for each placement.

Section 3. Application for Expanded Jurisdiction. (1) Application. An authorized representative of a local government shall submit to the department:

- (a) A completed Application for Local Expanded Jurisdiction, Form BCE/EJ #1;
- (b) An affidavit certifying the local government employs or contracts with a certified building inspector, level III, and a certified electrical inspector, and the name and job title for each inspector;
- (c) A complete list of code enforcement personnel employed by or contracted with the local government, including the name, job title, and certification status of each individual;
- (d) Documentation of all permits issued and fees collected for the previous calendar year, if any, and an estimation of the anticipated increase in activity if granted expanded jurisdictional authority;

(e) A complete list of each:

- 1. Building occupancy, classification, and size for which expanded jurisdiction is requested; and
- 2. Building occupancy, classification, and size for which expanded jurisdiction is not requested;

(f) A copy of the local ordinance requiring single-family dwelling plan review and inspection within the jurisdiction;

(g) A copy of the schedule of relevant fees adopted by the local governing body;

(h) A copy of any agreement between the applicant and another local government pursuant to KRS 198B.060(14); and

(i) A copy of any agreement between the applicant and any person, firm, or company to perform plan and specification inspections or building inspection functions pursuant to KRS 198B.060(15).

(2) Expanded jurisdiction agreement.

(a) If the application is approved by the department, the department and the local government shall enter into an expanded jurisdiction agreement.

(b) Each agreement for expanded jurisdiction shall be in effect for three (3) years, unless:

- 1. Canceled by one or both parties in writing; or

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2. Preempted in whole or in part pursuant to subsection (1) of this section.

(c) The local government shall notify the department within thirty (30) days of any changes in personnel or fees that differ from the terms of the agreement.

### Section 4. Procedures for Maintaining Expanded Jurisdiction.

(1) Renewal. Before the expiration of the agreement, the local jurisdiction shall submit a Renewal Application for Expanded Jurisdiction on Form BCE/EJ #2. The renewal application shall include the submissions required by Section 3 of this administrative regulation.

(2) Renewal application review. After receiving and reviewing the local government's application for renewal, the department shall:

(a) Reevaluate the building code enforcement program of the local government; and

(b) Renew the local government's expanded jurisdiction agreement or deny the renewal request within forty-five (45) days of receiving the local program's renewal application and supporting documentation.

(3) Expanded jurisdiction monitoring. The department shall monitor the program of each local government granted expanded jurisdiction responsibilities. If a local government violates the requirements of this administrative regulation, the Kentucky Building Code, 815 KAR 7:120, the Kentucky Residential Code, 815 KAR 7:125, the terms of the expanded jurisdiction agreement, or KRS Chapters 198B, 236, or 318, the local government shall be subject to preemption, in whole or in part, by the department.

(4) The department shall retain plan review, inspection, and enforcement responsibility pursuant to the Kentucky Building Code, 815 KAR 7:120, for all buildings as specified in the [original] agreement for expanded local jurisdiction with the local government.

Section 5. Local Appeals Board. (1) The local government with expanded jurisdiction may establish a local appeals board. A local appeals board shall operate in accordance with KRS 198B.070.

(2) If the local government establishes a local appeals board, the local government shall send a written notice to the department, which shall:

(a) Identify each member by name and qualifications for being appointed to the appeals board; and

(b) Include contact information for the local appeals board.

(3) If a local appeals board is not established, all costs incurred by the department to conduct hearings for appeals filed pursuant to KRS 198B.070(5) shall be charged to the local government.

Section 6. One (1) and Two (2) Family Dwellings. (1) The local building inspection program shall not include the plan review and inspection for one (1) and two (2) family dwellings that are:

(a) Manufactured homes;

(b) Modular homes; or

(c) Farm dwellings.

(2) The local building inspection program shall include permits and inspections for the foundation system and other on-site construction related to modular home installations.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Local Expanded Jurisdiction", Form BCE/EJ #1, May 2018; and

(b) "Renewal Application for Expanded Jurisdiction", Form BCE/EJ #2, May 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601, Monday Through Friday, 8 a.m. to 4:30 p.m. and is available online at [dhbc.ky.gov](http://dhbc.ky.gov).

KERRY B. HARVEY, Secretary

RICK W. RAND, Commissioner

APPROVED BY AGENCY: July 6, 2021

FILED WITH LRC: July 6, 2021 at 12:27 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2021 at 10:00 a.m., eastern time, in the Department of Housing, Buildings and Construction, 500 Mero Street, First Floor, Frankfort, Kentucky 40601. Individuals interest in being heard at this hearing shall notify this agency in writing by 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. The 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 September 30, 2021 at 11:59 p.m., eastern time. Send written notification of the intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person below:

CONTACT PERSON: Benjamin Siegel, General Counsel, Department of Housing, Buildings and Construction, 500 Mero Street, 1st Floor, Frankfort, Kentucky 40601, phone (502) 782-0604

fax (502) 573-1057, email [benjamin.siegel@ky.gov](mailto:benjamin.siegel@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Benjamin Siegel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for local governments to request and obtain expanded jurisdiction for building code plan review, inspection, and enforcement pursuant to KRS 198B.060(5) and (6).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the process by which a local government may apply and be approved to operate a local building inspection program with additional responsibilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.060(5) authorizes a local government to petition the commissioner to request additional plan review and inspection functions to be allocated to that local government. KRS 198B.050(5) requires the department to promulgate administrative regulations necessary to carry out the department's responsibilities under KRS Chapter 198B.

(d) How this administrative regulation current assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the requirements for a local government when petitioning the commissioner to form or renew a local building inspection program through an expanded jurisdiction agreement.

(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 allows a local government to request plan review, inspection, and enforcement responsibilities for educational buildings from the department and will allow the department to evaluate the local government's qualifications and capability to conduct plan review, inspection, and enforcement of the Kentucky Building Code as it pertains to educational buildings.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow a local government to request plan review, inspection, and enforcement responsibilities for educational buildings and to enable proper evaluation of the local government's qualifications and capability to do so.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.060(5) authorizes a local government to petition the commissioner to request additional plan review and inspection functions to be allocated to that local government. KRS 198B.050(5) requires the department to promulgate administrative regulations to carry out the department's

responsibilities under KRS Chapter 198B.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will enable local governments to request plan review, inspection, and enforcement responsibilities for educational buildings from the department and will allow the department to evaluate the local government's qualifications and capability to conduct plan review, inspection, and enforcement of the Kentucky building code as it pertains to educational buildings.

(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 Department of Housing, Buildings and Construction, as well as all local governments and building inspection programs with, or applying for, expanded jurisdiction responsibilities.

(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 comply with this administrative regulation or amendment: This amendment will require additional action only if a local government wishes to request plan review, inspection, and enforcement responsibilities for educational facilities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Local governments will benefit from being able to request plan review, inspection, and enforcement responsibilities for educational buildings from the department.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There are no anticipated additional costs to administer these regulatory amendments initially.

(b) On a continuing basis: There are no anticipated additional costs on a continuing basis to administer these regulatory amendments on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the department. Any costs resulting from these amendments will be met with existing agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment will not necessitate an increase in fees or require funding from the department for implementation.

(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 administrative regulation.

(9) TIERING: Is tiering applied? Explain why or why not. Tiering is not applied as this administrative regulation applies equally to all local governments with an expanded jurisdiction agreement or applying for an expanded jurisdiction agreement.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Building Code Enforcement and local governments with an expanded jurisdiction agreement or applying for an expanded jurisdiction agreement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorized the action taken by the administrative regulation. KRS 198B.060(5) authorizes a local government to petition the commissioner to request additional plan review and inspection functions to be allocated to that local government. KRS

198B.050(5) requires the department to promulgate administrative regulations necessary to carry out the department's responsibilities under KRS Chapter 198B.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 anticipated to generate additional revenue for state or local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment is not anticipated to generate additional revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this amendment for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Neutral  
Expenditures (+/-): Neutral  
Other Explanation: None

**PUBLIC PROTECTION CABINET  
Department of Housing, Buildings and Construction  
Division of Fire Prevention  
(Amendment)**

**815 KAR 10:060. Kentucky standards of safety.**

RELATES TO: KRS [198B.140,] 227.300, 227.320, 227.330, 227.990, 234.140, 198B.050

STATUTORY AUTHORITY: KRS 227.300(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.300(1) ~~requires~~[authorizes] the commissioner to promulgate an administrative regulation establishing the Kentucky Standards of Safety, which shall provide a reasonable degree of safety for human life against the exigencies of fire and panic and insuring as far as practicable against fire loss. This administrative regulation establishes the Kentucky Standards of Safety to supplement the Kentucky Building Code, promulgated as 815 KAR 7:120, in matters of fire safety.

Section 1. Definitions. (1) "Accepted" means that all deficiencies communicated, in writing, to the owner have been corrected to the satisfaction of the inspecting authority.

(2) "Distinct fire hazard" means a condition that poses a threat to life or property, including a condition likely to inhibit escape from danger of fire or explosion, but methods of construction that met the uniform state building code requirements, as applicable, at the time of construction shall not be deemed a distinct fire hazard. A building shall be deemed a distinct fire hazard if the authority having jurisdiction determines:

- (a) A fire, explosion, or asphyxiation is likely to occur;
- (b) Conditions may provide a ready fuel supply to augment the spread or intensity of a fire or explosion;
- (c) A building is vacant, unguarded and open to unauthorized entry;
- (d) An accumulation of combustible dust, debris, or materials is present;
- (e) Required exits or fire protection are in non-working condition or not present;
- (f) Objects [are] placed or installed so as to interfere with exits or exit routes;

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(g) Combustible materials or items are in dangerous proximity to an ignition source such as a stove, fireplace, or heater;

(h) Electrical or mechanical systems or installations create a hazardous condition; or

(i) Operations, conditions, processes, use, or materials being used fail to afford adequate safety to the public. ~~[Methods of construction that met the uniform state building code requirements, as applicable, at the time of construction shall not be deemed a distinct fire hazard.]~~

(3) "Fire protection system" is defined by KRS 198B.550(6).

(4) "NFPA" means the National Fire Protection Association.

(5) "NICET" means the National Institute for Certification of Engineering Technologies.

(6) "Unsafe Building" means a building characterized by:

(a) Deficiency in means of egress;

(b) Danger to human life or public welfare by reason of illegal or improper use, occupancy, or maintenance;

(c) Non-compliance with the construction codes in place at time of construction;

(d) Significant damage including as the result of:

1. Fire;

2. Explosion;

3. Natural disaster;

4. Neglect; or

5. Vandalism;

(e) Falling away, hanging loose, or loosening of siding, block, or other building material, appurtenance, or part thereof; or

(f) Existence of structurally unsafe conditions.

Section 2. Scope. (1) Applicability. This administrative regulation shall apply to all buildings except one (1) and two (2) family dwellings.

(2) Enforcement.

(a) State Fire Marshal. The State Fire Marshal shall:

1. Have primary jurisdiction over all property, unless a local government has established a fire inspection program by ordinance adopting this administrative regulation pursuant to KRS 227.320; and

2. Have exclusive jurisdiction over state-owned property, ~~[and primary jurisdiction for code compliance for health care facilities and other facilities licensed by the Kentucky Cabinet for Health and Family Services.]~~

(b) Local fire chief. Jurisdictions wherein a local fire chief is designated by ordinance to operate a fire inspection program pursuant to KRS 227.320 shall have primary jurisdiction for the enforcement of all property within the local governmental boundary except as provided in subparagraph (a)2. of this subsection.

Section 3. Existing Buildings and Conditions. (1) The standards for the construction pursuant to 815 KAR 7:120, Kentucky Building Code, in effect at the time of construction, and for which there has been issued a lawful certificate of occupancy, shall supersede different construction standards regarding the requirements for egress facilities, fire protection, and built-in fire protection equipment established in this administrative regulation or conflicting local ordinances.

(2) Change of use. It shall be unlawful to make a change in the use of a building or portion thereof without project plan review and approval in accordance with 815 KAR 7:120, Kentucky Building Code, except as specified in Chapter 34 therein.

(3) Buildings and conditions approved under other codes.

(a) Buildings constructed prior to promulgation of the uniform state building code. A building, or portion thereof, which was constructed and approved prior to the effective date of the uniform state building code shall be maintained as constructed and approved.

(b) Previous fire code. A building, or portion thereof, which was inspected, approved, or accepted pursuant to a previously adopted fire code ~~[the 1996 Kentucky Fire Prevention Code]~~ shall:

1. Be maintained as previously approved or accepted; and

2. Not be required to make a modification or change for so long as the building is maintained and used as previously accepted or approved.

(c) Buildings not occupied or used for one (1) year or more. Prior to occupancy, a building shall be subject to safety inspection by the State Fire Marshal or his designee to ensure that the structure is neither a distinct fire hazard or an unsafe structure.

(4) Distinct Fire Hazards.

(a) If the State Fire Marshal or local fire chief determines that a distinct fire hazard exists, the fire hazard shall be remedied so as to render the property safe.

(b) The State Fire Marshal or a local fire chief shall use the standards specified in this administrative regulation ~~[paragraph]~~ to identify and to order the correction of a distinct fire hazard acting in accordance with the procedures established in KRS Chapter 227 and ~~[Section 5 of]~~ this administrative regulation. In exercising authority granted, the following shall be applicable:

1. NFPA 1, Uniform Fire Code, 2018[2042] edition, and the NFPA referenced standards included in Chapter 2 of NFPA 1 except:

a. NFPA 403~~[402]~~, Guide for Aircraft Rescue and Fire Fighting Operation, 2018[2002] edition;

b. ~~[NFPA 472, Standard for Professional Competence of Responders to Hazardous Materials Incidents, 2002 edition;~~

e.] NFPA 1031, Standard for Professional ~~[Profession]~~ Qualifications for Fire Inspectors and Plan Examiner, 2014[2003] edition;

c. NFPA 1192, Standard on Recreational Vehicles, 2018 edition;

d. NFPA 1194, Standard for Recreational Vehicle Parks and Campgrounds, 2018 edition;

e. NFPA 1901, Standard for Automotive Fire Apparatus, 2016 edition;

f. NFPA 1906, Standard for Wildland Fire Apparatus, 2016 edition;

g. NFPA 1925, Standard on Marine Fire-Fighting Vessels, 2013 edition;

h. NFPA 1963, Standard for Fire Hose Connections, 2014 edition;

i. NFPA 2113, Standard on Selection, Care, Use, and Maintenance of Flame-Resistant Garments for Protection of Industrial Personnel Against Short-Duration Thermal Exposures from Fire, 2015 edition;

j[d]. NFPA 5000, Building Construction and Safety Code, 2018[2042], edition;

k. Code reference 1.7.2, Minimum Qualifications to Enforce this Code;

l. Code reference 10.2.7, Minimum Fire Prevention Inspection Frequencies for Existing Occupancies;

m[e]. Code reference 13.3.2.26, High Rise Buildings;

n[f]. Code reference 13.3.2.8, Existing Assembly Occupancies; and

o[g]. Code reference 13.6, Portable Extinguishers, which if required, shall be modified to exclude the provisions for installation of portable extinguishers in the occupancies listed in Table 13.6. Portable extinguishers shall be installed as required in the occupancy chapters of NFPA 101, Life Safety Code, 2018[2042] Edition;

2. NFPA 101, Life Safety Code, 2018[2042] edition, and the NFPA referenced standards included in Chapter 2 of NFPA 101 except Code reference 13.3.5;

3. NFPA 70, National Electrical Code~~[@]~~, 2017[2044] Edition; and

4. 815 KAR 7:120, Kentucky Building Code.

(c) Modifications, alternatives, and interpretations. If the State Fire Marshal accepts or approves an alternative to a code provision or issues an interpretation and the alternative or interpretation is of general applicability, it shall be published and forwarded to all known fire inspectors and other persons requesting a copy.

(5) Abatement of fire hazards. The abatement of a distinct fire hazard pursuant to this administrative regulation shall not require construction measures that would exceed the requirements of the current edition of 815 KAR 7:120, Kentucky Building Code, if the building were being newly constructed.

(6) Maintenance of equipment.

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(a) All fire suppression and fire protection equipment, systems, devices, and safeguards shall be maintained in accordance with the applicable NFPA referenced code and the manufacturer's recommendations.

(b) This administrative regulation shall not be the basis for removal or abrogation of a fire protection or safety system or device installed in a building without approval granted by the authority having jurisdiction.

(7) Cooperation with building official. The State Fire Marshal and the local fire chief shall coordinate and cooperate with the building code official having jurisdiction in assessing a building for relative fire safety and to assure that the proper standards are applied.

Section 4. Permits. (1) State permits required. A permit shall be required from the State Fire Marshal for flammable, combustible, ~~or~~ hazardous material storage vessel installations.

(2) Local permits allowed.

(a) A permit from a local government shall not be required unless required by local ordinance.

(b) An inspection or permit fee, if applicable, shall be established within the local adopting legislation.

Section 5. Enforcement of Violations. (1) Notice of deficiency. If the State Fire Marshal or local fire chief observes an apparent violation of a provision of this administrative regulation ~~[and the standards incorporated herein]~~ or other codes or ordinances under state or local jurisdiction, the State Fire Marshal or local fire chief shall prepare a written notice of deficiency. The notice of deficiency shall state the applicable code provision violated and specify the date by which the required repairs or improvements shall be completed. Pursuant to KRS 227.336, corrective action shall be ordered remedied within a period of time not to exceed sixty (60) days. The State Fire Marshal may grant extensions to the compliance date upon receipt of a written plan of a correction stating the dates of completion of each violation and a reason for the delay. The plan of correction must be received before the end of the first sixty (60) day period.

(2) ~~Services~~ Service of notice. The written notice of deficiency shall be served personally or via certified U.S. Mail upon the owner or the owner's duly authorized agent and upon each other person responsible for the deficiency. Proof of service shall be required to perfect service.

(3) Failure to correct deficiency. Any person who fails to correct a deficiency ordered to be remedied shall be subject to enforcement actions authorized in KRS 227.331.

Section 6. Means of Appeal. (1) Appeals of orders issued by the State Fire Marshal.

(a) An appeal to the State Fire Marshal from a notice of deficiency issued by the Division of Fire Prevention shall be:

1. In writing; and

2. Received by the Division of Fire Prevention, State Fire Marshal prior to the completion date specified in the notice of deficiency served.

(b) If the matter is not resolved by agreement of the affected parties and the State Fire Marshal, legal action shall be instituted pursuant to KRS Chapter 227.

(2) Appeal of an order to remedy. Pursuant to KRS 227.380, the owner of the subject property may appeal to the State Fire Marshal within ten (10) days following receipt of the issued order.

Section 7. Special Provisions. (1) Fire incident reporting. The fire chief or highest ranking fire department officer may request investigative assistance from the State Fire Marshal. ~~[shall promptly notify the State Fire Marshal upon becoming aware of any of the following:~~

~~(a) A hazardous materials incident;~~

~~(b) Fire-related fatality (including a vehicle or home);~~

~~(c) Fire-related injury serious enough to become a fatality; or~~

~~(d) A fire involving major structural damage in the following buildings:~~

~~1. An institutional, educational, state-owned or state-leased, or high-hazard occupancy;~~

~~2. A business, mercantile, or industrial occupancy having a capacity over 100 persons;~~

~~3. An assembly occupancy having a capacity over 100 persons;~~

~~4. A place of religious worship with a capacity over 400 persons and more than 6,000 square feet; or~~

~~5. Any other building more than three (3) stories in height or 20,000 square feet of floor area.]~~

(2) Fire protection systems testing and inspection.

(a) Reporting. Except as provided in paragraph (c) of this subsection, an inspection ~~nor~~ test required by this administrative regulation, Chapter 11, 13, or 20 of the NFPA 1, Uniform Fire Code shall be conducted and reported to the owner by a person authorized or certified by the ~~department~~ State Fire Marshal.

(b) Inspection and test reports.

1. A required inspection or test shall be recorded on the applicable form contained in NFPA 25 or NFPA 72 ~~[as determined by the State Fire Marshal]~~.

2. ~~[If any violations are noted, the]~~ The completed report shall be given to the owner and a copy shall be forwarded to the local fire chief or highest ranking fire department officer ~~[State Fire Marshal]~~ within ten (10) working days of the date of the inspection.

(c) Reporting exceptions.

1. Portable fire extinguishers and single station smoke detectors may be inspected and tested by the property owner or the property owner's agent.

2. Allowable reports by owners and owner agents shall not be required to be filed with the State Fire Marshal, but shall be kept on file within the building and available for review upon request by the State Fire Marshal.

a. Electric single station and electric multiple station smoke alarms shall be tested monthly. A log of the test shall be kept on site for review by the fire code official.

b. Battery powered smoke alarms shall be tested weekly. A log of the test results shall be kept on site for review by the fire code official.

c. Portable fire extinguishers shall be visually inspected monthly to ensure proper charge, accessibility, and that the extinguisher hose is free of obstruction.

(d) Frequency. Periodic testing and inspection of each fire suppression and each alarm system shall be performed as follows:

1. Fire detection and alarm systems and all fire suppression systems in buildings other than state licensed hospitals, nursing homes, and ambulatory surgical centers shall be inspected and tested for proper operation annually.

2. Fire detection and alarm systems and all fire suppression systems in state licensed hospitals, nursing homes, and ambulatory surgical centers shall be inspected and tested quarterly by a Kentucky certified inspector for sprinkler systems and fire alarms, respectively; and

3. Systems or components for which the manufacturer recommends more frequent checks shall be performed as described by the manufacturer's instructions.

(e) Inspectors.

1. Fire alarm inspectors shall apply to be certified by the department on a Form FPS 33-01, Application for Fire Alarm Systems Certification, and shall:

a. (i) Be qualified as NICET level two (2), level three (3), or level four (4) in fire alarm systems; or

(ii) Pass the examination for alarm inspector administered by an examination provider approved by the department;

b. Have had at least eighteen (18) months of experience in installation, repair, testing, or a combination thereof during the five (5) year period immediately preceding application;

c. Pay an annual certification fee of fifty (50) dollars for each classification applied for; and

d. Submit a passport-sized color photograph with the application.

2. For renewals of fire alarm inspector certification, an applicant shall:

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a. Submit a completed Form FPS 33-02, Renewal Application for Fire Alarm Systems Certification, May 2020;

b. Pay an annual certification renewal fee of fifty (50) dollars for each classification held;

c. Submit a passport-sized color photograph with the renewal application; and

d. (i) Provide proof of six (6) hours of continuing education from an approved provider obtained in the twelve (12) months prior to renewal; or

(ii) Provide proof of current NICET certification.

3. Penalties. An applicant shall be subject to penalties established in KRS 227.990 and may be denied certification ~~nor~~ renewal for:

a. Failure of a certified fire alarm inspector to conduct an inspection in accordance with the NFPA 72 standard;

b. Submission of false inspection reports;

c. Performing inspections without first having been certified by the department as a fire alarm inspector; or

d. Making a false or misleading statement on an application for certification or renewal.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) NFPA 1, "Uniform Fire Code", 2018[2012] edition;

(b) NFPA 101, "Life Safety Code", 2018[2012] edition;

(c) NFPA 70, "National Electrical Code", 2018[2014] edition;

(d) FPS 33-01, "Application for Fire Alarm Systems Certification", May 2020; and

(e) FPS 33-02, "Renewal Application for Fire Alarm Systems Certification", May 2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. 815 KAR 10:060:

KERRY B. HARVEY, Secretary

RICK W. RAND, Commissioner

APPROVED BY AGENCY: July 6, 2021

FILED WITH LRC: July 6, 2021 at 12:27 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2021 at 10:00 a.m., eastern time, in the Department of Housing, Buildings and Construction, 500 Mero Street, First Floor, Frankfort, Kentucky 40601. Individuals interest in being heard at this hearing shall notify this agency in writing by 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. The 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 September 30, 2021 at 11:59 p.m., eastern time. Send written notification of the intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person below:

CONTACT PERSON: Benjamin Siegel, General Counsel, Department of Housing, Buildings and Construction, 500 Mero Street, 1st Floor, Frankfort, Kentucky 40601, phone (502) 782-0604, fax (502) 573-1057, email benjamin.siegel@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Benjamin Siegel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky Standards of Safety to supplement the Kentucky Building Code, promulgated as 815 KAR 7:120, in matters of fire safety.

(b) The necessity of this administrative regulation: This

administrative regulation is necessary to establish the Kentucky Standards of Safety, which are required, pursuant to KRS 227.300(1), to provide a reasonable degree of safety for human life against the exigencies of fire and panic and insuring as far as is practicable against fire loss.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 227.300(1) requires the commissioner to promulgate reasonable administrative regulations based on good engineering practice and principles as embodied in recognized standards of fire prevention and protection, providing for a reasonable degree of safety for human life against the exigencies of fire and panic, and insuring as far as practicable against fire loss. These standards are to supplement the Uniform State Building Code, the Kentucky Building Code, 815 KAR 7:120, in matters of fire safety.

(d) How this administrative regulation current assists or will assist in the effective administration of the statutes: This administrative regulation establishes the Kentucky Standards of Safety to supplement the Kentucky Building Code, 815 KAR 7:120, in matters of fire safety, as required by KRS 227.300(1).

(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 adopts the 2018 NFPA 1 and 101, with some exceptions as outlined in the administrative regulation. This amendment also removes the requirement for local fire officials to report to the State Fire Marshal specific fire and hazardous materials incidents, instead allowing the local fire official to request investigative assistance from the State Fire Marshal. This amendment also clarifies the testing and reporting requirements of fire protection systems, and makes grammatical and technical edits to make the administrative regulation more user friendly.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to adopt the 2018 editions of NFPA 1 and 101, amend reporting requirements for local fire officials, and to make the administrative regulation more user friendly.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 227.300(1) requires the commissioner to promulgate reasonable administrative regulations based on good engineering practice and principles as embodied in recognized standards of fire prevention and protection, providing for a reasonable degree of safety for human life against the exigencies of fire and panic, and insuring as far as practicable against fire loss. These standards are to supplement the Uniform State Building Code, the Kentucky Building Code, 815 KAR 7:120, in matters of fire safety.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes the Kentucky Standards of Safety to supplement the Kentucky Building Code, 815 KAR 7:120, in matters of fire safety, as required by KRS 227.300(1). This amendment will allow the State Fire Marshal and local fire chiefs to utilize the 2018 NFPA 1 and 101 when addressing distinct fire hazards.

(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 Department of Housing, Buildings and Construction, local fire officials, and fire alarm inspectors.

(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 comply with this administrative regulation or amendment: The State Fire Marshal and local fire officials will need to familiarize themselves with the 2018 NFPA 1 and 101.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The regulated entities identified in question (3) may face a one time increase in expenses to purchase new code books and training.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits of the 2018 NFPA 1 and 101 include: enhanced fire protection, additional standards on door

locking to prevent unwanted entry in educational and daycare occupancies, and potentially lower insurance premiums as a result of better ISO ratings. Benefits from the other portions of the amendment include: the elimination of redundant reporting requirements and clarification on testing requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There are no anticipated additional costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional costs on a continuing basis to administer these regulatory amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the department. Any costs resulting from these amendments will be met with existing agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment will not necessitate an increase in fees or require funding from the department for implementation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment does not directly or indirectly increase previously established fees.

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation applies equally to all department personnel, local fire officials, and licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Fire Prevention and local fire departments or fire inspection programs will be effected.

2. Identify each state or federal statute or federal regulation that requires or authorized the action taken by the administrative regulation. KRS 227.300(1) requires the commissioner to promulgate reasonable administrative regulations based on good engineering practice and principles as embodied in recognized standards of fire prevention and protection, providing for a reasonable degree of safety for human life against the exigencies of fire and panic, and insuring as far as practicable against fire loss. These standards are to supplement the Uniform State Building Code, the Kentucky Building Code, 815 KAR 7:120, in matters of fire safety.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 anticipated to generate additional revenue for state or local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment is not anticipated to generate additional revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this amendment for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Neutral  
Expenditures (+/-): Neutral  
Other Explanation: None

**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings and Construction**  
**Division of Fire Prevention**  
**(Amendment)**

**815 KAR 10:070. Consumer fireworks retailer registration and fees.**

RELATES TO: KRS 227.700, 227.702, 227.704, 227.708, 227.710, 227.715, 227.750, 227.752

STATUTORY AUTHORITY: KRS 227.715

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.715 ~~authorizes~~[requires] the department to promulgate administrative regulations establishing registration requirements and fees for any person, firm, co-partnership, non-profit, or business ~~intending~~[intended] to sell consumer fireworks in the Commonwealth. This administrative regulation establishes the registration forms, submission process, and fees for consumer ~~fireworks~~[firework] retailers.

Section 1. Filing of Annual Registration by Consumer Fireworks Retailers. (1) A retailer shall not offer for sale, sell at retail, or keep with intent to sell consumer fireworks without annually registering with the Kentucky State Fire Marshal.

(2) All retailers of consumer fireworks required by KRS 227.715 to annually register with the State Fire Marshal shall submit to the Division of Fire Prevention:

(a) A completed Fireworks Registration Application, Form FM 32-03 [~~Form FM 32-03~~];

(b) A nonrefundable annual registration fee as established in Section 2 of this administrative regulation; and

(c) Evidence that a current sales and use tax permit has been obtained from the Department of Revenue.

(3) Registration shall not be complete until a Fireworks Registration Application, payment of the appropriate fireworks retailer fee, and evidence of current sales and use tax permit are received and processed by the Division of Fire Prevention, State Fire Marshal.

Section 2. Fee Schedule for Registration of Consumer Fireworks Retailers. (1) The annual consumer fireworks retailer registration[~~application and renewal~~] fees for each [retail] site shall be:

(a) Twenty-five (25) dollars for registration of retailers intending to sell consumer fireworks described in KRS 227.702(1);

(b) \$250 for registration of seasonal retailers intending to sell consumer fireworks described in KRS 227.702(2) and (3) between June 10th and July 7th, or between December 26th and January 4th; and

(c) \$500 for registration of permanent retailers whose primary source of business is the sale of consumer fireworks as defined in KRS 227.702(2) and (3).

(2) If registration is received less than fifteen (15) days prior to offering fireworks for sale at the site for which registration is submitted, an additional \$100 shall be added to the initial fee, in accordance with KRS 227.715(5).

(3) All[~~Application, renewal, and late~~] registration fees shall be nonrefundable.

Section 3. Payment of Fees. (1) A fee submitted to the Division of Fire Prevention, State Fire Marshal, shall be made payable to the Kentucky State Treasurer.

(2) If a fee is returned to the Division of Fire Prevention for nonpayment or insufficient funds, the Fire Marshal may revoke registration of the site in accordance with KRS 227.715(10), unless proof of financial institution error is provided.

Section 4. Incorporation by Reference. (1) Form FM 32-03, "Fireworks Registration Application", May 2020, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing,

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Buildings and Construction, Division of Fire Prevention, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KERRY B. HARVEY, Secretary  
RICK W. RAND, Commissioner

APPROVED BY AGENCY: July 6, 2021

FILED WITH LRC: July 6, 2021 at 12:27 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on September 27, 2021 at 10:00 a.m., eastern time, in the Department of Housing, Buildings and Construction, 500 Mero Street, First Floor, Frankfort, Kentucky 40601. Individuals interest in being heard at this hearing shall notify this agency in writing by 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. The 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 September 30, 2021 at 11:59 p.m., eastern time. Send written notification of the intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person below:

**CONTACT PERSON:** Benjamin Siegel, General Counsel, Department of Housing, Buildings and Construction, Mero Street, 1st Floor, Frankfort, Kentucky 40601, phone (502) 782-0604, fax (502) 573-1057, email benjamin.siegel@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Benjamin Siegel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the registration requirements, forms, submission process, and fees for consumer fireworks retailers.

(b) The necessity of this administrative regulation: KRS 227.715 authorizes the department to promulgate administrative regulations establishing registration requirements and fees for any person, firm, co-partnership, non-profit, or business intending to sell consumer fireworks in the Commonwealth. This administrative regulation establishes the registration forms, submission process, and fees for consumer fireworks retailers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 227.715 authorizes the department to promulgate administrative regulations establishing the registration requirements and fees for any person, firm, co-partnership, non-profit, or business intending to sell consumer fireworks in the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the registration requirements, forms, submission process, and fees for consumer fireworks retailers.

(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 makes grammatical and technical edits in order to clarify the administrative regulation and make it more user friendly.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the administrative regulation and to make it more user friendly.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 227.715 authorizes the department to promulgate administrative regulations establishing the registration requirements and fees for any person, firm, co-partnership, non-profit, or business intending to sell consumer fireworks in the Commonwealth. This amendment makes grammatical and

technical edits in order to clarify the administrative regulation and make it more user friendly.

(d) How the amendment will assist in the effective administration of the statutes: This amendment makes grammatical and technical edits in order to clarify the administrative regulation and make it more user friendly.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Consumer fireworks retailers, entities who intend to become consumer fireworks retailers, and the Department of Housing, Buildings and Construction, Division of Fire Prevention.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in Question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not impose any additional requirements on any of the entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): 815 KAR 10:070 will be more clear and user friendly.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There are no anticipated initial additional costs to administer this amendment.

(b) On a continuing basis: There are no anticipated additional costs to administer this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amendment is anticipated to result in no additional costs to the department. Any cost resulting from this amendment will be met with existing agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment will not necessitate an increase in fees or require funding to the department for implementation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees directly or indirectly increased by this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all consumer fireworks retailers and future registrants will be subject to the same amended 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 of Housing, Buildings and Construction, Division of Fire Prevention 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. This administrative regulation is authorized by KRS 227.715.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 anticipated to generate additional revenue for the state or local government for the first year.

(b) How much revenue will this administrative regulation



generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment is not anticipated to generate additional revenue for the state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this regulatory amendment for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Neutral  
Expenditures (+/-): Neutral  
Other Explanation: None

**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings and Construction**  
**Division of Plumbing**  
**(Amendment)**

**815 KAR 20:050. Installation permits.**

RELATES TO: KRS 318.030, 318.134, 318.160  
STATUTORY AUTHORITY: KRS 198B.040(10), 318.130, 318.134(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department to promulgate administrative regulations establishing the Kentucky State Plumbing Code to regulate plumbing. KRS 318.134(1) requires all persons, firms, or corporations to procure a plumbing installation permit from the department to construct, install, or alter, or cause to be constructed, installed, or altered any plumbing. KRS 318.134(3) requires the department to establish a reasonable schedule of fees and charges to be paid for plumbing installation permits and the necessary inspections incident thereto. This administrative regulation establishes the requirements, fees, and charges for plumbing installation permits and inspections in Kentucky.

Section 1. Permit Required. (1) A plumbing permit shall be required for:

- (a) A new plumbing installation;
- (b) An existing plumbing installation if a fixture, soil, or waste opening or conductor is to be moved or relocated;
- (c) A new house sewer or a house sewer that is to be replaced;
- (d) A new water service or [a] water service that is to be replaced;
- (e) The addition of a backflow prevention device to an existing water service; or
- (f) A new water heater installation or a water heater that is to be replaced.

(2) A new plumbing permit shall be required when a master plumber:

- (a) Takes over a plumbing installation originally permitted to another master plumber or homeowner; or
- (b) ~~Assumed~~[Assumes] responsibility to correct and test an installation made by someone else.
- (3) A permit shall not be required for:
  - (a) The repair of:
    - 1. Leaks;
    - 2. Cocks; [or]
    - 3. Valves; or
  - (b) Cleaning out waste or sewer pipes.

Section 2. Issuance of Plumbing Permits. (1) A permit to construct, install, or alter plumbing, sewerage, or drainage shall be issued only to:

- (a) A licensed master plumber; or
- (b) A homeowner who wishes to construct, install, or alter plumbing, sewerage, or drainage in a home occupied by the homeowner or constructed by the homeowner for the homeowner's

own personal residential use, if:

- 1. Application is made for the permit prior to the beginning of the work;
  - 2. The homeowner files with the application an affidavit stating that the homeowner shall abide by the terms of this section;
  - 3. All work shall be performed in compliance with 815 KAR Chapter 20;
  - 4. All ~~the~~ work shall be personally performed by the homeowner; and
  - 5. The homeowner shall not have obtained another homeowner permit for construction of a new home issued within the last five (5) years.
- (2) A journeyman plumber shall not construct, install, or alter plumbing, sewerage, or drainage unless the work is performed under the supervision of a licensed master plumber with a valid permit.

Section 3. Plumbing Plan Submission. (1) Procedure. Except as provided in subsection (2) of this section, plumbing plans shall be submitted to the department for review and approval prior to the issuance of a plumbing permit. A plumbing plan submission shall consist of:

- (a) A complete Plan Application form; and
  - (b) Three (3) sets of identical plans that include:
    - 1. A complete floor plan;
    - 2. An isometric plumbing diagram of the drain, waste, and vent system; and
    - 3. A site utility plan.
- (2) Field inspections. A plumbing inspector may inspect the plumbing in the following without an initial submission of plumbing plans:

- (a) An existing building if:
  - 1. There are no more than ten (10) openings for plumbing fixtures or appliances, present and future;
  - 2. There is no change of use in the occupancy;
  - 3. There is no increase in the occupant load;
  - 4. Approval by the Department of Health is not required; and
  - 5. Plans or documents of the installation are submitted to the department after installation; or
- (b) A multi-family dwelling if:
  - 1. The building consists of twelve (12) units or less;
  - 2. The water and sewer connections have been approved by the Division of Water in accordance with 401 KAR Chapter 5;
  - 3. Proof of a building permit from the authority having jurisdiction has been submitted to the department; and
  - 4. Plumbing plans are made available to the plumbing inspector for review and approval prior to construction.
- (c) A plumbing inspector shall not review and approve plans for the following:
  - 1. A tenant space that has not been occupied;
  - 2. A day care facility that is not currently licensed;
  - 3. A project on a private water system without approval from the Division of Water in accordance with 401 KAR Chapter 5; or
  - 4. A project with a sewer main extension or a sewage treatment plant without approval from the Division of Water in accordance with 401 KAR Chapter 5.

Section 4. Plumbing Permit Fees. (1) The base fee for each plumbing permit for residential one (1) and two (2) family units shall be ~~fifty (50)[forty-five (45)]~~ dollars plus ~~fourteen (14)[seven (7)]~~ dollars for each:

- (a) Plumbing fixture, appliance, or opening left for a plumbing fixture or appliance in the soil or waste pipe system;
  - (b) Domestic water heater; and
  - (c) Separately metered water and sewer service if more than one (1) water or sewer service is to be installed.
- (2) The base fee for each plumbing permit for buildings other than residential one (1) and two (2) family units shall be ~~fifty (50)[forty-five (45)]~~ dollars plus ~~twenty (20)[fifteen (15)]~~ dollars for each:
- (a) Plumbing fixture, appliance, or opening left for a plumbing fixture or appliance in the soil or waste pipe system;
  - (b) Domestic water heater;

- (c) Conductor opening; and
- (d) Separately metered water and sewer service if more than one (1) water or sewer service is to be installed.

(3)(a) If only one (1) new domestic water heater is installed or replaced within a single building, the only fee for the plumbing permit shall be fifty (50)~~[forty-five (45)]~~ dollars.

(b) If more than one (1) water heater is replaced within a building, a permit fee shall be calculated pursuant to subsections (1) or (2) of this section.

(4) The plumbing permit fee shall be limited to the base fee if:

- (a) The work to be performed does not include new installation;
- (b) The work to be performed is to make corrections [te] or two provide testing for an installation made by someone else; or
- (c) A master plumber takes over a plumbing permit pursuant to Section 1(2) of this administrative regulation.

Section 5. (1) A person with a plumbing permit shall be entitled to five (5) plumbing inspections at no additional cost.

(2)(a) The fee for an additional inspection shall be fifty (50) dollars.

(b) All additional inspection fees shall be paid prior to the final inspection.

(3) Additional inspection fees shall not apply if the cost of the plumbing permit exceeds \$250~~[\$200]~~.

Section 6. Expiration of permits. (1) Plumbing permits issued pursuant to this administrative regulation shall expire one (1) year after the date of issuance unless construction is ongoing, in which case the permit shall remain effective until the completion of the planned plumbing inspection.

(2) The permit shall expire and become void of~~[if]~~ the plumbing work ceases on the project for a period exceeding twelve (12) months.

Section 7. Incorporation by Reference. (1) "Plan Application Form", 2/2020, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Plumbing, 500 Mero Street, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov>.

KERRY B. HARVEY, Secretary  
RICK W. RAND, Commissioner

APPROVED BY AGENCY: July 6, 2021

FILED WITH LRC: July 6, 2021 at 12:27 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2021 at 10:00 a.m., eastern time, in the Department of Housing, Buildings and Construction, 500 Mero Street, First Floor, Frankfort, Kentucky 40601. Individuals interest in being heard at this hearing shall notify this agency in writing by 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. The 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 September 30, 2021 at 11:59 p.m., eastern time. Send written notification of the intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person below:

Contact Person: Benjamin Siegel, General Counsel,  
Department of Housing, Buildings and Construction, 500 Mero Street, 1st Floor, Frankfort, Kentucky 40601, Phone (502) 573-0365, Fax (502) 573-1057, Email [benjamin.siegel@ky.gov](mailto:benjamin.siegel@ky.gov).

Contact person: Benjamin Siegel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements, fees, and charges for plumbing installation permits and inspections in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements, fees, and charges for plumbing installation permits and inspections in Kentucky, pursuant to KRS 318.130 and KRS 318.134(3).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate administrative regulations establishing the Kentucky State Plumbing Code to regulate plumbing. KRS 318.134(1) requires all persons, firms, or corporations to procure a plumbing installation permit from the department to construct, install, or alter, or cause to be constructed, installed, or altered any plumbing. KRS 318.134(3) requires the department to establish a reasonable schedule of fees and charges to be paid for plumbing installation permits and the necessary inspections incident thereto.

(d) How this administrative regulation current assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements, fees, and charges for plumbing installations and inspections 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 will increase the fees for plumbing permits and inspections.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure continued service to the public and fulfillment of KRS Chapter 318's statutory duties to conduct plumbing plan review, inspection, and enforcement of the Kentucky State Plumbing Code. Beginning in FY 2019, the Division of Plumbing's expenditures exceed their revenues. In FY 2020, the division's expenditures exceeded revenues by \$604,592.68, despite the division making no intra-agency or cabinet support transfers. This is primarily due to increased personnel costs, which make up 88% of the division's expenditures. In order to offer the same level of service and safety to the plumbing industry and the Commonwealth as a whole, fees must be increased.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate administrative regulations establishing the Kentucky State Plumbing Code to regulate plumbing. KRS 318.134(1) requires all persons, firms, or corporations to procure a plumbing installation permit from the department to construct, install, or alter, or cause to be constructed, installed, or altered any plumbing. KRS 318.134(3) requires the department to establish a reasonable schedule of fees and charges to be paid for plumbing installation permits and the necessary inspections incident thereto.

(d) How the amendment will assist in the effective administration of the statutes: The revenues generated by this amendment will continue to allow the Division of Plumbing to operate safely and effectively in carrying out its plan review, inspection, and enforcement duties.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the Department of Housing, Buildings and Construction, homeowners doing plumbing work that requires a permit, and members of the plumbing industry.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: This amendment will not impose any

additional requirements on any of the regulated entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will increase the base fee for residential and commercial plumbing permits from \$45 to \$50 and water heater-only permits from \$45 to \$50. It will increase the per opening fee for residential plumbing permits from \$7 to \$14, the per opening fee for commercial plumbing permits from \$15 to \$20, and the additional inspection fee threshold from \$200 to \$250.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The revenues generated by this amendment will continue to allow the Division of Plumbing to operate safely and effectively in carrying out its plan review, inspection, and enforcement duties. It will allow the division to continue to offer excellent customer service to the plumbing industry, including, for example, same day inspections.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There are no anticipated additional costs to administer these regulatory amendments initially.

(b) On a continuing basis: There are no anticipated additional costs on a continuing basis to administer these regulatory amendments on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the department. Any costs resulting from these amendments will be met with existing agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment will increase the base fee for residential and commercial plumbing permits from \$45 to \$50 and water heater-only permits from \$45 to \$50. It will increase the per opening fee for residential plumbing permits from \$7 to \$14, the per opening fee for commercial plumbing permits from \$15 to \$20, and the additional inspection fee threshold from \$200 to \$250.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment will increase the base fee for residential and commercial plumbing permits from \$45 to \$50 and water heater-only permits from \$45 to \$50. It will increase the per opening fee for residential plumbing permits from \$7 to \$14, the per opening fee for commercial plumbing permits from \$15 to \$20, and the additional inspection fee threshold from \$200 to \$250.

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation applies equally to all plumbers and homeowners doing plumbing work that requires a permit.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorized the action taken by the administrative regulation. KRS 318.130 requires the department to promulgate administrative regulations establishing the Kentucky State Plumbing Code to regulate plumbing. KRS 318.134(1) requires all persons, firms, or corporations to procure a plumbing installation permit from the department to construct, install, or alter, or cause to be constructed, installed, or altered any plumbing. KRS 318.134(3) requires the department to establish a reasonable schedule of fees and charges to be paid for plumbing installation permits and the necessary inspections incident thereto.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 anticipated to generate approximately \$2,014,853 for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment is anticipated to generate approximately \$2,014,853 each subsequent year, assuming similar construction activity to FY 19 and FY 20.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this amendment 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 (+/-): \$2,014,853

Expenditures (+/-): Neutral

Other Explanation: Revenues generated will be utilized to offset the current gap between revenues and expenditures for the Division of Plumbing, making more equitable intra-agency and cabinet support transfers, making more equitable contribution to shared DHBC operational costs, and division operating costs.

**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings and Construction**  
**Division of Plumbing**  
**(Amendment)**

**815 KAR 20:195. Medical gas piping installations.**

RELATES TO: KRS 198B.050, 318.010, 318.134

STATUTORY AUTHORITY: KRS 198B.040(1), 318.130, 318.134(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department to promulgate administrative regulations establishing the Kentucky State Plumbing Code to regulate plumbing. KRS 318.134(1) requires all persons, firms, or corporations to procure a plumbing installation permit from the department to construct, install, or alter, or cause to be constructed, installed, or altered any plumbing. KRS 318.134(3) requires the department to establish a reasonable schedule of fees and charges to be paid for plumbing installation permits and the necessary inspections incident thereto. This administrative regulation establishes the requirements and permitting fees for medical gas piping installation.

Section 1. Standards and Procedures. (1) Installation standards. All new medical gas piping installation or an addition to an existing medical gas piping system shall comply with the applicable provisions of NFPA 99 Health Care Facilities Code.

(2) Permit required. A licensed master plumber shall apply for a permit to install medical gas piping prior to the installation. To obtain the permit, the master plumber shall:

(a) Pay a fifty (50) dollar~~fee of forty five (45) dollars~~ base permit fee for the medical gas system for each building;

(b) Pay a twenty (20) dollar ~~fee [of fifteen (15) dollars]~~ per opening; and

(c) Identify the person who shall install~~perform~~ the installation.

(3) The person installing the medical gas piping shall be:

(a) A certified medical gas installer as required by NFPA 99 Health Care Facilities Code; and

(b) A licensed master plumber or journeyman plumber.

(4) Supervision by a master plumber. It shall be the responsibility of the licensed master plumber to ensure that the person doing the installation:

(a) Is properly certified as required by NFPA 99 Health Care Facilities Code;

(b) Uses the proper products and stores them correctly; and

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(c) Requests and receives all inspections at the initial pressure test for the complete system from a qualified plumbing inspector.

(5) Final approval. Upon completion of the installation, the master plumber shall furnish the division with the certification from the medical gas system verifier as required by NFPA 99 Health Care Facilities Code.

Section 2. Incorporation by Reference. (1) “NFPA 99 Health Care Facilities Code, 2012 Edition, National Fire Protection Association, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, 500 Mero St., Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) A copy may also be obtained by contacting the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101.  
815 KAR 20:195:

KERRY B. HARVEY, Secretary

RICK W. RAND, Commissioner

APPROVED BY AGENCY: July 6, 2021

FILED WITH LRC: July 6, 2021 at 12:27 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2021 at 10:00 a.m., eastern time, in the Department of Housing, Buildings and Construction, 500 Mero Street, First Floor, Frankfort, Kentucky 40601. Individuals interest in being heard at this hearing shall notify this agency in writing by 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. The 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 September 30, 2021 at 11:59 p.m., eastern time. Send written notification of the intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person below:

CONTACT PERSON: Benjamin Siegel, General Counsel, Department of Housing, Buildings and Construction, 500 Mero Street, 1st Floor, Frankfort, Kentucky 40601, phone (502) 573-0365, fax (502) 573-1057, email benjamin.siegel@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Benjamin Siegel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements and permitting fees for medical gas piping installation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements and permitting fees for medical gas piping installation in Kentucky, pursuant to KRS 318.130 and KRS 318.134(3).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate administrative regulations establishing the Kentucky State Plumbing Code to regulate plumbing. KRS 318.134(1) requires all persons, firms, or corporations to procure a plumbing installation permit from the department to construct, install, or alter, or cause to be constructed, installed, or altered any plumbing. KRS 318.134(3) requires the department to establish a reasonable schedule of fees and charges to be paid for plumbing installation permits and the necessary inspections incident thereto.

(d) How this administrative regulation current assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements and permitting fees for medical gas piping installation.

(2) If this is an amendment to an existing administrative

regulation, provide a brief summary of:

(a) How the amendment will change the existing administrative regulation: This amendment will increase the fees for medical gas piping installation permits and makes minor grammatical changes.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure continued service to the public and fulfillment of KRS Chapter 318's statutory duties to conduct plumbing plan review, inspection, and enforcement of the Kentucky State Plumbing Code. Beginning in FY 2019, the Division of Plumbing's expenditures exceed their revenues. In FY 2020, the division's expenditures exceeded revenues by \$604,592.68, despite the division making no intra-agency or cabinet support transfers. This is primarily due to increased personnel costs, which make up 88% of the division's expenditures. In order to offer the same level of service and safety to the plumbing industry and the Commonwealth as a whole, fees must be increased.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate administrative regulations establishing the Kentucky State Plumbing Code to regulate plumbing. KRS 318.134(1) requires all persons, firms, or corporations to procure a plumbing installation permit from the department to construct, install, or alter, or cause to be constructed, installed, or altered any plumbing. KRS 318.134(3) requires the department to establish a reasonable schedule of fees and charges to be paid for plumbing installation permits and the necessary inspections incident thereto.

(d) How the amendment will assist in the effective administration of the statutes: The revenues generated by this amendment will continue to allow the Division of Plumbing to operate safely and effectively in carrying out its plan review, inspection, and enforcement duties.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the Department of Housing, Buildings and Construction and members of the plumbing industry who install medical gas piping.

(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 comply with this administrative regulation or amendment: This amendment will not impose any additional requirements on any of the regulated entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will increase the base fee for medical gas installation permits from \$45 to \$50 and increase the per opening fee for medical gas permits from \$15 to \$20.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The revenues generated by this amendment will continue to allow the Division of Plumbing to operate safely and effectively in carrying out its plan review, inspection, and enforcement duties. It will allow the division to continue to offer excellent customer service to the plumbing industry, including, for example, same day inspections.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There are no anticipated additional costs to administer these regulatory amendments initially.

(b) On a continuing basis: There are no anticipated additional costs on a continuing basis to administer these regulatory amendments on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the department. Any costs resulting from these amendments will be met with existing agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment will increase the base fee for medical gas installation permits from \$45 to

\$50 and increase the per opening fee for medical gas permits from \$15 to \$20.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment will increase the base fee for medical gas installation permits from \$45 to \$50 and increase the per opening fee for medical gas permits from \$15 to \$20.

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation applies equally to all plumbers doing work that requires a medical gas piping installation permit.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorized the action taken by the administrative regulation. KRS 318.130 requires the department to promulgate administrative regulations establishing the Kentucky State Plumbing Code to regulate plumbing. KRS 318.134(1) requires all persons, firms, or corporations to procure a plumbing installation permit from the department to construct, install, or alter, or cause to be constructed, installed, or altered any plumbing. KRS 318.134(3) requires the department to establish a reasonable schedule of fees and charges to be paid for plumbing installation permits and the necessary inspections incident thereto.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 anticipated to generate approximately \$18,310 for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment is anticipated to generate approximately \$18,310 each subsequent year, assuming similar construction activity to FY 19 and FY 20.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this amendment 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 (+/-): \$18,310

Expenditures (+/-): Neutral

Other Explanation: Revenues generated will be utilized to offset the current gap between revenues and expenditures for the Division of Plumbing, making more equitable intra-agency and cabinet support transfers, making more equitable contribution to shared DHBC operational costs, and division operating costs.

**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings and Construction**  
**Licensing Branch**  
**(Amendment)**

**815 KAR 30:010. LP gas license; financial responsibility required**

RELATES TO: KRS 234.120, 234.130

STATUTORY AUTHORITY: KRS 234.120(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 234.120

~~authorizes[requires] the commissioner[Executive—Director] to promulgate reasonable administrative regulations requiring proof of ability to respond in damages for personal injury and property damages in the minimum amounts required under KRS 234.120(1)[financial responsibility]. This administrative regulation establishes the initial application and renewal requirements for LP gas license applicants and LP gas licensees. [This administrative regulation is made to assure persons injured by LP Gas dealers have some assets against which to recoup some of their loss. This amendment is necessary to incorporate the 1994 legislative changes set forth in KRS 234.120.]~~

Section 1. Definitions. (1) “Liquefied petroleum gas” or “LP gas” is defined by KRS 234.100.

(2) “LP Gas License, Class A” means a license required for a person to engage in the liquefied petroleum gas business as described in KRS 234.120(1)(a).

(3) “LP Gas License, Class B” means a license required for a person to engage in the liquefied petroleum gas business as described in KRS 234.120(1)(b).

(4) “LP Gas License, Class C” means a license required for a person to engage in the liquefied petroleum gas business as described in KRS 234.120(1) (c).

(5) “LP Gas License, Class D” means a license required for a person to engage in the liquefied petroleum gas business as described in KRS 234.120(1)(d).

(6) “LP Gas License, Class E” means a license required for a person to engage in the liquefied petroleum gas business as described in KRS 234.120(1)(e).

Section 2[4]. Initial Application Requirements. An applicant for a LP gas license, class A, class B, class C, class D, or class E shall submit to the department:

(1) A completed License Application to Engage in the Liquefied Petroleum (LP) Gas Business, Form HAZMAT 38-01;

(2) The applicable prorated fee required by KRS 234.120(1); and

(3) Proof of minimum liability insurance as required by KRS 234.120(1).

Section 3. Proof of Insurance. An applicant shall provide proof of minimum liability insurance by providing an insurance certificate from an insurance provider approved by the Kentucky Department of Insurance with the Department of Housing, Buildings and Construction named as the certificate holder.

Section 4. Renewal Requirements. (1) Initial licenses shall expire on the last day of the licensee’s birth month or month of incorporation in the next even-numbered year. Renewed licenses shall be valid for one (1) year and shall expire on the last day of the licensee’s birth month or month of incorporation.

(2) To renew a LP gas license a licensee shall submit to the department:

(a) A completed Form HAZMAT 38-01;

(b) The applicable fee required by KRS 234.120(1); and

(c) Proof of minimum liability insurance as required by KRS 234.120(1).

Section 5. Incorporation by Reference. (1) “License Application to Engage in the Liquefied Petroleum (LP) Gas Business”, Form HAZMAT 38-01, April 2021, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Licensing Branch, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at dhbc.ky.gov.[Proof of Financial Responsibility, Amount. (1) Prior to the issuance or renewal of a license to engage in the LP gas business as required by KRS 234.120, the applicant shall submit a certificate of insurance certifying that the applicant has a valid commercial general liability insurance policy which includes coverage for completed operations and for damages because of injuries to persons, damage to their property and any other damage or loss resulting from or arising out

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~~of the LP gas dealer's business, trade, products, services, premises or operations in the minimum amount of \$100,000 for licenses set forth in KRS 234.120(1)(d), and \$500,000 for licenses set forth in KRS 234.120(1)(b), (c) and (e) and for the business license set forth in KRS 234.120(1)(a) in the minimum amount of \$1,000,000.~~

~~(2) The insurer shall be an authorized insurer as defined by the Kentucky Department of Insurance.~~

~~(3) The certificate of insurance shall be executed by a Kentucky licensed agent as follows:~~

~~(a) Form LPG-1, Certificate information.~~

### ~~LPG-1 CERTIFICATE OF INSURANCE~~

#### ~~LP GAS DEALERS~~

~~Policy Period:~~

~~Name of Insured:~~

~~Address:~~

~~Name of Agent/Broker:~~

~~Address:~~

~~Policy Coverage: Commercial General Liability, including products and completed operations for LP Gas Dealer Business in the following amounts (Check one)~~

~~Aggregate minimum limits per incidents or occurrence:~~

~~— \$1,000,000 — \$500,000 — \$100,000~~

~~Type of Company: (Check one)~~

~~Authorized/Admitted Carrier~~

~~The undersigned hereby certifies that the above mentioned insurance protection has been issued in the amounts indicated.~~

~~Signature: (KY Licensed Agent)~~

~~(b) Alternate certificate. In lieu of Form LPG-1, a standard company certificate of insurance may be used; but, only if all the information listed on the State Fire Marshal's Form LPG-1 is included.~~

~~(4) Failure to maintain the required insurance shall void the license.]~~

KERRY B. HARVEY, Secretary

RICK W. RAND, Commissioner

APPROVED BY AGENCY: July 6, 2021

FILED WITH LRC: July 6, 2021 at 12:27 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2021 at 10:00 a.m., eastern time, in the Department of Housing, Buildings and Construction, 500 Mero Street, First Floor, Frankfort, Kentucky 40601. Individuals interest in being heard at this hearing shall notify this agency in writing by 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. The 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 September 30, 2021 at 11:59 p.m., eastern time. Send written notification of the intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person below:

CONTACT PERSON: Benjamin Siegel, General Counsel, Department of Housing, Buildings and Construction, 500 Mero Street, 1st Floor, Frankfort, Kentucky 40601, phone (502) 782-0604, fax (502) 573-1057, email benjamin.siegel@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Benjamin Siegel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the initial application and renewal requirements for LP gas license applicants and LP gas licensees.

(b) The necessity of this administrative regulation: KRS 234.120 authorizes the commissioner to promulgate reasonable

administrative regulations requiring proof of ability to respond in damages for personal injury and property damages in the minimum amounts required under the provisions of KRS 234.120(1). This administrative regulation establishes the initial application and renewal requirements for LP gas license applicants and LP gas licensees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 234.120 authorizes the commissioner to promulgate reasonable administrative regulations requiring proof of ability to respond in damages for personal injury and property damages in the minimum amounts required under the provisions of KRS 234.120(1). This administrative regulation establishes the initial application and renewal requirements for LP gas license applicants and LP gas licensees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 234.120 authorizes the commissioner to promulgate reasonable administrative regulations requiring proof of ability to respond in damages for personal injury and property damages in the minimum amounts required under the provisions of KRS 234.120(1) This administrative regulation establishes the initial application and renewal requirements for LP gas license applicants and LP gas licensees.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment adds definitions to terms commonly utilized by the LP gas industry and the department with regards to licensure. This amendment also clarifies the application and renewal process for LP gas licensure, makes the administrative regulation more user friendly, and incorporates a new form for initial application and renewal.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to assist the department in the administration of the statutes, to clarify the license application and renewal process for LP gas license applicants and licensees, and to incorporate by reference an application and renewal form.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 234.120 authorizes the commissioner to promulgate reasonable administrative regulations requiring proof of ability to respond in damages for personal injury and property damages in the minimum amounts required under the provisions of KRS 234.120(1). This administrative regulation establishes the initial application and renewal requirements for LP gas license applicants and LP gas licensees.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by clarifying the application and renewal process for LP gas licensure and incorporating an application and renewal form.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: LP gas applicants, LP gas licensees, and the Department of Housing, Buildings and Construction.

(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: LP gas license applicants and licensees will now be required to submit form HAZMAT 38-01 when applying for or renewing a LP gas license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not impose any additional cost on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3) This amendment will assist the entities identified in question (3) to better read and understand the administrative regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

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(a) Initially: There is no anticipated initial additional cost associated with the implementation of this administrative regulation.

(b) On a continuing basis: There is no anticipated additional cost associated with this amendment on an ongoing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amendment is anticipated to result in no additional costs to the department. Any cost resulting from this amendment will be met with existing agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment will not necessitate an increase in fees or require funding to the department for implementation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees directly or indirectly increased by this amendment.

(9) TIERING: Is tiering applied? No, tiering is not applied for this amendment as all LP gas applicants and licensees will be subject to 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 Department of Housing, Buildings and Construction will be affected by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 234.120.

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 amendment is not anticipated to generate additional revenue for the state or local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment is not anticipated to generate additional revenue for the state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this regulatory amendment for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Fire Prevention
(Amendment)

815 KAR 30:060. Certification of underground petroleum storage tank contractors.

RELATES TO: KRS 224.60-105, 224.60-135, 227.300
STATUTORY AUTHORITY: KRS 224.60-135(5), 227.300
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-135(5) requires the State Fire Marshal to promulgate administrative regulations requiring a person or organization who installs, repairs, [interior lines, installs corrosion protection,] closes, or removes an

underground [petroleum] storage tank for a[an] petroleum storage tank owner or operator to demonstrate financial capability, including maintenance of pollution liability insurance, and technical competency and proficiency. This administrative regulation establishes the minimum requirements for determining technical competency and proficiency of a company who is responsible for the installation, repair, interior lining, installation of corrosion protection, removal or closure of a system by a qualifying individual and for determining financial capability through proof of insurance.

Section 1. Definitions. (1) "Certified contractor" means an individual or organization certified by the State Fire Marshal as qualified to:

(a) Engage in the business of installing, repairing, interior lining, installing corrosion protection, removing or closing a UPST system; or

(b) Supervise an employee engaged in an activity listed in paragraph (a) of this subsection.

(2) "Close" or "closure" means permanently taking an underground storage tank out of service without removing it from the ground.

(3) "Repair" means the restoration of a UPST system or component and does not include routine maintenance or corrosion protection applied to an existing installation, or the application of interior lining[that:

(a) Has caused a release of a product from the system or the modification of the tank or a system component; and

(b) Does not include routine maintenance or corrosion protection applied to an existing installation, or the application of interior lining.]

(4) "Remove" or "removal" means permanently taking an underground storage tank or a component out of service by removing it from the ground.

(5) "Routine maintenance" means servicing the UPST system or a component without excavation [or making or the breaking of a connection below ground].

(6) "Underground storage tank" is defined by KRS 224.60-100(1).

(7) "Upgrade" means a modification or addition to a UPST system except routine maintenance.

(8) "UPST system" means an underground storage tank that is used solely for the storage of petroleum or a petroleum product.

Section 2. (1) A permit for the installation of a UPST system shall not be issued by the State Fire Marshal unless the applicant for the permit:

(a) Is certified by the State Fire Marshal's office; and

(b) Assures the State Fire Marshal's Office, in writing, that the installation shall comply with all applicable requirements of 815 KAR 10:060 and [the Natural Resources and Environmental Protection Cabinet promulgated in] 401 KAR Chapter 42.

(2) An individual or company shall not install, remove, repair, interior line, install corrosion protection, or close a UPST system unless the installation, removal, interior lining, installation of corrosion protection repair or closure:

(a) Is made by a certified contractor; and

(b) Complies with all[the] applicable requirements[administrative regulations] of 815 KAR 10:060 and[the Natural Resources and Environmental Protection Cabinet, promulgated in] 401 KAR Chapter 42.

(3) A certificate authorizing a company to engage in an activity regulated by this administrative regulation shall be issued under the name of the company if the company:

(a) Applies for the certification; and

(b) Has in its employ at least one (1) certified contractor who:

1. Meets the supervision requirements established in Section 3 of this administrative regulation; and

2. Shall:

a. Direct an employee engaged in an activity regulated by this administrative regulation; and

b. Exercise independent judgment regarding the recommendation of an activity to an employee acting under his direction.

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Section 3. Supervision Requirements. (1) A certified contractor shall be present on site for each of the following activities:

(a) Preparation of the excavation immediately prior to receiving backfill or a component of the UPST system;

(b) Setting of the UPST system, including placement of an anchoring device, backfilling to the level of the UPST system and strapping;

(c) Installing piping and its components, field coating, or corrosion protecting piping and its components;

(d) Final inspection and pressure testing of a component of the tank or piping component of the UPST system; and

(e) Completion of the backfilling and filling of the excavation.

(2) A repair to a UPST system shall require a certified contractor to be present on site for each of the following activities:

(a) The actual excavation of an existing UPST system;

(b) The actual performance of a repair to the UPST system;

(c) The connection of a component of the piping during the repair project;

(d) The pressure testing of the UPST or its associated piping during the repair project;

(e) The replacement of a piping valve, fill pipe, vent, leak detection device, or spill and overflow protection device; and

(f) The addition of a leak detection device or spill and overflow device.

(3) Preparation for closing a UPST system shall require a certified contractor to be present on site for each of the following activities:

(a) The cleaning and purging of a UPST system;

(b) The filling of a UPST system with an inert solid material;

(c) All testing associated with the cleaning and purging processes; and

(d) The disconnection or capping of a component of the UPST system during the closing.

(4) Removal of a UPST system shall require a certified contractor to be present on site during each of the following activities:

(a) The cleaning and purging of the UPST system;

(b) The actual excavation and removal of the UPST system or a component;

(c) All testing associated with the cleaning and purging ~~process~~[processes]; and

(d) The disconnection or capping of a component of the UPST system during the removal.

(5) The interior tank lining of a UPST system shall require a certified contractor to be present on site during each of the following activities:

(a) The cleaning and purging of the UPST system;

(b) The excavation of the tank top;

(c) The cutting of the top of the tank;

(d) The entry of the tank;

(e) The preparation of the interior of the tank;

(f) The application of the lining of the tank; and

(g) The closing and testing of the tank.

(6) The installation of corrosion protection to a UPST system shall require a certified contractor to be present on site during each of the following activities:

(a) Excavation; and

(b) The installation of an approved corrosion protection system.

Section 4. Certificate Availability. Each certified contractor shall have a copy of the current certificate issued by the State Fire Marshal at the location where he is supervising work. Upon request of a fire official or agent of the Energy and Environment[~~Natural Resources and Environmental Protection~~] Cabinet, a certified contractor shall make the current certificate available for inspection.

Section 5. Application for Certification Requirements. Each applicant for certified contractor shall:

(1) Submit an application accompanied by a nonrefundable fee of \$300, to the State Fire Marshal, on application form "SFM/UPST #01, May, ~~2020~~[2004]" which is incorporated by reference in

Section 11 of this administrative regulation;

(2) Be an individual at least eighteen (18) years of age;

(3) Verify to the State Fire Marshal the individual's experience in the installation of, performance of repairs on site to, interior lining of, installation of corrosion protection, closure and removal of UPST systems, as required by Section 6 of this administrative regulation;

(4) Complete the examination requirements of Section 7 of this administrative regulation;

(5) Provide proof of financial capability for taking corrective action and for compensating a third party for bodily injury or property damage by submitting certificates of general liability insurance in the minimum amount of \$500,000 and pollution liability insurance or other proof of financial capability to respond to damages in the minimum amount of \$25,000 per occurrence; and

(6) If the individual wishes the certificate to be issued with a company name, indicate the company name on the application form. The company shall provide the insurance certificates required by subsection (5) of this section and be subject to this administrative regulation.

Section 6. Experience Requirements. (1) The person making application shall demonstrate that within five (5) years immediately prior to making application, that he has participated in the installation of, performance of repairs on site to, closure of, interior lining of, installation of corrosion protection to, or removal of a minimum of six (6) underground storage tanks, except that:

(a) Technical training of the type provided and documented by the manufacturer of the underground storage tanks and approved by the State Fire Marshal shall reduce the experience requirements of this subsection by one-third (1/3); or

(b) A BS degree in engineering with a concentration in the area of underground containment systems or a Kentucky license to practice engineering shall reduce the experience requirements of subsection (1) by two-thirds (2/3).

(2)(a) An applicant requesting installer or remover certification shall:

1. Have installed at least three (3) UPST systems;

2. Meet the experience requirements established in subsections (3), (4), and (5) of this section.

(b) A certified installer or remover shall be qualified to perform work on a UPST system.

(3) An applicant requesting contractor certification pursuant to this administrative regulation for the limited function of removal and closure shall demonstrate experience in removal and closure of six (6) underground storage tanks.

(4) An applicant requesting contractor certification pursuant to this administrative regulation for the limited function of tank lining shall demonstrate experience in lining of six (6) underground storage tanks or provide proof of certification from the tank interior lining manufacturer or supplier of lining material.

(5) An applicant requesting certification pursuant to this administrative regulation for the limited function of installing corrosion protection shall demonstrate experience in the installation of six (6) corrosion protection systems.

Section 7. Probationary Certification. If the applicant does not comply with the level of experience required by Section 6 of this administrative regulation, the applicant shall receive a probationary certificate under the following conditions:

(1) An applicant shall obtain a minimum score of eighty-five (85) percent on the written examination;

(2) An applicant shall complete three (3) applicable UPST activities for which the applicant seeks certification within one (1) year of the issuance of the certificate;

(3) All UPST activities shall comply with applicable codes and statutes;

(4) An applicant shall not install, interior line, install corrosion protection, remove, close, backfill around or cover a tank installation during the probationary period without prior approval of the State Fire Marshal's office; and

(5) An applicant shall pay a \$100 add-on inspection fee for each site where a tank is removed, closed, installed, upgraded or



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repaired by the applicant.

Section 8. Examination Requirements. Each applicant for certified contractor shall take and pass a written examination administered by the State Fire Marshal in compliance with this section.

(1) The applicant shall submit payment of a fifty (50) dollar nonrefundable fee at least ten (10) days prior to the date of the examination.

(2) The examination for certification as an installer or remover shall be a written multiple choice examination covering all aspects of the installation, repair, interior lining, installation of corrosion protection, closure, and removal of underground petroleum storage tank systems. The examination shall test the applicant's knowledge of codes, standards, laws and administrative regulations and of current technological and industry recommended practices with respect to the proper installation, repair, interior lining, installation of corrosion protection, closure, and removal of UPST systems.

(3) An applicant who requests to be a certified contractor for the limited purpose of removing and permanently closing a UPST system shall be tested on knowledge of closure and removal.

(4) An applicant who requests to be a certified contractor for the limited function of interior lining of UPST systems shall be tested on knowledge of cleaning, and lining the interior of an underground petroleum storage tank.

(5) An applicant who requests to be a certified contractor for the limited purpose of installing corrosion protection shall be tested on the installation, monitoring and general knowledge of a cathodic protection system.

(6) An applicant may request permission to take the examination orally, upon good cause shown.

(7) An applicant shall obtain a minimum score of seventy-five (75) percent on the written examination to satisfactorily pass.

(8) An applicant who fails the examination may request reexamination upon payment of a nonrefundable twenty-five (25) dollar fee. An application shall remain pending for that purpose for a period of one (1) year after the date the application was submitted. If the applicant has not requested reexamination within the one (1) year period, the applicant shall file a new application for certification with the State Fire Marshal.

(9) An examination shall be given at least monthly in the State Fire Marshal's Office located at 500 Mero Street, Frankfort, Kentucky 40601.

(10) An examination shall be graded and the applicant notified on the day of the examination. An examination paper:

(a) Shall not be returned to the applicant; and

(b) May be reviewed by the applicant on the day of the examination.

(11) With the application, the State Fire Marshal shall furnish the applicant with a set of instructions and sample examination questions. Instruction sheets shall refer the applicant to appropriate laws, administrative regulations and industry publications.

Section 9. Certification and Renewal Procedures. (1) The State Fire Marshal shall issue a certificate to each individual as required by Sections 5 through 7 of this administrative regulation. Each certificate shall be renewed annually for a fee of \$100 on Form SFM/UPST #02, May, 2020[~~2004~~].

(2) The application or renewal for a certified contractor shall be denied by the State Fire Marshal if the applicant:

(a) Fails to provide the:

1. Information required by the application form SFM/UPST #01;

2. Insurance or financial responsibility certificates; or

3. The[~~the~~] fee required for application and examination;

(b) Fails to comply with the experience and education requirements of this administrative regulation;

(c) Fails to successfully pass the examination required by this administrative regulation; or

(d) Makes a misrepresentation or submits a false statement with the application.

(3) A certified contractor who fails to renew his certification with[~~within~~] a one (1) year period from the most recent expiration date of his certification shall:

(a) Be treated as a new applicant;

(b) Retake the examination; and

(c) Comply with the new applicant requirements.

Section 10. Revocation or Suspension of Certification. A certificate issued pursuant to this administrative regulation shall be suspended or revoked by the State Fire Marshal if:

(1) The certified contractor negligently, incompetently, recklessly or intentionally violated a provision of this administrative regulation or a required code relating to installation, repair, lining, closure or removal;

(2) The certified contractor recklessly or intentionally caused or permitted a person under the contractor's supervision to install, perform a repair on site to, interior line, install corrosion protection, close, or remove a UPST system in violation of 815 KAR 10:060;

(3) The certified contractor obtained the certification through fraud or misrepresentation;

(4) The individual who took the examination, provided the experience requirements and requested the certificate be issued with a company's name and proof of insurance is no longer employed by the company in whose name the certificate was issued; or

(5) The certified contractor failed to renew the certification in accordance with Section 9 of this administrative regulation.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form SFM/UPST #01, "Application for Certification as an Underground Tank Contractor", May 2020; and

(b) [~~Form~~] SFM/UPST #02, "Installer/Remover Certification Renewal Form", May[~~]~~ 2020.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law at the State Fire Marshal's Office, Division of Hazardous Materials, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KERRY B. HARVEY, Secretary

RICK W. RAND, Commissioner

APPROVED BY AGENCY: July 6, 2021

FILED WITH LRC: July 6, 2021 at 12:27 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2021 at 10:00 a.m., eastern time, in the Department of Housing, Buildings and Construction, 500 Mero Street, First Floor, Frankfort, Kentucky 40601. Individuals interest in being heard at this hearing shall notify this agency in writing by 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. The 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 September 30, 2021 at 11:59 p.m., eastern time. Send written notification of the intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person below:

CONTACT PERSON: Benjamin Siegel, General Counsel, Department of Housing, Buildings and Construction, 500 Mero Street, 1st Floor, Frankfort, Kentucky 40601, phone (502) 782-0604, fax (502) 573-1057, email benjamin.siegel@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Benjamin Siegel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirements for determining technical competency and proficiency of a company who is responsible for the installation, repair, interior lining, installation of corrosion protection, removal or closure of a system by a qualifying

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individual and for determining financial capability through proof of insurance.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure technical competency and financial capability of companies that install, repair, interior line, install corrosion protection, remove or close a system.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.60-135(5) requires the State Fire Marshal to promulgate administrative regulations requiring a person or organization who installs, repairs, closes, or removes an underground storage tank for a petroleum storage tank owner or operator to demonstrate financial capability, including maintenance of pollution liability insurance, and technical competency and proficiency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the minimum requirements for determining technical competency and proficiency of a company who is responsible for the installation, repair, interior lining, installation of corrosion protection, removal or closure of a system by a qualifying individual and for determining financial capability through proof 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: This amendment updates definitions, makes grammatical and technical changes, and updates outdated language and references.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to keep the administrative regulation up to date, easier to read, and more user friendly.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.60-135(5) requires the State Fire Marshal to promulgate administrative regulations requiring a person or organization who installs, repairs, closes, or removes an underground storage tank for a petroleum storage tank owner or operator to demonstrate financial capability, including maintenance of pollution liability insurance, and technical competency and proficiency.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates definitions, makes grammatical and technical changes, updates outdated language and references, and will make the administrative regulation easier to read and understand for department personnel, licensees, and applicants.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: UPST Contractor licensees, applicants, and Department of Housing, Buildings and Construction personnel.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in Question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not impose any additional requirements on any of the regulated entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): 815 KAR 30:060 will be more clear, up to date, and user friendly.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There are no anticipated initial additional costs to administer this amendment.

(b) On a continuing basis: There are no anticipated additional costs to administer this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Implementation of this amendment is anticipated to result in no additional costs to the department. Any cost resulting from this amendment will be met with existing agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment will not necessitate an increase in fees or require funding to the department for implementation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees directly or indirectly increased by this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all licensees and applicants will be subject to the same amended 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 of Housing, Buildings and Construction will be affected by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is required by KRS 224.60-135(5).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is not anticipated to generate additional revenue for the state or local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment is not anticipated to generate additional revenue for the state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this regulatory amendment for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

### CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (Amendment)

**902 KAR 10:120. Kentucky public swimming and bathing facilities.**

RELATES TO: KRS Chapter 13B, 211.015, 211.090, 211.210, 211.220 [211.180], 211.990(2), 322.110, 323.020, 29 C.F.R. 1910.119, 15 U.S.C. 8003

STATUTORY AUTHORITY: KRS [Chapter 13B,] 194A.050(1), 211.180(1) [211.090(3), HB 492 (1988-Acts), EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the

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~~cabinet[HB 492 (1988 Acts) directs the Cabinet for Health Services to regulate the design and construction of water distribution and treatment systems for swimming pools]. KRS 211.180 authorizes[directs] the cabinet [for Health Services] to adopt administrative regulations relating to public facilities, and their operation and maintenance in a safe and[er] sanitary manner to protect public health and prevent health hazards. This administrative regulation establishes uniform standards for public swimming pools and [other swimming or] bathing facilities. [The function of this administrative regulation is to assure the proper design and construction of new facilities as related to water distribution and treatment systems, and the proper operation and maintenance of all such facilities in a manner which will protect the public health. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services.]~~

Section 1. Definitions. (1) "Accessible" means, if applied to a fixture, connection, appliance or equipment, having access to it, but may require the removal of an access panel, door or similar obstruction.

(2) "Agitation" means the mechanical or manual movement to dislodge the filter aid and dirt from the filter element.

(3) "Air gap" means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water or waste to a tank, plumbing fixture, receptor or other device, and the flood level rim of the receptacle.

(4) "Alkalinity" or "total alkalinity" means the amount of carbonates or bicarbonate present in water solution as expressed in parts per million (ppm).

(5) "Approved" means that which is acceptable to the cabinet.

(6) "Backwash" means the flow of water through the filter element or media in the reverse direction sufficient to dislodge the accumulated dirt and filter aid and remove them from the filter tank.

(7) "Backwash cycle" means the time required to backwash the filter system thoroughly.

(8) "Backwash rate" means the rate of application of water through a filter during the backwash cycle expressed in gallons per minute per square foot of effective filter area.

(9) "Bather" means a person using a public swimming and bathing facility.

(10) "Cabinet" is defined by KRS 211.015(a).

(11) "Cartridge filter" means a filter that utilizes a porous cartridge as its filter media.

(12) "Diatomaceous earth (DE) filter" means a filter that utilizes a thin layer of diatomaceous earth as its filter media that must be periodically replaced.

(13) "Disinfectant" means an approved chemical compound designed for the destruction of pathogenic organisms in bathing facilities and includes chlorine and bromine.

(14) "Equalizer line" means the connection from the skimmer housing to the pool, spa, or hot tub below the weir box, which is sized to satisfy pump demand and prevent air lock or loss of prime and contains a float valve assembly and pop-up valve.

(15) "Facility operator" means a person or employee of that person who is responsible for the proper operation and maintenance of the facility.

(16) "Filter" means a device that separates solid particles from water by recirculating it through a porous substance.

(17) "Filter aid" means an enhancement to the efficiency of the filter media.

(18) "Filter cycle" means the operating time between cleaning or replacing the filter media or backwash cycles.

(19) "Filter element" means a device within a filter tank designed to entrap solids and conduct water to a manifold, collection header, pipe, or similar conduit.

(20) "Filtration rate" means the rate of water flow through a filter while in operation.

(21) "Float valve assembly" means a mechanism designed to disengage the skimmer in order to prevent air from entering the pump if the water level drops below the skimmer level.

(22) "Flow meter" means a device that measures the flow of

water through piping.

(23) "Head loss" means the total pressure drop between the inlet and the outlet of a component.

(24) "Holding tank" means a storage vessel to retain water for a spray pad recirculation system.

(25) "Hydrojet" means a fitting which blends air and water creating a high velocity, turbulent stream of air enriched water.

(26) "Inlet" means a fitting or fixture through which filtered water returns to a pool or spa.

(27) "Main outlet" means an outlet fitting at the deepest point of the horizontal bottom of a pool through which water passes to a recirculating pump or surge tank. It is often referred to as a "main drain".

(28) "Modulating valve" means a valve that automatically regulates the flow of water from the main drain through the use of a float ball.

(29) "Perimeter overflow system" means a channel at normal water level that extends completely around the pool perimeter and is used to remove surface debris, also known as an overflow or scum gutter.

(30) "Perlite filter" means a filter that utilizes a thin layer of perlite as its filter media deposited on a septum that must be periodically replaced.

(31) "Play feature" means a structure or feature that is added to a pool for the purpose of entertainment.

(32) "Plunge pool" means a pool or area within a pool designed as the termination point for a water slide or water ride.

(33) "Pop-up valve" means a mechanism located under the float valve assembly that opens to allow water to reach the pump when the float valve is activated.

(34) "Positive shutoff valve" means a valve that completely stops the flow of water.

(35) "Precoat" means the process of depositing a layer of diatomaceous earth or perlite on the filter element at the start of a filter cycle.

(36) "Public swimming and bathing facility" means a natural or artificial body or basin of water that is modified, improved, constructed, or installed for the purpose of swimming or bathing. It does not include a pool at a private single family residence intended only for the use of the owner and guests.

(37) "Readily accessible" means direct access without the necessity of removing any panel, door, or similar obstruction.

(38) "Septum" means that part of the filter element consisting of cloth, or closely woven fabric or other porous material on which the filter cake is deposited.

(39) "Skimmer" means a device designed to continuously remove surface film and water and return it through the filter.

(40) "Spray pad" means an area with aquatic play features that spray or drop water for the purpose of wetting people, and are designed so that there is no accumulation or ponding of water on the ground, and includes both recirculating and non-recirculating water systems.

(41) "Strainer" means a device used to remove hair, lint, leaves, or other coarse material on the suction side of a pump.

(42) "Suction piping" means that portion of the circulation piping located between the facility structure and the inlet side of a pump.

(43) "Superchlorinate" means the addition to facility water of an amount of chlorine sufficient to produce a free available chlorine that is at least equal to ten (10) times the amount of combined chlorine plus the required minimum level of free available chlorine in order to oxidize the ammonia and nitrogenous materials which may be dissolved in the facility water.

(44) "Surge tank" means a storage vessel within the pool recirculation system used to retain the water displaced by bathers.

(45) "Total discharge head" means the amount of water that a pump will raise water above its center line.

(46) "Total dynamic head" means the arithmetical difference between the total discharge head and total suction head (a vacuum reading is considered as a negative pressure). This value is used to develop the published performance curve.

(47) "Total residual chlorine" means the arithmetical sum of free available chlorine and combined chlorine, and is composed of

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the following components:

(a) Free available chlorine, which is the amount of chlorine available to inactivate microorganisms and that has not reacted with ammonia, nitrogenous material, and other contaminants in swimming pool water; and

(b) Combined chlorine (also called "chloramine"), which is the amount of chlorine that has reacted and combined with ammonia and other nitrogenous material to form chloro-ammonia compounds.

(48) "Total suction head" means the amount of water that a pump will lift by suction.

(49) "Turnover rate" means the time in hours or minutes, required for the circulation system to filter and recirculate a volume of water equal to the facility volume.

(50) "Wading pool" means a pool or area within a pool where the water depth is twenty-four (24) inches or less.

(51) "Weir box" means an overflow system placed at normal operating water surface level to remove surface debris and does not form a continuous loop around the pool perimeter.

Section 2. Submission of Plans and Specifications for Approval. (1) No person shall construct, alter, or reconstruct a public swimming and bathing facility until approval of detailed plans and specifications, with supporting design data as required in this administrative regulation, is granted in writing by the state or local agency having jurisdiction.

(2) The original plans and five (5) copies shall be submitted to the local health department with payment pursuant to 902 KAR 10:121.

(3) The front page of the plans submitted for review and approval shall contain the:

(a) Name of the swimming and bathing facility;

(b) Location by city and county;

(c) Name and contact information for the facility owner;

(d) Name of the installer; and

(e) Name of the engineer, architect, or person preparing the plans.

(4) Plans submitted by an engineer or architect shall bear the individual's official seal.

(5) Plans and specifications on public swimming and bathing facilities constructed by the state or local government, or for a facility with surface area greater than 1,600 square feet shall be prepared by an engineer or architect registered in the State of Kentucky.

(6) The plans shall be:

(a) Drawn to scale;

(b) Accompanied by proper specifications to permit a comprehensive review of the plans including the piping and hydraulic details; and

(c) Include:

1. A site plan of the general area with a plan and sectional view of the facility complex with all necessary dimensions;

2. A piping diagram showing all appurtenances including treatment facilities in sufficient detail, as well as pertinent elevation data, to permit a hydraulic analysis of the system;

3. The specifications on all treatment equipment, including performance ranges of pumps, disinfecting equipment, chemical feeders, filters, strainers, lights, skimmers, suction outlets or return inlets, diving boards, safety equipment, and other related equipment; and

4. Drawing of equipment room showing placement of equipment.

(7) One (1) set of approved plans shall be kept at the job site and available for inspection.

(8) Upon completion of recirculation piping system construction and prior to such piping being air pressure tested at ten (10) pounds per square inch of pressure for fifteen (15) minutes and covered, the owner or builder shall contact the cabinet for inspection.

(9) Upon completion of construction, a notarized statement certifying the facility was constructed in accordance with the approved plans and this administrative regulation shall be submitted to the cabinet.

(10) The facility shall not be used before receiving a final inspection and written approval from the cabinet.

(11) Unless construction is begun within one (1) year from the date of approval, the approval shall expire. Extension of approval may be considered upon written request to the cabinet.

(12) No change in location, construction, design, materials, or equipment shall be made to approved plans or the facility without the written approval of the cabinet.

Section 3. Water Supplies. (1) Potable water from an approved municipal water system or water district shall be supplied to all public swimming and bathing facilities. If these supplies are not available, a potable water supply meeting the approval of the Energy and Environment Cabinet shall be provided.

(2) The water supply shall be capable of providing sufficient quantities of water under pressure to all water-using fixtures and equipment at the facility, and be capable of providing enough water to raise the water level in swimming, diving, or wave pools, and water slide plunge pools, at least one (1) inch in three (3) hours.

Section 4. Water Quality and Sanitary Requirements for Bathing Beaches. (1) Prior to the issuance of plan and construction approval, the cabinet shall conduct a sanitary survey of the proposed beach. This survey shall include an evaluation of the physical, chemical, and bacteriological characteristics of the bathing beach area and the watershed.

(2) Physical quality. The following characteristics shall not be present in the beach area or watershed:

(a) Sludge deposits, solid refuse, floating waste solids, oils, grease, and scum; and

(b) Hazardous substances being discharged into bathing beach water or watershed.

(3) Bacteriological quality. The bacteriological quality of water at bathing beaches shall comply with the following criteria:

(a) It shall meet the requirements of 401 KAR 10:031. Satisfactory bacteriological results shall be obtained before approval for construction is considered; and

(b) There shall be no sanitary or combined sewer discharges or other raw or partially treated sewage discharges to the bathing beach area or immediate watershed.

(4) Chemical quality. There shall be no discharges of chemical substances, other than disinfecting agents, capable of creating toxic reactions, or irritations to the skin or mucous membranes of a bather.

Section 5. Sewage and Wastewater Disposal. (1) Sewage or wastewater generated from the operation of a public swimming and bathing facility shall discharge to a public sanitary sewer.

(2) If a public sanitary sewer is not available, sewage or wastewater shall be discharged to a system which complies with 902 KAR 10:085.

(3) Outdoor deck or surface area drainage water may be discharged directly to storm sewers, natural drainage areas, or to the ground surface without additional treatment. Such drainage shall not result in nuisance conditions that create an offensive odor, a stagnant wet area, or an environment for the breeding of insects.

(4) Filter backwash shall be discharged to public sanitary sewers, or if unavailable, to a system approved by the cabinet.

Section 6. Refuse Disposal. (1) All refuse at a public swimming and bathing facility shall be disposed of in a manner approved by the Energy and Environment Cabinet in KAR Title 401.

(2) An adequate number of refuse containers, with tight fitting lids shall be provided at readily accessible locations at all public swimming and bathing facilities.

(3) Refuse containers in women's restrooms shall be kept covered.

(4) Bulk refuse storage areas shall be designed and maintained to prevent rodent harborage.

(5) Bulk refuse containers shall be:

(a) Of approved design and construction;

(b) Kept closed; and

(c) Placed upon an impervious surface within a suitable enclosure to prevent access by animals.

Section 7. Facility Design and Construction. (1) All public swimming and bathing facilities, and attendant structures such as bathhouses, dressing rooms, or restrooms, except for beach areas at bathing beaches, shall meet the design, materials, fixture, and construction requirements of 815 KAR 7:120 and 815 KAR Chapter 20.

(2) The wading and swimming areas at beaches where the water is less than five (5) feet deep shall be separated from swimming and diving areas by lines securely anchored and buoyed. Safe limits of swimming shall be marked by buoys, poles, or other markers located not over 100 feet apart and visible to bathers from a distance of at least 100 feet. Within such limits of safe swimming there shall be no boating, underwater obstructions, or other hazards that may be dangerous or cause injury to swimmers. Signs shall be provided on the beach describing these markers and stating that they indicate the limits of safe bathing. The bottom of the swimming area shall consist of sand or gravel and be of a uniform slope.

(3) If diving facilities are provided at beaches, the design and layout of the facilities and associated unobstructed water depths shall be in accordance with the State Building Code requirements for swimming and diving pools. The water surrounding any floats or inflatable features where diving is permitted shall be at least nine (9) and one-half (1/2) feet deep.

(4) Depth markings and lane lines.

(a) On all facilities other than beaches, the depth of the water shall be marked plainly at or above the water surface on the vertical wall of the facility if possible and on the edge of the deck next to the facility. Depth markers shall be placed at the following locations:

1. At the points of maximum and minimum depths;
2. At the point of change of slope between deep and shallow portions (transition point);
3. At intermediate two (2) feet increments of water depth; and
4. If the facility is designed for diving, at appropriate points to denote the water depths in the diving area.

(b) Depth markers shall be spaced so that the distance between adjacent markers is not greater than twenty-five (25) feet as measured peripherally.

(c) Depth markers shall be in Arabic numerals at least four (4) inches high and of a color contrasting with the background. If depth markers cannot be placed on the vertical walls at or above the water level, other means shall be used, so that markings shall be plainly visible to persons in the facility.

(d) Lane lines or other markings on the bottom of the facility shall be a minimum of ten (10) inches in width and be of a contrasting color.

(e) A safety line supported by buoys shall be provided across the section of the pool where the break between the shallow and deep water occurs (five (5) feet). The line shall be placed one (1) foot toward the shallow end from where the break occurs.

Section 8. Facility Water Treatment Systems. (1)(a) A recirculation system, consisting of pumps, piping, filters, water conditioning, disinfection equipment, and other accessory equipment shall be provided to clarify, chemically balance, and disinfect the water for all swimming and bathing facilities except bathing beaches.

(b) All system components, including piping, shall bear the National Sanitation Foundation potable water (NSF-pw) mark.

(c) Pumps greater than seven and five-tenths (7.5) horse power that are not required to meet NSF testing standards shall be considered on a case-by-case basis.

(2) Pumping equipment.

(a) The recirculation pump and motor shall deliver the flow necessary to obtain the turnover required in the table below. A valve for flow control and a flow meter shall be provided in the recirculation pump discharge piping.

(b) The turnover rate shall be:

| Type of Facility  | Turnover Required  |
|---|--------------------|
| Diving pools  | 8 hours or less    |
| Wading pools, Spas, Therapy pools, Spray pad holding tanks, Facility equipped with a spray feature not providing additional filtered and disinfected water to the spray feature | 30 minutes or less |
| Wave pools, Lazy rivers, Water rides  | 2 hours or less    |
| Vortex pools, Plunge pools  | 1 hour or less     |
| All other pools   | 6 hours or less    |

(c) Higher flow rates may be necessary in pools with skimmers so that each skimmer will have a minimum flow rate of thirty (30) gallons per minute.

(d) The pump shall be of sufficient capacity to provide a minimum backwash rate of fifteen (15) gallons per square foot of filter area per minute in sand filter systems.

(e) The pump or pumps shall supply the required recirculation rate of flow to obtain the turnover rate required at a total dynamic head of at least:

1. Fifty (50) feet for all vacuum filters;
2. Seventy (70) feet for pressure sand or cartridge filters; or
3. Eighty (80) feet for pressure diatomaceous earth filters and perlite filters.

(f) If the pump is located at an elevation higher than the facility water line, it shall be self-priming.

(g) If vacuum filters are used, a vacuum limit control shall be provided on the pump suction line. The vacuum limit switch shall be set for a maximum vacuum of eighteen (18) inches of mercury.

(h) A compound vacuum-pressure gauge or vacuum gauge shall be installed on the suction side of the pump.

(i) A pressure gauge shall be installed on the pump discharge line adjacent to the pump.

(j) Valves shall be installed to allow the flow to be shut off during cleaning, switching baskets, or inspection of hair and lint strainers.

(k) A hair or lint strainer with openings no more than one-eighth (1/8) inch is required except for pumps that are used with vacuum filter systems.

(3) Water heaters shall be installed at all indoor swimming and bathing facilities, and shall comply with the following:

(a) A water heater piping system shall be equipped with a bypass. A valve shall be provided at the bypass and on the influent and effluent heater piping. The influent and effluent heater piping shall be metallic and installed in accordance with heater manufacturer's recommendations;

(b) A heating coil, pipe, or steam hose shall not be installed in any swimming and bathing facility;

(c) Thermometers shall be provided in the piping to check the temperature of the water returning from the facility and the temperature of the blended water returning to the facility;

(d) An automatic temperature limiting device with thermostatic control that prevents the introduction of water in excess of 100 degrees Fahrenheit to swimming and diving pools and in excess of 104 degrees Fahrenheit for spas shall be provided, and be accessible only to the facility operator;

(e) A pressure relief valve shall be provided and shall be piped to within six (6) inches of the floor;

(f) Venting of gas or other fuel burning water heaters shall be provided in accordance with the State Building Code;

(g) Heaters for indoor swimming and diving pools shall be capable of maintaining an overall pool water temperature between seventy-six (76) degrees Fahrenheit and eighty-four (84) degrees Fahrenheit;

(h) Combustion and ventilation air shall be provided for fuel burning water heaters in accordance with manufacturer recommendations or the State Building Code;

(i) Heaters for indoor swimming and diving pools shall be sized on a basis of 150 British Thermal Units per hour input per square foot of pool water surface area; and

(j) All heaters shall meet the latest standards of applicable recognized testing agencies.

(4) A flow meter shall be:

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(a) Located so that the rate of recirculation may be easily read;  
(b) Installed on a straight length of pipe at a distance of at least ten (10) pipe diameters downstream, and five (5) pipe diameters upstream from any valve, elbow, or other source of turbulence, except for those specifically designed without separation parameters; and

(c) Installed on each recirculation system, spray pad feature, waterslide, any other type of spray feature, and on multiple filtration units.

(5) Vacuum cleaning system.

(a) A vacuum cleaning system shall be:

1. Provided for all facilities except beaches; and
2. Capable of reaching all parts of the facility bottom;

(b) A vacuum system that utilizes the attachment of a vacuum hose to the suction piping through the skimmer may be provided;

(c)1. If the vacuum cleaning system is an integral part of the facility recirculation system, a wall fitting shall be provided:

a. Eight (8) to twelve (12) inches below the normal water level; and

b. With a cap or plug that is not removable by bathers.

2. Piping from this connection shall be:

a. To the suction side of the pump ahead of the hair and lint strainer;

b. At least one and one-half (1 1/2) inches in diameter; and

c. Equipped with a control valve near the junction with the pump suction line.

3. The size of the vacuum hose shall be at least one and one-half (1 1/2) inches in diameter and be of sufficient strength to prevent collapsing and allow adequate flow for proper cleaning.

(d) Automatic vacuum systems may be used to supplement the built-in vacuum system provided they are capable of removing all debris from the facility bottom; and

(e) Vacuum systems shall only be used when the facility is closed to bathers.

(6) Piping, skimmer and overflow system.

(a) Piping shall comply with the material specifications listed in the Kentucky State Plumbing Code for potable water.

(b) All piping, valves, and fittings shall be color coded, suitably labeled, or marked to denote its purpose within the facility water treatment system.

(c) The piping shall be designed to carry the required quantities of water at velocities not exceeding five (5) feet per second in suction piping and ten (10) feet per second in pressure piping.

(d) Gravity piping shall be sized so that the head loss in piping, fittings, and valves does not exceed the difference in water levels between the facility and the maximum operating level in the surge or filter tank.

(e) The following waste lines shall be provided with six (6) inch air gaps at their points of discharge to the waste pump or sewer:

1. Main outlet bypass or other connections to waste;
2. Surge tank drain and overflow lines;
3. Pump discharge to waste lines; and
4. Gutter bypass to waste lines.

(7) Inlets.

(a) Each inlet shall be directionally adjustable.

(b) The velocity of flow through any inlet orifice shall be in the range of five (5) to twenty (20) feet per second, except in facilities equipped with skimmers it shall be in the range of ten (10) to twenty (20) feet per second.

(c) Inlets shall be located and directed to produce uniform circulation of water to facilitate the maintenance of a uniform disinfectant residual throughout the entire facility without the existence of dead spots.

(d) Inlets in facilities with skimmers shall be twelve (12) inches below the midpoint on the skimmer throat.

(e) Inlets in facilities with a prefabricated perimeter overflow system shall be eight (8) inches or more below the lip of the gutter.

(f) Inlets shall be placed completely around the pool with each serving a linear distance of not more than fifteen (15) feet on center. The pipe serving the inlets shall form a loop completely around the pool.

(g) The number of inlets shall be determined by dividing the perimeter of the pool measured in feet, by fifteen (15), any fraction

thereof would represent one (1) additional inlet.

(h) Pools greater than forty-five (45) feet wide shall be equipped with floor inlets in a grid pattern located no more than seven and five-tenths (7.5) feet from a wall and no more than fifteen (15) feet apart. The grid must form a continuous loop with no reduction in loop pipe sizing.

(i) A minimum of two (2) inlets is required on all pools, holding tanks, and bathing facilities regardless of size.

(j) At least one (1) inlet shall be located in each recessed stairwell or other space where water circulation might be impaired.

(k) Prefabricated perimeter overflow systems shall be approved on a case-by-case basis by the cabinet.

(8) Outlets.

(a) All facilities, including holding tanks, shall be provided with a minimum of two (2) main outlets at the deepest horizontal point plumbed in parallel to permit the facility to be completely and easily drained.

(b) Openings and grates shall:

1. Conform to 15 U.S.C. 8003;

2. Be covered by a proper grating that is not removable by bathers;

3. Be at least four (4) times the area of the main outlet pipe;

4. Have sufficient area so that the maximum velocity of the water passing through the grate does not exceed one and one-half (1 1/2) feet per second at maximum flow; and

5. The maximum width of grate openings shall be one-fourth (1/4) inch;

(c) Additional outlets shall be provided in all facilities where the width of the facility is more than sixty (60) feet. In these cases, outlets shall be spaced not more than thirty (30) feet apart, nor more than fifteen (15) feet from side walls, and shall be connected in parallel, not in series;

(d) A hydrostatic relief valve may be provided for in-ground swimming and diving pools. Subsurface drainage, if provided, shall not be directly connected to a sanitary sewer; and

(e) Main outlet piping shall be sized for removal of the water through it at a rate of at least 100 percent of the design recirculation flow rate at velocities specified in subsection (6)(c) of this section. It shall function as a part of the recirculation system. The piping system shall be valved to permit adjustment of flow through it.

(9) Perimeter overflow systems.

(a) Swimming and bathing facilities with a water surface area greater than 1,600 square feet shall have a continuous perimeter overflow system.

(b) A perimeter overflow system shall:

1. Extend completely around the facility;

2. Permit inspection, cleaning, and repair;

3. Be designed so that no ponding or retention of water occurs within any portion of the system;

4. Be designed to prevent entrapment of bathers or the passage of small children into an enclosed chamber;

5. Have an overflow lip which is rounded, provides a good handhold, and is level within two-tenths (0.2) inch;

6. Provide for the rapid removal of all water and debris skimmed from the pool's surface;

7. Be designed for removal of water from the pool's upper surface at a rate equal to 100 percent of the design turnover flow rate;

8. Discharge to the recirculation system;

9. Be provided with a minimum of two (2) outlet pipes that will not allow the overflow channel to become flooded when the facility is in normal use;

10. Require additional outlet pipes provided at one (1) per 150 lineal feet of perimeter overflow system or fraction thereof; and

11. Have drain gratings with surface area at least equal to two (2) times the area of the outlet pipe.

(10) All facilities that have perimeter overflow systems shall have a net surge capacity of at least one (1.0) gallon per square foot of water surface area. Surge capacity shall be provided either in a vacuum filter tank, surge tank, or a combination of these. Main drain piping shall terminate eighteen (18) inches above the surge tank floor and be equipped with a modulating valve and a positive

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shutoff valve. Surge capacity for a diatomaceous earth (DE) filter is measured eighteen (18) inches above the filter media and the bottom of the gutter pipe.

(11) Skimmers are permitted on facilities whose width does not exceed thirty (30) feet and whose water surface area is 1,600 square feet or less. If skimmers are used, the following shall be met:

(a) At least one (1) skimmer shall be provided for each 500 square feet of water surface area or fraction thereof with a minimum of two (2) skimmers provided, except for spas, holding tanks, or wading pools with a water surface area of 144 square feet or less, where a minimum of one (1) skimmer shall be required.

(b) Skimmers shall be located to minimize interference with each other:

(c) The rate of flow per skimmer shall not be less than thirty (30) gallons per minute, and all skimmers shall be capable of handling at least eighty (80) percent of required flow rate;

(d) Surface skimmer piping shall have a separate valve in the equipment room to permit adjustment of flow;

(e) Each skimmer shall be provided with an equalizer line at least one and one-half (1 1/2) inches in diameter, located at least one (1) foot below the lowest overflow level of the skimmer, and be provided with a self-closing valve and cover that conforms to 15 U.S.C. 8003;

(f) A basket that can be removed without the use of tools and through which all overflow water must pass; and

(g) All pools not equipped with a perimeter overflow system shall have a smoothly contoured handhold coping not over two and one-half (2 1/2) inches thick for the outer two (2) inches or an equivalent approved handhold. The handhold shall be no more than nine (9) inches above the normal water line.

(12) All facilities shall be equipped for the addition of make-up water from a potable water source pursuant to the following:

(a) Discharge through an air gap of at least six (6) inches to a surge tank or a vacuum filter tank. If make-up water is added directly to the facility, the fill-spout shall be located under or immediately adjacent to a ladder rail, grab rail, or lifeguard platform. If added to a surge tank or vacuum filter tank, the six (6) inch air gap shall be measured above the top lip of the tank; and

(b) Through piping with vacuum breaker, antisiphon, or other protection as specified by the State Plumbing Code.

### (13) Filtration.

(a) Filters shall comply with the following:

1. Pressure filters shall have:

a. Pressure gauges;

b. An observable free fall, or a sight glass installed on the backwash discharge line; and

c. A manual air-relief valve at the high point;

2. The filter backwash disposal facility shall have sufficient capacity to prevent flooding during the backwash cycle;

3. All filters shall be designed so that they can be completely drained. Filters shall be drained through a six (6) inch air gap to a pump or sanitary sewer; and

4. Filter media shall be listed as NSF approved.

(b) Each facility shall have separate filtration and treatment systems.

(c) Filter equipment and treatment systems shall operate continuously twenty-four (24) hours per day except if the facility is closed for repairs or at the end of the swimming season.

(d) Rapid sand or gravity sand filters shall be designed for a filter rate not to exceed three (3) gallons per minute per square foot of bed area at time of maximum head loss with sufficient area to meet the design rate of flow required by the prescribed turnover.

(e) At least eighteen (18) inches of freeboard shall be provided between the upper surface of the filter media and the lowest portion of the pipes or drains that serve as overflows during backwashing.

(f) The filter system shall be designed with necessary valves and piping to permit filtering to the pool.

(g) High rate sand filters. The design filtration rate shall be a minimum of five (5) gallons per minute per square foot of filter area. The maximum design filtration rate shall be the lesser of fifteen (15) gallons per minute per square foot of filter area or

seventy-five (75) percent of the NSF listed filtration rate. The backwash rate shall be fifteen (15) gallons per minute per square foot of filter area.

(h) Diatomaceous earth filters.

1. The design filtration rate shall not exceed one and one-half (1 1/2) gallons per minute per square foot of filter area on diatomaceous earth filters, except that the rate of filtration may be increased to two (2) gallons per minute per square foot of filter area if continuous feeding of diatomaceous earth is employed;

2. A precoat pot shall be provided on the pump suction line for pressure diatomaceous earth systems. All diatomaceous earth filter systems shall have piping arranged to allow recycling of the filter effluent during precoating;

3. If equipment is provided for the continuous feeding of diatomaceous earth to the filter influent, the equipment shall have a capacity to feed at least one and one-half (1 1/2) ounces of this material per square foot of filter area per day;

4. Overflow piping on vacuum diatomaceous earth filters shall be provided on the filter tank to discharge overflow water;

5. All filters shall be equipped for cleaning by one (1) or more of the following methods: backwashing; air-pump assist backwashing; spray wash; water pressure to wash vacuum filter; or agitation; and

6. Perlite may be used in filters listed by NSF for perlite, but it may not be substituted for diatomaceous earth without NSF listing.

(i) Vacuum sand filters.

1. The design filtration rate shall be seventy-five (75) percent of that listed by NSF or fifteen (15) gallons per minute, whichever is lesser. The backwash rate shall be at fifteen (15) gallons per minute per square foot of filter area; and

2. Overflow piping shall be provided in order to drain overflow water.

(j) Cartridge filters.

1. Cartridge filters shall not be used on facilities with a capacity larger than 80,000 gallons;

2. Cartridge filters shall only be used on indoor pools;

3. The design filtration rate shall not exceed fifteen hundredths (0.15) gallons per minute per square foot of filter surface area; and

4. A clean duplicate set of cartridges shall be maintained at the facility.

(14) Disinfectant and chemical feeders.

(a) The minimum chemical feed equipment required at any facility shall include a unit for feed of a disinfectant and a unit for feed of a chemical for pH control, except as stated in paragraph (e) of this subsection.

(b) Equipment capacity.

1. Equipment for supplying chlorine or compounds of chlorine shall be of sufficient capacity to feed the chlorine at a rate of eight (8) ppm or two and seven-tenths (2.7) pounds per day chlorine gas or its equivalent for each 10,000 gallons of pool volume for outdoor facilities; or three (3) ppm or one (1) pound per day for chlorine gas or its equivalent for each 10,000 gallons of pool volume for indoor facilities based on the turnover rates specified in subsection (2)(b) of this section;

2. The equipment for supplying chlorine shall not be controlled by a day-date clock;

3. The injection point for chlorine shall be placed on the discharge side of the pump and downstream of the flow meter unless the chlorine injection point is located within the surge tank;

4. Pot feeders for supplying bromochlorodimethylhydantoin sticks shall contain at least five tenths (0.50) a pound of bromochlorodimethylhydantoin per thousand gallons of facility capacity, or fraction thereof. The feeder shall have a method of feed rate adjustment;

5. Supplemental NSF listed ultraviolet (UV) light disinfection systems shall:

a. Be provided on all splash pads with a recirculating water system;

b. Be installed on a bypass line; and

c. Equipped with a flow indicator; and

d. May be used on other facilities as supplemental disinfection.

6. Ozone may be used as a supplement to chlorination or bromination. Ozonation equipment will be considered by the

cabinet on a case-by-case basis; and

7. No more than one (1) gram per day of ozone per ten (10) gallons per minute of flow rate will be allowed. The ambient air ozone concentration shall be less than five hundredths (.05) ppm at all times either in the vicinity of the ozonator or at the pool water surface.

(c) If positive displacement pumps (hypochlorinators) are used to inject the disinfectant solution into the recirculation line, they shall be of variable flow type and shall be of sufficient capacity to feed the amount of disinfectant required by paragraph (b)1 of this subsection. If calcium hypochlorite is used, the concentration of calcium hypochlorite in the solution shall not exceed five (5) percent. The solution container shall have a minimum capacity equal to the volume of solution required per day at the feed rate required in paragraph (b)1 of this subsection.

(d) Gas chlorinators shall only be used in a pre-existing facility and shall comply with applicable sections of 29 C.F.R. 1910.119.

(e) pH control feeders. All facilities shall install a chemical feeder of positive displacement type for the purpose of applying chemicals to maintain pH of facility water within the range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). A solution tank of adequate capacity shall be provided.

(15)(a) Testing equipment shall be provided at all swimming and bathing facilities, maintained with fresh reagents, and consist of at least the following:

1. A DPD (Diethyl-P-Phenylene-Diamine) colorimetric test kit used to determine free disinfectant residual, combined disinfectant residual, total alkalinity, and pH of the facility water. Test kits using orthotolidine reagents are not acceptable; and

2. At least five (5) chlorine color standards and five (5) pH color standards.

(b) Test kits shall be used to determine the total residual chlorine either directly or by summation of free chlorine and combined chlorine test results. Chlorine standards shall range from one-tenth (0.1) to five (5.0) ppm.

(c) pH standards shall range from six and eight-tenths (6.8) to eight and four-tenths (8.4).

(d) Both tests shall be accurate to within two-tenths (0.2) units.

(e) Facilities using cyanurates for stabilization shall have a test kit to measure the cyanuric acid concentration. The cyanuric acid test kit shall permit readings up to 100 ppm.

Section 9. Operational Water Quality Standards. (1) Disinfectant residuals for swimming and diving pools, wading pools, water slides, and wave pools:

(a) Chlorine residual shall be maintained between one (1) and five (5) ppm as free available chlorine.

(b) Bromine residual shall be maintained between two (2) and six (6) ppm as free available disinfectant.

(c) Pools stabilized with cyanuric acid shall meet the following criteria:

1. Be an outdoor facility;

2. Maintain one (1) to five (5) ppm free available chlorine residual; and

3. Cyanuric acid concentration not to exceed fifty (50) ppm.

(d) If the presence of chloramines is determined, superchlorination is required, and the chloramine level shall not exceed two-tenths (0.2) ppm.

(2) Disinfectant residuals for spas:

(a) Chlorine residual shall be maintained between one (1) and five (5) ppm as free available chlorine;

(b) Bromine residual shall be maintained between two (2) and six (6) ppm as free available disinfectant; and

(c) If the level of chloramines exceeds two-tenths (0.2) ppm, superchlorination is required. During the superchlorination process and until such time as free chlorine levels return to five (5) ppm or less, the facility shall be closed.

(3) The pH of the facility water shall be maintained in a range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). For corrosive water supplies, the alkalinity level shall be suitably adjusted to allow maintenance of the pH level.

(4) Turbidity. Facility water shall have sufficient clarity at all times so that:

(a) A black disc, six (6) inches in diameter, is readily visible when placed on a white field at the deepest point of the pool; and

(b) The openings of the main outlet grate are clearly visible by an observer on the deck;

(5) Total alkalinity. The alkalinity of the facility water shall not be less than fifty (50) nor more than 180 ppm, as determined by suitable test kits.

(6) Temperature.

(a) The water temperature for indoor swimming and bathing facilities other than spas shall not be less than seventy-six (76) degrees Fahrenheit nor more than eighty-four (84) degrees Fahrenheit. The cabinet may allow variances from the above temperature limits for special use purposes as competition, physical therapy, or instruction of children. Variances may be approved if proof is presented showing that a variance from the temperature requirements is necessary for the special uses stated, and that the variance will not jeopardize public health.

(b) Air temperature at an indoor facility shall be higher than the water temperature, except for spas.

(c) Water temperatures for any facility including spas shall not exceed 104 degrees Fahrenheit.

(d) All facilities with heated water shall have at least one (1) break proof thermometer located within the facility water in a conspicuous location. The thermometer shall be securely mounted to prevent tampering by bathers.

(7) The facility operator shall perform tests for each of the above water quality characteristics before opening and during all hours of operation based on the frequency schedule listed below, and record all test results on a daily operational log sheet:

(a) Disinfectant residual, temperature, and pH shall be checked at least three (3) times daily with a greater frequency if bather load or climatic conditions warrant.

(b) Turbidity shall be checked daily, or more often as needed.

(c) Alkalinity, cyanuric acid (if used) shall be checked weekly, or more often as needed.

(8) All spas shall be completely drained, thoroughly cleaned, and refilled with potable water at least once per week. Cleaners used shall be compatible with facility wall and bottom finishes.

Section 10. General Facility Operation and Maintenance. (1) All facilities shall be maintained:

(a) Free from sediment and debris; and

(b) In good repair.

(2) Decks shall be kept clean. Indoor decks shall be disinfected at least weekly.

(3) Perimeter overflow and skimmers. The perimeter overflow system or automatic surface skimmers shall be clean and free of leaves or other debris. The strainer baskets for skimmers shall be cleaned daily. The flow through each skimmer shall be adjusted as often as necessary to maintain a vigorous skimming action. The facility water shall be maintained at an elevation so that effective surface skimming is accomplished. The flow returning from the facility shall be balanced or valved so that the majority of flow is returned through the perimeter overflow or skimmer system.

(4) Inlet fittings. Inlets shall be checked frequently to insure that the rate of flow through each inlet is correct so that a uniform distribution pattern is established.

(5) Bather preparation facilities.

(a) The floors of dressing rooms, shower stalls, and other interior rooms shall be cleaned and disinfected daily.

(b) Toilet rooms and fixtures shall be kept clean, free of dirt and debris, and in good repair.

(c) Floors shall be maintained in a nonslip condition.

(d) Soap dispensers shall be filled and operable.

(e) Adequate supplies of toilet tissue, disposable hand drying towels, or suitable hand drying devices shall be maintained.

(6) Street attire. Street shoes shall not be worn on the facility decks or wet areas of the bather preparation facilities, except for those persons engaged in official duties.

(7) Safety. All public swimming facilities shall have adequate enclosures that meet the specifications of Department of Housing, Buildings and Construction. Doors or gates in the facility enclosure shall be kept closed and locked if the facility is closed.



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(8) Electrical systems. Repairs to any electrical system shall be made by an electrician. All repairs shall be in accordance with the National Electrical Code and shall be approved by a certified electrical inspector.

(9) Diving equipment, ladders, hand rails, and other similar equipment, shall be maintained in good repair, be securely anchored, and have a nonslip surface.

(10) Operation of mechanical equipment.

(a) Manufacturers' instructions for operation and maintenance of mechanical and electrical equipment, as well as pump performance curves, shall be kept available at the facility;

(b) Pumps, filters, disinfectant feeders, pH controls, flow indicators, gauges, and all related components of the facility water recirculation system shall be kept in continuous operation twenty-four (24) hours a day; and

(c) Recirculation pumps. The pump shall not be throttled on the suction side (except the bottom drain line valve) during normal operation, and shall be kept in good repair and condition. The flow control valve on the discharge side shall be adjusted as necessary to maintain the design flow rate.

(11) Filtration.

(a) Sand filters.

1. The filter air release valve shall be opened as necessary, to remove air which collects in the filter, and following each backwash; and

2. The filter shall be backwashed if the design flow rate can no longer be achieved, or as specified by the filter manufacturer, whichever occurs first.

(b) Diatomaceous earth filters.

1. The dosage of diatomaceous earth precoat shall be at least one and one-half (1 1/2) ounces per square foot of element surface area. Pressure diatomaceous earth filters shall be backwashed if the design flow rate can no longer be achieved or as specified by the filter manufacturer, whichever occurs first. If the recirculation pump stops or is shut off, the filter shall be thoroughly backwashed and the elements shall be precoated before placing the pump back into operation. Vacuum diatomaceous earth filters shall be washed if the design flow rate can no longer be achieved or as specified by the filter manufacturer, whichever occurs first;

2. Following the precoating operation, the initial filter effluent shall be either recirculated through the filter until the filter effluent is clear, or the initial filter effluent shall be discharged to waste until properly clarified water is produced; and

3. If continuous diatomaceous earth feed is required (filter loading rate exceeds one and five-tenths (1.5) gallons per minute per square foot of filter surface area), it shall be applied at a rate of one-half (1/2) to one and one-half (1 1/2) ounces per square foot of surface area per day, or as needed to extend filter cycles.

(12) Hair and lint strainers. Hair and lint strainers shall be cleaned to prevent clogging of the suction line and cavitation. The pump shall be stopped before the strainer is opened. In all cases, the hair strainer basket shall be cleaned during the time the filter is being backwashed.

(13) Flow meters. Flow meters shall be maintained in an accurate operating condition and readily accessible. The glass and the connecting tubes shall be kept clean.

(14) Vacuum and pressure gauges. The lines leading to the gauges shall be bled occasionally to prevent blockage.

(15) Positive displacement feeders.

(a) Positive displacement feeders shall be periodically inspected and serviced;

(b) To minimize sludge accumulation in the unit, the lowest practicable concentration of solution shall be used. If liquid chlorine solution is used, the dilution with water is not critical to the operation of the unit; and

(c) Sludge accumulations shall be cleaned periodically from the unit.

(16) Chlorinated cyanurates. The use of chlorinated cyanurates is prohibited.

(17) pH adjustment.

(a) Soda ash or caustic soda may be used to raise the facility water pH;

(b) Caustic soda shall only be used in accordance with the

manufacturer's instructions. If caustic soda is intended for use, the cabinet shall be notified in writing. Protective equipment and clothing, including rubber gloves and goggles, shall be available for the handling and use of this chemical;

(c) Sodium bisulfate or muriatic acid may be used to lower pool water pH;

(d) Hydrochloric (muriatic) acid may only be used with proper supervision and care. Protective equipment and clothing, including rubber gloves and goggles, shall be available for handling this chemical; and

(e) The cabinet shall be consulted in the event of unusual pH problems including corrosion, scaling, or wide fluctuations in pH.

(18) Algae control.

(a) The development of algae shall be eliminated by superchlorinating. The facility shall not be open for use during this treatment. If superchlorination fails to eliminate the algae, the cabinet shall be consulted for further advice.

(b) Treated algae which cling to the bottom and sides of the facility shall be brushed loose and removed by the suction cleaner and filtration system.

(19) Miscellaneous chemicals.

(a) Chemicals other than approved disinfectants shall be used only with the advice and under the supervision of the cabinet;

(b) Chemicals shall be kept covered and stored in the original container, away from flammables and heat, and in a clean, dry, and well-ventilated place that prevents unauthorized access to the chemicals;

(c) The chemicals used in controlling the quality of water shall be used only in accordance with the manufacturer's instructions; and

(d) If polyphosphates are used for sequestering iron, the concentration of polyphosphates shall not exceed ten (10) ppm.

(20) Equipment rooms.

(a) Equipment necessary for facility operation shall be housed in a lighted, ventilated room that affords protection from the weather, prevents unauthorized access, has ceilings of at least seven (7) feet in height, and is of sufficient size for operation and inspection;

(b) The equipment room floor shall slope toward drains and shall have a nonslip finish;

(c) A hose bib with a vacuum breaker shall be installed in the equipment room;

(d) Suitable space, if not provided in the equipment room, shall be provided for storage of chemicals, tools, equipment, supplies, and records where they can be acquired by the facility operator without leaving the premises. The storage space shall be dry and protected from unauthorized access; and

(e) The equipment room and all other storage areas shall be maintained in a clean, uncluttered condition, and shall not be used for storage of materials not essential to operation and maintenance of the facility.

(21) Maintenance of bathing beaches.

(a) Beach areas shall be maintained free of litter and water borne debris. Beverage containers of glass or metal containers with detachable pull tabs shall be prohibited.

(b) A layer of sand or gravel of sufficient depth to prevent the creation of mud holes or slicks and to reduce shallow water turbidity shall be maintained on all beach areas, and shall extend beneath the water of all wading and swimming areas; and

(c) Wading, swimming, and diving areas shall be examined by the facility operator on a routine basis and immediately after high water conditions for floating or sunken debris, obstructions at diving areas, and high water turbidity, which may present safety hazards to bathers.

Section 11. Facility Records. (1) The operator of each facility shall keep a daily record of information regarding operation of the facility on the DFS-352, Swimming Pool Log Sheet. This data shall be kept on file by the operator and submitted to the cabinet as requested. Proper operating records shall be kept showing daily or weekly results, as applicable, for:

(a) Disinfectant residuals;

(b) pH readings, total alkalinity, cyanuric acid level (if

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applicable); and

(c) Equipment malfunctions.

(2) If two (2) or more facilities are operated on the same site, separate records shall be maintained for each facility.

Section 12. Personnel. (1) Operator. A facility operator shall be responsible for the operation and maintenance of all swimming and bathing facilities. The operator shall be available at all times when the facility is open for use.

(2) Lifeguards.

(a) Lifeguards shall be on duty at a facility that has 2,000 square feet or greater of water surface area at a rate of one (1) per 2,000 square feet or fraction thereof.

(b) Lifeguards shall be provided at all facilities, regardless of water surface area, that allow bathers seventeen (17) years of age or under to enter the facility area without a responsible adult present at a rate of one (1) lifeguard per 2,000 square feet of water surface area or fraction thereof.

(c) All facilities that are not required to provide lifeguards must post and enforce the following rules at all entrance points: "No Lifeguard on Duty" and "No person may enter the facility area alone or swim alone."

(d) All beaches shall provide lifeguards at a rate of one (1) per 100 linear feet of beach front or fraction thereof, and a minimum of one (1) per attraction, with additional lifeguards provided to ensure all areas surrounding the attraction are clearly visible at all times.

(e) Lifeguards shall comply with the following:

1. Lifeguards shall have a current lifesaving certificate. Current training as a lifesaver or water safety instructor by the American Red Cross or equivalent shall satisfy this requirement. The certificate of competency shall be prominently posted;

2. Lifeguards shall be dressed in swimming attire; and

3. Lifeguards assigned to the supervision of the facility shall not be subject to duties that would distract their attention from proper observation of persons in the facility area, or that would prevent immediate assistance to persons in distress in the water.

Section 13. Safety Equipment. (1) Facilities requiring lifeguards shall have a minimum of one (1) elevated lifeguard chair per on-duty lifeguard. A lifeguard chair shall be provided for each 2,000 square feet of water surface area or major fraction more than half thereof. They shall be located to provide a clear view of the facility bottom in the area under surveillance.

(2) Beaches shall be provided with an elevated lifeguard chair for each 100 linear feet of beach front, with an additional lifeguard chair for each additional 100 linear feet of beach front or fraction thereof. The chairs shall be located on the beach to provide a clear view of all areas under surveillance and to provide the quickest response time.

(3) One (1) unit consisting of the following lifesaving equipment shall be provided for 2,000 square feet of water surface area and an additional unit for each additional 2,000 square feet or fraction thereof:

(a) A U.S. Coast Guard approved ring buoy no more than fifteen (15) inches in diameter with a three-sixteenths (3/16) inch rope attached that measures one and one-half (1 1/2) times the maximum pool width;

(b) A shepherd's hook securely attached to a one piece pole not less than twelve (12) feet in length; and

(c) One (1) backboard with head immobilizer and at least three (3) straps, for back and neck injuries.

(4) Facilities limited to small spas, with less than 144 square feet of water surface area, shall not be required to provide the equipment listed in subsection (3) of this section, but shall meet the requirements of subsections (7), (10), and (11) of this section.

(5) In addition to subsection three (3) of this section, a beach shall provide the following lifesaving equipment:

(a) Paddle board or surfboard;

(b) At least one (1) lifeboat, and one (1) unit of lifesaving equipment; and

(c) A torpedo shaped buoy.

(6) All facilities shall be equipped with a minimum of one (1)

standard twenty-four (24) unit first aid kit or its equivalent that is kept filled and ready for use. Additional units shall be provided for each additional 2,000 square feet of facility area or major fraction thereof.

(7) Lifesaving equipment shall be mounted in conspicuous places at lifeguard chairs or other readily accessible locations. Its function shall be plainly marked, and this equipment shall be kept in repair and ready condition. Bathers or other persons shall not be permitted to tamper with, use for any purpose other than its intended use, or remove such equipment from its established location. This equipment at beaches shall be located at each lifeguard chair, with the lifeboat required by subsection (5)(b) of this section being located at the most centrally stationed lifeguard chair.

(8) The hydrojet auxiliary air or water pump for a spa shall be controlled by an on-off switch with a fifteen (15) minute timer located and labeled at least five (5) feet away from the spa.

(9) All facilities shall provide an emergency automatic pump shut off located adjacent to the telephone.

(10)(a) All facilities shall have a non-pay landline telephone capable of direct dialing 911 without going through a switchboard located on the deck that is readily accessible and conspicuously located.

(b) A two (2) way radio communication system to a manned telephone system may be substituted at an isolated beach facility.

(c) The telephone number of the police department, fire department, emergency medical service, or a hospital shall be posted in a conspicuous place near the telephone.

(11) All drownings and injuries requiring hospitalization shall be immediately reported to the local health department and the Department for Public Health.

Section 14. Spectator and Bather Administrative Regulations.

(1) Management of each facility shall adopt rules for controlling of food, drink, and smoking in the facility and surrounding areas.

(2) Rules governing the use of the facility and instructions to bathers shall be displayed on placards at the entrance to dressing rooms and enforced by the facility operator. Posting of rules and other instructions shall provide that:

(a) Admission to the facility shall be refused to a person:

1. Having any contagious disease, infectious conditions such as colds, fever, ringworm, foot infections, skin lesions, carbuncles, boils, inflamed eyes, ear discharges, or any other condition that has the appearance of being infectious;

2. Having excessive sunburn, abrasions that have not healed, corn plasters, bunion pads, adhesive tape, rubber bandages, or other bandages of any kind; and

3. Under the influence of alcohol, illegal substances, or exhibiting erratic behavior;

(b) No food, drink, gum, tobacco, or vapor producing product, will be allowed other than in specially designated and controlled sections of the facility area;

(c) Personal conduct within the facility shall assure that the safety of self and others is not jeopardized;

(d) No running and no boisterous or rough play (except supervised water sports) are permitted;

(e) Spitting, spouting of water, blowing the nose, or otherwise introducing contaminants into the facility water is not permitted;

(f) Glass, soap, or other material that creates hazardous conditions or interferes with efficient operation of the facility shall not be permitted in the facility or on the deck;

(g) All apparel worn in the facility shall be clean;

(h) Diving in shallow water is not permitted;

(i) Caution shall be exercised in the use of diving boards; and

(j) Animals shall be excluded from the facility area.

(2) Due to the nature of bathing beaches, subsection (2)(c), and (f) of this section shall not apply. Subsection (2)(a) and (b) of this section shall be enforced at the discretion of the facility operator, except subsections (2)(a)2. and 3., which shall be enforced at all facilities.

(3) In addition to the requirements of subsection (2) of this section, a caution sign shall be mounted adjacent to all spas and contain the following warnings:

“CAUTION

Pregnant women, elderly persons, and persons suffering from any heart condition or disease, diabetes, or high or low blood pressure should not enter the spa without prior medical consultation and permission from their doctor.

Do not use the spa while under the influence of alcohol, tranquilizers, or other drugs that cause drowsiness, or that raise or lower blood pressure.

Do not use at water temperatures greater than 104 degrees Fahrenheit.

Do not use alone.

Unsupervised use by children is prohibited.

Enter and exit slowly.

Observe reasonable time limits (that is, ten (10) to fifteen (15) minutes), then leave the water and cool down before returning for another brief stay.

Long exposure may result in nausea, dizziness, fainting, or death.

Keep all breakable objects out of the area.

Shower before entering the spa.”

(4) A sign shall be posted in the immediate vicinity of the spa stating the location of the nearest telephone and indicating that emergency telephone numbers are posted at that location.

Section 15. Swimming Suits and Towels Furnished by Management. All swimming suits and towels used by swimmers and maintained for public use shall be cleaned after each use. These items shall be handled in a sanitary manner.

Section 16. Facility Inspection. (1) Seasonal facilities.

(a) All owners or operators of seasonal facilities, prior to opening to the public, shall certify to the cabinet, in writing, that the facility is in compliance with the requirements of this administrative regulation except in instances where the cabinet has made an inspection prior to its opening. For seasonal facilities, the cabinet shall make at least two (2) full facility inspections during the operating season. The cabinet may require one (1) of the full facility inspections to be performed prior to a facility's opening; and

(b) The facility owner or operator shall be responsible for notifying the cabinet of the proposed opening date.

(2) Continuous operation indoor facilities shall receive a full facility inspection by the cabinet at least once each six (6) months.

(3) New facilities shall receive final construction approval inspections by the cabinet, and other affected state and local regulatory agencies, prior to placing the facility in operation. It shall be the owner or operator's responsibility to notify the cabinet and other involved agencies of construction completion and call for inspection.

(4) Facilities other than beaches shall be inspected at a minimum of once each thirty (30) day period by the cabinet on a monitoring basis. The monitoring inspection shall consist of:

(a) Disinfectant residual testing (free available residual) and combined disinfectant in ppm;

(b) pH testing;

(c) Total alkalinity testing;

(d) Cyanuric acid testing (if cyanuric acid stabilizers are used);

(e) Turbidity assessment;

(f) Temperature testing (if heated water facility);

(g) Review of operator's daily log;

(h) Visual scanning for algae or debris; and

(i) Other checks as necessary.

(5) Beaches shall be monitored once each month or anytime immediately after periods of heavy rainfall. Monitoring inspections for beaches shall include general sanitation, bacteriological water sampling, and safety checks as necessary.

(6) The cabinet may make as many additional inspections and reinspections as necessary for the enforcement of this administrative regulation.

(7) When an agent of the cabinet makes an inspection of a public swimming and bathing facility, the findings shall be recorded on the DFS-349, Public Swimming and Bathing Facilities Inspection, or DFS-350, Public Swimming and Bathing Facilities

Beach Inspection Report, and a copy provided to the facility owner or operator. The inspection report shall:

(a) Set forth any violation observed;

(b) Establish a specific and reasonable period of time for the correction of the violation observed; and

(c) State that failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in closure of the facility.

Section 17. Water Sampling and Testing. (1) A water sample may be collected from facilities if inspections or monitoring indicates water quality standards are not being maintained, or there is a suspected water borne disease outbreak, and shall be submitted to the Division of Laboratory Services in an approved container and by approved sampling procedures for analysis.

(2) Samples shall be collected and analyzed for any of the following or other contaminants:

(a) Total coliform;

(b) E. coli; and

(c) Pseudomonad organisms.

(3) Multiple samples shall be collected at beaches to assure adequate representation of the entire facility water area.

(4) If a sample is positive test for a contaminant, the test shall be repeated within one (1) to seven (7) days.

(5) For a facility other than a bathing beach, no more than two (2) consecutive samples shall be positive for:

(a) More than two (2) coliform organisms per 100 milliliter (mL);

(b) Pseudomonas organisms; or

(c) E. coli.

(6) Beaches shall comply with the requirements of Section 4 of this administrative regulation prior to opening for the season and during the operating season.

(7) Additional samples may be requested to ensure compliance with this administrative regulation.

Section 18. Bacteriological Quality of Facility Water. (1) For facilities other than beaches, no more than two (2) consecutive samples shall:

(a) Contain more than 200 bacteria per mL;

(b) Have a positive confirmatory test for coliform organisms in any of the five (5) ten (10) mL portions of a sample or more than two (2) coliform organisms per 100 mL when the membrane filter test is used;

(c) Have a positive confirmatory test for pseudomonas organisms; or

(d) Have a positive test for fecal coliform organisms.

(2) Beaches shall comply with the standards set forth in Section 4(3)(a) of this administrative regulation.

Section 19. Conditions requiring Closure of a Facility and Enforcement Provisions. (1) The cabinet shall immediately order the closure of a facility and prohibit any person from using the facility by written notice to the facility owner or operator if:

(a) There is an immediate danger to health or safety;

(b) The water does not conform to the bacteriological standards contained in this administrative regulation;

(c) An environmental survey of the area shows evidence of sewage, or other pollutants or toxic materials being discharged to waters tributary to a beach;

(d) Turbidity levels of facility water do not meet the requirements of Section 9(4) of this administrative regulation;

(e) The disinfectant residual is outside the range prescribed in this administrative regulation;

(f) The pH is outside the range prescribed by this administrative regulation;

(g) The cyanuric acid level exceeds fifty (50) ppm;

(h) There is no pool operator available;

(i) There has been a fecal accident in the pool;

(j) In any instance where the owner, operator, an employee, or representative of the owner interferes with duly authorized agents of the cabinet, bearing proper identification, in the performance of their duties;

(k) If recirculation systems, filtration systems, or disinfectant

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systems are not in operation, with exceptions for maintenance, and seasonal shut down; or

(1) If serious or repeated violations of any of the requirements of the administrative regulations are found.

(2) The notice shall state the reasons prompting the closing of the facility and a copy of the notice shall be posted conspicuously at the facility by the owner or operator.

(3) Any owner or operator affected by an order may request an administrative conference in accordance with 902 KAR 1:400.

(4) If the conditions rendering closure are abated or further analyses prove to not render closure, the cabinet may authorize reopening the facility.

(5) If a source of sewage, pollution, or toxic material discovered as a result of an environmental survey is eliminated, the cabinet may authorize the reopening of a beach.

(6) In all other instances of a violation of the provisions of this administrative regulation, or 902 KAR 10:121 for the nonpayment of fees, the cabinet shall serve upon the owner or operator a written notice specifying the violation in question and afford a reasonable opportunity to correct same. An owner or operator who fails to comply with any written notice issued under the provisions of this administrative regulation or 902 KAR 10:121 shall be notified in writing that the facility shall be closed at the end of ten (10) days following service of such notice, unless a written request for a conference pursuant to 902 KAR 1:400 is filed with the cabinet, by the owner or operator, within the ten (10) day period.

(7) All administrative hearings shall be conducted in accordance with KRS Chapter 13B.

(8) Any person whose facility has been closed may, at any time, make application for a reinspection for the purpose of reopening the facility. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his or her opinion the conditions causing closure of the facility have been corrected, the cabinet shall make a reinspection. If the facility is found to be in compliance with the requirements of this administrative regulation, the facility shall be reopened.

(9)(a) For serious or repeated violations of any of the requirements of this administrative regulation, or for interference with the agents of the cabinet in the performance of their duties, the facility may be permanently closed after an opportunity for a conference has been provided in accordance with 902 KAR 1:400.

(b) Prior to the action, the cabinet shall notify the owner or operator, in writing, stating the reasons for which the facility is subject to closure and advising that the facility shall be permanently closed at the end of ten (10) days following service of the notice unless a request for a conference is filed with the cabinet by the owner or operator, within the ten (10) day period.

Section 20. Existing Facilities and Equipment. (1) Notwithstanding the other provisions of this administrative regulation, existing facilities and equipment being used prior to August 1, 1996, that do not fully meet the design, construction, and materials requirements of this administrative regulation, may continue to be used if in good repair, capable of being maintained in a sanitary condition, meet facility water quality standards, and create no health or safety hazard.

(2) If existing equipment, components, piping, or fittings involved in the facility water treatment system are replaced to effect repairs, the replacement equipment, components, piping, or fittings shall meet the requirements of this administrative regulation. If replacement occurs, it shall be the owner's or operator's responsibility to notify the cabinet as to what was replaced and what was used for a replacement.

Section 21. Effect on Local Administrative Regulations. Compliance with this administrative regulation does not relieve any person from compliance with any other state or local laws dealing with pool operation and maintenance matters or zoning requirements that may also be applicable.

Section 22. Variances for Construction Requirements. (1) All facilities shall be constructed or remodeled in compliance with the provisions of these administrative regulations, except that an

applicant may request a variance in those cases where it is determined that the variance would not affect seriously the safe and healthful operation of the facility.

(2) Before granting a variance, the cabinet shall require adequate proof from the applicant that the requested variance will comply with the basic intent of these administrative regulations and that no safety or health hazard would be created if the variance is granted.

Section 23. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "DFS-349, Public Swimming and Bathing Facilities Inspection" 5/2021;

(b) "DFS-350 Public Swimming and Bathing Facilities Beach Inspection Report" 5/2021; and

(c) "DFS-352 Swimming Pool Log Sheet" 5/2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Public Health Protection and Safety, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. and online at <https://chfs.ky.gov/agencies/dph/dphps/emb/Pages/pools.aspx>. [Citation of Administrative Regulation. This administrative regulation may be cited as the "Kentucky Public Swimming and Bathing Facilities Administrative Regulation."

Section 2. Definitions. As used in this administrative regulation the following terms shall have the meanings set forth below:

(1) "Accessible" means, if applied to a fixture, connection, appliance or equipment, having access to it, but may require the removal of an access panel, door or similar obstruction. "Readily accessible" means direct access without the necessity of removing any panel, door, or similar obstruction.

(2) "Agitation" means the mechanical or manual movement to dislodge the filter aid and dirt from the filter element.

(3) "Air gap" means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water or waste to a tank, plumbing fixture, receptor or other device, and the flood level rim of the receptacle.

(4) "Air induction system" means a system whereby a volume of air (only) is induced into hollow ducting built into a spa floor, bench, or other location. The air induction system is activated by a separate air power unit (blower).

(5) "Alkalinity or total alkalinity" means the amount of carbonates or bicarbonates present in water solution as expressed in parts per million (p.p.m.).

(6) "Approved" means accepted or acceptable under the applicable specifications stated or cited in the administrative regulation or accepted as suitable for the proposed use by the State Building Code

(7) "Backwash" means the flow of water through the filter element or media in the reverse direction sufficient to dislodge the accumulated dirt and filter aid and remove them from the filter tank.

(8) "Backwash cycle" means the time required to backwash the filter system thoroughly.

(9) "Backwash rate" means the rate of application of water through a filter during the backwash cycle expressed in U.S. gallons per minute per square foot (liters per minute per square meter) of effective filter area.

(10) "Bather" means any person using a public swimming and bathing facility, and adjoining deck or beach area for the purpose of therapy, relaxation, recreation, competitive water sports or events, or related activities.

(11) "Bather load" means the maximum number of persons which may use the swimming and bathing facility as defined in the State Building Code.

(12) "Body feed" means the continuous addition of controlled amounts of filter aid during the operation of a diatomite type filter to maintain a permeable filter cake. If added as a slurry, this may be referred to as a slurry feed.

(13) "Cabinet" means the Cabinet for Health Services and its authorized agents.

(14) "Cartridge" means a replaceable porous filter element

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which can be the depth type or the surface type:

(a) "Depth type cartridge" means a filter cartridge with media not less than three-fourths (3/4) inch (.18 cm) thick which relies on penetration of particulates into the media to achieve their removal and to provide adequate holding capacity for the cartridge; and

(b) "Surface type cartridge" means a filter cartridge with media less than three-fourths (3/4) inch (.18 cm) thick which relies on retention of particulates on the surface of the cartridge to achieve their removal.

(15) "Chemical feeder output rate" means the weight or volume of active ingredients delivered by a chemical feeder expressed in units of time.

(16) "Chemical feed rate indicator" means a mechanism which will produce reproducible results expressed in units of weight or volume of chemical per unit of time, or per unit of volume of water; the mechanism may be a direct reading instrument, or may require the use of a reference chart.

(17) "Circulation piping system" means the piping between the facility structure and the mechanical equipment.

(18) "Corrosion resistant" means capable of maintaining original surface characteristics under the prolonged influence of the environment in which it is used.

(19) "Design head" means the total head requirement of the circulation system at the design rate of flow.

(20) "Design rate of flow (design filter rate)" means the rate of flow in a system which is used for design calculation. (The volume of the facility in gallons divided by the number of minutes in the turnover time.)

(21) "Diving pool" means a pool designed and intended for use exclusively by divers.

(22) "Effective filter area" means:

(a) "Permanent media type" – the effective filter area is the cross-section area of the filter surface that is perpendicular to the flow direction;

(b) "Diatomaceous earth type" – the effective filter area of the septum is that part of the septum which will accept the full thickness of precoat and through which the design filter flow will be maintained during filtration; and

(c) "Cartridge filter" – the total effective filter area is that cartridge area which is exposed to the direct flow of water. This excludes cartridge ends, seals, supports, and other areas where flow is impaired.

(23) "Factor of safety" means the ultimate load divided by the safe load or the ultimate strength divided by the allowable stress.

(24) "Filter" means a device that separates solid particles from water by recirculating it through a porous substance (a filter media or element):

(a) "Permanent media filter" means a filter that utilizes a media that can be backwashed and reused;

(b) "Diatomaceous earth filter" means a filter that utilizes a thin layer of diatomaceous earth as its filter media that must be periodically replaced; and

(c) "Cartridge filter" means a filter that utilizes a porous cartridge as its filter media.

(25) "Filter aid" refers to any means used to enhance the efficiency of the filter media. Alum, as used on the bed of a sand filter, is also referred to as a filter aid.

(26) "Filter cycle" means the operating time between cleaning or replacing the filter media or backwash cycles.

(27) "Filter element" means a device within a filter tank designed to entrap solids and conduct water to a manifold, collection header, pipe, or similar conduit. Filter elements usually consist of a septum and septum support:

(a) "Permanent filter media" means finely graded material (such as sand, anthracite, etc.) which removes suspended filterable particles from the water.

(b) "Nonpermanent filter media" means any type of finely graded media used to coat a septum type filter usually diatomaceous earth, processed perlite or similar material for the purpose of removing fine particulates from the water.

(28) "Filter waste discharge piping" means piping that conducts wastewater from a filter to a drainage system. Connection to drainage system is made through an air gap or other approved

method.

(29) "Filtration rate" means the rate of water flow through a filter while in operation, expressed in U.S. gallons per minute per square foot (liters per minute per square meter) of effective filter area.

(30) "Flow balance valve" means a device to regulate the effluent from the skimmer housing of each of a combination of two (2) or more surface skimmers.

(31) "Flume" means an inclined channel which conveys the water and the bather from the top of the slide to the plunge pool of a water slide.

(32) "Friction loss" means the pressure drop expressed in feet (meters) of water or psi (pascals) caused by liquid flowing through the piping and fittings.

(33) "Handicap pool" means a swimming pool which is designed specifically for the use of persons who are physically or mentally disabled or impaired, and is equipped with devices, appliances, ramps and other means of assisted access to the pool.

(34) "Head loss" means the total pressure drop in psi (kilopascals) or feet (meters) or head between the inlet and the outlet of a component.

(35) "Hydrojet booster pump system" means a system whereby one (1) or more hydrojets are activated by the use of a pump which is completely independent of the filtration and heating system of a spa.

(36) "Hydrojets" means a fitting which blends air and water creating a high velocity, turbulent stream of air enriched water.

(37) "Indirect waste pipe" means a pipe that does not connect directly with the drainage system, but conveys liquid wastes by discharging into a plumbing fixture, interceptor, or receptacle which is directly connected to the drainage system.

(38) "Inlet fitting" means a fitting or fixture through which filtered water enters a pool or spa.

(39) "Listed" means equipment or materials included in a list published by a listing agency that maintains periodic inspection on current production of listed equipment or materials, and whose listing states either that the equipment or material complies with approved standards or has been tested and found suitable for use in a specified manner.

(40) "Main outlet" means the outlet fitting(s) at the bottom of a facility through which passes water to a recirculating pump. It is often referred to as a "main drain."

(41) "Multiport valve" means a valve for various recirculation related operations, which combines in one (1) unit the function of two (2) or more single direct flow valves.

(42) "National Sanitation Foundation (NSF)" is based at 3475 Plymouth Road, P.O. Box 1468, Ann Arbor, MI 48106. It publishes a list of manufacturers and their equipment which has been approved as having satisfied NSF standards.

(43) "Perimeter overflow systems" means a channel at normal water level which normally extends completely around the pool perimeter. Also, known as an overflow or scum gutter.

(44) "Person" means any individual, firm, association, club, organization, partnership, business trust, corporation, company, or any state or local governmental agency.

(45) "Precoat" means the process of depositing a layer of diatomaceous earth on filter septa at the start of a filter cycle.

(46) "Public swimming and bathing facilities" or "facility" means any natural or artificial body or basin of water which is modified, improved, constructed, or installed for the purpose of public swimming or bathing under the control of any person and includes, but is not limited to, the following:

- (a) Beaches;
- (b) Swimming pools, wading pools, wave pools;
- (c) Competition swimming pools and diving pools;
- (d) Water slides and spray pools; and
- (e) Spas, therapeutic pools, hydrotherapy pools, and whirlpools. It includes those operated by communities, subdivisions, apartment complexes, condominiums, clubs, camps, schools, institutions, parks, mobile home parks, hotels, recreational areas, or similar public facilities. It does not include any of the above facilities which are at private single family residences intended only for the use of the owner and guests.

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(47) "Public swimming and bathing facilities operator" means any "person" as defined above or any employees of that person who are delegated responsibility for the proper operation and maintenance of the facility.

(48) "Pump discharge pressure" means the actual gauge reading measured in psi taken at the discharge outlet of a pump.

(49) "Receptor" means an approved plumbing fixture or device of material, shape, and capacity to adequately receive the discharge from indirect waste piping, constructed and located to be readily cleaned.

(50) "Recirculation system" means the interconnected system traversed by the recirculated water from the pool until it is returned to the pool.

(51) "Residual chlorine" shall mean the amount of measurable chlorine remaining in water following chlorination and is composed of the following components:

(a) Free available residual chlorine shall mean the amount of chlorine which is available to inactivate microorganisms and which has not reacted with ammonia, nitrogenous material, and other material in swimming pool water;

(b) Combined residual chlorine (also called "chloramine") shall mean the amount of chlorine which has reacted and combined with ammonia and other nitrogenous material to form chloro-ammonia compounds;

(c) Total residual chlorine shall mean the arithmetic sum of free available residual chlorine and combined residual chlorine; and

(d) The word "disinfectant" may be substituted for "chlorine" in the above.

(52) "Return piping" means that part of the piping between the filter and the facility through which passes the filtered water.

(53) "Separation tank" means a device used to clarify filter rinse or wastewater.

(54) "Septum" means that part of the filter element consisting of cloth, or closely woven fabric or other porous material on which the filter cake is deposited.

(55) "Spa" means a special facility designed for recreational and therapeutic use, and which is not drained, cleaned, or refilled after each individual use. It may include, but not be limited to, units designed for hydrojet circulation, hot water, cold water, mineral bath, air induction bubbles, or any combination thereof. Common terminology for a spa includes, but is not limited to, "therapeutic pool," "hydrotherapy pool," "whirlpool," "hot spa."

(56) "Static suction lift" means the vertical distance in feet (meters) from the center line of the pump impeller to the level of water in the pool.

(57) "Spray pool" means an artificially constructed area over which water is sprayed but is not allowed to pool. Sprayed water flows to waste and is not recirculated.

(58) "Strainer" means a device used to remove hair, lint, leaves, or other coarse material on the suction side of a pump.

(59) "Suction piping" means that portion of the circulation piping located between the facility structure and the inlet side of the pump and usually includes the following: main outlet piping, skimmer or gutter piping, vacuum piping, and surge tank piping.

(60) "Superchlorinate" means the addition to facility water of an amount of chlorine sufficient to produce a free available residual which is at least equal to ten (10) times the amount of combined residual chlorine plus the required minimum level of free available residual chlorine in order to oxidize the ammonia and nitrogenous materials which may be dissolved in the facility water.

(62) "Total dynamic head" means the arithmetical difference between the total discharge head and total suction head (a vacuum reading is considered as a negative pressure). This value is used to develop the published performance curve.

(63) "Total discharge head" means the value in feet (meters) of water that a pump will raise water above its center line.

(64) "Total suction head" means the value in feet (meters) of water that a pump will lift by suction.

(65) "Total dynamic suction lift (TDSL)" means the arithmetical total of static suction lift, friction head loss, and velocity head loss working on the suction side of the pump.

(66) "Trimmer valve" means a flow adjusting device which is used to proportion flow among multiple skimmers on a single line.

(67) "Turnover time" means the time in hours or minutes, required for the circulation system to filter and recirculate a volume of water equal to the facility volume.

(68) "Vacuum piping" means the piping from the suction side of a pump connected to a vacuum fitting located at the facility and below the water level to which underwater cleaning equipment may be attached.

(69) "Velocity" means a measurement of the motion of liquids expressed in feet per second.

(70) "Wading pool" means a pool intended only for small children. The maximum depth is less than twenty-four (24) inches.

(71) "Water slide" means a slide which consists of one (1) or more flumes, a plunge pool, a pump reservoir, and water treatment facilities, where water is pumped to the top of the slide and allowed to flow down the flume to the plunge pool.

(72) "Wave pool" means a swimming pool designed for the purpose of producing wave action in the water.

(73) "Working pressure" means the normal operating pressure recommended by the manufacturer.

Section 3. Submission of Plans and Specifications for Approval. (1) No person shall begin construction, or construct, or substantially change alter or reconstruct any public swimming and bathing facility until plans and specifications, with supporting design data as required in this administrative regulation for the proposed review of the plans, have first been submitted in quintuplicate (five (5) sets) to the cabinet through the Department of Housing, Buildings and Construction and have been approved in writing by all state or local agencies having jurisdiction. All construction shall be in accordance with approved plans. The front page of the plans shall contain the name of the swimming and bathing facility, location by city and county, name of its owner and name of the engineer, architect, or person preparing the plans. Plans submitted by an engineer or architect shall bear his seal. Plans and specifications on public swimming and bathing facilities constructed by the state or political subdivision, or on facilities designed for a bather load of 100 or more, shall be prepared by an engineer or architect registered in the State of Kentucky and comply with the provisions of KRS 322.010 and 323.010. Plans and specifications, reports and other information shall be submitted in form and content as may be specified by the cabinet.

(2) The plans shall be drawn to scale and accompanied by proper specifications to permit a comprehensive engineering review of the plans including the piping and hydraulic details and shall include:

(a) A site plan of the general area with a plan and sectional view of the facility complex with all necessary dimensions;

(b) A piping diagram showing all appurtenances including treatment facilities in sufficient detail, as well as pertinent elevation data, to permit a hydraulic analysis of the system;

(c) The specifications shall contain details on all treatment equipment, including performance ranges of pumps, chlorinators, chemical feeders, filters, strainers, lights, skimmers, inlet and outlet fittings, diving boards, safety equipment and other related equipment;

(d) A statement of the design, bather load expected to use the facility at any given time; and

(e) Drawing of equipment room showing placement of equipment.

(3) Owners shall keep one (1) set of approved plans available for inspection at the job site in the possession of the actual builder of the facility.

(4) Upon completion of the recirculation piping system and prior to such piping being covered with dirt or concrete, the owner or builder shall contact affected agencies for inspection.

(5) Upon completion of the swimming and bathing facility, a notarized statement certifying completion of the facility in accordance with the approved plans and specifications and this administrative regulation shall be submitted to the cabinet by the engineer, architect, or person who prepared plans, and shall be accompanied by a request for inspection prior to occupancy. The facility shall not be used until final inspection by affected agencies demonstrates compliance with this administrative regulation.

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(6) Unless construction is begun within one (1) year from date of approval, the approval shall expire. Extension of approval may be granted upon written request to the cabinet.

(7) No change in location, construction, design, materials, or equipment shall be made to approved plans or the facility without the written approval of the cabinet and all other agencies having jurisdiction.

**Section 4. Water Supplies.** (1) Potable water from an approved municipal water system or water district shall be supplied to all public swimming and bathing facilities. If these supplies are not available, a potable water supply meeting the approval of the Natural Resources and Environmental Protection Cabinet shall be provided.

(2) The water supply shall be capable of providing sufficient quantities of water under pressure to all water-using fixtures and equipment at the facility, and be capable of providing enough water to raise the water level in swimming, diving, or wave pools, and water-slide/plunge pools at least one (1) inch in three (3) hours.

**Section 5. Water Quality and Sanitary Requirements for Bathing Beaches.** (1) Prior to the issuance of plan and construction approval, the cabinet shall conduct a sanitary survey of the proposed beach. This survey shall include an evaluation of the physical, chemical, and bacteriological characteristics of the bathing beach area and the watershed.

(2) Physical quality. The following characteristics shall not be present in the beach area or watershed:

(a) Sludge deposits, solid refuse, floating waste solids, oils, grease, and scum; and

(b) Hazardous substances being discharged into bathing beach water or watershed.

(3) Bacteriological quality. The bacteriological quality of water at bathing beaches shall comply with the following criteria:

(a) It shall meet the requirements of 401 KAR 5:031, Section 6, recreational waters, as adopted by the Natural Resources and Environmental Protection Cabinet. Bacterial levels exceeding those standards shall be considered sufficient grounds to require additional investigation, survey, special analyses, and correction of any problems determined to be causing the high counts. Subsequent evaluation and satisfactory bacteriological results shall be obtained before approval for construction will be issued; and

(b) There shall be no sanitary or combined sewer discharges or other raw or partially treated sewage discharges to the bathing beach area or immediate watershed.

(4) Chemical quality. There shall be no discharges of chemical substances, other than disinfecting agents, capable of creating toxic reactions, or irritations to the skin or mucous membranes of a bather.

**Section 6. Sewage and Wastewater Disposal.** Sewage or wastewater generated from the operation of a public swimming and bathing facility shall discharge to a public sanitary sewer. If a public sanitary sewer is not available, sewage or wastewater shall be discharged to a system which complies with 902 KAR 10:085, on-site sewage disposal systems administrative regulation.

(1) Outdoor deck or surface area drainage water may be discharged directly to storm sewers, natural drainage areas, or to the ground surface without additional treatment. Such drainage shall not result in nuisance conditions, which create an offensive odor, or which produce a stagnant wet area, or which produce an environment for the breeding of insects;

(2) Wash or backwash water from sand filters or diatomaceous earth filters shall be discharged to public sanitary sewers, or if unavailable to a system approved by the cabinet.

**Section 7. Refuse Disposal.** (1) All refuse at a public swimming and bathing facility shall be disposed of in a manner approved by the Natural Resources and Environmental Protection Cabinet.

(2) Refuse containers of approved design and construction, with tight fitting lids, adequate in number, shall be provided at readily accessible locations at all public swimming and bathing facilities. These containers shall be mounted upon an approved

rack or holder in all outdoor locations, and shall be maintained to prevent the creation of a health or safety hazard.

(3) Refuse containers in rest rooms or bather preparation and dressing areas may be of open-top or swing-lid design, except in women's rest rooms where swing-lid or other covered top containers shall be required.

(4) Bulk refuse storage areas shall be designed, constructed, drained, and maintained to prevent rodent and vermin harborage, breeding sites, or insanitary conditions. Bulk refuse containers shall be of approved design and construction, with tight fitting lids, adequate in number, and shall be placed upon an impervious surface within a suitable enclosure to prevent access by animals.

(5) If the facility is not in use after seasonal operation or for any other reason, the facility shall not be allowed to accumulate debris, give off objectional odors, become a breeding site for insects, or create any other nuisance situation.

**Section 8. Facility Design and Construction.** (1) All public swimming and bathing facilities and attendant structures such as bathhouses, dressing rooms, or rest rooms, except for beach areas at bathing beaches, shall meet the design, materials, fixture, and construction requirements of the Kentucky State Building Code and the State Plumbing Code of the Department of Housing, Buildings, and Construction, Public Protection and Regulation Cabinet.

(2) The wading and swimming areas at beaches where the water is less than five (5) feet deep shall be separated from swimming and diving areas by lines securely anchored and buoyed. Safe limits of swimming shall be marked by buoys, poles, or other markers located not over 100 feet apart and visible to bathers from a distance of at least 100 feet. Within such limits of safe swimming there shall be no boating, underwater obstructions, or other hazards which may be dangerous or cause injury to swimmers. Signs shall be provided on the beach describing these markers and stating that they indicate the limits of safe bathing. The bottom of the swimming area shall consist of sand or gravel and be of a uniform slope.

(3) If diving facilities are provided at beaches, the design and layout of the facilities and associated unobstructed water depths shall be in accordance with the State Building Code requirements for swimming and diving pools. The water surrounding any floats where diving is permitted shall be at least nine (9) and one-half (1/2) feet deep.

(4) Depth markings and lane lines.

(a) On all facilities other than beaches, the depth of the water shall be marked plainly at or above the water surface on the vertical wall of the facility if possible and on the edge of the deck next to the facility. Depth markers shall be placed at the following locations:

1. At the points of maximum and minimum depths;

2. At the point of change of slope between deep and shallow portions (transition point);

3. At intermediate two (2) foot increments of water depth; and

4. If the facility is designed for diving, at appropriate points to denote the water depths in the diving area.

(b) Depth markers shall be spaced so that the distance between adjacent markers is not greater than twenty-five (25) feet or seven and five-tenths (7.5) m as measured peripherally.

(c) Depth markers shall be in Arabic numerals at least four (4) inches (ten (10) cm) high and of a color contrasting with the background. If depth markers cannot be placed on the vertical walls at or above the water level, other means shall be used, so that markings shall be visible plainly to persons in the facility.

(d) Lane lines or other markings on the bottom of the facility shall be a minimum of ten (10) inches in width and be of a contrasting color.

(e) A safety line supported by buoys shall be provided across the section of the pool where the break between the shallow and deep water occurs (five (5) feet). The line shall be placed one (1) foot toward the shallow end from where the break occurs.

**Section 9. Facility Water Treatment Systems.** (1) A recirculation system, consisting of pumps, piping, filters, water conditioning, disinfection equipment, and other accessory

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equipment shall be provided to clarify, chemically balance, and disinfect the water for all swimming and bathing facilities except bathing beaches. All system components shall bear the seal of approval of the National Sanitation Foundation (NSF). (Pumps greater than seven and five tenths (7.5) HP which are not required to meet NSF testing standards shall be considered on a case-by-case basis.)

(2) Pumping equipment.

(a) The recirculation pump and motor shall deliver the flow necessary to obtain the turnover required in the table below. A valve for flow control shall be provided in the recirculation pump discharge piping:

| Turnover Rate. The turnover rate shall be as shown in the following table:  |                    |
|---|--------------------|
| Type of Facility  | Turnover Required  |
| Diving Pools  | 8 hours or less    |
| Wading Pools, Spas  | 30 minutes or less |
| Water Slides, Handicap Pools  | 2 hours or less    |
| Vortex Pools  | 1 hour or less     |
| All Other Pools   | 6 hours or less    |
| Higher flow rates may be necessary in pools with skimmers so that each skimmer will have a minimum flow rate of thirty (30) gallons per minute. |                    |

(b) The pump shall be of sufficient capacity to provide a minimum backwash rate of fifteen (15) gallons per square foot of filter area per minute in sand filter systems. The pump or pumps shall supply the required recirculation rate of flow to obtain the turnover rate required at a total dynamic head of at least:

1. Fifty (50) feet for all vacuum filters;
2. Seventy (70) feet for pressure sand or cartridge filters; or
3. Eighty (80) feet for pressure diatomaceous earth filters.

(c) If the pump is located at an elevation higher than the facility water line, it shall be self-priming.

(d) If vacuum filters are used, a vacuum limit control shall be provided on the pump suction line. The vacuum limit switch shall be set for a maximum vacuum of eighteen (18) inches of mercury.

(e) A compound vacuum-pressure gauge shall be installed on the pump line. A vacuum gauge may be used for pumps with suction lift. A pressure gauge shall be installed on the pump discharge line adjacent to the pump.

(f) Valves shall be installed to allow the flow to be shut off during cleaning, switching baskets, or inspection of hair and lint strainers.

(g) A hair or lint strainer with openings no more than one-eighth (1/8) inch is required except for pumps that are located downstream of the filter.

(3) Water heaters shall be installed at all indoor swimming and bathing facilities. If a water heater is installed, the following shall apply:

(a) A water heater piping system shall be equipped with a bypass. A valve shall be provided at the bypass and on the influent and effluent heater piping. The influent and effluent heater piping shall be metallic in accordance with heater manufacturer's recommendations;

(b) A heating coil, pipe, or steam hose shall not be installed in any swimming and bathing facility;

(c) Thermometers shall be provided in the piping to check the temperature of the water returning from the facility and the temperature of the blended water returning to the facility;

(d) An automatic temperature limiting device with thermostatic control, which will prevent the introduction of water in excess of 100° Fahrenheit to swimming and diving pools and in excess of 104° Fahrenheit for spas shall be provided, and be accessible only to the facility operator;

(e) A pressure relief valve shall be provided and shall be piped to within six (6) inches of the floor;

(f) Venting of gas or other fuel burning water heaters shall be provided in accordance with the applicable State Building Codes;

(g) Heaters for indoor swimming and diving pools shall be capable of maintaining an overall pool water temperature between seventy-six (76) degrees Fahrenheit and eighty-four (84) degrees Fahrenheit;

(h) Combustion and ventilation air shall be provided for fuel burning water heaters in accordance with manufacturer's recommendations or the State Building Code;

(i) Heaters for indoor swimming and diving pools shall be sized on a basis of 150 BTU's/hour input per square foot of pool water surface area; and

(j) All heaters shall meet the latest standards of applicable recognized testing agencies.

(4) A flow meter shall be located so that the rate of recirculation may be easily read. Flow meters shall be installed on a straight length of pipe at a distance of at least ten (10) pipe diameters downstream, and five (5) pipe diameters upstream from any valve, elbow, or other source of turbulence.

(5) Vacuum cleaning system.

(a) A vacuum cleaning system shall be provided for all facilities except beaches, and small indoor spas designed for six (6) or less bathers. A vacuum cleaning system capable of reaching all parts of the facility bottom shall be provided;

(b) A vacuum system may be provided which utilizes the attachment of a vacuum hose to the suction piping through the skimmer. Vacuumed water must pass through the skimmer's strainer basket;

(c) If the vacuum cleaning system is an integral part of the facility recirculation system, a wall fitting(s) shall be provided eight (8) to twelve (12) inches below the normal water level and be provided with a cap or plug. Piping from this connection shall be to the suction side of the pump ahead of the hair and lint strainer, shall be at least one and one-half (1 1/2) inches in diameter and be equipped with a control valve near the junction with the pump suction line. The size of the vacuum hose shall be at least one and one-half (1 1/2) inches in diameter and be of sufficient strength to prevent collapsing and allow adequate flow for proper cleaning;

(d) Automatic vacuum systems may be used to supplement the built-in vacuum system provided they are capable of removing all debris from the facility bottom; and

(e) Vacuum systems are to be used only when the facility is closed to bathers.

(6) Piping, skimmer and overflow system.

(a) Piping shall comply with the material specifications listed in the Kentucky State Plumbing Code for potable water. All piping, valves, or fittings shall be color coded, or suitably labeled, or marked to denote its purpose within the facility water treatment system.

(b) The piping shall be designed to carry the required quantities of water at velocities not exceeding five (5) feet per second in suction piping, and ten (10) feet per second in pressure piping. Gravity piping shall be sized so that the head loss in piping, fittings, and valves does not exceed the difference in water levels between the facility and the maximum operating level in the surge or filter tank.

(c) The following waste lines shall be provided with six (6) inch air gaps at their points of discharge to the waste pump or sewer:

1. Main outlet bypass or other connections to waste;
2. Surge tank drain and overflow lines;
3. Pump discharge to waste lines; and
4. Gutter bypass to waste lines.

(7) Inlets.

(a) Each inlet shall be flow adjustable.

(b) The velocity of flow through any inlet orifice shall be in the range of five (5) to twenty (20) feet per second, except in facilities equipped with skimmers it shall be in the range of ten (10) to twenty (20) feet per second.

(c) Inlets shall be located and permanently directed to produce uniform circulation of water to facilitate the maintenance of a uniform disinfectant residual throughout the entire facility without the existence of dead spots. Inlets in facilities with skimmers shall be twelve (12) inches below the midpoint on the skimmer throat. Inlets in facilities with a prefabricated perimeter overflow system shall be eight (8) inches or more below the lip of the gutter.

(d) Inlets for swimming and diving pools, wave pools, large spas, and water slide plunge pools shall be spaced as follows:

1. Inlets shall be placed completely around the pool, each serving a linear distance of not more than fifteen (15) feet on



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center. The pipe serving the inlets shall form a loop completely around the pool; and

2. If inlets are to be placed on the bottom of the pool, the number of inlets shall be determined by dividing the perimeter of the pool measured in feet, by fifteen (15), any fraction thereof would represent one (1) additional inlet.

(e) Inlets for wading pools, and small spas for six (6) or less bathers, shall be at least two (2) in number, and placed so as to meet the requirements of paragraph (c) of this subsection.

(f) At least one (1) inlet shall be located in each recessed stairwell or other space where water circulation might be impaired.

(g) A continuous flume, tubing, or other arrangement near the pool water surface which serves as inlet supply piping and employs multiple "jet" inlets is approved provided the individual components of the system meet the requirements of paragraphs (a), (b) and (c) of this subsection and subsections (9)(a), (b) and (10) of this section.

(h) Prefabricated perimeter overflow systems shall be approved on a case-by-case basis by the cabinet.

(8) Outlets.

(a) All facilities shall be provided with a main outlet at the deepest point to permit the facility to be completely and easily drained. Openings shall be covered by a proper grating which is not removable by bathers without the use of tools, and which cannot entrap their fingers. Openings of the grating shall be at least four (4) times the area of the main outlet pipe and have sufficient area so that the maximum velocity of the water passing through the grate does not exceed one and one-half (1 1/2) feet per second at maximum flow. The maximum width of grate openings shall be one-fourth (1/4) inch;

(b) Multiple outlets shall be provided in all facilities where the width of the facility is more than thirty (30) feet. In these cases, outlets shall be spaced not more than thirty (30) feet apart, nor more than fifteen (15) feet from side walls, and shall be connected in parallel, not series. All spas and wading pools shall have at least two (2) outlets;

(c) A hydrostatic relief valve may be provided for in-ground swimming and diving pools, wave pools, and water slide plunge pools. Subsurface drainage, if provided, shall not be directly connected to a sanitary sewer; and

(d) Main outlet piping shall be sized for removal of the water through it at a rate of at least 100 percent of the design recirculation flow rate at velocities specified in subsection (6)(b) of this section. It shall function as a part of the recirculation system. The piping system shall be valved to permit adjustment of flow through it.

(9) Perimeter overflow systems.

(a) Swimming and bathing facilities other than pools designed and used exclusively for diving, having a water surface area greater than 1,600 square feet shall have a continuous perimeter overflow system. Swimming and bathing facilities less than 1,600 square feet in area and thirty (30) feet or less in width may use surface skimmers.

(b) A perimeter overflow system shall:

1. Extend completely around the facility;
2. Permit inspection, cleaning, and repair;
3. Be designed so that no ponding or retention of water occurs within any portion of the system; or the passage of small children into an enclosed chamber;
4. Be designed to prevent the entrapment of bather's arms, legs, and feet;
5. Have an overflow lip which is rounded, provides a good handhold, and is level within two-tenths (0.2) inch;
6. Provide for the rapid removal of all water and debris skimmed from the pool's surface;
7. Be designed for removal of water from the pool's upper surface at a rate equal to 100 percent of the design turnover flow rate. If the surge volume is to be stored in the perimeter overflow system, the system shall have the capacity to carry 100 percent of the design flow while maintaining the surge storage capacity;
8. Discharge to the recirculation system;
9. Be provided with sufficient drains and piping which will not allow the overflow channel to become "flooded" when the facility is

in normal use; and

10. Have drain gratings with surface area at least equal to two (2) times the area of the outlet pipe.

(10) All facilities which have perimeter overflow systems shall be provided with a net surge capacity of at least one (1.0) gallon per square foot of water surface area. Surge capacity shall be provided either in a vacuum filter tank, in the perimeter overflow system, in a surge tank, or a combination of these. Valving shall be provided where necessary, to automatically retain water during periods of facility use and to discharge water during the periods of nonuse so that the proper operating water level in the facility is maintained at all times.

(11) Skimmers are permitted on facilities whose width does not exceed thirty (30) feet and whose water surface area is 1,600 square feet or less. If skimmers are used, the following shall be met:

(a) At least one (1) skimmer shall be provided for each 500 square feet of water surface area or fraction thereof, with a minimum of two (2) skimmers provided, except for small spas, or wading pools with a water surface area of 144 square feet or less, where a minimum of one (1) skimmer shall be required.

(b) Skimmers shall be located to minimize interference with each other;

(c) The rate of flow per skimmer shall not be less than thirty (30) gallons per minute, and all skimmers shall be capable of handling at least eighty (80) percent of required flow rate;

(d) The surface skimmer piping shall have both a trimmer valve and a separate valve in the equipment room to permit adjustment of flow;

(e) Each skimmer shall be provided with an equalizer line at least one and one-half (1 1/2) inches in diameter, located at least one (1) foot below the lowest overflow level of the skimmer, and be provided with a self-closing valve;

(f) A basket which can be removed without the use of tools and through which all overflow water must pass, shall be provided; and

(g) Skimmer equipped swimming and diving pools, wave pools, water slide plunge pools, and large spas shall have a smoothly contoured handhold coping not over two and one-half (2 1/2) inches thick for the outer two (2) inches or an equivalent approved handhold. The handhold shall be no more than nine (9) inches above the normal water line.

(12) All facilities shall be equipped for the addition of make-up water from a potable water source pursuant to the following:

(a) Discharge through an air gap of at least six (6) inches to the facility to a surge tank, or a vacuum filter tank. If make-up water is added directly to the facility, the fill spout shall be located under or immediately adjacent to a ladder rail, grab rail, or lifeguard platform. If added to a surge tank or vacuum filter tank, the six (6) inch air gap shall be measured above the top lip of the tank; and

(b) Through piping with vacuum breaker, antisiphon or other protection as specified by the State Plumbing Code.

(13) Filtration.

(a) Filters shall comply with the following:

1. Pressure filters shall have pressure gauges;
  2. Pressure filters shall have an observable free fall, or a sight glass shall be installed on the backwash discharge line;
  3. Pressure filters shall have a manual air-relief valve at the high point;
  4. The filter backwash disposal facility shall have sufficient capacity to prevent flooding during the backwash cycle;
  5. All filters shall be designed so that they can be completely drained. Filters shall be drained through a six (6) inch air gap to a pump or sanitary sewer;
  6. Filter media shall meet NSF specifications;
  7. Each facility shall have separate filtration and treatment systems;
  8. Filter equipment and treatment systems shall operate continuously twenty-four (24) hours per day except if the facility is closed for repairs or at the end of the swimming season; and
  9. Individual filters shall be designed with necessary valves and piping to permit isolation of individual filters for repairs while other units are in service.
- (b) Rapid sand or gravity sand filters:

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1. Rapid sand filters shall be designed for a filter rate not to exceed three (3) gallons per minute per square foot of bed area at time of maximum head loss with sufficient area to meet the design rate of flow required by the prescribed turnover. Open gravity type filters shall be designed for a filter rate not exceeding two (2) gallons per square foot per minute.

2. Filtering media shall consist of at least twenty (20) inches of graded, sharp filter sand with an effective size between four-tenths (0.4) and 0.55 mm and a uniformity coefficient not exceeding one and 1.75, supported by at least ten (10) inches of graded filter gravel. Anthracite with effective size of six-tenths (0.6) to eight-tenths (0.8) mm with a uniformity coefficient of not greater than one and eight-tenths (1.8) may be used in lieu of the sand. A reduction in gravel depth or an elimination of gravel may be permitted where equivalent performance and service are demonstrated.

3. At least twelve (12) inches of freeboard shall be provided between the upper surface of the filter media and the lowest portion of the pipes or drains which serve as overflows during backwashing.

4. The filter system shall be designed with necessary valves and piping to permit:

a. Filtering to pool; and

b. Individual backwashing of filters to waste at a rate of not less than fifteen (15) gallons per minute per square foot of filter area. A backwash rate of eight (8) gallons per square foot per minute shall be provided for anthracite filters;

5. Each filter shall be provided with an access opening of not less than a standard eleven (11) inch by fifteen (15) inch manhole and cover.

6. The filter tank and its integral parts shall be constructed of substantial material capable of withstanding continuous anticipated usage and shall be designed for a pressure safety factor of four (4) based on the maximum shutoff head of the pump. This shutoff head for design purposes shall in no case be considered less than fifty (50) pounds per square inch.

(c) High rate sand filters. The design filtration rate shall be a minimum of five (5) gallons per minute per square foot of filter area. The maximum design filtration rate shall be the lesser of fifteen (15) gallons per minute per square foot of filter area or seventy-five (75) percent of the NSF listed filtration rate. The backwash rate shall be fifteen (15) gallons per minute per square foot of filter area.

(d) Diatomaceous earth filters.

1. The design filtration rate shall not exceed one and one-half (1 1/2) gallons per minute per square foot of filter area on diatomaceous earth filters, except that the rate of filtration may be increased to two (2) gallons per minute per square foot of filter area if continuous feeding of diatomaceous earth is employed;

2. A precoat pot shall be provided on the pump suction line for pressure diatomaceous earth systems. All diatomaceous earth filter systems shall have piping arranged to allow recycling of the filter effluent during precoating;

3. If equipment is provided for the continuous feeding of diatomaceous earth to the filter influent, the equipment shall have a capacity to feed at least one and one-half (1 1/2) ounces of this material per square foot of filter area per day;

4. Overflow piping on vacuum diatomaceous earth filters shall be provided on the filter tank to discharge overflow water; and

5. All filters shall be equipped for cleaning by one (1) or more of the following methods: backwashing; air-pump assist backwashing; spray wash; water pressure to wash vacuum filter; or agitation.

(e) Vacuum sand filters.

1. The design filtration rate shall be seventy-five (75) percent of that listed by NSF or fifteen (15) gallons per minute whichever is lesser. The backwash rate shall be at fifteen (15) gallons per minute per square foot of filter area; and

2. Overflow piping shall be provided in order to drain overflow water.

(f) Cartridge filters.

1. Cartridge filters shall not be used on facilities with a capacity larger than 80,000 gallons;

2. Cartridge filters shall only be used on indoor pools;

3. The design filtration rate shall not exceed 0.15 gallons per minute per square foot of filter surface area; and

4. A clean duplicate set of cartridges shall be maintained at the facility.

(14) Disinfectant and chemical feeders.

(a) The minimum chemical feed equipment required at any facility shall include a unit for feed of a disinfectant and a unit for feed of a chemical for pH control, except as stated in paragraph (e) of this subsection.

(b) Equipment capacity.

1. Equipment for supplying chlorine or compounds of chlorine shall be of sufficient capacity to feed the chlorine at a rate of eight (8) p.p.m. (two and seven-tenths (2.7) lbs/day chlorine gas or its equivalent for each 10,000 gallons of pool volume) for outdoor facilities and three (3) p.p.m. (one (1) lbs/day for chlorine gas or its equivalent for each 10,000 gallons of pool volume) for indoor facilities based on the flow rates specified in subsection (2)(a) of this section;

2. The equipment for supplying chlorine shall not be controlled by a day-date clock;

3. The injection point for chlorine shall be placed on the discharge side of the pump and downstream of the flow meter;

4. Pot feeders for supplying bromo-chlorodimethylhydantoin sticks shall contain at least 0.50 pounds of bromo-chlorodimethylhydantoin per thousand gallons of facility capacity, or fraction thereof. The feeder shall have a method of feed rate adjustment;

5. Ozone may be used as a supplement to chlorination or bromination as required in subparagraph 1 or 4 of this paragraph. Ozonation equipment will be considered by the cabinet on a case-by-case basis for experimental use; and

6. No more than one (1) gram per day of ozone per ten (10) gallons per minute of flow rate will be allowed. The ambient air ozone concentration shall be less than .05 p.p.m. at all times either in the vicinity of the ozonator or at the pool water surface.

(c) If positive displacement pumps (hypochlorinators) are used to inject the disinfectant solution into the recirculation line, they shall be of variable flow type and shall be of sufficient capacity to feed the amount of disinfectant required by paragraph (b)1 of this subsection. If calcium hypochlorite is used, the concentration of calcium hypochlorite in the solution shall not exceed five (5) percent. The solution container shall have a minimum capacity equal to the volume of solution required per day at the feed rate required in paragraph (b)1 of this subsection.

(d) Gas chlorinators.

1. The chlorine supply and gas feeding equipment shall be housed in a separate, relatively airtight room. The room shall be provided with an exhaust system which takes its suction not more than eight (8) inches from the floor and discharges out-of-doors in a direction to minimize exposure to toxic fumes. The fan shall be capable of producing one (1) air change per minute. Means for introducing a fresh air supply to the enclosure through appropriate openings such as filters, grill openings, or other similar openings, at a high point opposite the exhaust fan intake shall be provided. The room shall have a window at least eighteen (18) inches square, and shall have artificial lighting. Electrical switches for lighting and ventilation shall be outside and adjacent to the door. Scales for weighing chlorine cylinders in service shall be provided. Automatic changeover chlorinators may be substituted for scales.

2. Chlorine cylinders either full or empty shall be anchored, or chained in a vertical position. The valve protection hoods shall be kept in place, except when the cylinders are connected. Chlorine feed devices should be located directly on the tank if practical;

3. The chlorine feeding device shall be designed so that during interruptions of the flow of the water supply, gas feed is automatically terminated. In addition, the release of chlorine shall be terminated if the recirculation pump is shut off. If other than facility recirculated water is used, the supply line shall be equipped with an electric shut off valve wired to the recirculation pump and shall be equipped with an approved backflow preventer. If two (2) or more cylinders are in use, an automatic changeover valve shall be used;

4. Chlorinator vent lines shall be conducted to the out-of-doors

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similar to the chlorinator room exhaust system;

5. The gas chlorinator shall be the solution feed type capable of delivering chlorine at its maximum rate without releasing chlorine gas to the atmosphere;

6. The water supply for the gas feeding equipment shall produce the flow rate and pressure required according to the manufacturer's specifications for proper operation of the equipment;

7. A self-contained breathing apparatus (SCBA) designed for use in a chlorine atmosphere and of a type approved by the Mine Safety and Health Administration (MSHA) or the National Institute for Occupational Safety and Health (NIOSH), shall be provided. This SCBA shall have sufficient capacity for the purpose intended. In addition a written respirator program shall be provided and employees shall be trained in the use and maintenance of such equipment to insure operability and safety. The SCBA shall be kept in a closed cabinet, accessible without a key, and located outside of the chlorine room. Installation of chlorinator equipment, and its operation, shall be carried on by and under the supervision of personnel experienced with installation and operation of such equipment. A chlorine valve shut-off wrench shall be kept on the cylinder valve stem that is in use; and

8. In the event of a chlorine leak, the fire department or an agency trained in the handling of chlorine spills shall be immediately contacted. The phone numbers of the fire department or above agency shall be posted on the outside of the chlorine room door.

(e) pH control feeders. At facilities with a volume greater than 100,000 gallons, or at facilities utilizing gas chlorine as a disinfectant, a chemical feeder of positive displacement type shall be installed for the purpose of applying chemicals to maintain pH of facility water within the range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). A solution tank of at least forty (40) gallons capacity shall be provided.

(f) Erosion type chlorine feeders shall be prohibited.

(15) Testing equipment shall be provided at all swimming and bathing facilities, maintained with fresh reagents, and consist of at least the following:

(a) A DPD (Diethyl-P-Phenylene Diamine) colorimetric test kit shall be provided, which will determine free disinfectant residual, combined disinfectant residual, total alkalinity, and pH of the facility water. Test kits using orthotolidine reagents are not acceptable;

(b) There shall be At least five (5) chlorine color standards and at least five (5) pH color standards. Chlorine standards shall range from one-tenth (0.1) to three (3.0) p.p.m. and pH standards shall range from six and eight-tenths (6.8) to eight and four-tenths (8.4); as a minimum. Both tests shall be accurate to within two-tenths (0.2) units; and

(c) Facilities using cyanurates for stabilization shall have a test kit to measure the cyanuric acid concentration. The cyanuric acid test kit shall permit readings up to 100 p.p.m.

Section 10. Operational Water Quality Standards. (1) Disinfectant residuals for swimming and diving pools, wading pools, water slides, and wave pools:

(a) Chlorine residual shall be maintained between one (1.0) p.p.m. and two and five-tenths (2.5) p.p.m. as free available chlorine.

(b) Bromine residual shall be maintained between one (1.0) p.p.m. and two and five-tenths (2.5) p.p.m. as free available disinfectant.

(c) Pools stabilized with cyanuric acid shall meet the following criteria:

1. Be an outdoor facility;
2. Maintain one and five-tenths (1.5) to two and five-tenths (2.5) p.p.m. free available chlorine residual; and
3. Cyanuric acid concentration twenty-five (25) p.p.m. to fifty (50) p.p.m.

(d) If the presence of chloramines is determined, superchlorination is required, and the chloramine level shall not exceed two-tenths (0.2) p.p.m.

(2) Disinfectant residuals for spas:

(a) Chlorine residual shall be maintained between two (2.0)

p.p.m. and three (3.0) p.p.m. as free available chlorine;

(b) Bromine residual shall be maintained between two (2.0) p.p.m. and three (3.0) p.p.m. as free available disinfectant; and

(c) If the level of chloramines exceeds two-tenths (0.2) p.p.m., superchlorination is required. During the superchlorination process and until such time as free chlorine levels return to three (3) p.p.m. or less, the facility shall be closed.

(3) pH. The pH of the facility water shall be maintained in a range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). For corrosive water supplies, the alkalinity level shall be suitably adjusted to allow maintenance of the pH level.

(4) Turbidity. Facility water shall have sufficient clarity at all times to meet one (1) of the following:

(a) A black disc, six (6) inches in diameter, is readily visible when placed on a white field at the deepest point of the pool;

(b) The openings of the main outlet grate are clearly visible by an observer on the deck; and

(c) For wading pools the bottom of the pool shall be clearly visible.

(5) Total alkalinity. The alkalinity of the facility water shall not be less than fifty (50) nor more than 180 p.p.m., as determined by suitable test kits.

(6) Temperature. The water temperature for indoor swimming and bathing facilities other than spas shall not be less than seventy-six (76) degrees Fahrenheit nor more than eighty-four (84) degrees Fahrenheit. The cabinet may allow variances from the above temperature limits for special use purposes as competition, physical therapy, or instruction of children. Variances may be approved if proof is presented showing that a variance from the temperature requirements is necessary for the special uses stated, and that the variance will not jeopardize public health. Air temperature at an indoor facility shall be higher than the water temperature, except for spas. In no instance will water temperatures for any facility including spas be permitted to exceed 104 degrees Fahrenheit. All facilities with heated water shall be provided with at least one (1) breakproof thermometer located within the facility water in a conspicuous location. The thermometer shall be securely mounted to prevent tampering by bathers.

(7) The facility operator shall perform tests for each of the above water quality characteristics before opening and during all hours of operation based on the frequency schedule listed below, and record all test results on a daily operational log sheet:

(a) Disinfectant residual, and pH shall be checked at least three (3) times daily with a greater frequency if bather load or climatic conditions warrant.

(b) Turbidity - daily, or more often as needed.

(c) Alkalinity, cyanuric acid (if used) - weekly, or more often as needed.

(d) Temperature:

1. Spas - daily, or more often as needed; and
2. All other indoor facilities - daily.

(8) All spas shall be completely drained, thoroughly cleaned, and refilled with potable water at least once per week. Cleaners used shall be compatible with facility wall and bottom finishes.

Section 11. General Facility Operation and Maintenance. (1) Facility and facility area:

(a) All facilities shall be maintained free from sediment, lint, dirt, and hair. Cracks and other defects in the facility shall be repaired. The walls, ceilings, floors, and equipment shall be painted as often as necessary so that they are protected from deterioration. The bottom and sides of the facility shall be maintained so that they are free from deterioration;

(b) Decks shall be rinsed as necessary to be kept clean. Indoor decks shall be disinfected at least weekly. The walk areas, overflow gutters, counters, lockers, equipment, furniture, interior partitions, and walls shall be kept in good repair, clean, and sanitary; and

(c) Management of each facility shall adopt rules for controlling of food, drink, and smoking in the facility and surrounding areas.

(2) Perimeter overflow and skimmers. The perimeter overflow system or automatic surface skimmers shall be clean and free of leaves or other obstacles which would restrict flow. The strainer

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baskets for skimmers shall be cleaned daily. The flow through each skimmer shall be adjusted as often as necessary to maintain a vigorous skimming action. The facility water shall be maintained at an elevation so that effective surface skimming is accomplished. The flow returning from the facility shall be balanced or valved so that the majority of flow is returned through the perimeter overflow or skimmer system.

(3) Inlet fittings. Inlets shall be checked frequently to insure that the rate of flow through each inlet is correct so that a uniform distribution pattern is established.

(4) Bather preparation facilities.

(a) The floors of dressing rooms, shower stalls, and other interior rooms shall be cleaned and disinfected daily; and

(b) Toilet rooms and fixtures shall be kept clean, free of dirt and debris, and in good repair. Floors shall be maintained in a nonslip condition. Soap dispensers shall be filled and operable. Adequate supplies of toilet tissue, disposable hand drying towels, roll type cloth towels, or suitable hand drying devices shall be maintained.

(5) Street attire. Street shoes shall not be worn on the facility decks or wet areas of the bather preparation facilities, except for those persons engaged in official duties.

(6) Safety. All public swimming facilities shall have adequate enclosures that meet the specifications of Department of Housing, Buildings and Construction. Doors or gates in the facility enclosure shall be kept closed and locked if the facility is closed.

(7) Electrical systems. Repairs to any electrical system shall be made by an electrician. All repairs shall be in accordance with the National Electrical Code and shall be approved by a certified electrical inspector.

(8) Diving equipment, ladders, hand rails, and other similar equipment, shall be maintained in good repair, be securely anchored, and have a nonslip surface.

(9) Operation of mechanical equipment.

(a) Manufacturers' instructions for operation and maintenance of mechanical and electrical equipment, as well as pump performance curves, shall be kept available at the facility;

(b) Pumps, filters, disinfectant feeders, pH controls, flow indicators, gauges, and all related components of the facility water recirculation system shall be kept in continuous operation twenty-four (24) hours a day; and

(c) Recirculation pumps. The pump shall not be throttled on the suction side (except the bottom drain line valve) during normal operation, and shall be kept in good repair and condition. The flow control valve on the discharge side shall be adjusted as necessary to maintain the design flow rate.

(10) Filtration.

(a) Sand filters.

1. The filter air release valve shall be opened as necessary, to remove air which collects in the filter, and following each backwash; and

2. The filter shall be backwashed if the design flow rate can no longer be achieved, or as specified by the filter manufacturer, whichever occurs first.

(b) Diatomaceous earth filters.

1. The dosage of diatomaceous earth precoat shall be at least one and one-half (1 1/2) ounces per square foot of element surface area. Pressure diatomaceous earth filters shall be backwashed if the design flow rate can no longer be achieved or as specified by the filter manufacturer, whichever occurs first. If the recirculation pump stops or is shut off, the filter shall be thoroughly backwashed and the elements shall be precoated before placing the pump back into operation. Vacuum diatomaceous earth filters shall be washed if the design flow rate can no longer be achieved or as specified by the filter manufacturer, whichever occurs first;

2. Following the precoating operation, the initial filter effluent shall be either recirculated through the filter until the filter effluent is clear, or the initial filter effluent shall be discharged to waste until properly clarified water is produced; and

3. If continuous diatomaceous earth feed is required (filter loading rate exceeds one and five-tenths (1.5) gallons per minute per square foot of filter surface area), it shall be applied at a rate of one-half (1/2) - one and one-half (1 1/2) ounces per square foot of

surface area per day, or as needed to extend filter cycles.

(11) Hair and lint strainers. Hair and lint strainers shall be cleaned to prevent clogging of the suction line and cavitation. The pump shall be stopped before the strainer is opened. In all cases, the hair strainer basket shall be cleaned during the time the filter is being backwashed.

(12) Flow meters. Flow meters shall be maintained in an accurate operating condition and readily accessible. The glass and the connecting tubes shall be kept clean.

(13) Vacuum and pressure gauges. The lines leading to the gauges shall be bled occasionally to prevent blockage.

(14) Gas chlorinators.

(a) Gas chlorinators shall be repaired only by a person trained in servicing these units. The facility operator shall determine the appropriate emergency personnel to contact in the event of a chlorine gas emergency and have the telephone number of said personnel conspicuously posted;

(b) Chlorine cylinders shall be stored indoors in the area designed for that purpose and away from a direct source of heat. Cylinders shall not be moved unless the protection cap is secured over the valve; and

(c) Chlorinator, gas line, injector, and cylinders shall be checked daily for leaks. Chlorine will produce a white smoke in the presence of ammonia. In case of a chlorine leak, corrective measures shall be undertaken only by trained persons wearing proper safety equipment. All other persons shall leave the dangerous area until conditions are again safe.

(15) Self-contained breathing apparatus (SCBA).

(a) A record shall be kept of SCBA usage to insure that the unit will be serviceable when needed. The SCBA shall be kept in a closed cabinet, accessible without a key, located outside of the room in which the chlorinator is located, and preferably outside the entrance to the equipment room; and

(b) The SCBA shall be serviced regularly as per manufacturer's recommendations.

(16) Positive displacement feeders.

(a) Positive displacement feeders shall be periodically inspected and serviced;

(b) To minimize sludge accumulation in the unit, the lowest practicable concentration of solution shall be used. If liquid chlorine solution is used, the dilution with water is not critical to the operation of the unit; and

(c) Sludge accumulations shall be cleaned periodically from the unit.

(17) Chlorinated cyanurates. The use of chlorinated cyanurates is prohibited.

(18) pH adjustment.

(a) Soda ash or caustic soda may be used to raise the facility water pH;

(b) Caustic soda shall only be used in accordance with the manufacturer's instructions. If caustic soda is intended for use, the cabinet shall be notified in writing. Protective equipment and clothing, including rubber gloves and goggles, shall be available for the handling and use of this chemical;

(c) Sodium bisulfate or muriatic acid may be used to lower pool water pH;

(d) Hydrochloric (muriatic) acid may only be used with proper supervision and care. Protective equipment and clothing, including rubber gloves and goggles, shall be available for handling this chemical; and

(e) The cabinet shall be consulted in the event of unusual pH problems including corrosion or scaling or wide fluctuations in pH.

(19) Algae control.

(a) The development of algae shall be eliminated by superchlorinating. The facility shall not be open for use during this treatment. If superchlorination fails to eliminate the algae, the cabinet shall be consulted for further advice.

(b) Treated algae which cling to the bottom and sides of the facility shall be brushed loose, and removed by the suction cleaner and filtration system.

(20) Miscellaneous chemicals.

(a) Chemicals other than disinfectants shall be used only with the advice and under the supervision of the cabinet;

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(b) Chemicals shall be kept covered and stored in the original container, away from flammables and heat and in a clean, dry, and well-ventilated place which prevents unauthorized access to the chemicals;

(c) The chemicals used in controlling the quality of water shall be used only in accordance with the manufacturer's instructions; and

(d) If polyphosphates are used for sequestering iron, the concentration of polyphosphates shall not exceed ten (10) p.p.m.

### (21) Equipment rooms.

(a) Equipment necessary for facility operation shall be housed in a lighted, ventilated room which affords protection from the weather, prevents unauthorized access, and is of sufficient size for operation and inspection;

(b) The equipment room floor shall slope toward drains and shall have a nonslip finish;

(c) A hose bib with a vacuum breaker shall be installed in the equipment room;

(d) Suitable space, if not provided in the equipment room, shall be provided for storage of chemicals, tools, equipment, supplies, and records where they can be acquired by the facility operator without leaving the premises. The storage space shall be dry and protected from unauthorized access; and

(e) The equipment room and all other storage areas mentioned above shall be maintained in a clean, uncluttered condition, and shall not be used for storage of materials not essential to operation and maintenance of the facility.

### (22) Maintenance of bathing beaches.

(a) Beach areas shall be maintained free of litter and waterborne debris. Beverage containers of glass or metal containers with detachable pull tabs shall be prohibited.

(b) A layer of sand or gravel of sufficient depth to prevent the creation of mud holes or slicks and to reduce shallow water turbidity shall be maintained on all beach areas, and shall extend beneath the water of all wading and swimming areas; and

(c) Wading, swimming, and diving areas shall be examined by the facility operator on a routine basis, and immediately after high water conditions for floating or sunken debris, and obstructions at diving areas and high water turbidity which may present safety hazards to bathers.

**Section 12. Facility Records.** (1) The operator of each facility shall keep a daily record of information regarding operation including disinfectant residuals, pH, maintenance procedures, and recirculation, together with other data as may be required on form DFS-352 - Swimming Pool Log Sheet furnished by the cabinet. This data shall be kept on file by the operator and submitted to the cabinet as requested. Proper operating records, which include the following shall be kept showing daily or weekly results as applicable:

(a) Disinfectant residuals;

(b) pH readings, total alkalinity, cyanuric acid level (if applicable); and

(c) Malfunctioning of equipment.

(2) If two (2) or more facilities are operated on the same site, separate records shall be maintained for each facility.

**Section 13. Personnel.** (1) Operator. A facility operator shall be responsible for the operation and maintenance of all swimming and bathing facilities. The operator shall be available at all times when the facility is open for use.

### (2) Lifeguards.

(a) A lifeguard or Lifeguards shall be provided at all facilities which allow bathers sixteen (16) years of age or under to enter the facility area without a responsible person seventeen (17) years of age or older present.

(b) All facilities which do not provide a lifeguard must post and enforce the following rule: "No person may enter the facility area alone or swim alone."

(c) If lifeguards are required, lifeguards shall comply with the following:

1. Lifeguards shall have a current lifesaving certificate. Current training as a lifesaver or water safety instructor by the American

Red Cross, YMCA, or equivalent shall satisfy this requirement. The certificate of competency shall be prominently posted;

2. More than one (1) lifeguard shall be on duty at large facilities or facilities with a large number of bathers. Lifeguards shall be provided at a ratio of one (1) per 200 bathers or one (1) per 2,000 square feet of water surface area, whichever is less;

3. Lifeguards shall be dressed in swimming attire; and

4. Lifeguards assigned to the supervision of the facility shall not be subject to duties that would distract their attention from proper observation of persons in the facility area, or that would prevent immediate assistance to persons in distress in the water.

**Section 14. Safety Equipment.** (1) Facilities other than beaches having an area of more than 2,000 square feet of water surface area shall be provided with an elevated lifeguard chair. An additional lifeguard chair shall be provided for each additional 2,000 square feet of water surface area or major fraction more than half thereof. They shall be located to provide a clear view of the facility bottom in the area under surveillance.

(2) Beaches shall be provided with an elevated lifeguard chair for each 100 linear feet of beach front, with an additional lifeguard chair for each additional 100 linear feet of beach front or fraction thereof. The chairs shall be located on the beach to provide a clear view of all areas under surveillance and to provide the quickest response time.

(3) The following lifesaving equipment shall be provided:

(a) A U.S. Coast Guard approved ring buoy not more than fifteen (15) inches in diameter to which shall be attached a three-sixteenths (3/16) inch rope of length one and one-half (1 1/2) times the maximum pool width;

(b) A life pole or shepherd's crook type of pole having blunted ends with a minimum length of twelve (12) feet; and

(c) One (1) plywood backboard with straps, made to the specifications of the American Red Cross for back and neck injuries.

(4) The equipment listed in subsection (3) of this section shall be considered as one (1) unit (except paragraph (c)) and shall be considered as adequate for 2,000 square feet of facility water surface area. An additional unit shall be provided for each additional 2,000 square feet or major fraction thereof.

(5) Facilities limited to small spas, of less than 144 square feet of water surface area, shall not be required to provide the equipment listed in subsection (3) of this section, but shall meet the requirements of subsections (7), (10), and (11) of this section.

(6) Bathing beach facilities shall provide the following lifesaving equipment in addition to that listed in subsection (3) of this section:

(a) Paddle board or surfboard;

(b) At least one (1) lifeboat, containing one (1) unit of lifesaving equipment and outfitted to meet state water safety administrative regulations; and

(c) A torpedo shaped buoy.

(7) All facilities shall be equipped with a minimum of one (1) standard twenty-four (24) unit first aid kit or its equivalent, which shall be kept filled and ready for use. Additional units shall be provided for each additional 2,000 square feet of facility area or major fraction thereof.

(8) Lifesaving equipment shall be mounted in conspicuous places at lifeguard chairs or other readily accessible locations. Its function shall be plainly marked, and this equipment shall be kept in repair and ready condition. Bathers or other persons shall not be permitted to tamper with, use for any purpose other than its intended use, or remove such equipment from its established location. This equipment at beaches shall be located at each lifeguard chair, with the lifeboat mentioned in subsection (6)(b) of this section being located at the most centrally stationed lifeguard chair.

(9) The hydrojet auxiliary air or water pump for a spa shall be controlled by an on-off switch with a fifteen (15) minute timer located and labeled at least five (5) feet away from the spa.

(10) All facilities shall have a nonpay telephone on the premises which is readily accessible and conspicuously located; for isolated facilities two (2) way radio communication systems to a manned telephone system may be substituted. The telephone

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number of a police, fire department, emergency medical service, or a hospital shall be posted in a conspicuous place near the telephone.

(11) All drownings and injuries requiring hospitalization shall be immediately reported to the cabinet.

### Section 15. Spectator and Bather Administrative Regulations.

(1) Rules governing the use of the facility and instructions to bathers shall be displayed on placards at the entrance to dressing rooms and shall be enforced by the facility operator. Posting of rules and other instructions shall provide that:

(a) Admission to the facility is refused to all persons having any contagious disease, infectious conditions as colds, fever, ringworm, foot infections, skin lesions, carbuncles, boils, inflamed eyes, ear discharges, or any other condition which has the appearance of being infectious. Persons with excessive sunburn, abrasions which have not healed, corn plasters, bunion pads, adhesive tape, rubber bandages, or other bandages of any kind are not permitted. A person under the influence of alcohol or exhibiting erratic behavior shall not be permitted in the facility area;

(b) No food, drink, gum, or tobacco will be allowed in other than specially designated and controlled sections of the facility area;

(c) Personal conduct within the facility shall assure that the safety of self and others is not jeopardized. No running and no boisterous or rough play (except supervised water sports) are permitted;

(d) People in street shoes and other spectators are not allowed in the facility, on the deck, and in the "wet" areas of the bathhouse, except those engaged in official duties;

(e) Spitting, spouting of water, blowing the nose, or otherwise introducing contaminants into the facility water is not permitted;

(f) Glass, soap, or other material which might create hazardous conditions or interfere with efficient operation of the facility shall not be permitted in the facility or on the deck;

(g) All apparel worn in the facility shall be clean;

(h) Diving in shallow water is not permitted;

(i) Caution shall be exercised in the use of diving boards; and

(j) Animals shall be excluded from the facility area.

(2) Due to the nature of bathing beaches, subsection (1)(c), (d), and (g) of this section shall not apply. Subsection (1)(a) and (b) of this section shall be enforced at the discretion of the facility operator, except for parts dealing with those persons with excessive sunburn or those under the influence of alcohol or exhibiting erratic behavior, which shall be enforced at all facilities.

(3) In addition to the requirements of subsection (1) of this section, a caution sign shall be mounted adjacent to all spas which contain the following warnings:

#### CAUTION

Pregnant women, elderly persons, and persons suffering from any heart condition or disease, diabetes, or high/low blood pressure should not enter the spa without prior medical consultation and permission from their doctor.

Do not use the spa while under the influence of alcohol, tranquilizers, or other drugs that cause drowsiness, or that raise or lower blood pressure.

Do not use at water temperatures greater than 104 degrees Fahrenheit.

Do not use alone.

Unsupervised use by children is prohibited.

Enter and exit slowly.

Observe reasonable time limits (that is, ten (10) to fifteen (15) minutes), then leave the water and cool down before returning for another brief stay.

Long exposure may result in nausea, dizziness, fainting, or death.

Keep all breakable objects out of the area.

Shower before entering the spa.

(4) A sign shall be posted in the immediate vicinity of the spa stating the location of the nearest telephone and indicating that emergency telephone numbers are posted at that location.

### Section 16. Swimming Suits and Towels Furnished by

Management. All swimming suits and towels used by swimmers and maintained for public use shall be cleaned after each use. These items shall be handled in a sanitary manner.

### Section 17. Facility Inspection. (1) Seasonal facilities.

(a) All owners or operators of seasonal facilities, prior to opening to the public, shall certify to the cabinet, in writing, that the facility is in compliance with the requirements of this administrative regulation except in instances where the cabinet has made an inspection prior to its opening. For seasonal facilities, the cabinet shall make at least two (2) full facility inspections during the operating season. The cabinet, at its discretion, may require one (1) of the full facility inspections to be performed prior to a facility's opening; and

(b) The facility owner or operator shall be responsible for notifying the cabinet of the proposed opening date.

(2) Continuous operation (indoor) facilities shall receive a full facility inspection by the cabinet at least once each six (6) months.

(3) New facilities shall receive final construction approval inspections by the cabinet, and other affected state and local regulatory agencies, prior to placing the facility in operation. It shall be the owner or operator's responsibility to notify the cabinet and other involved agencies of construction completion and call for inspection.

(4) Facilities other than beaches shall be inspected at a minimum of once each thirty (30) day period by the cabinet on a monitoring basis. The monitoring inspection shall consist of the following:

(a) Disinfectant residual testing (free available residual) and combined disinfectant in p.p.m.;

(b) pH testing;

(c) Total alkalinity testing;

(d) Cyanuric acid testing (if cyanuric acid stabilizers are used);

(e) Turbidity assessment;

(f) Temperature testing (if heated water facility);

(g) Review of operator's daily log;

(h) Visual scanning for algae or debris; and

(i) Other checks as necessary.

(5) Beaches shall receive monitoring inspections once each month or anytime immediately after periods of heavy rainfall. Monitoring inspections for beaches shall include general sanitation and safety checks as necessary.

(6) The cabinet may make as many additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(7) If an agent of the cabinet makes an inspection of a public swimming and bathing facility, he shall record his findings on an official cabinet inspection report form DFS-349 - Public Swimming and Bathing Facilities Inspection or DFS-350 - Public Swimming and Bathing Facilities Beach Inspection Report and provide the facility owner or the operator with a copy. The inspection report shall:

(a) Set forth any violation(s) if found;

(b) Establish a specific and reasonable period of time for the correction of the violation(s) found; and

(c) State that failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in closure of the facility.

Section 18. Water Sampling and Testing. (1) A water sample may be collected from facilities if inspections or monitoring indicates water quality standards are not being maintained, or there is a suspected water borne disease outbreak, and shall be submitted to the Health Services Laboratory or other laboratory licensed by the Natural Resources and Environmental Protection Cabinet for analysis. Samples shall be collected in approved containers and by approved sampling procedures.

(2) Samples shall be collected and analyzed for any of the following or other contaminants:

(a) Total coliform;

(b) Fecal coliform; and

(c) Pseudomonad organisms.

(3) Multiple samples may be collected at bathing beaches to

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assure adequate representation of the entire facility water area.

(4) Need for additional samples at other times shall be triggered by the results of monitoring inspections, reported disease outbreaks associated with the facility, or failure of previous samples to meet the standards outlined in Sections 5 and 19 of this administrative regulation. If a sample shows a positive test for contaminants as specified in subsection (2)(a), (b), and (c) of this section, the sample shall be repeated within one (1) to seven (7) days.

Section 19. Bacteriological Quality of Facility Water. (1) For facilities other than bathing beaches, no more than two (2) consecutive samples shall contain either:

(a) More than 200 bacteria per milliliter, as determined by the standard (thirty-five (35) degrees Centigrade) agar plate count;

(b) Show a positive test (confirmed test) for coliform organisms in any of the five (5) ten (10) milliliter portions of a sample or more than two (2.0) coliform organism per 100 ml when the membrane filter test is used;

(c) Show a positive test (confirmed test) for pseudomonas organisms; or

(d) Show a positive test for fecal coliform organisms.

(2) Bathing beaches shall comply with the standards set forth in Section 5(3)(a) of this administrative regulation.

Section 20. Conditions requiring Closure of a Facility and Enforcement Provisions. (1) If the cabinet finds any of the following conditions, it may immediately order by written notice the owner or operator to close the facility and to prohibit any person from using the facility:

(a) If conditions at a facility and appurtenances, including bathhouse facilities, upon inspection and investigation by a representative of the cabinet, create an immediate danger to health or safety;

(b) If the cabinet upon review of results of bacteriological analyses of water samples collected from a facility, finds that the water does not conform to the bacteriological standards promulgated by the cabinet for proper swimming and bathing water quality;

(c) If an environmental survey of an area shows evidence of sewage or other pollutional or toxic materials being discharged to waters tributary to a beach creating an immediate danger to health or safety;

(d) If Turbidity levels of facility water do not meet the requirements of Section 10(4) of this administrative regulation;

(e) If in such cases as it is required, the presence of a satisfactory disinfectant residual, prescribed by the cabinet is absent;

(f) In any instance where the owner, operator, or any other employee or representative of the owner interferes with duly authorized agents of the cabinet, bearing proper identification, in the performance of their duties;

(g) If recirculation system(s), filtration system(s), or disinfectant system(s) are not in operation (with exceptions for maintenance, and seasonal shut-down); or

(h) If serious or repeated violations of any of the requirements of the administrative regulations are found.

(2) The notice shall state the reasons prompting the closing of the facility and a copy of the notice shall be posted conspicuously at the facility by the owner or operator.

(3) Any owner or operator affected by an order is entitled, upon written request on form DFS-212 - Request for Hearing to the cabinet, to a hearing in accordance with 902 KAR 1:400.

(4) If the conditions are abated or if the results of analyses of water samples collected from the facility, in the opinion of the cabinet, comply with the cabinet's bacteriological standards for acceptable water quality, or if the turbidity decreases to the permissible limit, or if the disinfectant residual reaches a satisfactory level as prescribed by administrative regulation, the cabinet may authorize reopening the facility. If sources of sewage, pollution, or toxic materials discovered as a result of an environmental survey are eliminated the cabinet may authorize reopening of such beach.

(5) In all other instances of violation of the provisions of this administrative regulation, including nonpayment of fees, the cabinet shall serve upon the owner or operator a written notice specifying the violation(s) in question and afford a reasonable opportunity to correct same. If an owner or operator has failed to comply with any written notice issued under the provisions of this administrative regulation, the owner or operator shall be notified in writing that the facility shall be closed at the end of ten (10) days following service of such notice, unless a written request for a hearing is filed with the cabinet, by the owner or operator, within such ten (10) day period.

(6) All administrative hearings shall be conducted in accordance with 902 KAR 1:400.

(7) Any person whose facility has been closed may, at any time make application for a reinspection on form DFS-215 - Application for Reinstatement of Suspended Permits for the purpose of reopening the facility. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing closure of the facility have been corrected, the cabinet shall make a reinspection. If the facility is found to be in compliance with the requirements of this administrative regulation, the facility shall be reopened.

(8) For serious or repeated violations of any of the requirements of this administrative regulation or for interference with the agents of the cabinet in the performance of their duties, the facility may be permanently closed after an opportunity for a hearing has been provided in accordance with 902 KAR 1:400. Prior to the action, the cabinet shall notify the owner or operator, in writing, stating the reasons for which the facility is subject to closure and advising that the facility shall be permanently closed at the end of ten (10) days following service of the notice unless a request for a hearing is filed with the cabinet by the owner or operator, within such ten (10) day period.

Section 21. Existing Facilities and Equipment. (1) Notwithstanding the other provisions of this administrative regulation, existing facilities and equipment being used prior to the effective date of this administrative regulation, which do not fully meet the design, construction, and materials requirements of this administrative regulation, may be continued in use, if in good repair, capable of being maintained in a sanitary condition, meet facility water quality standards, and create no health or safety hazard.

(2) If existing equipment, components, piping, or fittings involved in the facility water treatment system are replaced to effect repairs, the replacement equipment, components, piping, or fittings shall meet the requirements of this administrative regulation. If replacement occurs, it shall be the owner's or operator's responsibility to notify the cabinet as to what was replaced and what was used for a replacement.

Section 22. Effect on Local Administrative Regulations. Compliance with this administrative regulation does not relieve any person from compliance with any other state or local laws, dealing with pool operation and maintenance matters, or zoning requirements which may also be applicable.

Section 23. Variances. (1) All facilities shall be constructed or remodeled in compliance with the provisions of these administrative regulations, except that an applicant may request and the cabinet may grant a variance in those cases where it is determined that the variance would not affect seriously the safe and healthful operation of the facility.

(2) Before granting a variance, the cabinet shall require adequate proof from the applicant that the requested variance will comply with the basic intent of these administrative regulations and that no safety or health hazard would be created if the variance is granted.]

STEVEN J. STACK, MD, MBA, Commissioner  
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 23, 2021

FILED WITH LRC: July 13, 2021 at 12:25 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on September 27, 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 September 20, 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 September 27, 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 administrative regulation establishes uniform standards for public swimming pools and bathing facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure all public swimming and bathing facilities operate in a safe and sanitary manner to reduce the incidence of recreational water related illnesses and outbreaks, and reduce pool chemical-associated health events.

According to the Centers for Disease Control and Prevention (CDC):

“Water-based physical activity, such as swimming, improves physical and mental health throughout life; however, it can put people at risk for recreational water–associated illness and injury. A recreational water illness outbreak is the occurrence of similar illnesses in 2 or more persons, epidemiologically linked by location and time of exposure to recreational water. For 1978–2012, 879 recreational water illness outbreaks have been reported CDC, and the number reported annually has increased significantly in recent years, especially the number of outbreaks associated with treated recreational water venues (e.g., pools and hot tubs/spas) reported annually.

“Pool chemical–associated health events (e.g., respiratory distress or burns) result in approximately 3,000–5,000 ED visits each year, and almost half of the patients are younger than 18 years of age.

“Code enforcement through inspections of public aquatic facilities is an important tool in preventing recreational water–associated illness and injury. An inspection of a public aquatic facility is an assessment of whether its operation and maintenance meet the standards set in the jurisdiction’s public health code. During inspections, environmental health practitioners can serve as illness-and-injury-prevention advisors to pool operators. Immediate closures and violations offer an opportunity to educate operators about how to properly operate and maintain aquatic facilities and why these measures are necessary to prevent repeated violations of given operation or maintenance standards in public aquatic facility codes.”

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.180 authorizes the cabinet to adopt administrative regulations relating to public facilities,

public and semipublic recreational areas, and their operation and maintenance in a safe and sanitary manner to protect public health and prevent health hazards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure public swimming and bathing facilities, including beaches, are designed and operated in a safe and sanitary manner, ensure the water quality standard of these facilities to control for contamination, ensure proper disinfection of water and facilities, and ensure all equipment utilized is fully operational.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation:

Revises the definitions to remove terms not used in the regulation;

Clarifies the construction plan submission requirements;

Clarifies that an inspection is required prior to the air pressure testing and covering of the recirculation piping system;

Adds that the depth of water surrounding an inflatable water feature at a beach where diving is permitted be at least nine and one-half (9 ½) feet deep;

Clarifies the required turnover rates for public swimming and bathing facilities, and spas;

Ensures all openings and grates comply with the federal swimming pool and spa drain cover standards;

Adds the requirement for supplemental ultraviolet light disinfection systems on splash pad with recirculating water systems;

Clarifies that the use of glass chlorinators for new construction is prohibited, and ensures glass chlorinators, if used on existing facilities, comply with the application Occupational Safety and Health Administration standards for the storage of hazardous chemicals;

Updates the disinfection standards for pools and spas;

Clarifies the life and safety requirements including the required number of lifeguards, and required safety equipment;

Clarifies that a variance request is for construction requirements; Incorporates the required daily log to be completed by the facility operator, and the inspection forms; and

Makes other amendments to comply with KRS 13A drafting rules.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure those seeking to construct or remodel a public swimming and bathing facility are aware of the plan submission, equipment, and pool design requirements; ensure those operating a public swimming and bathing facility, including a beach, are aware of the most current water quality and disinfection standards, and aware of the life safety equipment requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.180 authorizes the cabinet to adopt administrative regulations relating to public facilities, public and semipublic recreational areas, and their operation and maintenance in a safe and sanitary manner to protect public health and prevent health hazards.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will ensure those operating a public swimming and bathing facility, including a beach, are aware of the most up to date standards to operate the facility in a safe and sanitary manner.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 2,250 public swimming pools, bathing facilities, and spas, and thirty-three (33) beaches regulated by the department. The department receives approximately 115 requests for plan review each year.

(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: Pool operators and owners will need to be aware of the updated requirements and ensure their facilities are in compliance. Beach operators will need to be aware of the updated requirements and ensure their facilities are in compliance. Anyone seeking to modify an existing facility or build a new facility will need to be aware of the plan submission process and the facility requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): Regulated facilities are already currently required to be in compliance with the water quality standards. There will be no added costs to facilities to be in compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated facilities will reduce the likelihood of experiencing a water borne disease outbreak, which will allow the facility to operate without interruption.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This is an ongoing program, there is no additional cost.

(b) On a continuing basis: This is an ongoing program, the costs associated with this administrative regulation will be absorbed by current program funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This program is funded by a mix of state general fund dollars and fees collected for plan review and inspection activities.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: An increase in funding is not needed to implement the amendment to this administrative regulation. The fees associated with these activities are listed in 902 KAR 10:121.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation does not contain fees.

(9) TIERING: Is tiering applied? Tiering is applied. Smaller swimming and bathing facilities have less requirements for equipment, including life safety equipment. Larger swimming and bathing facilities require more life safety equipment, including an increase in the number of required lifeguards. All facilities, regardless of size, are required to meet the water quality standards of this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Division of Public Health, Protection and Safety, all local health departments, state parks and campgrounds that have a swimming or bathing facility, or beach, and local governments who operate a public swimming or bathing facility, or beach.

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(1).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue.

(c) How much will it cost to administer this program for the first

year? The costs associated with this amended administrative regulation will be absorbed by current program costs.

(d) How much will it cost to administer this program for subsequent years? The costs associated with this amended administrative regulation will be absorbed by current program costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 29 C.F.R. 1910.119 Occupational Safety and Health Administration regarding the storage of hazardous materials, and 15 U.S.C. 8003-Federal swimming pool and spa drain cover standards.

2. State compliance standards. KRS 211.180 authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations for the regulation and control of the matters set out below and shall formulate, promote, establish, and execute policies, plans, and comprehensive programs relating to all matters of public health, including the sanitation of public and semipublic recreational areas.

3. Minimum or uniform standards contained in the federal mandate. 29 C.F.R. 1910.119 contains requirements for preventing or minimizing the consequences of catastrophic releases of toxic, reactive, flammable, or explosive chemicals. These releases may result in toxic, fire or explosion hazards.

The federal swimming pool and spa drain cover standards under 15 U.S.C. 8003 requires that effective December 19, 2007, all pools and spas manufactured, distributed, or entered into commerce in the United States shall conform to the entrapment protection standards of the ASME/ANSI A112.19.8 performance standard; each public pool and spa in the United States shall be equipped with anti-entrapment devices or systems that comply with the ASME/ANSI A112.19.8 performance standard, or any successor standard.

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 any stricter requirements, or additional or different responsibilities or requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Public Health**  
**Division of Public Health Protection and Safety**  
**(Amendment)**

**902 KAR 48:010. Definitions for 902 KAR Chapter 48.**

RELATES TO: KRS 211.180, 211.900-211.905, 211.9061-211.9079, 211.994, 217.660, 217.801, 40 C.F.R. Part 745[–15 U.S.C. 2601, sec. 405(b)]

STATUTORY AUTHORITY: KRS 211.090(3), 211.9065(4), 211.9067, 211.9071

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.9065(4) and 211.9067 authorize the Department for Public Health to promulgate administrative regulations relating to the training, certification of persons, and standards and procedures for activities related to conducting lead-hazard assessment and abatement activities in target housing or child-occupied facilities. KRS 211.9071 requires the department to comply with the applicable rules and regulations of all federal agencies having jurisdiction over issues concerning lead-hazards. This administrative regulation establishes definitions for 902 KAR Chapter 48.

Section 1. Definitions. (1) "Abatement permit" means a permit issued by the department to a person who plans to conduct lead-

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hazard abatement in target housing or child-occupied facilities.

(2) "Abatement permit holder" means a person who:

(a) Is certified by the department to conduct lead abatement activities; and (b) Has been issued a permit by the department to conduct specific lead abatement activities.

(3) "Abatement plan" means a detailed, written description of proposed planned abatement activities for lead-hazard abatement, environmental lead-hazard control, cleanup, and clearance.

(4) "Accredited training program" means a program for training individuals engaged in lead-hazard detection and abatement activities, conducted by a training provider accredited by the department.

(5) "Adequate quality control" is defined by 40 C.F.R. 745.223.

(6) means a plan or design that:

(a) Ensures the authenticity, integrity, and accuracy of samples including:

1. Dust; and
2. Soil; and
3. Paint chips; and

(b) Provides for representative sampling.

(6) "Applicable work experience" means experience in a profession related to lead, asbestos, environmental remediation work, building renovation/remodeling, or building construction.

(7) "Approved course" means a training course:

(a) Approved under the initial accreditation requirement of a training program; and

(b) Conducted by a provider who has met the notification and reporting requirements of 902 KAR 48:030, Section 12[13].

(7)[(8)] "Certificate of accreditation" means the document issued by the department to a training provider certifying that the [training] provider has been approved [by the department] to provide training courses for individuals who perform lead-hazard detection and abatement activities.

(8)[(9)] "Chewable surface" is defined by 40 C.F.R. 745.63.

(9) means an interior or exterior painted surface that is accessible to children for mouthing or chewing.

(10) "Child" means a person six (6) years of age or younger.

(10)[(11)] "Child-occupied facility" is defined by KRS 211.9061(1).

(11)[(12)] "Clearance [dust] level" is defined by 40 C.F.R. 745.223.

(12) means the lead level permitted in dust on a surface following completion of an abatement or other activity which may have disturbed a lead paint hazard, as established in 902 KAR 48:040, Section 13.

(13) "Common area" is defined by 40 C.F.R. 745.223.

(13) means a portion of a building that is generally accessible to the occupants of multiresidential units.

(14) "Composite dust sample" means a sample of dust:

- (a) Consisting of two (2) or more subsamples;
- (b) Representing each component being tested; and
- (c) Containing a subsample from only one (1) type of component.

(14)[(15)] "Containment" is defined by 40 C.F.R. 745.223.

(15) means a process to protect workers and the environment by controlling exposures to lead-contaminated dust and debris created during a lead abatement project or activity.

(16) "Course test blue print" is defined by 40 C.F.R. 745.223.

(16) "blueprint" means written documentation identifying the percentage of course test questions devoted to each major topic in a course curriculum.

(17) "Department" is defined at KRS 211.9061(2).

(17)[(18)] "Deteriorated paint" is defined by 40 C.F.R. 745.63.

(18) means an interior or exterior paint or other coating that is peeling, chipping, chalking or cracking, or is otherwise damaged or separated from the substrate.

(19) "Discipline" means a category of work performed by one

(1) of the following persons:

- (a) Lead-hazard inspector;
- (b) Lead-hazard risk assessor;
- (c) Lead-hazard dust sampling technician;
- (d) Lead-hazard abatement worker;
- (e) Lead-hazard abatement supervisor;

(f) Lead-hazard project designer; or

(g) Lead-hazard abatement company.

(19)[(20)] "Distinct painting history" is defined by 40 C.F.R. 745.223.

(20) means the application history of paint or other surface coatings to a component or building component, as indicated by:

(a) Its visual appearance; or

(b) A record of paint application over time.

(21) "Documented methodologies" is defined by 40 C.F.R. 745.223.

(21) "Dripline" is defined by 40 C.F.R. 745.63.

(22) means methods or protocols used to sample for the presence of lead in paint, dust, and soil:

(a) Established by administrative regulation; or

(b) Recognized, as indicated in 902 KAR 48:040, Section 1, for acceptable use.

(22) "Drip line" means the area within three (3) feet surrounding the perimeter of a building.

(23) "Dust-lead hazard" is defined by 40 C.F.R. 745.65(b).

(23) means surface dust in a residential dwelling or child-occupied facility that contains a specific area or mass concentration of lead exceeding the levels established in 902 KAR 48:040, Section 13.

(24) "Encapsulant" is defined by 40 C.F.R. 745.223.

(24) means a liquid-applied coating, or an adhesively-bonded covering material, that forms a barrier between lead-containing paint and the environment.

(25) "Encapsulation" is defined by 40 C.F.R. 745.223.

(25) means the application of an encapsulant.

(26) "Enclosure" is defined by 40 C.F.R. 745.223.

(26) means a rigid, durable construction material mechanically fastened to the substrate as a barrier between the underlying lead-containing paint and the environment.

(27) "Equivalent method" means a method demonstrated to the department by a certified person that:

(a) Is equally protective as documented methodologies;

(b) Ensures adequate quality control; and

(c) Protects the environment.

(27)[(28)] "EPA" means the U.S. Environmental Protection Agency.

(28) "Friction surface" is defined by 40 C.F.R. 745.63.

(29) "Guest instructor" is defined by 40 C.F.R. 745.223.

(30)[(29)] "Hands-on skills assessment" is defined by 40 C.F.R. 745.223 means an evaluation of a trainee's ability to perform activities that test the trainee's performance of practice standards and procedures established in 902 KAR 48:040.

(30) "Friction surface" means an interior or exterior surface subject to abrasion or friction, including window, floor and stair surfaces).

(31) "Impact surface" is defined by 40 C.F.R. 745.63.

(32) "Interim control" is defined by 40 C.F.R. 745.223.

(33) means an interior or exterior surface subject damage by repeated sudden force, such as parts of a doorframe.

(32) "Interior window sill" is defined by 40 C.F.R. 745.63.

(34) means the portion of the horizontal window ledge that protrudes into the interior of the room.

(33) "Guest instructor" means a person designated by training manager to provide:

(a) Instructions specific to the lecture;

(b) Hands-on activities; or

(c) Work practice standards and procedures.

(34) "Interim control" means a measure designed to temporarily reduce human exposure, actual or potential, to a lead-hazard, including:

(a) Specialized cleaning;

(b) Repairs;

(c) Maintenance;

(d) Painting;

(e) Temporary containment;

(f) Ongoing monitoring of lead hazards or potential hazards; or

(g) The establishment and operation of management and resident educational programs.

(35) "Large-scale" means an abatement project with ten (10)

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or more residential dwellings.

~~(35)~~~~(36)~~ "Lead-hazard" means a hazard due to excessive amounts of lead in:

- (a) Paint;
- (b) Dust; or
- (c) Soil.

~~(36)~~~~(37)~~ "Lead-hazard abatement" is defined by KRS 211.9061(4).

~~(37)~~~~(38)~~ "Lead-hazard abatement worker" means a person certified by the department to perform physical lead-hazard abatement activities.

~~(38)~~~~(39)~~ "Lead-hazard company" means a firm certified by the department to perform lead-hazard assessment and abatement activities in target housing and child-occupied facilities.

~~(39)~~~~(40)~~ "Lead-hazard detection" is defined by KRS 211.9061(3).

~~(40)~~~~(41)~~ "Lead-hazard dust sampling technician" means person who performs clearance evaluation and sampling for nonabatement activities that may create a lead dust hazard.

~~(41)~~~~(42)~~ "Lead-hazard inspection" means an examination of painted surfaces within the interior or exterior of a residential structure or child-occupied facility, to determine if hazardous levels of lead are present.

~~(42)~~~~(43)~~ "Lead-hazard inspector" means a person certified by the department to conduct:

- (a) Lead-hazard inspections;
- (b) Sample collection; and
- (c) Lead-hazard dust clearance.

~~(43)~~~~(44)~~ "Lead-hazard project designer" means a person certified by the department to prepare the following items for a lead-hazard abatement project, in accordance with 902 KAR 48:040, Section 7:

- (a) Abatement project plans;
- (b) Abatement reports; and
- (c) Occupant protection plans.

~~(44)~~~~(45)~~ "Lead-hazard risk assessment" means an on-site investigation to determine the existence, nature, severity, location of lead hazards.

~~(45)~~~~(46)~~ "Lead-hazard risk assessor" means a person certified by the department to conduct:

- (a) Lead-hazard inspections;
- (b) Risk assessments;
- (c) Lead-hazard screens;
- (d) Sample collection; and
- (e) Lead-hazard dust clearance.

~~(46)~~~~(47)~~ "Lead-hazard screen" means a risk-assessment activity requiring reduced sampling.

~~(47)~~~~(48)~~ "Lead-hazard supervisor" means a person certified by the department to:

- (a) Supervise lead-hazard abatement activities; and
- (b) Prepare, in accordance with 902 KAR 48:040, Section 7:
  - 1. Abatement plans;
  - 2. Abatement reports; and
  - 3. Occupant protection plans.

~~(48)~~~~(49)~~ "Lead-paint hazard" means a:

~~(a)~~ Lead-based paint on a friction surface with dust levels on the nearest horizontal surface beneath the friction surface equal to or greater than dust-lead-hazard levels;

~~(b)~~ Damaged or deteriorated lead-based paint on an impact surface;

~~(c)~~ Chewable lead-based painted surface on which there is evidence of teeth marks; or

~~(d)~~ Deteriorated lead-based paint within a residential dwelling or child-occupied facility.

~~(50)~~ "Living area" is defined by 40 C.F.R. 745.223.

~~(49)~~ means an area of a residential dwelling used by one (1) or more child.

~~(51)~~ "Mid-yard" means an area of a residential yard approximately midway between the drip line of a residential building and:

- (a) The nearest property boundary; or
- (b) Another building on the same property.

~~(52)~~ "Permanently covered soil" is defined by 40 C.F.R.

745.223.

~~(50)~~ means soil separated from human contact by the placement of a barrier consisting of a solid, impermeable material, such as pavement or concrete, not including permanent grass, mulch, or other landscaping material.

~~(53)~~ "Person" is defined at KRS 217.660(3).

~~(51)~~~~(54)~~ "Play area" is defined by 40 C.F.R. 745.63.

~~(52)~~ means an area where children contact soil frequently, as indicated by the following:

~~(a)~~ Presence of:

- 1. Play equipment;
  - 2. Toys; or
  - 3. Other articles used by children;
- ~~(b)~~ Observations of play patterns; or
- ~~(c)~~ Information provided by a:
- 1. Parent;
  - 2. Resident;
  - 3. Care giver; or
  - 4. Property owner.

~~(55)~~ "Post-abatement report" means a report prepared at the conclusion of an abatement project, after clearance has been achieved, in accordance with 902 KAR 48:040, Section 16.

~~(53)~~~~(56)~~ "Quality assurance inspection" means an inspection conducted by the department to determine whether a lead abatement activity complies with:

- (a) Certification requirements;
- (b) Work practices; and
- (c) Performance standards.

~~(54)~~~~(57)~~ "Quality control plan" means a written plan prepared by the training manager describing in-house controls to assure that the program meets the requirements in 902 KAR 48:030, Section 5.

~~(55)~~~~(58)~~ "Recognized laboratory" is defined by 40 C.F.R. 745.223.

~~(56)~~ means an environmental laboratory accredited pursuant to Section 405(b) of the Toxic Substance Control Act, 15 U.S.C. 2601, as being capable of performing an analysis for lead compounds in paint, soil, dust and water.

~~(59)~~ "Reduction" is defined by 40 C.F.R. 745.223.

~~(57)~~ "Related work experience" means experience in a profession associated with lead, asbestos, or environmental remediation work; building renovation and remodeling; or building construction.

~~(58)~~ means measures designed to reduce or eliminate human exposure to lead hazards.

~~(60)~~ "Residential dwelling" is defined by 40 C.F.R. 745.223.

~~(59)~~ means a building containing one (1) or more residential dwellings.

~~(61)~~ "Room" is defined by 40 C.F.R. 745.63.

~~(60)~~ "Small-scale" means an abatement project with less than ten (10) residential dwellings.

~~(61)~~ means a separate part of the inside of building, that is separated from adjoining rooms by build-in walls or archways that extend at least six (6) inches from the intersecting wall.

~~(62)~~ "Soil-lead hazard" is defined by 40 C.F.R.

~~745.65(c)~~ means bare soil, on residential property or the property of a child-occupied facility, containing lead at or greater than the levels specified at 902 KAR 48:040, Section 13].

~~(62)~~~~(63)~~ "Soil sample" means a sample collected in a representative location using:

- (a) ASTM E 1727 "Standards Practice for Field Collection of Soil Samples for Lead Determination by Atomic Spectroscopy Techniques";
- (b) A documented methodology; or
- (c) An equivalent method.

~~(63)~~~~(64)~~ "Small-scale" means an abatement project with less than ten (10) residential dwellings.

~~(65)~~ "Target housing" is defined by KRS 211.9061(5).

~~(64)~~ "Third-party examination" means a written test approved and administered by the department or its designated agent.

~~(65)~~~~(66)~~ "Training day" means eight (8) training hours.

~~(66)~~~~(67)~~ "Training hour" is defined by 40 C.F.R. 745.223.

~~(67)~~ means at least fifty (50) minutes of actual teaching.

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including:

- (a) Lecture;
- (b) Learning activities;
- (c) Small group activities;
- (d) Demonstrations;
- (e) Evaluations; and
- (f) Hands-on experience.

~~(68) "Third-party examination" means a written test approved and administered by the department or its designated agent.~~

~~(69) "Training manager" is defined by 40 C.F.R. 745.223.~~

~~(68) means the individual responsible for administering a training program and monitoring the performance of instructors.~~

~~(70) "Window trough" is defined by 40 C.F.R. 745.63.~~

~~(69) or "window well" means:~~

~~(a) For a typical double-hung window, the proportion of the exterior window sill between the interior window sill and the frame of the storm window; or~~

~~(b) If there is no storm window, the area upon which the upper and lower sashes rest when placed in their lowest position.~~

~~(74) "Wipe sample" is defined by 40 C.F.R. 745.63.~~

~~(70) means a sample collected by wiping, with an approved wipe sampling material, a representative surface of a known area, as determined by:~~

~~(a) ASTM E 1728: "Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrograph Technique";~~

~~(b) A documented methodology described in 902 KAR 48:040, Section 2; or~~

~~(c) An equivalent method.~~

~~(72) "Wipe sampling material" means that the material used for wiping complies within ASTM E 1792 "Standards specifications for wipe sampling material for lead in surface dust."~~

~~(73) "XRF" means an x-ray fluorescence device that indicates the lead levels of paint on a painted surface.~~

STEVEN J. STACK, MD, MBA, Commissioner  
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 17, 2021

FILED WITH LRC: July 13, 2021 at 12:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 27, 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 September 20, 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 September 30, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation lists the definitions for terms used throughout 902 KAR Chapter 48 administrative regulations.

(b) The necessity of this administrative regulation: This

administrative regulation is necessary to ensure a consistent understanding of the terms used throughout 902 KAR Chapter 48 administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.9063 authorizes the Department for Public Health to create and administer a certification program for persons who perform lead-hazard detection or abatement activities; and are to promulgate administrative regulations for the enforcement of the certification program. KRS 211.9065 authorizes the department to create and administer an accreditation program for training programs that provide training for certified lead-hazard detection and abatement personnel. KRS 211.9071 requires the department to comply with the applicable rules and regulations of the United States Department of Housing and Urban Development, the United States Occupational Safety and Health Administration, the United States Environmental Protection Agency, and other federal agencies with jurisdiction over issues concerning lead hazards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure all those certified for lead-hazard detection and abatement activities, and those offering training for certification of lead hazard detection and abatement personnel have a consistent understanding of the terms used throughout 902 KAR Chapter 48 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 amendment to this administrative regulation updates defined terms, removes definitions for terms not used in 902 KAR Chapter 48 administrative regulations, and cites to the applicable code of federal regulation for defined terms.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary for compliance with KRS Chapter 13A drafting rules.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.9071 requires compliance with federal rules and regulations. The amendment to this administrative regulation cites to the federal code of regulation for defined terms when applicable.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will help to ensure the department is operating in compliance with the federal rules and regulations regarding lead-hazard detection and abatement activities, and the training programs for personnel engaged in these activities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently there are fifty-four (54) companies, 295 individuals, and seven (7) training providers registered with the department. The amendment to this administrative regulation affects those currently registered with the department to preform lead-hazard activities, and affects all future registrants.

(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: Lead hazard detection and abatement personnel will need to review the amendment to this administrative regulation to ensure a consistent understanding of terminology. Training program personnel will need to review the amendment to this administrative regulation to ensure a consistent understanding of terminology and may need to update the training resource materials.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There will be no costs to lead hazard detection and abatement personnel.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Lead hazard personnel and training program providers will have a consistent understanding of terms used throughout 902 KAR Chapter 48 administrative regulations.

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(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This is an ongoing program, there is no initial cost associated with this amendment.

(b) On a continuing basis: There is no costs associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Environmental Lead Program is funded through a mix of federal dollars, state general fund dollars, and revenue received from the fees for certification, permitting, and training program accreditation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: An increase in fees or funding is not necessary to implement 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 administrative regulation does not contain any fees.

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this administrative regulation affect all entities equally.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Public Safety Branch in the Division of Public Health, Protection and Safety.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 211.090(3), 211.9065(4), 211.9067, 211.9071, and 40 C.F.R. Part 745.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year? No change in administration cost due to no change in work activities.

(d) How much will it cost to administer this program for subsequent years? No change in administration cost due to no change in work activities.

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 federal Environmental Protection Agency (EPA) provides eighty-five (85) to ninety (90) percent of the funding for the Environmental Lead Program. This funding is dependent upon the current grant cycle. Program income received from fees and state general fund dollars cover the remaining balance. Funds used to cover program expenses cycles between federal monies and the state program income depending upon receipt of the federal allotments. Grant funding periods range from three (3) to five (5) years. The Environmental Lead Program has maintained this grant since the late 1990's. At this time, the EPA does not see an end to this grant program and continues to fund all eligible states.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. Part 745

2. State compliance standards. KRS 211.9071 requires compliance with federal rules and regulations for all persons certified to perform lead hazard detection and abatement activities; all training programs for personnel engaged in these activities; and the Department for Public Health.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation cites to the federal definition for terms used for lead hazard detection and abatement activities, and for training programs for personnel engaged in these activities.

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 a stricter requirement, or an additional or different responsibility or requirement, than required by federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

### CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (Amendment)

#### 902 KAR 48:020. Training and certification requirements for persons who perform lead-hazard detection or [lead-hazard] abatement.

RELATES TO: KRS 211.180, 211.900-211.905, 211.990, 211.994, 217.801

STATUTORY AUTHORITY: KRS 211.090(3), 211.9063, 211.9067, 211.9069[~~211.9061-211.9075~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.9063(3) requires the Department for Public Health to promulgate administrative regulations to establish the training and testing requirements and procedures for certification of persons who perform or offer to perform lead-hazard detection or [lead-hazard] abatement in target housing or child-occupied facilities. KRS 211.9063(4) requires the department to promulgate administrative regulations to provide for the enforcement of the certification program. KRS 211.9067 requires the department to promulgate administrative regulations to establish a schedule of fees for permits and certification and accreditation programs. KRS 211.9069 authorizes the department to establish terms and conditions for granting equivalent certificates. This administrative regulation establishes requirements, procedures, and fees for lead-hazard[-] related permits, certification, and accreditation, establishes terms and conditions for equivalent certification, and establishes procedures for the enforcement of the certification program.

Section 1. Application Procedures. An applicant for certification shall submit to the department:

(1) An application fee:

(a) In the amount established in Section 8 of this administrative regulation;

(b) By check or money order; and

(c) Made payable to the Kentucky State Treasurer;

(2) An "Application for Individual Certification"[~~A document containing the following information:~~

(a) Name of applicant;

(b) Company;

(c) Address;

(d) Phone number;

(e) ~~The discipline for which the applicant is requesting certification]; and~~

(3) The following documents:

(a) A current color photograph of the applicant[~~portrait~~] at least two (2) by two (2) inches in size;

(b) A copy of a course completion certificate received from a course approved by the department; and

(c) Documentation demonstrating that the applicant has met the initial requirements established for the indicated discipline, as described in Section 4 of this administrative regulation.

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Section 2. Departmental Review and Certification. (1) The department shall:

(a) Review and approve or disapprove the application for initial certification or recertification; and

(b) Notify the applicant, within ten (10) working days of receipt of the application, of the results of the review.

(2) An applicant whose application for a discipline requiring a third-party examination is approved shall:

(a) Pay to the department ~~the~~<sup>an</sup> examination fee in an amount established in Section 8 of this administrative regulation;

(b) Schedule with the department a date and time to take the examination;

(c) Be permitted to take the examination three (3) times within a twelve (12) month period of time;

(d) If the applicant fails the third examination, complete another approved course before reapplying for certification;

(e) If the applicant passes or is not required to take an examination, shall pay a discipline fee in an amount established in Section 8 of this administrative regulation.

(3) If an application is found to be deficient:

(a) The department shall notify the applicant that:

1. Specified supplemental documentation is required;

2. Additional education or training is required; or

3. Other specified information is necessary to determine the applicant's qualifications.

(b) The applicant shall:

1. Submit the requested information before qualifying to take the required examination or otherwise complete the application process; and

2. Within twelve (12) months, become certified by the department; or

3. Reapply for certification and pay additional specified fees.

(4) The department shall:

(a) Grant individual certification upon:

1. Satisfaction of the requirements for application approval and education or training; and

2. Payment of the discipline fee;

(b) Issue a certification certificate and identification card valid for a period of two (2) years from the date of completion of the required course of training.

Section 3. Certification Through Reciprocity. An applicant shall be considered for certification by the department under an equivalent certification agreement established at KRS 211.9069.

Section 4. Initial Requirements for Each Discipline. (1) Lead-hazard abatement worker shall successfully complete a departmental-approved lead abatement worker course.

(2) Lead-hazard inspector shall:

(a) Successfully complete an approved training course for inspectors;

(b) Have a high school diploma or equivalent; or

(c) Have a least one (1) year's related work experience.

(3) Lead-hazard risk assessor shall:

(a) Successfully complete an approved inspector course prior to the completion of an approved risk assessor course; and

(b) Have at least one (1) of the following:

1. Certification as an industrial hygienist, professional engineer, registered architect, or registered sanitarian;

2. A bachelor's degree, and one (1) year related work experience;

3. An associate degree, and two (2) years related work experience; or

4. A high school diploma or equivalent, and at least (3) years related work experience.

(4) Lead-hazard supervisor shall have:

(a) Successfully completed an accredited training course for supervisors;

(b) A high school diploma or equivalent; and

(c) At least two (2) years related work experience.

(5) Lead-hazard project designer shall have:

(a) Successfully completed an approved training course for supervisor prior to successfully completing an approved project

designer course; and

(b) One (1) of the following:

1. A bachelor's degree in engineering, architecture, or a related profession, and one (1) year related work experience; or

2. Four (4) years related work experience.

(6) Lead dust sampling technician shall have:

(a) Successfully completed an approved training course; and

(b) Successfully completed department proficiency requirements.

Section 5. Certification of Lead-hazard Company. (1) A company shall be certified by the department prior to conducting lead-hazard assessment and abatement activities and shall qualify as follows.

(2) The company applying for certification shall:

(a) Pay an application fee as identified in Section 8 of this administrative regulation; and

(b) Submit an "Application for Company Certification" with the following information:

1. A list of department certified employees; and

2. Notarized affidavit stating that the company is knowledgeable of and will follow the work practice standards established by 902 KAR 48:040.

Section 6. Individual Recertification. (1) An applicant for recertification shall, at least thirty (30) days before the expiration date indicated on the certificate, submit to the department:

(a) A completed application;

(b) A fee established at Section 8 of this administrative regulation; and

(c) Documentation of successful completion of an approved refresher course, for the appropriate discipline, taken within the last twelve (12) months of the certification period.

(2) An applicant who applies for recertification after the time specified in subsection (1) of this section, but within six (6) months after the certification has lapsed, shall:

(a) Pass a department-approved refresher course; and

(b) Retake and pass the applicable third-party examination under the process identified in Section 2 of this administrative regulation.

(3) An applicant who fails to reapply for certification after six (6) months from the date that the certification has lapsed shall:

(a) Pass an initial course; and

(b) Reapply through the certification process as identified in Section 2 of this administrative regulation.

Section 7. Company Recertification. A lead-hazard company shall apply for recertification by submitting:

(1) The fee established by Section 8 of this administrative regulation;

(2) A current listing, as of the date of recertification, of certification numbers identifying the employees engaged in lead-hazard activities; and

(3) A notarized affidavit certifying that the company:

(a) Has continued to use the work practice standards established by 902 KAR 48:040; and

(b) Uses only departmental-certified employees to conduct lead-hazard activities in target housing and child-occupied facilities in the Commonwealth.

**Section 8. Fee Schedule.**

| Type or discipline                                 | Fee   |
|--|-------|
| Application  | \$50  |
| Third-party exam                                   | \$50  |
| Lead dust sampling technician                      | \$100 |
| Lead-hazard project designer                       | \$300 |
| Lead-hazard risk assessor                          | \$250 |
| Lead-hazard inspector                              | \$200 |
| Lead-hazard supervisor                             | \$150 |
| Lead-hazard abatement worker                       | \$75  |
| Lead-hazard company                                | \$200 |
| Reissue of lost certificate or identification card | \$25  |

Section 9. Suspension, Revocation, Denial and Modification of Certificates. If the department suspends, revokes, denies, or modifies certification, it shall notify the certificate holder, in writing, of the following:

- (1) The legal and factual basis for the suspension, revocation, denial, or modification;
- (2) The commencement date and duration of the suspension, revocation, or modification;
- (3) Action, if any, which the certified person may take to avoid suspension, revocation, or modification, or to receive certification in the future;
- (4) The opportunity and method for requesting a hearing prior to final department action; and
- (5) Other information the department deems appropriate.

Section 10. Administrative Hearings. An administrative hearing shall be conducted in accordance with 902 KAR 1:400.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Application for Individual Certification", 5/2021 edition; and
- (b) "Application for Company Certification", 4/2021 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Environmental Lead Program, Division of Public Health Protection and Safety, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. or online at <https://chfs.ky.gov/agencies/dph/dphps/psb/Pages/lead.aspx>.

STEVEN J. STACK, MD, MBA, Commissioner  
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 17, 2021

FILED WITH LRC: July 13, 2021 at 12:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 27, 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 September 20, 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 September 30, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email [CHFSregs@ky.gov](mailto:CHFSregs@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the certification and training requirements for individuals and companies engaged in lead-hazard detection and abatement activities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure all those who engage in lead-hazard detection or abatement activities are

properly certified by the cabinet. Lead is a toxic metal used in some paints made before 1978. Children are exposed to lead when older buildings are in poor condition. Today, childhood lead poisoning affects 310,000 children in the U.S. six years old and younger. Common renovations can create lead-hazards that can be harmful. Workers who disturb lead-based paint in structures built earlier than 1978 must be certified and follow work practices to keep children safe.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.9063 requires the Department for Public Health to create and administer a certification program for persons who perform or offer to perform lead-hazard detection or lead-hazard abatement services. All persons who perform or offer to perform lead-hazard detection or abatement services in target housing or child-occupied facilities shall be certified by the department. This administrative regulation establishes the certification process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure all persons who perform or offer to perform lead-hazard detection or abatement activities are properly certified and trained.

(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 incorporates by reference the application for certification for an individual seeking certification as a lead-hazard inspector, risk assessor, supervisor, project designer, abatement worker, or sampling technician; and incorporates by reference the application for lead-hazard company certification.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation simplifies the certification process and makes it easier for the regulated entities to obtain and maintain certification for lead-hazard activities.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.9063 requires the Department for Public Health to create and administer a certification program for persons who perform or offer to perform lead-hazard detection or lead-hazard abatement services. The amendment to this administrative regulation ensures those seeking certification are aware of the documentation and training requirements for certification.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation ensures individuals and companies applying for certification for lead-hazard activities are aware of the required forms.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently there are fifty-four (54) companies, 295 individuals, and seven (7) training providers registered with the department. The amendment to this administrative regulation affects those currently registered with the department to perform lead-hazard activities, and affects all future registrants.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: Individuals seeking initial or renewal certification as a lead-hazard inspector, risk assessor, supervisor, project designer, abatement worker, or sampling technician will need to be aware of the documentation and training requirements. A company seeking initial or renewal certification as a lead-hazard company will need to be aware of the documentation requirements and will need to ensure all employees meet the individual certification and training requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in

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question (3): This amendment will not result in any increase in cost 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 makes it easier for the regulated entities to obtain and maintain certification for lead-hazard activities.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This is an ongoing program, there is no initial cost associated with this amendment.

(b) On a continuing basis: There are no additional costs associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Environmental Lead Program is funded through a mix of federal dollars and revenue received from the fees for certification, permitting, and training program accreditation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: An increase in fees or funding is not necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. The fee schedule outlined in Section 8 of this administrative regulation is not changed.

(9) TIERING: Is tiering applied? Tiering is not applied. While there are different training requirements depending on the level of certification sought, all persons who perform or offer to perform lead-hazard detection or lead-hazard abatement services in target housing or child-occupied facilities shall be certified by the department.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Public Safety Branch in the Division of Public Health, Protection and Safety.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 211.090(3), 211.9063, 211.9067, and 211.9069.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 change in revenue due to no change in fees.

(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 change in revenue due to no change in fees.

(c) How much will it cost to administer this program for the first year? No change in administration cost due to no change in work activities.

(d) How much will it cost to administer this program for subsequent years? No change in administration cost due to no change in work activities.

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 federal Environmental Protection Agency (EPA) provides eighty-five (85) to ninety (90) percent of the funding for the Environmental Lead Program. This funding is dependent upon the current grant cycle. Program income received from fees and state general fund dollars cover the remaining balance. Funds used to cover program expenses cycles between federal monies and the state program income depending upon

receipt of the federal allotments. Grant funding periods range from three (3) to five (5) years. The Environmental Lead Program has maintained this grant since the late 1990's. At this time, the EPA does not see an end to this grant program and continues to fund all eligible states.

### CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (Amendment)

#### 902 KAR 48:030. Accreditation of training programs and providers of educational programs for individuals who perform lead-hazard detection and abatement.

RELATES TO: KRS 211.180, 211.9063, 211.9069, 211.9071, 211.9075[211.900-211.905], 211.990, [211.994,] 217.801

STATUTORY AUTHORITY: KRS 211.9065, 211.9067[211.090(3), 211.9061-211.9075]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.9065(3) requires the Department for Public Health to promulgate administrative regulations relating to the accreditation of training programs and providers of educational programs for individuals who perform lead-hazard detection or [lead-hazard] abatement activities in target housing or child-occupied facilities. KRS 211.9067 requires the department to promulgate administrative regulations to establish a schedule of fees for certification and accreditation programs. KRS 211.9065(4) requires the department to promulgate administrative regulations to provide for enforcement of the programs. This administrative regulation establishes requirements for accreditation, curriculum content, training experience, competency and proficiency qualifications, and establishes fees for functions performed by the department.

Section 1. Initial Application Requirements for Training Programs. A training provider shall submit [the following]:

(1) An application review fee of \$200 in the form of a check or money order payable to the Kentucky State Treasurer, unless exempted by federal or state law or regulation;

(2) An "Application for Lead-Hazard Training Accreditation"[~~Management and administrative information as follows:~~

(a) ~~Training provider name;~~

(b) ~~Address; and~~

(c) ~~Telephone number;~~

(3) The name of training manager;

(4) A list of training courses proposed for accreditation;

(5) Documentation of the training manager qualifications as identified in Section 5 of this administrative regulation;

(6) Documentation of principal instructor's qualifications as identified in Section 5 of this administrative regulation;

(7) Copies of student and instructor manuals for each course;

(8) Course outlines;

(9) Copies of course agendas;

(10) The description of the activities and procedures that will be used for conducting the hands-on skills assessment for each course;

(11) Copies of hands-on skills assessment forms;

(12) Copies of course test blueprints;

(13) Copies of course tests;

(14) A copy of the quality control plan; and

(15) The location and description of the facilities and equipment [~~to be~~] used for providing lecture and hands-on training.

Section 2. Review of Accreditation Documentation. (1) The department shall, within thirty (30) calendar days after the receipt of an application for accreditation:

(a) Approve or disapprove the application for accreditation; and  
(b) Notify the applicant of its action.

(2) During the thirty (30) day period established by subsection (1) of this section, the department may request clarification or additional information from the applicant.



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(3) If the department approves an application for a training program, it shall:

(a) Notify the applicant of its approval in writing; and

(b) Indicate the appropriate course fees that are to be paid to the department.

(4) On receipt of the required fee of \$200 for each initial and refresher course, the department shall issue a certificate of accreditation to the training provider.

(5) If the department denies an application it shall:

(a) Notify the applicant of its denial in writing; and

(b) List the necessary additions or corrections to the application.

(6) The training provider shall have six (6) months to:

(a) Make the corrections specified in the notice of denial; and

(b) Reapply for accreditation.

(7) The provider shall be required to pay another application review fee of \$200 to the department before the accreditation review process will be undertaken, if the training provider does not:

(a) Correct the deficiencies; and

(b) Resubmit the application within the six (6) months of the initial application date.

Section 3. Amending Training Program Accreditation. (1) The accreditation of a training program shall be for two (2) years.

(2) After the training provider has applied for and received program accreditation, the provider may add a course discipline by:

(a) Amending the original accredited training program application in writing; and

(b) Paying the application and course fee.

(3) A course added to the training program during the two (2) year accreditation period shall be included with, and applied for under, the application for reaccreditation of the training program.

Section 4. Training Provider Facilities and General Course Requirements. (1) A training provider shall provide:

(a) Adequate facilities for the delivery of the:

1. Lecture;

2. Course test;

3. Hands-on training; and

4. Assessment activities;

(b) One (1) instructor per ten (10) students when conducting hands-on skills activities and assessments;

(c) [~~Adequate~~] Hands-on skills training equipment consistent with current technology;

(d) [~~Adequate~~] Audiovisual equipment to provide effective instruction and lecture to students; and

(e) [~~Appropriate~~] Lighting and space for effective student learning.

(2) A training provider shall:

(a) Give a course test at the completion of each course;

(b) Confirm the identity of each student by examining a photographic identification; and

(c) If applicable, conduct a hands-on skill assessment.

(3) A training provider shall not issue a course completion certificate unless the student has:

(a) Successfully completed the hands-on skills assessment;

(b) Received a score of seventy (70) percent on the course test; and

(c) [~~Has~~] Attended a least ninety (90) percent of each training day for the length of the course.

(4) If necessary, the training provider may allow the student up to two (2) weeks following the course to:

(a) Retake and pass the course examination; and

(b) Complete the hands-on skills assessment requirements.

(5) A course completion certificate shall include [~~the following information~~]:

(a) The name of the student;

(b) The name of the course;

(c) The inclusive dates of the training;

(d) The name and address of the training program;

(e) The signature of the principal instructor;

(f) The signature of the training manager;

(g) The language in which the course was taught, if other than

English; and

(h) A unique identification number for each student.

Section 5. Training Manager and Principal Instructor Qualifications. (1) The training manager shall have:

(a) Two (2) or more years of experience, education, or training in teaching adults; and

(b) A bachelor or graduate degree in:

1. Building construction technology;

2. Engineering;

3. Industrial hygiene;

4. Safety;

5. Public health;

6. Education;

7. Business administration; or

8. Program management; or

(c) Two (2) or more years of experience managing an occupational health and safety training program specializing in environmental hazards; and

(d) Experience in the construction industry, in one (1) of the following areas:

1. Lead or asbestos abatement;

2. Painting;

3. Carpentry;

4. Renovation;

5. Remodeling;

6. Occupational safety and health;

7. Industrial hygiene; or

8. A related field.

(2) The principal instructor shall have:

(a) Two (2) years of experience in adult education and training;

(b) Completed an EPA-model or department approved initial course that the principal instructor will teach, except the worker course; and

(c) Experience, education, or training in:

1. Lead or asbestos abatement;

2. Painting;

3. Carpentry;

4. Renovating;

5. Remodeling;

6. Occupational safety and health; or

7. Industrial hygiene.

Section 6. Training Manager's Duties. The training manager shall:

(1) Designate a qualified principal instructor to:

(a) Organize the course; and

(b) Oversee the teaching of course materials;

(2) Designate guest instructors as needed to provide:

(a) Instruction specific to the lecture;

(b) Hands-on activities; and

(c) Work practice procedures and standards of a course; [~~and~~]

(3) Maintain the validity and integrity of the hands-on skills assessment to ensure that the activities:

(a) Accurately evaluate the trainees' performance of the work practices and procedures associated with the course topics; and

(b) Reflect current technologies, standards and needs of the students;

(4) Maintain the validity and integrity of the course test to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics;

(5) Ensure that the course test was developed in accordance with the course test blueprint submitted with the training accreditation application; [~~and~~]

(6) Develop the quality assurance control plan, that:

(a) Is to be used to maintain and improve the quality of the training program over time; and

(b) Contains [~~at least~~] the procedures for the:

1. Periodic revision of training materials and the course test to reflect innovations in the field; and

2. Training manager's annual review of principal instructor competency; and

(7) Ensure that the training program complies with the

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requirements of this administrative regulation.

Section 7. Knowledge of Work Practice Standards. (1) The training provider shall offer courses that teach:

(a) The work practice standards established in 902 KAR 48:040~~[this administrative regulation,]~~ for conducting lead-hazard activities; and

(b) Other related standards developed by:

1. The EPA; and
2. Other federal and state agencies.

(2) Work practice standards shall be taught in the appropriate courses to provide trainees with knowledge needed to perform safe, effective lead-hazard assessment or abatement activities in target housing and child-occupied facilities.

Section 8. Requirements for Initial Courses. (1) The lead-hazard inspector course shall:

(a) Consist of at least twenty-four (24) training hours;

(b) Include at least eight (8) hours of hands-on training activities; and

(c) Include the following minimum curriculum requirements for inspector course topics:

1. Role and responsibilities of an inspector;
2. Background information on lead and its adverse health effects;
3. Background information on federal, state and local regulations that pertain to lead hazards and lead-hazard assessment and abatement activities;
4. Lead-hazard inspection methods, including selection of rooms and components for sampling or testing, with hands-on activities;
5. Paint, dust, water and soil sampling methodologies, with hands-on activities;
6. Clearance standards and testing, including random sampling, with hands-on activities;
7. Preparation of an inspection report, with hands-on activities; and
8. Recordkeeping.

(2) The lead-hazard risk assessor course shall:

(a) Consist of at least sixteen (16) training hours;

(b) Include at least four (4) hours of hands-on training activities; and

(c) Include the following minimum curriculum requirements for the risk assessor course topics:

1. Role and responsibilities of the risk assessor;
2. Collection of background information to perform a risk assessment;
3. Sources of environmental lead contamination found in paint, surface dust, soil, water and air, packaging and food;
4. Visual inspection for the purpose of identifying potential sources of lead hazards, with hands-on activities;
5. Lead-hazard screening protocol;
6. Sampling for other sources of lead exposure, with hands-on activities;
7. Interpretation of lead-sampling results, including applicable federal or state regulations pertaining to lead hazards, with hands-on activities;
8. Development of hazard control options, the role of interim controls, and operation and maintenance activities to reduce lead hazards; and
9. Preparation of a risk-assessment report.

(3) The lead-hazard supervisor course shall:

(a) Consist of at least thirty-two (32) training hours;

(b) Include at least eight (8) hours of hands-on activities; and

(c) Include the following minimum curriculum requirements for the supervisor course topics:

1. Role and responsibilities of a supervisor;
2. Background information on lead and its adverse health effects;
3. Background information on federal, state, and local regulations that pertain to lead hazards and lead-hazard assessment and abatement activities;
4. Liability and insurance issues relating to lead-hazard

abatement;

5. Risk assessment and inspection report interpretation, with hands-on activities;

6. Development and implementation of an abatement and occupant protection plan;

7. Lead-hazard recognition and control, with hands-on activities;

8. Lead-hazard abatement and ~~[lead-hazard]~~ reduction methods, including restricted practices, with hands-on activities;

9. Interior dust abatement, cleanup, or lead-hazard control and reduction methods, with hands-on activities;

10. Soil and exterior lead dust abatement or lead-hazard control and reduction methods, with hands-on activities;

11. Clearance standards and testing;

12. Cleanup and waste disposal; and

13. Recordkeeping.

(4) The lead-hazard project designer course shall:

(a) Consist of at least eight (8) training hours; and

(b) Include the following minimum requirements for the project designer course:

1. Role and responsibilities of a project designer;

2. Development and implementation of an occupant protection plan for large-scale abatement projects;

3. Lead-hazard abatement and lead-hazard reduction methods, including restricted practices for large-scale abatement projects;

4. Interior dust abatement, cleanup, or lead-hazard control and reduction methods for abatement projects;

5. Clearance standards and testing for large-scale abatement projects; and

6. Integration of lead-hazard abatement methods with modernization and rehabilitation projects for large-scale abatement projects.

(5) The lead-hazard abatement worker course shall:

(a) Consist of at least sixteen (16) training hours;

(b) Include at least eight (8) hours of hands-on training activities; and

(c) Include the following minimum requirements for the worker course:

1. Role and responsibilities of an abatement worker;

2. Background information on lead and its adverse health effects;

3. Background information on federal, state, and local regulations and guidance to lead-hazard abatement;

4. Lead-hazard recognition and control, with hands-on activities;

5. Lead-hazard abatement and lead-hazard reduction methods, including restricted practices, with hands-on activities;

6. Interior dust abatement methods, cleanup, or lead-hazard reduction, with hands-on activities; and

7. Soil and exterior dust abatement methods of lead-hazard reduction, with hands-on activities.

(6) Lead-hazard dust sampling technician course shall:

(a) Consist of eight (8) training hours;

(b) Include at least two (2) hours hands-on training; and

(c) Include the following minimum curriculum for lead technician course:

1. Role and responsibilities of a lead technician;

2. Background information on lead and its adverse health effects;

3. Background information on federal, state and local law pertaining to lead-hazard evaluation and sampling activities;

4. Lead-hazard dust sampling methodologies, with hands-on activities;

5. Lead-hazard~~[hazards]~~ clearance techniques;

6. Preparation of a clearance report with hand-on activities; and

7. Recordkeeping.

Section 9. Requirements for Refresher Courses. (1) To obtain accreditation to offer a refresher-training course, the provider shall meet the following minimum requirements:

(a) The training provider shall have been accredited by the

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department to teach the related initial course; and

(b) The refresher course shall teach the same topics as the initial course and shall include:

1. An overview of current safety practices relating to lead-hazard activities [~~in general~~], including specific information pertaining to the appropriate discipline;

2. Current law relating to lead-hazard abatement, inspection, assessment activities [~~in general~~], including specific information pertaining to the applicable discipline; and

3. Current technologies relating to lead-hazard activities [~~in general~~], including specific information pertaining to the applicable discipline.

(2) The training hour requirements for a refresher course shall be:

(a) Eight (8) hours if the initial course was more than eight (8) hours; or

(b) Four (4) hours if the initial course was eight (8) hours or less.

(3) For each training course offered, the training provider shall:

(a) Provide relevant hands-on skills assessments; and

(b) Give a test at the completion of the course.

Section 10. Renewal of Accreditation of Training Program. (1) Accreditation for a training program shall be for a two (2) year period following issuance.

(2) At least thirty (30) days prior to the expiration date of accreditation a training provider shall:

(a) Apply for renewal of accreditation; and

(b) Submit the following fees:

1. Reapplication review fee of \$100; and

2. Course fee of \$150 per course.

(3) A training provider shall also submit [~~the following information~~]:

(a) An updated "Application for Lead-Hazard Training Accreditation" [~~The training provider's name, address, and telephone number~~];

(b) A list of courses for which the training provider is applying for renewal of accreditation; and

(c) Updated material and other information identified in Section 2 of this administrative regulation.

(4) The application shall be reviewed and approved or denied pursuant to provisions identified in Section 3 of this administrative regulation.

(5) If a training provider fails to apply for renewal of accreditation in accordance with this section, the training provider shall apply for initial accreditation, as established in Section 2 of this administrative regulation.

Section 11. Recordkeeping Requirements. (1) An accredited training provider shall maintain, update, and make available to the department upon request the following records:

(a) Current curriculum, course materials, and documents reflecting changes made to these materials; [~~and~~]

(b) Information regarding how the hands-on assessment is conducted, including:

1. Who conducts the assessment;

2. How the skills are graded;

3. What facilities are used; and

4. The pass or fail rate;

(c) The quality control plan; and

(d) Results of:

1. Student hands-on skills assessments and course tests; and

2. A copy of each student's course completion certificate.

(2) The training provider shall retain the documentation for a minimum of three (3) years and six (6) months.

Section 12. Notification Requirements. (1) The training provider shall notify the department in writing within fourteen (14) calendar days of a change in the following information:

(a) Management;

(b) Organization; or [~~Organizational~~];

(c) Address; and

(d) The transfer of records to the new training provider's

address.

(2) The training provider shall provide written notification to the department at least fourteen (14) calendar days prior to the course start date, indicating the following information:

(a) Training provider name;

(b) Telephone number;

(c) Course name;

(d) Course location;

(e) Course start and end dates [~~date(s)~~];

(f) Name of the principal instructor;

(g) Qualifications for principal instructor if not currently approved under the program accreditation by the department;

(h) Updated course materials including changes in the course agenda; and

(i) Indication if guest instructors are to be used.

(3) The training provider shall provide written notification of course correction or cancellation at a minimum of two (2) days prior to the course start date.

(4) Within fourteen (14) calendar days after the completion of a course, the provider shall provide to the department a student attendance listing containing [~~the following information~~]:

(a) The name of the initial, or refresher course;

(b) Student information as follows:

1. Name;

2. Address;

3. Company affiliation if any; and

4. Test scores.

(5) A course shall not be approved if the provider fails to provide notice required by this section.

(6) The department may revoke a training program's accreditation, as authorized by KRS 211.9065(4), if a deficiency in compliance with this section is of such severity as to warrant revocation.

(7) The department may allow the training provider a variance in the notification period as identified in subsection (2) of this section if the provider:

(a) Submits a variance request in writing; and

(b) Indicates the reasons for a reduced notification time.

Section 13. Course and Training Provider Audits. (1) The training provider shall permit access to representatives of the department in order to conduct on-site:

(a) Audits at the provider location; and

(b) Monitoring of the training courses.

(2) The department shall, if needed, use other methods to verify the documentation and continued requirements for accreditation.

Section 14. Notice to Suspend, Revoke, Deny Accreditation. (1) The department shall suspend or revoke the accreditation of a training program if the department determines that the training provider has failed to comply with the requirements established by this administrative regulation.

(2) If the department suspends, revokes, or denies the accreditation of the training program, it shall notify the affected entity in writing of the following:

(a) The legal and factual basis for the suspension, revocation, or denial;

(b) The commencement date and duration of the suspension, or revocation; and

(c) The opportunity and method for requesting a hearing prior to final department action.

Section 15. Administrative Hearings. Administrative hearings shall be conducted in accordance with 902 KAR 1:400.

Section 16. Incorporation by Reference. (1) "Application for Lead-Hazard Training Accreditation", 4/2021, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Environmental Lead Program, Division of Public Health Protection and Safety, Department for Public Health, 275 East Main Street, Frankfort,

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Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. or online at <https://chfs.ky.gov/agencies/dph/dphps/psb/Pages/lead.aspx>.

STEVEN J. STACK, MD, MBA, Commissioner  
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 17, 2021

FILED WITH LRC: July 13, 2021 at 12:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 27, 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 September 20, 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 September 30, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation outlines the application and approval process for lead-hazard training providers, including classroom requirements and course content.

(b) The necessity of this administrative regulation: This administrative regulation ensures the training standards for individuals who test or disturb lead based paint to ensure that children are protected from the dangers of lead. Lead is a toxic metal used in some paints made before 1978. Children are exposed to lead when older buildings are in poor condition. Today, childhood lead poisoning affects 310,000 children in the U.S. six (6) years old and younger. Common renovations can create lead-hazards that can be harmful. Workers who disturb lead-based paint in structures built earlier than 1978 must be certified and follow work practices to keep children safe.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.9065 requires the Department for Public Health to create and administer an accreditation program for training programs providing or offering to provide an education program designed to prepare persons for certification in lead-hazard detection or lead-hazard abatement services. All training programs providing or offering to provide an education program designed to prepare persons for certification in lead-hazard detection or lead-hazard abatement services, pursuant to KRS 211.9063, shall be accredited by the department. This administrative regulation establishes the accreditation process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures all training programs providing or offering to provide lead-hazard education programs are properly accredited.

(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 incorporates by reference the application for lead-hazard training accreditation, and makes other amendments for compliance with KRS Chapter 13A drafting rules.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation will ensure training program providers are aware of the process to obtain and maintain accreditation for lead-hazard education programs.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.9065 requires the Department for Public Health to create and administer an accreditation program for programs that provide or offer to provide an education program designed to prepare persons for certification in a lead-hazard detection or lead-hazard abatement services. The amendment to this administrative regulation ensures those seeking accreditation are aware of the documentation requirements for accreditation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that training providers applying for accreditation are aware of the required documentation, including the application form.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment to this administrative regulation impacts the seven (7) accredited training programs currently registered with the department, and any new training programs that seek accreditation.

(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: Accredited training program providers will need to be aware of the documentation and training requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): No change in cost will be incurred from the current regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will make it easier for the regulated entities to obtain and maintain accreditation for lead-hazard educational programs.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This is an ongoing program, there is no initial cost associated with this amendment.

(b) On a continuing basis: There are no additional costs associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Environmental Lead Program is funded through a mix of federal dollars and revenue received from the fees for certification, permitting, and training program accreditation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: An increase in fees or funding is not necessary to implement the amendment to this administrative regulation

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. The fee schedule outlined in this administrative regulation is not changed.

(9) TIERING: Is tiering applied? Tiering is not applied. The requirements of this administrative regulation affects all those engaged in lead-hazard educational programs equally.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will

be impacted by this administrative regulation? This administrative regulation impacts the Public Safety Branch in the Division of Public Health, Protection and Safety.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 211.9065 and 211.9067.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 change in revenue due to no fee changes.

(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 change in revenue due to no fee changes

(c) How much will it cost to administer this program for the first year? No change in administration cost due to no change in work activities.

(d) How much will it cost to administer this program for subsequent years? No change in administration cost due to no change in work activities.

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 federal Environmental Protection Agency (EPA) provides eighty-five (85) to ninety (90) percent of the funding for the Environmental Lead Program. This funding is dependent upon the current grant cycle. Program income received from fees and state general fund dollars cover the remaining balance. Funds used to cover program expenses cycle between federal monies and the state program income depending upon receipt of the federal allotments. Grant funding periods range from three (3) to five (5) years. The Environmental Lead Program has maintained this grant since the late 1990s. At this time, the EPA does not see an end to this grant program and continues to fund all eligible states.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Public Health**  
**Division of Public Health Protection and Safety**  
**(Amendment)**

**902 KAR 48:040. Lead-hazard abatement permit fees, permit requirements and procedures, and standards for performing lead-hazard detection and abatement.**

RELATES TO: KRS 211.180, 211.9063, 211.9071, 217.801, 40 C.F.R. [Part] 745.227

STATUTORY AUTHORITY: KRS 211.090(3), [244-9064-]211.9075

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.9075 requires the Department for Public Health [is required by statute] to promulgate administrative regulations relating to lead-hazard detection and abatement. This administrative regulation establishes the lead-hazard abatement permit application process, including application and permit fees, permit requirements and procedures, and the standards for performing lead-hazard detection and abatement activities in target housing or child-occupied facilities.

Section 1. Work Practice Requirements and Methodologies. Lead-hazard detection and abatement activities shall comply with:

(1) The work practice standards and procedures established by this administrative regulation;

(2) Documented methodologies recognized in federal EPA rules identified in 40 C.F.R. [C.F.R. Part] 745.227 [~~Work practice standards for conducting lead-based paint activities: target housing~~

~~and child-occupied facilities"]; [or]~~

(3) Equivalent methodologies; or

(4) Local ordinances.

~~Section 2. Lead-Hazard Inspections. [A lead-hazard inspection shall comply with the following work practice standards and procedures:]~~

(1) A lead-hazard[An] inspection shall be conducted by a certified lead-hazard inspector or [lead-hazard] risk assessor.

(2) The sites and components specified in subsection (3) of this section shall be:

(a) Selected according to technical methodologies specified in Section 1 of this administrative regulation; ~~and~~

(b) Tested for the presence of lead in paint; and

(c) Excluded from testing if the inspector or risk assessor determines that the components were:

1. Replaced or built after 1978; or

2. Not coated with lead-based[containing] paint or similar coating.

(3) The sampling scheme shall be [as follows]:

(a) For a single residential dwelling or child-occupied facility, interior and exterior components with a distinct painting history; and

(b) For a multifamily dwelling or child-occupied facility, additional components with a distinct painting history in common areas.

(4) Paint shall:

(a) Be sampled under the technical methodologies specified in Section 1 of this administrative regulation; and

(b) Tested in the following manner:

1. The analysis of paint to determine the presence of lead shall be conducted using documented methodologies that incorporate adequate quality control procedures; and

2. Paint chip samples that have been collected shall be analyzed by an EPA-recognized laboratory to determine if they contain hazardous levels of lead.

(5) A certified lead-hazard inspector or risk assessor shall prepare a lead-hazard[an] inspection report that shall include [the following]:

(a) Date of each lead-hazard inspection;

(b) Address of building;

(c) Date of construction;

(d) Apartment numbers, if applicable;

(e) Name, address, and telephone number of the owner of each residential dwelling or child-occupied facility;

(f) Name, signature, and certification number of the certified lead-hazard inspector or risk assessor who conducted the inspection;

(g) Name, address, and telephone number of the firm or individual employing each lead-hazard inspector or risk assessor, if applicable;

(h) Name, address, and telephone number of the laboratory that conducted an analysis of collected samples, if applicable;

(i) The testing method, testing device, or sampling procedure employed for paint analysis, including:

1. Quality control data; and

2. If used, the serial number and radioactive materials license number of the XRF device;

(j) Specific locations of each painted component tested; and

(k) The results of the lead-hazard inspection expressed in terms appropriate to the sampling method used.

(6) A copy of the lead-hazard inspection report shall be submitted to the department within thirty (30) days after the completion of the inspection.

~~Section 3. Lead-Hazard Screens. [A lead-hazard screen shall comply with the following work practice standards and procedures:]~~

(1) A lead-hazard screen shall be conducted by a certified lead-hazard risk assessor.

(2) For a residential dwelling or child-occupied facility, the lead-hazard risk assessor shall:

(a) Collect background information regarding the physical characteristics and occupant use patterns of the residential

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dwelling or child-occupied facility that may cause lead exposure to a child;

(b) Conduct a visual inspection to determine if deteriorated paint is present;

(c) Test for the presence of lead on each surface with deteriorated paint determined to have a distinct painting history;

(d) Collect paint chip and dust wipe samples using the technical methodologies specified in Section 1 of this administrative regulation;

(e) Collect at least two (2) composite dust wipe samples from each room where children are most likely to come in contact with dust, as follows:

1. One (1) from the floors; and
2. One (1) from the window troughs or sills;

(f) For a multifamily dwelling, collect one (1) additional sample from each common area where children are most likely to come in contact with lead dust;

(g) Submit paint chip or dust samples to an EPA-approved laboratory for analysis;

(h) Prepare a lead-hazard screening report that shall include:

1. The applicable component information required for a complete lead-hazard risk assessment identified in Section 4 of this administrative regulation~~subsection (4) of this section~~; and

2. If warranted, recommendations for a follow-up lead-hazard risk assessment and other appropriate action; and

(i) Submit to the department, within thirty (30) days from the completion of the assessment, a copy of the lead-hazard screening report.

Section 4. Lead-Hazard Risk Assessments. ~~[Risk assessment shall comply with the following work practice standards and procedures shall comply with the provisions of this section.]~~

(1) A risk assessment shall be conducted by a certified lead-hazard risk assessor.

(2) A lead-hazard risk assessor shall:

(a) Collect samples using a methodology specified in Section 1 of this administrative regulation;

(b) Conduct a visual inspection of a residential dwelling or child-occupied facility to:

1. Locate deteriorated paint;
2. Assess the extent and causes of the deterioration of paint;

~~and~~

3. Inspect for other potential sources of lead hazard; and

4. Observe any chewable, friction, or impact surfaces;

(c) Collect information regarding the physical characteristics and occupant use patterns of the residential dwelling or child-occupied facility that may cause lead exposure to children;

(d) Test every surface coated with visibly-deteriorated paint for the presence of lead;

(e) For a residential dwelling, collect dust wipe samples, either composite or single surface, from the interior window ~~sills~~~~sill(s)~~ and floor, where children are most likely to come into contact with dust in the living area;

(f) For a multifamily dwelling, collect additional dust wipe samples in the following locations:

1. Each common area adjacent to the residential dwelling or child-occupied facility from which samples have been taken; and
2. Each common area in the building;

(g) For a child-occupied facility, collect dust wipe samples in the following locations:

1. Each room, hallway, or stairwell; and
2. Other common areas;

(h) ~~Collect~~~~Collected~~ soil samples at the following locations:

1. Exterior play areas where bare soil is present;
2. Dripline or foundation areas where bare soil is present; and
3. The rest of the yard where bare soil is present;

(i) Submit collected paint chip, dust wipe, or soil samples to an EPA-recognized laboratory; and

(j) Prepare a lead-hazard risk assessment report.

(3) The information provided in a report shall include:

(a) Date of assessment;

(b) Address of each building;

(c) Date of construction of buildings;

(d) Apartment numbers, if applicable;

(e) Name, address, and telephone number of each owner of each building;

(f) Name, signature, and certification number of the lead-hazard~~certified~~ risk assessor conducting the assessment;

(g) Name, address, and telephone number of the firm or individual employing each lead-hazard~~certified~~ risk assessor, if applicable;

(h) Name, address, and telephone number of each recognized laboratory conducting an analysis of collected samples;

(i) Results of the visual inspection;

(j) Testing method and sampling procedure for paint analysis employed;

(k) Specific locations of each painted component tested for the presence of lead;

(l) Diagram or floor plan showing testing locations;

(m) Data collected from on-site testing, including:

1. Quality control data; and

2. If used, the serial number of the XRF device;

(n) Results of laboratory analysis on:

1. Collected paint;

2. Soil; and

3. Dust wipe samples;

(o) Other sampling results;

(p) Background information collected described at subsection (2)(c) of this section;

(q) The history of any previous lead-hazard inspection or analysis for the presence of lead, lead-hazard assessments, or other lead hazards found in the residence, that have been given consideration, as a part of the present lead-hazard determination;

(r) A description of:

1. The location, type, and severity of identified lead hazards associated with paint; and

2. Other potential lead hazards;

(s) A description of interim controls or lead-hazard abatement for each identified lead hazard, including:

1. Description of interim controls or lead-hazard abatement options; and

2. Recommendations for addressing the lead hazard; and

(t) If the use of an encapsulant or enclosure is recommended, a suggested maintenance and monitoring schedule is required.

(4) A copy of the lead-hazard risk assessment report shall be submitted to the department within thirty (30) days after the completion of the assessment.

Section 5. Lead-Hazard Abatement Permit Application. (1) The ~~following items shall be submitted to the department by the~~ certified person who prepared the abatement plan shall submit:

(a) An "Application for Lead-Hazard Abatement Activities";

~~(b)~~ An abatement plan with components as identified in Section 7(3)~~(b)~~ of this administrative regulation;

~~(c)~~~~(b)~~ An occupant protection plan with components identified in Section 7(4)~~(c)~~ of this administrative regulation; and

~~(d)~~~~(c)~~ The fee established by Section 6 of this administrative regulation.

(2) The department shall consider and render a decision regarding an application in accordance with KRS 211.9063(6).

(3) If an application is not approved, the applicant shall:

(a) Be notified in writing of the deficiencies;

(b) Correct the deficiencies indicated in the department's notice of disapproval; and

(c) Submit to the department:

1. The corrected application; and

2. An additional application review fee.

(4) A lead-hazard~~An~~ abatement permit shall be valid for the dates of issuance, unless extended by the department for the following conditions:

(a) Written request seven (7) days prior to expiration date by the lead-hazard abatement permit holder; and

(b) Provision of the following information:

1. Amended dates of abatement;

2. An amended abatement plan, if applicable; and

3. An amended occupant protection plan, if applicable.

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(5) If the lead-hazard abatement activity has not been completed within the dates of issuance or permit dates extended, the lead-hazard abatement permit holder shall:

- (a) Apply for an amended permit; and
- (b) Pay the amended permit fee established in Section 6 of this administrative regulation.

Section 6. Application and Lead-Hazard Abatement Permit Fee Schedule. (1) The fee for a lead-hazard abatement permit shall be:

- (a) For each single family dwelling or child-occupied facility, \$225;
  - (b) For a multifamily dwelling, \$100 per residence;
  - (c) Exterior abatement, \$125 per building; and
  - (d) Soil abatement, fifty (50) dollars per project.
- (2) Other fees required are:
- (a) Application review fee, fifty (50) dollars;
  - (b) Amended permit, twenty-five (25) dollars; and
  - (c) Reinspection fee, \$100.

Section 7. Lead-Hazard Abatement and Occupant Protection Plans. [~~Standards and requirements for abatement and occupant protection plans are as follows:~~]

(1) Lead-hazard abatement and occupant protection plans for small-scale projects shall be prepared by a lead-hazard supervisor.

(2) Lead-hazard abatement and occupant protection plans shall be prepared by a lead-hazard[~~certified~~] project designer if:

- (a) The project is a large-scale project; and
- (b) The planned abatement activity creates additional lead waste material not considered low waste, such as:

- 1. Filtered personal or commercial water;
- 2. Disposable personal protective clothing; and
- 3. Plastic sheeting.

(3)[(2)] An abatement plan shall include:

(a) Name and certification number of the lead-hazard supervisor or project designer [~~individual~~] who prepared the plan;

(b) Name and certification numbers of all lead-hazard [~~personnel~~][~~individuals~~] working at the site;

- (c) Anticipated start and finish dates;
- (d) Daily work hours at the project;
- (e) Copy of job specifications relating to the project;
- (f) Location of the site;
- (g) Type of structure;
- (h) Sequence of work activity;
- (i) Lead-hazard abatement methods to be used;
- (j) Diagram or floor plan showing [~~abatement locations~~];

1. Containment locations, including fencing;

2. Lead-hazard warning signs;

3. Wash stations and waste locations; and

4. Entrance and egress;

(k) Enclosure and containment methods and locations;

(l) Locations of rooms and components where lead-hazard abatement will occur;

(m) Reason for the selection of particular lead-hazard abatement methods for each component;

(n) If encapsulants are to be used, product usage information;

(o) Cleanup measures; and

(p) Name and address of the lead-hazard inspector or risk assessor[~~individual~~] conducting lead-hazard clearance testing.

(4)[(3)] An occupant protection plan shall be:

(a) [~~Be~~] Unique to the residential dwelling or child-occupied facility;

(b) Developed prior to the lead-hazard abatement; and

(c) [~~Be~~] A detailed, written description of the measures and management procedures that will be taken during the lead-hazard abatement to protect the occupants of the building from exposure to lead hazards.

Section 8. Lead-Hazard Abatement On-site Project Requirements. (1) In compliance with KRS 211.9063(5), a lead-hazard abatement activity shall not be conducted until the department issues a permit.

(2) The abatement permit shall be kept at the lead-hazard abatement site until:

- (a) Project is complete;
- (b) Lead-hazard clearance is achieved; and
- (c) The department has conducted the quality assurance inspection required by KRS 211.9063(6).

(3) Only lead-hazard personnel[~~a certified person~~] shall be allowed on the lead-hazard abatement site during the time that lead-hazard abatement activities are being conducted.

(4) All lead-hazard personnel[~~A certified person~~] shall keep the department-issued identification card in possession while on site.

(5) The lead-hazard[~~certified~~] supervisor or [~~certified~~] project designer who prepared the lead-hazard abatement plan shall be:

(a) Available, within two (2) hours, to the lead-hazard abatement[~~lead-abatement~~] workers while lead-hazard abatement[~~lead-abatement~~] activities are conducted; and

(b) On site during:

- 1. Work site preparation;
- 2. The post lead-hazard[~~postlead-~~]abatement cleanup of work areas; and

3. At the time of the departmental quality assurance inspection.

(6) The lead-hazard abatement permit holder shall ensure that all[~~a~~] lead-hazard abatement and post lead-hazard [~~postlead-~~]abatement activities comply with Section 1 of this administrative regulation[~~activity complies with applicable federal, state, and local law and requirements~~].

Section 9. Specific Lead-Hazard Abatement Practices. (1) Soil abatement shall be conducted as follows:

(a) If soil containing a hazardous level of lead is removed, the lead-hazard abatement permit holder shall[~~will~~] provide analytical information to the department that the replacement soil does not contain amounts over the established in Section 14 of this administrative regulation[~~soil lead-hazard levels~~]; or

(b) If soil containing a hazardous lead level is not removed, the lead hazard in the soil shall be considered [~~as~~] abated when permanently covered soil is obtained by a method identified in Section 1 of this administrative regulation.

(2) The following work practices used for lead-based paint removal shall be prohibited:

- (a) Open-flame burning or torching; or
- (b) Machine sanding or grinding, or abrasive blasting or sandblasting unless conducted using a high efficiency particulate air exhaust control that removes particles of three-tenths (0.3) microns or larger from the air at 99.97 percent or greater efficiency.

(c) Dry scraping unless:

- 1. In conjunction with heat guns; [~~or~~]
- 2. Around electrical outlets; or
- 3. In the treatment of defective paint spots that total no more than:

- a. Two (2) square feet on surfaces within a room; or
  - b. Twenty (20) square feet on exterior surfaces.
- (d) Use of a heat gun at temperatures that exceed 1,100 degrees Fahrenheit.

Section 10. Post Abatement Lead-Hazard[~~Postabatement~~] Clearance Procedures. (1) Post abatement lead-hazard[~~Post-lead hazard-abatement~~] clearance procedures shall be performed according to a method identified in Section 1 of this administrative regulation.

(2) Post abatement lead-hazard[~~Postabatement~~] clearance shall be performed by a lead-hazard[~~certified~~] inspector or [~~certified~~] risk assessor.

(3) Lead-hazard[~~Postlead-hazard~~] clearance after a nonabatement activity, such as renovation or remodeling, shall be performed by a lead-hazard[~~certified~~] inspector, risk assessor, or sampling technician.

(4) A visual inspection shall be conducted before sampling to examine for deteriorated paint, dust, or debris.

(5) Clearance sampling shall not take place if deteriorated painted surfaces or visible amounts of dust or debris are found during the visual inspection.

(6) Sampling shall be conducted using single or composite dust wipe sampling as identified in Section 1 of this administrative regulation.

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(7)(a) The certified person who conducted the clearance shall compare the residual lead levels, as determined by the laboratory analysis from each dust wipe sample, with clearance dust levels established by Section 13 of this administrative regulation.

(b) If the residual lead levels in a dust wipe sample exceed accepted clearance levels, each component represented by the failed sample shall be recleaned and retested until clearance dust levels have been met.

(8) In a multifamily dwelling with similarly[-] constructed and maintained residential units, random sampling for clearance shall be conducted in accordance with documented methodologies.

(9) The person who conducted the lead-hazard abatement and post abatement[~~postabatement~~] cleanup in the residential dwelling shall not be provided knowledge of the units selected for the random sample.

Section 11. Lead-Hazard Clearance Report. (1) After a lead-hazard clearance, the certified person shall prepare a report containing [the following information]:

- (a) Name of the lead-hazard inspector, risk assessor, or sampling technician conducting the clearance;
- (b) Departmental certification number;
- (c) Address of the property;
- (d) Specified units and areas effected;
- (e) Dates of clearance examination;
- (f) Results of visual assessment;
- (g) Results of dust wipe sample analysis;
- (h) Name and address of laboratory used;
- (i) Project activity information; and
- (j) Lead-hazard reduction or abatement methods used.

(2) A copy of the lead-hazard clearance report shall be submitted to the department within thirty (30) days after the completion of the lead-hazard clearance.

Section 12. Levels of Lead in Paint. The determination of lead-based paint shall be in accordance with 40 C.F.R. 745.227(h)[The following lead levels shall be used to determine if paint or similar coatings are considered as lead-based paint:

- (1) Equal to or in excess of one (1.0) milligrams per square centimeter; or
- (2) More than five-tenths (0.5) percent by weight].

Section 13. Dust-Lead Hazards and Clearance Dust Levels. The maximum acceptable levels used for lead-hazard clearance or other evaluation after the disturbance of lead-based paint, or for determination of potential dust-lead[~~lead-dust~~] hazards in a residential structure or child-occupied facility shall be:

- (1) In accordance with 40 C.F.R. 745.227 for interior components; and
- (2) Below 800 µg/ft<sup>2</sup> for exterior components.[-, are as follows:

|                       |      |
|-----------------------|------|
| Floors                | 40   |
| Interior Window Sills | 250  |
| Window Troughs        | 400  |
| Exterior Components   | 800] |

Section 14. Soil Lead Hazards. The determination of a soil lead hazard shall be in accordance with 40 C.F.R. 745.227(h)[Soil is considered to be a lead hazard on residential property or at a child-occupied facility if the lead level exceeds:

- (1) 400 parts per million in a play area; or
- (2) 1,200 parts per million of bare soil in the rest of the yard].

Section 15. Quality Assurance Inspection. (1) A lead-hazard abatement permit holder shall notify the department of the completion of the abatement services and clearance testing.

(2) The department shall proceed in accordance with quality assurance inspection provisions of KRS 211.9063(6).

(3) A[An] lead-hazard abatement permit holder shall provide the department with access to the project unit to conduct a quality assurance inspection.

(4) If a department inspector discovers visual dust or paint chips, or violative work practices and standards, the inspector shall:

(a) Not conduct sampling; and  
(b) Notify the lead-hazard abatement permit holder that another inspection shall be conducted after:

- 1. Cleanup has been completed; and
  - 2. Another clearance is conducted.
- (5) If a dust wipe sample exceeds clearance levels:

- (a) The components making up the failed sample shall be:
  - 1. Recleaned; or
  - 2. Otherwise lead-hazard abated; and
- (b) Another lead-hazard clearance shall be conducted.

(6) For each failed inspection, the lead-hazard abatement[a] permit holder shall pay a reinspection fee as established by Section 6 of this administrative regulation.

Section 16. Post-Abatement[~~Postabatement~~] Report. (1)(a) A post-abatement [~~postabatement~~] report shall be prepared by either the lead-hazard[~~certified lead-hazard~~] supervisor or [~~lead-hazard~~] project designer who prepared the abatement plan.

(b) The post-abatement[~~postabatement~~] report shall include the:

- 1. Start and completion dates of lead-hazard abatement;
- 2. Name and addresses of the lead-hazard supervisor or project designer[~~certified individual~~] preparing the report;
- 3. Changes made to the occupant protection plan and the lead-hazard abatement plan;
- 4. Name, address, and signature of each lead-hazard[~~certified~~] risk assessor or [~~certified~~] inspector conducting lead-hazard clearance sampling and the date of [~~clearance~~] testing;
- 5. The name of each recognized laboratory that conducted the analysis;
- 6. Results of:
  - a. Lead-hazard clearance testing; and
  - b. Soil analysis, if applicable; and
- 7. Suggested monitoring of encapsulation or enclosure plan according to a methodology identified in Section 1 of this administrative regulation.

(2) The post-abatement[~~postabatement~~] report shall be submitted to the department within thirty (30) days after the completion of the lead-hazard abatement project.

Section 17. Recordkeeping. A report required by this administrative regulation shall be retained by the lead-hazard abatement permit holder, or other certified individual who prepared the report, for three (3) years.

Section 18. Administrative Hearings. An administrative hearing relating to the subject matter of this administrative regulation shall be conducted in accordance with 902 KAR 1:400.

Section 19. Incorporation by Reference. (1) "Application for Lead-Hazard Abatement Activities", 4/2021, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Environmental Lead Program, Division of Public Health Protection and Safety, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. or online at <https://chfs.ky.gov/agencies/dph/dphps/psb/Pages/lead.aspx>.

STEVEN J. STACK, MD, MBA, Commissioner  
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 17, 2021  
FILED WITH LRC: July 13, 2021 at 12:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 27, 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 September 20, 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 September 30, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the lead-hazard abatement permit application process, including abatement permit fees, permit requirements and procedures, and standards for performing lead-hazard detection and abatement activities in target housing or child-occupied facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure those engaged in lead-hazard abatement and clearance activities are properly permitted, and follow safe work practices and procedures. Lead is a toxic metal used in some paints made before 1978. Children are exposed to lead when older buildings are in poor condition. Today, childhood lead poisoning affects 310,000 children in the U.S. six (6) years old and younger. Common renovations can create lead hazards, which can be harmful. Workers who disturb lead-based paint in structures built earlier than 1978 must be certified and follow work practices to keep children safe.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.9075 requires the department to promulgate administrative regulations to establish the standards for performing lead-hazard detection or lead-hazard abatement procedures in target housing or child-occupied facilities. This administrative regulation establishes those procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure the reliability, effectiveness, and safety of lead-hazard detection and lead-hazard abatement procedures in target housing or child-occupied facilities.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this amendment clarifies the requirements for an abatement floor plan and cites to the federal Environmental Protection Agency (EPA) hazard values to ensure continuity between federal and state laws.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to update to the most current EPA standard for dust-lead hazard levels for clearances. The amendment to this administrative regulation aligns the state program with the federal requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.9071 requires the Department for Public Health to comply with the applicable rules and regulations of the United States Department of Housing and Urban Development, the United States Occupational Safety and Health Administration, the United States Environmental Protection Agency, and other federal agencies with jurisdiction over issues concerning lead hazards. KRS 211.9075 requires the Department for Public Health to promulgate administrative regulations to establish standards for performing lead-hazard detection or lead-hazard abatement procedures. This amendment ensures that this regulation aligns with the United States Environmental Protection Agency.

(d) How the amendment will assist in the effective administration

of the statutes: The amendment to this administrative regulation will assist regulated entities with having continuity between federal and state regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment to this administrative regulation impacts the fifty-four (54) companies, 295 individuals, and seven (7) training providers currently registered with the department.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: There will be no changes in how the regulated entities conduct their work. Regulated entities have been following the more stringent EPA regulations since they went into effect.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There will be no additional cost to regulated entities since they are required by federal law to meet these standards.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit to regulated entities is consistency between state and federal regulations.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This is an ongoing program, there are no initial costs to implement the amendment to this administrative regulation.

(b) On a continuing basis: No cost changes due to the fact that the entities are already following the stricter federal standards.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Environmental Lead Program is funded through a mix of federal dollars and revenue received from the fees for certification, permitting, and training program accreditation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: An increase in fees or funding is not necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. The fees established by this administrative regulation are not amended.

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation affects all those engaged in lead-hazard detection and abatement activities equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Public Safety Branch in the Division of Public Health, Protection and Safety.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 211.090 and 211.9075.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 change in revenue due to no change in fees.

(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 change in revenue due to no change in fees.

(c) How much will it cost to administer this program for the first year? No change in administration cost due to no change in work activities.

(d) How much will it cost to administer this program for covered years? No change in administration cost due to no change in work activities.

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 federal Environmental Protection Agency (EPA) provides eighty-five (85) to ninety (90) percent of the funding for the Environmental Lead Program. This funding is dependent upon the current grant cycle. Program income received from fees and state general fund dollars cover the remaining balance. Funds used to cover program expenses cycle between federal monies and the state program income depending upon receipt of the federal allotments. Grant funding periods range from three (3) to five (5) years. The Environmental Lead Program has maintained this grant since the late 1990s. At this time, the EPA does not see an end to this grant program and continues to fund all eligible states.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 745.227

2. State compliance standards. KRS 211.9071 requires compliance with federal rules and regulations for all persons certified to perform lead-hazard detection and abatement activities; all training programs for personnel engaged in these activities; and the Department for Public Health. State standards will directly reference the Environmental Protection Agency's lead standards to allow for consistency.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation cites to the EPA standards for all work practices, the determination of a lead-based paint hazard, dust-lead hazards and clearance dust level, and soil lead hazards.

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 a stricter requirement, or an additional or different responsibility or requirement, than required by federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Medicaid Services

##### Division of Policy and Operations

##### (Amendment)

#### 907 KAR 23:020. Reimbursement for outpatient drugs.

RELATES TO: KRS 205.5510 to 205.5520, 205.560, 205.561, 205.5631, 205.5632, 205.5634, 205.5636, 205.5638, 205.5639, 205.6316(4), 217.015, 42 C.F.R. 440.120, 447.500 - 447.520, 42 U.S.C. 256b, 1396a - 1396d, 1396r-8

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 205.561(2), 205.6316(4), 42 U.S.C. 1396a(a)(30), 42 U.S.C. 1396r-8

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. KRS 205.561(2) and 205.6316(4) require the department to promulgate an administrative regulation to establish the professional dispensing fee for covered drugs. This administrative regulation establishes the Medicaid Program reimbursement requirements, including the professional dispensing fee, for covered outpatient drugs dispensed to all enrolled Medicaid recipients [who are not enrolled with a managed care organization].

Section 1. Reimbursement. Reimbursement to a pharmacy or medical provider participating in the Medicaid Program for a covered outpatient drug provided to an eligible recipient shall be determined in accordance with the requirements established in this section. (1) A rebate agreement in accordance with 42 U.S.C. 1396r-8(a) shall be signed by the drug manufacturer, or the drug shall be provided based on an exemption from the rebate requirement established by 907 KAR 23:010, Section 5(3).

(2) A pharmacy claim shall meet the point of sale (POS) requirements for services in accordance with 907 KAR 1:673.

(3) Reimbursement shall not be made for more than one (1) prescription to the same recipient during the same time period for a drug with the same:

(a) National Drug Code (NDC); or

(b) Drug or active ingredient name, strength, and dosage form.

(4) A timely claim payment shall be processed in accordance with 42 C.F.R. 447.45.

(a) In accordance with 42 C.F.R. 447.45, a claim shall be submitted to the department within twelve (12) months of the date of service.

(b) The department shall not reimburse for a claim submitted to the department after twelve (12) months from the date of service unless the claim is for a drug dispensed to an individual who was retroactively determined to be eligible for Medicaid.

(c) The department shall not reimburse a claim for a drug dispensed to an individual who was retroactively determined to be eligible for Medicaid after 365 days have lapsed from the date that the department issued the notice of retroactive eligibility.

(5) Reimbursement shall be denied if:

(a) The recipient is ineligible on the date of service;

(b) The drug is excluded from coverage in accordance with 907 KAR 23:010; or

(c) Prior authorization is required by the department and the request for prior authorization has not been approved prior to dispensing the drug, except in an emergency supply situation.

(6) Pursuant to KRS 205.622, prior to billing the department, a provider shall submit a bill to a third party payer if the provider has knowledge that the third party payer may be liable for payment.

(a) If a provider is aware that a Medicaid recipient has additional insurance or if a recipient indicates in any manner that the recipient has additional insurance, the provider shall submit a bill to the third party in accordance with KRS 205.622.

(b) A provider who is aware that a recipient may have other insurance, but the other insurance is not identified on the medical assistance identification card or by the recipient, shall notify the department's fiscal agent of the potential third-party liability.

(7) There shall be no copayment or cost-sharing for an outpatient drug. ~~Drug copayment requirements and provisions shall be as established in 907 KAR 1:604.~~

(8) If a payment is made for a drug that was not administered or dispensed in accordance with 907 KAR 23:010 or the payment was not appropriately reimbursed as required by this administrative regulation, the provider shall refund the amount of the payment to the department or the department may, at its discretion, recoup the amount of the payment.

(9) Adherence to the requirements established in this section shall be monitored through an on-site audit, post payment review of the claim, a computer audit, or an edit of the claim.

Section 2. Reimbursement Methodology. (1) Drug cost shall be determined in the pharmacy program using drug pricing and coding information obtained from nationally recognized comprehensive drug data files with pricing based on the actual package size utilized.

(2) Lowest of Logic. Except as provided in Section 4 of this administrative regulation, covered outpatient drug cost shall be reimbursed at the lowest of the:

(a) National Average Drug Acquisition Cost or NADAC, plus the professional dispensing fee;

(b) Wholesale acquisition cost or WAC, plus the professional dispensing fee;

(c) Federal upper limit or FUL, plus the professional dispensing fee;

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(d) Maximum allowable cost or MAC, plus the professional dispensing fee; or

(e) The provider's usual and customary charge to the public, as identified by the claim charge, plus the professional dispensing fee[price].

(3) A clotting factor shall be reimbursed via the lowest of logic established in subsection (2) of this section and shall include the Average Sales Price plus six (6) percent, plus the professional dispensing fee.

(4) Pursuant to KRS 205.5510 to 205.5520:

(a) Reimbursement methodologies for the managed care population shall be subject to the terms of the awarded contract to administer the single pharmacy benefits manager or PBM for the managed care population.

(b) The single PBM for the managed care population shall not discriminate against 340B contract pharmacies via any reimbursement methodologies utilized.

Section 3. Professional Dispensing Fee. (1) Effective April 1, 2017, the professional dispensing fee for a covered outpatient drug prescribed by an authorized prescriber and dispensed by a participating pharmacy provider in accordance with 907 KAR 23:010, and pursuant to a valid prescription shall be \$10.64 per pharmacy provider per recipient per drug per month.

(2) The professional dispensing fee for a compounded drug shall be \$10.64 per pharmacy provider per recipient per drug reimbursed up to three (3) times every thirteen (13) days.

Section 4. Reimbursement Limitations. (1) Emergency supply. Dispensing of an emergency supply of a drug shall be made outside of the prescriber's normal business hours and as permitted in accordance with 907 KAR 23:010.

(2) Partial fill. If the dispensing of a drug results in partial filling of the quantity prescribed, including an emergency supply, reimbursement for the drug ingredient cost for the actual quantity dispensed in the partial fill and the completion fill for the remainder of the prescribed quantity shall:

(a) Utilize the lowest of logic established by Section 2 of this administrative regulation; and

(b) Include payment of only one (1) professional dispensing fee, which shall be paid at the time of the completion fill.

(3) Maintenance drugs. The department shall not reimburse for a refill of a maintenance drug prior to the end of the dispensing period established by 907 KAR 23:010 unless the department determines that it is in the best interest of the recipient.

(4) For a nursing facility resident meeting Medicaid nursing facility level of care criteria, and in accordance with 201 KAR 2:190 and 902 KAR 55:065, an unused drug paid for by Medicaid shall be returned to the originating pharmacy and the department shall be credited for the drug ingredient cost.

(5) For a Medicaid recipient participating in a hospice program, payment for a drug shall be in accordance with 907 KAR 1:340.

(6) 340B Pharmacy Transactions.

(a) A pharmacy dispensing drugs purchased through the 340B Program pursuant to a 340B eligible prescription from a covered entity shall bill the department no more than the actual 340B acquisition cost, plus the professional dispensing fee.

(b) For a 340B purchased drug dispensed by a pharmacy, the lowest of logic shall include the 340B ceiling price.

(c) A drug dispensed by a 340B contract pharmacy shall not be eligible as a 340B transaction and shall be reimbursed in accordance with the lowest of logic as required by Section 2 of this administrative regulation plus the professional dispensing fee.

(d) Reimbursement to a 340B contract pharmacy dispensing a 340B eligible prescription for the managed care population shall not include the 340B ceiling price in the lowest of logic.

(7) Physician administered drugs (PAD).

(a) Federal rebate required. Only covered PAD products that are federally rebateable pursuant to a manufacturer rebate agreement shall be reimbursed.

(b) Non-340B purchased PAD. Reimbursement for drug cost for a drug administered by a physician or the physician's authorized agent in an office or outpatient clinic setting, not

purchased through the 340B Program, and submitted for reimbursement as a medical benefit shall be reimbursed only for the drug cost by the lowest of logic required by Section 2 of this administrative regulation, which shall include the average sales price (ASP) plus six (6) percent. A professional dispensing fee shall not be paid for PAD.

(c) 340B purchased PAD. For a drug purchased through the 340B Program and administered by a physician or the physician's authorized agent in an office or outpatient clinic setting, and submitted for reimbursement as a medical benefit, the lowest of logic required by Section 2 of this administrative regulation shall include the 340B ceiling price. The covered entity shall bill no more than the actual 340B acquisition cost. A professional dispensing fee shall not be paid for PAD.

(8) Non-340B hemophilia products. Clotting factors acquired outside of the 340B Program shall be reimbursed by the lowest of logic required by Section 2 of this administrative regulation, which shall include the average sales price (ASP) plus six (6) percent. The professional dispensing fee established by Section 3 of this administrative regulation shall also be paid.

Section 5. The maximum allowable cost, or MAC, shall be determined by taking into account each drug's cost, rebate status (non-rebateable or rebateable) in accordance with 42 U.S.C. 1396r-8(a), marketplace status (obsolete, terminated, or regional availability), equivalency rating (A-rated), and relative comparable pricing. Other factors considered shall include clinical indications of drug substitution, utilization, and availability in the marketplace. (1) Drug pricing resources used to compare estimated acquisition costs for multiple-source drugs shall include comprehensive data files maintained by a vendor under contract to the department, such as:

(a) NADAC as published by CMS;

(b) WAC, manufacturer's price list, or other nationally recognized sources;

(c) The Average Manufacturers Price for 5i Drugs as reported by CMS;

(d) ASP as published by CMS;

(e) Nationally recognized drug file vendors approved for use at a federal level and that have been approved by the department;

(f) Pharmacy providers; or

(g) Wholesalers.

(2) The department shall maintain a current listing of drugs and their corresponding MAC prices accessible through the department's pharmacy webpage.

(3) The process for a pharmacy provider to appeal a MAC price for a drug shall be as established in this subsection.

(a) The pharmacy provider shall email or fax a completed Kentucky Medicaid MAC Price Research Request Form to Kentucky's authorized agent in accordance with the instructions on the form.

(b) An appeal of a MAC price for a drug shall be investigated and resolved within three (3) business days.

(c) If available, the provider shall be supplied with the name of one (1) or more manufacturers who have a price comparable to the MAC price.

(d) The MAC price and effective date of that price shall be adjusted accordingly, retroactive to the date of service for the claim in question, if:

1. It is determined that a manufacturer does not exist in the price range referenced in paragraph (c) of this subsection; or

2. The provider is able to document that despite reasonable efforts to obtain access, he or she does not have access to the one (1) or more manufacturers supplied to the provider.

(e) If an adjusted MAC price becomes effective, the provider shall be informed that the claim may be rebilled for the price adjustment.

Section 6. Federal Approval and 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

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(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

Section 7. Incorporation by Reference. (1) "Kentucky Medicaid MAC Price Research Request Form", 2012, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at:

(a) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at: <https://chfs.ky.gov/agencies/dms/dpo/ppb/Pages/default.aspx> [<http://www.chfs.ky.gov/dms/incorporated.htm>].

LISA D. LEE, Commissioner  
ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 23, 2021

FILED WITH LRC: June 29, 2021 at 11:36 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on September 27, 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 September 20, 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 September 30, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

**CONTACT PERSON:** Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email [CHFSregs@ky.gov](mailto:CHFSregs@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services' (DMS's) reimbursement provisions and requirements regarding outpatient drugs dispensed or administered to all Medicaid recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's reimbursement provisions and requirements regarding all outpatient drugs dispensed or administered to Medicaid recipients.

(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 DMS's reimbursement provisions and requirements regarding outpatient drugs dispensed or administered to all Medicaid recipients.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding outpatient drugs dispensed or administered to all Medicaid recipients.

(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 implements 2020's SB 50 and the department's awarded request for proposals as required by that legislation. The administrative regulation is amended to clarify when the professional dispensing fee can be assessed, clarify clotting factor reimbursement, and establish professional dispensing fees for compounded drugs. Finally, the regulation is amended to remove cost-sharing and comply with Senate Bill 55's removal of all co-pays.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is needed to implement 2020's SB 50 and the department's awarded request for proposals as required by that legislation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment allows for the implementation of a single-state PBM as required by KRS 205.5512-.5520.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow for 2020's SB 50 to be fully implemented.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All participating pharmacy providers dispensing covered drugs (approximately 1,500) and all participating medical providers administering covered drugs (approximately 46,000) will be affected by the administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In order to be reimbursed by the DMS, participating providers will have to submit pharmacy or medical claims for covered outpatient drugs in accordance with this administrative regulation and applicable billing rules.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs experienced by affected providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicable providers will benefit by receiving a true drug ingredient cost based reimbursement along with a professional dispensing fee from DMS for dispensing covered outpatient drugs to all Medicaid recipients.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: DMS estimates that moving to a single PBM model for all Medicaid recipients will be cost-neutral. DMS will continue to assess costs and provide updates via the required reporting functions of 2021's SB 192 and KRS 205.5510 to 205.5520.

(b) On a continuing basis: DMS estimates that moving to a single PBM model for all Medicaid recipients will be cost-neutral. DMS will continue to assess costs and provide updates via the required reporting functions of 2021's SB 192 and KRS 205.5510 to 205.5520.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency 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: "At this time, DMS does not assess that an increase in fees or funding is necessary to implement this administrative regulation."

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation

applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? DMS will be affected by this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 205.561(2), 205.6316(4), 42 U.S.C. 1396a(a)(30), 42 U.S.C. 1396r-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.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is not expected to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation is not expected to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? DMS estimates that moving to a single PBM model for all Medicaid recipients will be cost-neutral. DMS will continue to assess costs and provide updates via the required reporting functions of 2021's SB 192 and KRS 205.5510 to 205.5520.

(d) How much will it cost to administer this program for subsequent years? DMS estimates that moving to a single PBM model for all Medicaid recipients will be cost-neutral. DMS will continue to assess costs and provide updates via the required reporting functions of 2021's SB 192 and KRS 205.5510 to 205.5520.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): \_\_\_\_\_  
 Expenditures (+/-): \_\_\_\_\_  
 Other Explanation: \_\_\_\_\_

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. Part 447.

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). Revising reimbursement methodology for outpatient drugs dispensed or administered to Medicaid recipients shall not change compliance standards.

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.

CABINET FOR HEALTH AND FAMILY SERVICES  
 Department for Income Support  
 Division of Child Support Enforcement  
 (Amendment)

921 KAR 1:400. Establishment, review, and modification of child support and medical support orders.

RELATES TO: KRS 205.710-~~205.802~~[~~205.800~~], 205.990, 213.046(4), (9), 403.160(1), (2)(a), (b), 403.210-403.240, 405.430, 405.440, 405.991, 406.021, 406.025, 454.220, 45 C.F.R. 302.50, 302.56, 302.80, 303.4, 303.8, 303.30-303.32, 42 U.S.C. 651-669B  
 STATUTORY AUTHORITY: KRS 194A.050(1), 205.795, 405.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the cabinet 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 and 405.520 authorize the secretary of the cabinet to promulgate and adopt administrative regulations to operate the Child Support Enforcement Program in accordance with federal law and regulations. This administrative regulation establishes the requirements for the establishment, review, and modification of child support and medical support orders.

Section 1. Support Obligation Shall be Established. (1) A child support and medical support obligation shall be established by:

- (a) A court of competent jurisdiction; or
- (b) An administrative order.

(2) The obligation shall be the amount as established administratively or judicially, as computed by the:

- (a) CS-71, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation; [or]
- (b) CS-71.1, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation Exception; or
- (c) Any other form incorporated by a regulation promulgated by the agency.

(3) The amount determined shall be the amount to be collected. Any support payment collected shall reduce the amount of the obligation dollar for dollar.

(4) For a public assistance case and a nonpublic assistance case for which child support services are being provided, the cabinet shall use state statutes and legal process in establishing the amount of a child support and medical support obligation, including KRS 403.211, 403.212, 405.430 and 454.220.

(5) In addition to the deductions specified in KRS 403.212(2), the deduction for a prior-born child residing with a parent for an administratively or judicially imputed child support obligation, as specified in KRS 403.212(2)(h)[g]3, shall be calculated by using:

- (a) That parent's portion of the total support obligation as indicated on the worksheet, if:
  - 1. There is a support order; and
  - 2. A copy of the child support obligation worksheet is obtained; or
- (b) 100 percent of the income of the parent with whom the prior born child resides, if:
  - 1. There is no support order;
  - 2. There is a support order, but no support obligation worksheet; or
  - 3. A worksheet cannot be obtained.

(6) In accordance with 45 C.F.R. 303.4(d), within ninety (90) calendar days of locating a noncustodial parent, or obligor, the cabinet shall:

- (a) Complete service of process; or
  - (b) Document an unsuccessful attempt to serve process.
- (7) If service of process has been completed, the cabinet shall, if necessary:

- (a) Establish paternity;
- (b) Establish a child support or medical support obligation; or
- (c) Send a copy of any legal proceeding to the obligor and obligee within fourteen (14) calendar days of issuance.

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(8) If a court or administrative authority dismisses a petition for support without prejudice, the cabinet shall, at that time, determine when to appropriately seek an order in the future.

Section 2. Administrative Establishment. (1) The cabinet may administratively establish a child support obligation or medical support obligation, or both if:

- (a) Paternity is not in question;
- (b) There is no existing order of support for the child;
- (c) The noncustodial parent, or obligor, resides or is employed in Kentucky; and
- (d) The noncustodial parent's, or obligor's, address is known.

(2) To gather necessary information for administrative establishment, as appropriate the cabinet shall:

- (a) Send to the custodial parent or nonparent custodian forms:
  1. CS-133, Custodial Parent Information Request;
  2. CS-132, Child Care Expense Verification; and
  3. CS-136, Health Insurance Information Request;
- (b) Send to the custodial parent the CS-65, Statement of Income and Resources;
- (c) Send to the noncustodial parent forms:
  1. CS-64, Noncustodial Parent Appointment Letter;
  2. CS-65, Statement of Income and Resources;
  3. CS-132, Child Care Expense Verification; and
  4. CS-136, Health Insurance Information Request;
- (d) Send a CS-130, Income Information Request, to the employer of the:
  1. Custodial parent; or
  2. Noncustodial parent, or obligor; and

(e) Issue a CS-84 Administrative subpoena in accordance with KRS 205.712(2)(k) and (n), if appropriate.

(3) The cabinet shall determine the monthly support obligation in accordance with the child support guidelines as contained in KRS 403.212 or subsection (4) of this section.

(4) In a default case, the cabinet shall set the obligation based upon the needs of the child or the previous standard of living of the child, whichever is greater in accordance with KRS 403.211(5).

(5) After the monthly support obligation is determined, the cabinet shall serve a CS-66, Administrative Order/Notice of Monthly Support Obligation, in accordance with the requirements of KRS 405.440 and 42 U.S.C. 654(12).

(6) The cabinet shall not administratively modify an obligation that is established by a court of competent jurisdiction, except as provided in subsection (7) of this section.

(7) If support rights are assigned to the cabinet, the cabinet shall direct the obligor to pay to the appropriate entity by modifying the order:

- (a) Administratively upon notice to the obligor or obligee; or
- (b) Judicially through a court of competent jurisdiction.

Section 3. Review and Adjustment of Child Support and Medical Support Orders. (1) In accordance with KRS 405.430(6), the cabinet may modify the monthly support established. Every thirty-six (36) months the cabinet shall notify each party subject to a child support order of the right to re-quest a review of the order.

(2) Pursuant to 45 C.F.R. 303.8, the cabinet shall conduct a review upon the request of:

- (a) Either parent;
- (b) The state agency with assignment; or
- (c) Another party with standing to request a modification.

(3) In accordance with 45 C.F.R. 303.8(e), within 180 days of receiving a request for review or of locating the nonrequesting parent, whichever occurs later, the cabinet shall:

- (a) Conduct the review;
- (b) Modify the order; or
- (c) Determine the circumstances do not meet criteria for modification.

(4) The cabinet shall provide notification within fourteen (14) calendar days of modification or determination to each parent or custodian, if appropriate, and legal representatives by issuing a CS-79, Notification of Review Determination, in accordance with KRS 205.712(2)(m).

(5) In accordance with subsections (2) and (3) of this section,

the cabinet or the cabinet's designee shall seek modification of an administrative or judicial support order to include medical support on behalf of the child as defined in KRS 403.211(7)(a) through (d).

(6) Retroactive modification of a child support order shall occur in accordance with KRS 403.211(5) and 403.213(1).

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "CS-64, Noncustodial Parent Appointment Letter", 3/10;
- (b) "CS-65, Statement of Income and Resources", 6/2021 [12/15];
- (c) "CS-66, Administrative Order/Notice of Monthly Support Obligation", 3/10;
- (d) "CS-71, Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation", 6/2021 [3/40];
- (e) "CS-71.1, Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation Exception", 6/2021 [3/40];
- (f) "CS-79, Notification of Review Determination", 3/10;
- (g) "CS-84, Administrative Subpoena", 8/18;
- (h) "CS-130, Income Information Request", 3/10;
- (i) "CS-132, Child Care Expense Verification", 3/10;
- (j) "CS-133, Custodial Parent Information Request", 3/10; and
- (k) "CS-136, Health Insurance Information Request", 12/15.

(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/dcbcs/Pages/default.aspx>.

STEVEN P. VENO, Commissioner  
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 3, 2021

FILED WITH LRC: June 29, 2021 at 11:55 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 27, 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 September 20, 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 September 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email [CHFSregs@ky.gov](mailto:CHFSregs@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mary W. Sparrow or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the establishment, review and modification of child and medical support orders.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement requirements for the establishment, review and modification of child and medical support orders in accordance with 42 U.S.C. 651-654, 656, 666,

667, 669B and 45 C.F.R. 302 and 303.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Cabinet has responsibility under KRS 194A.050(1), 205.795, 405.520, and by virtue of applying for federal funds under 42 U.S.C. 651-669B to establish, review, and modify child support and medical support obligations. This administrative regulation sets forth such procedures and processes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist with further establishing procedures to ensure effective administration of and conforming to KRS 403.211 through 403.213.

(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 an update in a citation after HB 404 (2021 session) became law as well as updating material incorporated by reference: Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation (CS-71) and the Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation Exception (CS-71.1).

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to update a citation and to update material incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying the criteria used by the Cabinet in establishing, reviewing, and modifying child support and medical support orders. This amendment identifies each party that has a right to request a review or modification of the child or medical support order, conforming to 45 C.F.R. 303.8. This amendment also identifies KRS 403.212 and 403.211(5) as the laws governing how child support obligations are determined.

(d) How the amendment will assist in the effective administration of the statutes: The forms being revised have been updated to reflect the changes implemented in HB 404 (2021) in regard to determining and establishing a child support obligation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

- Administrative Office of the Courts – Judges and Staff
- Private Attorneys
- Child Support Enforcement Attorneys and Staff
- Participants in the Child Support 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: Administrative Office of the Courts – must educate the Judiciary regarding the new Worksheet for Monthly Child Support Obligation and the Worksheet for Monthly Child Support Obligation Exception.

Private Attorneys – will access the updated information to become familiar with the revised forms.

Child Support Enforcement Attorneys and Staff – will receive guidance from the Child Support Program regarding the revised forms.

Participants with new or cases where participants request a review and possible modification, will access or be provided by a child support office, the revised forms.

(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 forms for determining an

obligation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The amendment to this administrative regulation will be implemented with no allocated funds. There will be minimal costs associated with implementing the changes on our websites.

(b) On a continuing basis: The administrative regulation has no associated allocation of funding. Once updated on our websites, no additional costs are associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding include state general funds and federal funds under 42 U.S.C. 401-419, Title IV-D of the Social Security Act.

(7) Provide an assessment of whether an 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 and 303, 42 U.S.C. 651-654, 656, 666, 667, 669B.

2. State compliance standards. KRS 194A.050(1), 205.710, 205.712, 205.725, 205.735, 205.765, 205.792, 205.793, 205.795, 403.211, 403.212, 403.213, 405.430, 405.440, 405.450, 405.520, 405.550, 405.991, 406.021, 406.025 and 454.220.

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the 42 U.S.C. 654(4)(A), and 666(a)(10) and (c)(1).

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. 42 U.S.C. 651 - 654, 656, 666(a)(10) and (c)(1), 667, and 669B. 45 C.F.R. 302 and 303. KRS 194A.050(1), 205.710, 205.712, 205.725, 205.735, 205.765, 205.792, 205.793, 205.795, 403.211, 403.212, 403.213, 405.430, 405.440, 405.450, 405.520, 405.550, and 405.991.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this administrative regulation will be implemented with no allocated funds. There will be minimal costs associated with

implementing the changes on Child Support Enforcement program websites. This administrative regulation will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment to this administrative regulation will be implemented with no allocated funds. There will be minimal costs associated with implementing the changes on the Child Support Program's computer system and website. This administrative regulation will not generate revenue.

(c) How much will it cost to administer this program for the first year? No new or additional costs are necessary to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? No new or additional costs are necessary to administer this program in any subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Family Support**  
**(Amendment)**

**921 KAR 2:015. Supplemental programs for persons who are aged, blind, or have a disability.**

RELATES TO: KRS Chapter 194A, 202A.011(12), 205.245, 209.020(4), 216.530, 216.557(1), [246.750(2),] 216.765(2), Chapter 216B, Chapter 514, 20 C.F.R. 416.120, 416.212, 416.2030, 416.2095, 416.2096, 416.2099, 8 U.S.C. 1621, 1641, 42 U.S.C. 1381-1383

STATUTORY AUTHORITY: KRS 194A.050(1), 205.245, 42 U.S.C. 1382e-g

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. 42 U.S.C. 1382 authorizes the cabinet to administer a state funded program of supplementation to all former recipients of the Aid to the Aged, Blind, and Disabled Program as of December 13, 1973, and who were disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 establishes the mandatory supplementation program and the supplementation to other needy persons who are aged, blind, or have a disability. In addition, any state that makes supplementary payments on or after June 30, 1977, and does not have a pass-along agreement in effect with the Commissioner of the Social Security Administration, formerly a part of the U.S. Department of Health, Education, and Welfare, shall be determined by the commissioner to be ineligible for payments under Title XIX of the Social Security Act in accordance with 20 C.F.R. 416.2099. This administrative regulation establishes the provisions of the supplementation program.

Section 1. Definitions. (1) "Activities of daily living" is defined by KRS 194A.700(1).

(2) "Adult" is defined by KRS 209.020(4).

(3) "Aid to the Aged, Blind and Disabled Program" means the former state-funded program for an individual who was aged, blind, or had a disability.

(4) "Care coordinator" means an individual designated by a community integration supplementation applicant or recipient to fulfill responsibilities specified in Section 6(2) of this administrative regulation.

(5) "Department" means the Department for Community Based Services or its designee.

(6) "Full-time living arrangement" means a residential living status that is seven (7) days a week, not part time.

(7) "Instrumental activities of daily living" is defined by KRS 194A.700(9).

(8) "Private residence" means a dwelling that meets requirements of Section 4(2)(d) of this administrative regulation.

(9) "Qualified immigrant [alien]" means an immigrant [alien] who, at the time the person applies for, receives, or attempts to receive state supplementation, meets the U.S. citizenship requirements of 907 KAR 20:001.

(10) "Qualified mental health professional" is defined by KRS 202A.011(12).

(11) "Serious mental illness" or "SMI" means a mental illness or disorder in accordance with Section 6(1) of this administrative regulation.

(12) "Supplemental security income" or "SSI" means a monthly cash payment made pursuant to 42 U.S.C. 1381 to 1383f to the aged, blind, or disabled.

Section 2. Mandatory State Supplementation. (1) A recipient for mandatory state supplementation shall include a former Aid to the Aged, Blind and Disabled Program recipient who became ineligible for SSI due to income but whose special needs entitled the recipient to an Aid to the Aged, Blind and Disabled Program payment as of December 1973.

(2) A mandatory state supplementation recipient shall be subject to the same payment requirements as specified in Section 4 of this administrative regulation.

(3) A mandatory state supplementation payment shall be equal to the difference between:

(a) The Aid to the Aged, Blind and Disabled Program payment for the month of December 1973; and

(b) 1. The total of the SSI payment; or  
2. The total of the SSI payment and other income for the current month.

(4) A mandatory payment shall discontinue if:

(a) The needs of the recipient as recognized in December 1973 have decreased; or

(b) Income has increased to the December 1973 level.

(5) The mandatory payment shall not be increased unless:

(a) Income as recognized in December 1973 decreases;  
(b) The SSI payment is reduced, but the recipient's circumstances are unchanged; or

(c) The standard of need as specified in Section 9 of this administrative regulation for a class of recipients is increased.

(6) If a husband and wife are living together, an income change after September 1974 shall not result in an increased mandatory payment unless total income of the couple is less than December 1973 total income.

Section 3. Optional State Supplementation Program. (1) Except as established in Sections 7, 8, and 9 of this administrative regulation, optional state supplementation shall be available to a person who meets technical requirements and resource limitations of the medically needy program for a person who is aged, blind, or has a disability in accordance with:

(a) 907 KAR 20:001;

(b) 907 KAR 20:005, Sections 5(2), (3), (4), (7), 10, and 12;

(c) 907 KAR 20:020, Section 2(4)(a);

(d) 907 KAR 20:025; or

(e) 907 KAR 20:040, Section 1.

(2) A person shall apply or reapply for the state supplementation program in accordance with 921 KAR 2:035 and shall be required to:

(a) Furnish a Social Security number; or

(b) Apply for a Social Security number, if a Social Security number has not been issued.

(3) If potential eligibility exists for SSI, an application for SSI shall be mandatory.

(4) The effective date for state supplementation program approval shall be in accordance with 921 KAR 2:050.

Section 4. Optional State Supplementation Payment. (1) An



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optional supplementation payment shall be issued in accordance with 921 KAR 2:050 for an eligible individual who:

- (a) Requires a full-time living arrangement;
  - (b) Has insufficient income to meet the payment standards specified in Section 9 of this administrative regulation; and
  - (c) 1. Resides in a personal care home and is eighteen (18) years of age or older in accordance with KRS 216.765(2);  
2. Resides in a family care home and is at least eighteen (18) years of age in accordance with 902 KAR 20:041, Section 3(14);  
3. Receives caretaker services and is at least eighteen (18) years of age; or  
4.a. Resides in a private residence;  
b. Is at least eighteen (18) years of age; and  
c. Has SMI.
- (2) A full-time living arrangement shall include:
- (a) Residence in a personal care home that:
    1. Meets the requirements and provides services established in 902 KAR 20:036; and
    2. Is licensed under KRS 216B.010 to 216B.131;
  - (b) Residence in a family care home that:
    1. Meets the requirements and provides services established in 902 KAR 20:041; and
    2. Is licensed under KRS 216B.010 to 216B.131;
  - (c) A situation in which a caretaker is required to be hired to provide care other than room and board; or
  - (d) A private residence, which shall:
    1. Be permanent housing with:
      - a. Tenancy rights; and
      - b. Preference given to single occupancy; and
    2. Afford an individual with SMI choice in activities of daily living, social interaction, and access to the community.
- (3) A guardian or other payee who receives a state supplementation check for a state supplementation recipient shall:
- (a) Return the check to the Kentucky State Treasurer, the month after the month of:
    1. Discharge to a:
      - a. Nursing facility, unless the admission is for temporary medical care as specified in Section 10 of this administrative regulation; or
      - b. Residence other than a private residence pursuant to subsection (2)(d) of this section; or
    2. Death of the state supplementation recipient; and
  - (b) Notify a local county department within five (5) working days of the death or discharge of the state supplementation recipient.
- (4) Failure to comply with subsection (3)(a) of this section may result in prosecution in accordance with KRS Chapter 514.
- (5) If there is no guardian or other payee, a personal care or family care home that receives a state supplementation check for a state supplementation recipient shall:
- (a) Return the check to the Kentucky State Treasurer, the month after the month of:
    1. Discharge to a:
      - a. Nursing facility, unless the admission is for temporary medical care as specified in Section 10 of this administrative regulation;
      - b. Another personal care or family care home; or
      - c. Residence other than a private residence pursuant to subsection (2)(d) of this section; or
    2. Death of the state supplementation recipient; and
  - (b) Notify a local county department within five (5) working days of the:
    1. Death or discharge of the state supplementation recipient; or
    2. Voluntary relinquishment of a license to the Office of the Inspector General.
- (6) If a personal care or family care home receives a state supplementation check after voluntary relinquishment of a license, as specified in subsection (5)(b)2. of this section, the personal care or family care home shall return the check to the Kentucky State Treasurer.
- (7) Failure to comply with subsections (5)(a) or (6) of this section may result in prosecution in accordance with KRS Chapter 514.

Section 5. Eligibility for Caretaker Services. (1) Service by a caretaker shall be provided to enable an adult to:

- (a) Remain safely and adequately:
    1. At home;
    2. In another family setting; or
    3. In a room and board situation; and
  - (b) Prevent institutionalization.
- (2) Service by a caretaker shall be provided at regular intervals by:
- (a) A live-in attendant; or
  - (b) One (1) or more persons hired to come to the home.
- (3) Eligibility for caretaker supplementation shall be verified annually by the cabinet with the caretaker to establish how:
- (a) Often the service is provided;
  - (b) The service prevents institutionalization; and
  - (c) Payment is made for the service.
- (4) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if the:
- (a) Client is taken daily or periodically to the home of the caretaker; or
  - (b) Caretaker service is provided by the following persons living with the applicant:
    1. The spouse;
    2. Parent of an adult or minor child who has a disability; or
    3. Adult child of a parent who is aged, blind, or has a disability.

Section 6. Eligibility for Community Integration Supplementation. (1) Eligibility for the community integration supplementation shall be based upon a diagnosis of SMI by a qualified mental health professional. SMI shall:

- (a) Not include a primary diagnosis of Alzheimer's disease or dementia;
  - (b) Be described in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM);
  - (c) Impair or impede the individual's functioning in at least one (1) major area of living such as inability to care for or support self, communicate, or make and maintain interpersonal relationships; and
  - (d) Be unlikely to improve without treatment, services, or supports.
- (2) Eligibility for the community integration supplementation shall be verified annually by the cabinet with the applicant, recipient, or care coordinator to establish how:
- (a) Often services, including those that address subsection (1)(c) of this section, are provided;
  - (b) The services prevent institutionalization and support private residence in accordance with Section 4(2)(d) of this administrative regulation; and
  - (c) Payment is made for the services.
- (3) Unless criteria in Section 10 of this administrative regulation are met by the applicant or recipient, SMI supplementation shall not be available to a resident of a home, facility, institution, lodging, or other establishment:
- (a) Licensed or registered in accordance with KRS Chapter 216B; or
  - (b) Certified in accordance with KRS Chapter 194A.

Section 7. Resource Consideration. (1) Except as provided in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy in accordance with:

- (a) 907 KAR 20:001;
  - (b) 907 KAR 20:020, Section 2(4)(a);
  - (c) 907 KAR 20:025; and
  - (d) 907 KAR 20:040, Section 1.
- (2) An individual or couple shall not be eligible if countable resources exceed the limit of:
- (a) \$2,000 for an individual; or
  - (b) \$3,000 for a couple.

Section 8. Income Considerations. (1) Except as provided in subsections (2) through (8) of this section, income and earned

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income deductions shall be considered according to the policy for the medically needy in accordance with:

- (a) 907 KAR 20:001;
- (b) 907 KAR 20:020, Section 2(4)(a);
- (c) 907 KAR 20:025; and
- (d) 907 KAR 20:040, Section 1.

(2) The optional supplementation payment shall be determined by:

(a) Adding:

1. Total countable income of the applicant or recipient, or applicant or recipient and spouse; and

2. A payment made to a third party on behalf of an applicant or recipient; and

(b) Subtracting the total of paragraph (a)1. and 2. of this subsection from the standard of need in Section 9 of this administrative regulation.

(3) Income of an ineligible spouse shall be:

(a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and

(b) Conserved in the amount of one-half (1/2) of the SSI standard for an individual for:

1. The applicant or recipient; and

2. Each minor dependent child.

(4) Income of an eligible individual shall not be conserved for the needs of the ineligible spouse or minor dependent child.

(5) Income of a child shall be considered if conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.

(6) The earnings of the eligible individual and ineligible spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(7) If treating a husband and wife who reside in the same personal care or family care home as living apart prevents them from receiving state supplementation, the husband and wife may be considered to be living with each other.

(8) The SSI twenty (20) dollar general exclusion shall not be an allowable deduction from income.

Section 9. Standard of Need. (1) To the extent funds are available, the standard of need shall be the amount listed in this subsection in addition to all cost of living adjustments determined by the Social Security Administration that have taken place since 2021 [2019] pursuant to 42 U.S.C. 415(i) and published at <https://www.ssa.gov/cola/>:

(a) For a resident of a personal care home, \$1,409 [\$1,294];

(b) For a resident of a family care home, \$965 [\$943];

(c) For an individual who receives caretaker services:

1. A single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability, \$855 [\$833];

2. An eligible couple, both aged, blind, or having a disability and one (1) requiring care, \$1,251 [\$1,248]; or

3. An eligible couple, both aged, blind, or having a disability and both requiring care, \$1,305 [\$1,272]; or

(d) For an individual who resides in a private residence and has SMI, \$1,313 [\$1,294].

(2)(a) In a couple case, if both are eligible, the couple's income shall be combined prior to comparison with the standard of need.

(b) One-half (1/2) of the deficit shall be payable to each.

(3) A personal care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a sixty (60) dollar personal needs allowance that shall be retained by the client.

(4) A family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollar personal needs allowance that shall be retained by the client.

Section 10. Temporary Stay in a Medical Facility. (1) An SSI recipient who receives optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if the:

(a) SSI recipient meets eligibility for medical confinement

established by 20 C.F.R. 416.212;

(b) Social Security Administration notifies the department that the admission shall be temporary; and

(c) Purpose shall be to maintain the recipient's home or other living arrangement during a temporary admission to a health care facility.

(2) A non-SSI recipient who receives mandatory or optional state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if:

(a) The non-SSI recipient meets the requirements of subsection (1)(c) of this section;

(b) A physician certifies, in writing, that the non-SSI recipient is not likely to be confined for longer than ninety (90) full consecutive days; and

(c) A guardian or other payee, personal care home, or family care home, receiving a state supplementation check for the state supplementation recipient, provides a local county department office with:

1. Notification of the temporary admission; and

2. The physician statement specified in paragraph (b) of this subsection.

(3) A temporary admission shall be limited to the following health care facilities:

(a) Hospital;

(b) Psychiatric hospital; or

(c) Nursing facility.

(4) If a state supplementation recipient is discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge.

Section 11. Citizenship requirements. An applicant or recipient shall be a:

(1) Citizen of the United States; or

(2) Qualified immigrant [alien].

Section 12. Requirement for Residency. An applicant or recipient shall reside in Kentucky.

Section 13. Mental Illness or Intellectual Disability (MI/ID) Supplement Program. (1) A personal care home:

(a) May qualify, to the extent funds are available, for a quarterly supplement payment of fifty (50) cents per diem for a state supplementation recipient in the personal care home's care as of the first calendar day of a qualifying month;

(b) Shall not be eligible for a payment for a Type A Citation that is not abated; and

(c) Shall meet the following certification criteria for eligibility to participate in the MI/ID Supplement Program:

1. Be licensed in accordance with KRS 216B.010 to 216B.131;

2. Care for a population that is at least thirty-five (35) percent mental illness or intellectual disability clients in all of its occupied licensed personal care home beds and who have a:

a. Primary or secondary diagnosis of intellectual disability including mild or moderate, or other ranges of intellectual disability whose needs can be met in a personal care home;

b. Primary or secondary diagnosis of mental illness excluding organic brain syndrome, senility, chronic brain syndrome, Alzheimer's, and similar diagnoses; or

c. Medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis;

3. Have a licensed nurse or an individual who has received and successfully completed certified medication technician or Kentucky medication aide training on duty for at least four (4) hours during the first or second shift each day;

4. Not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician training in effect prior to July 1990, as a result of this minimum requirement;

5. Be verified by the Office of the Inspector General in accordance with Section 15(2) through (4) of this administrative regulation; and

6. File an STS-1, Mental Illness or Intellectual Disability (MI/ID)

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Supplement Program Application for Benefits, with the department by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter.

a. Quarters shall begin in January, April, July, and October.

b. Unless mental illness or intellectual disability supplement eligibility is discontinued, a new application for the purpose of program certification shall not be required.

(2) A personal care home shall provide the department with its tax identification number and address as part of the application process.

(3) The department shall provide an STS-2, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Notice of Decision to Personal Care Home, to a personal care home following:

(a) Receipt of verification from the Office of the Inspector General as specified in Section 15(6) of this administrative regulation; and

(b) Approval or denial of an application.

(4) A personal care home shall:

(a) Provide the department with an STS-3, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Monthly Report Form, that:

1. Lists every resident of the personal care home who was a resident on the first day of the month;

2. Lists the last four (4) digits only of the resident's Social Security Number;

3. Lists the resident's date of birth; and

4. Is marked appropriately for each resident to indicate the resident:

a. Has a mental illness diagnosis;

b. Has an intellectual disability diagnosis; or

c. Receives state supplementation; and

(b) Submit the STS-3 to the department on or postmarked by the fifth working day of the month by:

1. Mail;

2. Fax; or

3. Electronically.

(5) The monthly report shall be used by the department for:

(a) Verification as specified in subsection (4)(a) of this section;

(b) Payment; and

(c) Audit purposes.

(6)(a) A personal care home shall notify the department within ten (10) working days if its mental illness or intellectual disability percentage goes below thirty-five (35) percent for all personal care residents.

(b) A personal care home may be randomly audited by the department to verify percentages and payment accuracy.

Section 14. Mental Illness or Intellectual Disability (MI/ID) Training. (1)(a) A personal care home's licensed nurse or individual who has successfully completed certified medication technician or Kentucky medication aide training shall complete the personal care home mental illness or intellectual disability training workshop provided through the Department for Behavioral Health, Developmental and Intellectual Disabilities, once every two (2) years.

(b) Other staff may complete the training workshop in order to assure the personal care home always has at least one (1) certified staff employed for certification purposes.

(2) The personal care home mental illness or intellectual disability training shall be provided through a one (1) day workshop. The following topics shall be covered:

(a) Importance of proper medication administration;

(b) Side effects and adverse medication reactions with special attention to psychotropics;

(c) Signs and symptoms of an acute onset of a psychiatric episode;

(d) SMI;

(e) SMI recovery;

(f) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bipolar disorder, or intellectual disability;

(g) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or intellectual

disability;

(h) Instruction in providing a necessary activity to meet the needs of a resident who has a diagnosis of mental illness or intellectual disability;

(i) Activities of daily living and instrumental activities of daily living;

(j) Adult learning principles; and

(k) Information about 908 KAR 2:065 and the process for community transition for individuals with SMI.

(3) Initial training shall:

(a) Include the licensed nurse or the individual who has successfully completed certified medication technician or Kentucky medication aide training and may include the owner or operator; and

(b) Be in the quarter during which the STS-1 is filed with the department.

(4)(a) A personal care home shall have at least one (1) direct care staff member who has received training.

(b) A personal care home shall have on staff a licensed nurse or individual who:

1. Has successfully completed certified medication technician or Kentucky medication aide training; and

2.a. Has received mental illness or intellectual disability training; or

b. Is enrolled in the next scheduled mental illness or intellectual disability training workshop.

(5) The Department for Behavioral Health, Developmental and Intellectual Disabilities shall provide within five (5) working days a:

(a) Certificate to direct care staff who complete the training workshop; and

(b) Listing to the department of staff who completed the training workshop.

(6) The department shall pay twenty-five (25) dollars, to the extent funds are available, to a personal care home:

(a) That has applied for the MI/ID Supplement Program; and

(b) For each staff member receiving training up to a maximum of five (5) staff per year.

Section 15. MI/ID Supplement Program Certification. (1) The Office of the Inspector General shall visit a personal care home to certify eligibility to participate in the MI/ID Supplement Program.

(a) The personal care home's initial MI/ID Supplement Program Certification Survey:

1. May be separate from an inspection conducted in accordance with KRS 216.530; and

2. Shall be in effect until the next licensure survey.

(b) After a personal care home's initial MI/ID Supplement Program Certification Survey is completed, the personal care home may complete any subsequent certification survey during the licensure survey as specified in paragraph (a)2. of this subsection.

(c) The department shall notify the Office of the Inspector General that the personal care home is ready for an inspection for eligibility.

(2) During the eligibility inspection, the Office of the Inspector General shall:

(a) Observe and interview residents and staff; and

(b) Review records to assure the following criteria are met:

1. Certification is on file at the personal care home to verify staff's completion of training, as specified in Section 14(1) through (4) of this administrative regulation;

2. The personal care home:

a. Has certified staff training all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or intellectual disability training workshop; and

b. Maintains documentation of completion at the in-service training for all direct care staff;

3. Medication administration meets licensure requirements and a licensed nurse or individual who has successfully completed certified medication technician or Kentucky medication aide training:

a. Demonstrates a knowledge of psychotropic drug side effects; and

b. Is on duty as specified in Section 13(1)(c)3. of this

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administrative regulation; and

4. An activity is being regularly provided that meets the needs of a resident.

a. If a resident does not attend a group activity, an activity shall be designed to meet the needs of the individual resident, for example, reading or other activity that may be provided on an individual basis.

b. An individualized care plan shall not be required for the criteria in clause a. of this subparagraph.

(3) The Office of the Inspector General shall review the personal care home copy of the training certification prior to performing a record review during the MI/ID Supplement Program Certification Survey process.

(4) If at least thirty-five (35) percent of the population is mental illness or intellectual disability clients, as specified in Section 13(1)(c)2. of this administrative regulation, on the day of the visit, a personal care home shall be deemed to have an ongoing qualifying percentage effective with the month of request for certification as specified in subsection (1)(c) of this section.

(5) If the mental illness or intellectual disability population goes below thirty-five (35) percent of all occupied personal care beds in the facility, the personal care home shall notify the department as specified in Section 13(6)(a) of this administrative regulation.

(6) The Office of the Inspector General shall provide the department with a completed STS-4, Mental Illness or Intellectual Disability (MI/ID) Supplement Certification Survey, within fifteen (15) working days of an:

(a) Initial survey; or

(b) Inspection in accordance with KRS 216.530.

(7) The Office of the Inspector General shall provide a copy of a Type A Citation issued to a personal care home to the department by the fifth working day of each month for the prior month.

(8) The personal care home shall receive a reduced payment for the number of days the Type A Citation occurred on the first administratively feasible quarter following notification by the Office of the Inspector General, in accordance with 921 KAR 2:050.

(9) If a criterion for certification is not met, the department shall issue an STS-2 to a personal care home following receipt of the survey by the Office of the Inspector General as specified in subsection (6) of this section.

(10) The personal care home shall provide the department with the information requested on the STS-2:

(a) Relevant to unmet certification criteria specified on the STS-4; and

(b) Within ten (10) working days after the STS-2 is issued.

(11) If a personal care home fails to provide the department with the requested information specified in subsection (10) of this section, assistance shall be discontinued or decreased, pursuant to 921 KAR 2:046.

(12) If a personal care home is discontinued from the MI/ID Supplement Program, the personal care home may reapply for certification, by filing an STS-1 in accordance with Section 13(1)(c)6. of this administrative regulation, for the next following quarter.

Section 16. Hearings and Appeals. An applicant or recipient of benefits under a program described in this administrative regulation who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing under 921 KAR 2:055.

Section 17. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "STS-1, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Application for Benefits", 01/15;

(b) "STS-2, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Notice of Decision to Personal Care Home", 01/15;

(c) "STS-3, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Monthly Report Form", 01/19; and

(d) "STS-4, Mental Illness or Intellectual Disability (MI/ID) Supplement Certification Survey", 01/19.

(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.

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 10, 2021

FILED WITH AGENCY: July 1, 2021 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 27, 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 September 20, 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 September 30, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Laura Begin or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a program for supplemental payments to persons who are aged, blind, or have a disability in accordance with KRS 205.245 and the Mental Illness or Intellectual Disability (MI/ID) Supplement Program.

(b) The necessity of this administrative regulation: The administrative regulation is needed to establish conditions and requirements regarding the State Supplementation Program and the MI/ID Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes through its establishment of a supplemental program of persons who are aged, blind, or have a disability and its compliance with the agreement with the Social Security Administration, formerly a part of the U. S. Department of Health, Education, and Welfare, to maintain the state's eligibility for federal Medicaid funding.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the eligibility requirements and standards of need for the State Supplemental Program for persons who are aged, blind, or have a disability.

(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 administrative regulation lists the standards of need for individuals receiving Supplemental Security Income (SSI) as of 2021 and cites the federal language pertaining to Social Security Administration SSI cost of living adjustments and the website where the cost of living adjustment (COLA) is issued so that affected entities may be able to find the COLA for each subsequent year. This amendment incorporates the appropriated General Fund moneys in

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the amount of \$2.2 Million in each fiscal year, to the extent funds are available, to support an increase in the reimbursements provided to personal care homes, per House Bill 192 (2021 Regular Session, Acts Chapter 169). The individual reimbursement rate was calculated using the average of 1,900 residents from SFY 2018 through SFY 2020. The total annual appropriation of \$2.2 Million divided among 1,900 residents, divided by 12 months was used to calculate the monthly reimbursement rate of \$96 (rounded down to whole dollar value). The Cabinet for Health and Family Services will monitor the reimbursement rate annually to adjust the rate accordingly, not to exceed \$2.2 Million per year appropriated.

(b) The necessity of the amendment to this administrative regulation: This amendment implements the General Fund appropriation of \$2.2 million annually to support an increase in reimbursements provided to personal care homes, as required by HB 192.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes through its establishment of a supplemental program for persons who are aged, blind, or have a disability and its compliance with the agreement with the Social Security Administration. The amendment implements the executive branch budget bill passed in the 2021 legislative session.

(d) How the amendment will assist in the effective administration of the statutes: This amendment implements the General Fund appropriation of \$2.2 Million annually as appropriated to support an increase in reimbursements provided to Personal Care Homes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In SFY 2018-2020, there were an average of 1,900 residents of personal care homes in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no new action required of regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no new costs to affected entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Increased reimbursements for personal care homes.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be negligible fiscal impact to the Cabinet for Health and Family Services to implement.

(b) On a continuing basis: There will be negligible fiscal impact to the Cabinet for Health and Family Services to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Fund appropriations and agency funds are used to implement and enforce the State Supplementation Program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation will be applied in a like manner statewide.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 C.F.R. Part 416, 42 U.S.C. 1382e-g
2. State compliance standards. KRS 194.050(1), 205.245
3. Minimum or uniform standards contained in the federal mandate. 20 C.F.R. Part 416, 42 U.S.C. 1382 e-g

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 a stricter requirement, or additional or different responsibilities or requirements, than those required by federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter requirement, or additional or different responsibilities or requirements, than those required by federal mandate.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Community Based Services, administers this program.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194.050(1), 205.245, 42 U.S.C.1328e-g, 20 C.F.R. Part 416.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 administrative regulation will not generate additional revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The administrative regulation will not generate any additional revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? No additional costs are projected to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs are projected to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (Amendment)

#### 921 KAR 4:116. Low Income Home Energy Assistance Program or "LIHEAP".

RELATES TO: KRS 45.357, 194A.010, [194A.050(1)-] 194A.060, 194A.070, 45 C.F.R. Part 96 Subpart H, 42 U.S.C. 8621-8627, 42 U.S.C. 9902(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 42 U.S.C. 8621  
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. The Cabinet for Health and Family Services has the responsibility under 42 U.S.C. 8621 to administer the Low Income Home Energy Assistance Program to help low-income households meet the cost of home energy. This administrative regulation establishes the eligibility and benefits

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criteria for heating and cooling assistance. This administrative regulation imposes a stricter requirement than the federal mandate because additional reporting requirements are necessary to comply with KRS 45.357. The imposition of additional requirements and responsibilities is to ensure necessary compliance with applicable state laws.

Section 1. Definitions. (1) "Agency" means Community Action Kentucky (CAK), or a local community action agency contracted to provide LIHEAP.

(2) "Annual low income home energy assistance program state plan" means an application prepared in accordance with 42 U.S.C. 8624(c) and 45 C.F.R. Part 96, Subpart H, sections 96.83 to 96.87.

(3) "Authorized representative" means the person who presents to an agency a written statement signed by the head of the household, or spouse of the head of the household, authorizing that person to apply on the household's behalf.

(4) "Crisis component" means the component that provides assistance to households that are experiencing a home heating or cooling crisis.

(5) "Economic unit" means one (1) or more persons sharing common living arrangements.

(6) "Emergency" means, at the time of application, the household:

- (a) Is without heat;
- (b) Will be disconnected from a utility service within forty-eight (48) hours;
- (c) Will be without bulk fuel within four (4) days; or
- (d) Will be without cooling as specified in Section 3 of this administrative regulation.

(7) "Energy" means electricity, gas, and other fuel that is used to sustain reasonable living conditions.

(8) "Gross household income" means all earned and unearned income, including lump sum payments received by a household during the calendar month preceding the month of application.

(9) "Heating season" means the period from October through April.

(10) "Household" means an individual or group of individuals who are living together in the principal residence as one (1) economic unit and who purchase energy in common.

(11) "Household demographics" means an applicant's:

- (a) Address;
- (b) Household composition that includes:
  1. Size;
  2. Age group;
  3. Relationship to applicant;
  4. Sources of income;
  5. Liquid assets; and
  6. Type of housing; and
- (c) Heat source.

(12) "Level of poverty" or "poverty level" means the degree to which a household's gross income matches the official poverty income guidelines published annually in the Federal Register by the U.S. Department of Health and Human Services, under authority of 42 U.S.C. 9902(2).

(13) "Life-threatening situation" means, at the time of application, a household is or will be without heat or cooling within eighteen (18) hours and temperatures are at a dangerous level as determined by the National Weather Service.

(14) "Principal residence" means the place:

- (a) Where a person is living voluntarily and not on a temporary basis;
- (b) An individual considers home;
- (c) To which, when absent, an individual intends to return; and
- (d) Is identifiable from another residence, commercial establishment, or institution.

(15) "Subsidy component" means the heating or cooling component that provides an eligible household with:

- (a) A payment to the household's energy provider; or
- (b) A payment to a landlord, if utilities are included in the rent.

Section 2. Application. (1) A household or authorized representative applying for LIHEAP shall provide to an agency the

following:

- (a) Proof of household income;
  - (b) Most recent:
    1. Heating bill;
    2. Cooling bill; or
    3. Verification that heating or cooling is included in the rent;
  - (c) Statement of household demographics; and
  - (d) A Social Security number, or a permanent residency card, for each household member.
- (2) An application shall not be considered complete until the required information, as specified in subsection (1) of this section, is received by the agency.

Section 3. Eligibility Criteria. (1) Income. Gross household income shall be at or below 130 percent of the official poverty income guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services pursuant to 42 U.S.C. 9902(2), unless:

- (a) Program funding is enhanced through a federal or state award; or
  - (b) The cabinet approves an increase to the poverty income guidelines due to funding availability.
- (2) The household shall be responsible for paying:
- (a) Home heating;
  - (b) Cooling costs; or
  - (c) Heating or cooling costs as an undesignated portion of the rent.

(3) Crisis component. In addition to meeting the criteria in subsections (1) and (2) of this section, an applicant shall:

- (a) Be within four (4) days of running out of fuel, if propane, fuel oil, coal, wood, or kerosene is the primary heat source;
- (b) Have received a past-due or disconnect notice, if natural gas or electric is the primary heat or cooling source; or
- (c) Have received a notice of eviction for nonpayment of rent, if home heating or cooling cost is included as an undesignated portion of the rent.

(4) Summer cooling component. In addition to meeting the criteria in subsections (1) and (2) of this section, to be eligible to receive an [a window] air conditioner unit, an applicant shall:

- (a) Be without an adequate source of cooling; and
- (b) Have a household member who:
  1. Has a health condition that requires cooling to prevent further deterioration, verified by a physician's statement prepared on the physician's letterhead;
  2. Is sixty-five (65) years of age or older; or
  3. Is under the age of six (6) years.

Section 4. Benefits. (1) For a subsidy component, payment to the household's heating or cooling provider shall be made for the full benefit amount as follows:

- (a) Benefits shall be determined prior to implementation of the component, based upon calculations from fuel usage data and from an average heating season energy cost for the six (6) primary heating fuels.
  - (b) The amount of benefits shall be based upon household income and type of heating or cooling source used.
  - (c) A household with the lowest income and highest heating season fuel cost shall receive highest benefits.
  - (d) Benefits shall be a percentage of the average annual heating season energy cost of the primary heating fuel.
  - (e) A household living in federally assisted housing or receiving a utility allowance shall be eligible for lower benefits.

(2) For a crisis component, benefits shall be the minimum amount necessary to alleviate a heating or cooling crisis. A household living in federally assisted housing may be eligible.

- (a) A benefit may be:
1. Fuel or other energy source for heating or cooling;
  2. A space heater loaned on a temporary basis until:
    - a. Fuel is delivered; or
    - b. Another resource is located to alleviate the crisis;
  3. A blanket or sleeping bag;
  4. Emergency shelter; or
  5. An [a window] air conditioner unit.

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(b) In determining the minimum amount of assistance, an agency shall take into consideration a direct subsidy for payment of utility cost received by the household from another program.

(c) A household may receive assistance more than one (1) time, but shall not receive more than the maximum allowable during each component period for the primary heating fuel or cooling source. The maximum allowable benefit shall equal cost for delivery up to:

1. Two (2) tons of coal;
2. Two (2) cords of wood;
3. 200 gallons of propane;
4. 200 gallons of fuel oil;
5. 200 gallons of kerosene; or
6. \$400 for natural gas or electric, unless:

a. Program funding is enhanced through a federal or state award; or

b. The cabinet approves an increase to the benefit amount due to funding availability.

(d) A household threatened with eviction whose heat or cooling costs are an undesignated portion of the rent shall not receive more than the maximum allowable payment for the primary heating fuel or cooling source.

(3) For cooling component benefits, a household shall be eligible for:

(a) A one (1) time subsidy payment during each component period to the household's:

1. Electric utility provider; or
2. Landlord, if the cost of cooling is included as an undesignated portion of the rent;

(b) An [a window] air conditioner unit, if:

1. Criteria in Section 3(4) of this administrative regulation are met; and

2. The agency has the funding to purchase an [a window] air conditioner unit or has an [a window] air conditioner unit available for the household; and

(c) Benefits based on:

1. The household's level of poverty, unless program funding is enhanced through a federal or state award or the cabinet approves an increase to the poverty income guidelines due to funding availability; and

2.a. Subsidized housing with:

(i) Zero percent to one hundred (100) percent of poverty receiving up to one hundred (100) [fifty-(50)] dollars; or

(ii) 101 percent to 150 percent of poverty receiving up to \$200 [one hundred (100) dollars]; or

2.-]b. Nonsubsidized housing with:

(i) Zero to one hundred (100) percent of poverty receiving up to \$400 [\$200]; or

(ii) 101 percent to 150 percent of poverty receiving up to \$300 [\$150].

Section 5. Benefit Delivery Methods. (1)(a) Payment under a subsidy component shall be authorized by a one (1) party check made payable to the household's:

1. Energy provider; or
2. Landlord, if the cost of heating or cooling is included as an undesignated portion of rent.

(b) At the recipient's discretion, the total benefit may be made in separate authorizations to more than one (1) provider if heating or cooling services were provided by more than one (1) provider. However, the total amount of the payments shall not exceed the maximum for the primary source of heating or cooling.

(2) For a crisis component, a direct cash payment shall not be made to the recipient. A payment shall be authorized to:

(a) An energy provider by a one (1) party check upon delivery of fuel, restoration, or continuation of service;

(b) A vendor who supplies a heater, blanket, emergency lodging, or [window] air conditioning unit; or

(c) A landlord, if heating or cooling cost is included in the rent.

Section 6. Right to a Fair Hearing. (1) An individual who has been denied assistance or whose application has not been acted upon in accordance with time standards established in Section 8 of

this administrative regulation shall be provided an administrative review by the agency.

(2) An individual dissatisfied with the results of an administrative review may request a hearing to be held in accordance with 921 KAR 2:055.

Section 7. Vendor Selection for Nonmetered Fuel Provider. (1) Subsidy component.

(a) An agency shall solicit vendors for all nonmetered fuels and shall establish an approved vendor listing.

(b) The agency shall place an advertisement for interested vendors in a local newspaper with the largest circulation and shall contact all vendors in good standing that participated in the program during the last contract period.

(c) A potential vendor shall provide the agency with a fixed price in gallons for kerosene, propane or fuel oil, cords for wood, or tons for coal, delivered or picked up by the client.

(d) A prospective vendor shall:

1. Allow agency and authorized federal or state representatives to inspect records upon request;

2. Maintain records to financial transactions regarding LIHEAP for a period of three (3) years;

3. Inform the agency if information is received that a household has obtained a benefit by misrepresentation;

4. Provide fuel as specified and at the price quoted;

5. Comply with federal and state law pertaining to equal employment opportunity; and

6. Comply with billing procedures established by the agency.

(e) A household shall select a vendor from the agency's approved vendor list.

(2) Crisis component.

(a) Each agency shall perform a local price survey for each bulk fuel type and shall establish a reasonable price for quality of fuel, delivery and on-site pick-up for each fuel type.

(b) Each agency shall maintain a list of approved vendors and prices throughout the crisis component.

(c) A household may use its regular vendor if the price does not exceed the established price for that fuel type and mode of delivery.

(d) For a household with no regular vendor, the agency shall select from its vendor list the lowest priced vendor capable of providing fuel within:

1. Eighteen (18) hours for a life-threatening situation; or
2. Forty-eight (48) hours for an emergency situation.

Section 8. Time Standards. (1) Under a subsidy component, an eligibility determination shall be made by an agency within five (5) working days after receipt of information required by Section 2 of this administrative regulation.

(2) Under a crisis or cooling component, benefits shall be authorized so that a:

(a) Crisis situation is resolved within forty-eight (48) hours; or

(b) Life-threatening situation is resolved within eighteen (18) hours.

(3) Under a subsidy, crisis or cooling component, an applicant shall have five (5) working days from the date of application to provide required information to an agency as specified in Section 2 of this administrative regulation, or the application shall be denied.

Section 9. Effective Dates. (1) Implementation and termination dates for LIHEAP shall depend upon the availability of funds.

(2) If additional federal funds are made available, LIHEAP may be reactivated after termination under the same terms and conditions as shown in this administrative regulation.

Section 10. Allocation of Federal Funds. (1) An amount of federal funds sufficient to provide benefits to eligible households that apply during the subsidy application period shall be reserved for a subsidy component.

(2) The balance of benefit funds for LIHEAP shall be reserved for a crisis component as follows:

(a) Benefit funds reserved for the crisis component shall be allocated based upon each local administering agency's

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percentage of the statewide population at or below 130 percent of the poverty level unless:

1. Program funding is enhanced through a federal or state award; or

2. The cabinet approves an increase to the poverty income guidelines due to funding availability.

(b) \$400,000 of crisis benefit funds shall be identified as contingency funds and allocated to agencies based on need as approved in advance by the cabinet.

(3) \$25,000 or more shall be reserved for the Preventive Assistance Program to assist families with an energy payment not to exceed \$300 for each family if the payment:

(a) Prevents the removal of a child from the family; or

(b) Assists in reuniting a child with the family.

Section 11. Energy Provider Responsibilities. A provider accepting payment from LIHEAP for energy or services provided to an eligible recipient shall comply with the following provisions:

(1) Reconnection of utilities and delivery of fuel during a crisis component shall be accomplished upon certification for payment.

(2) A household shall be charged, in the normal billing process, the difference between actual cost of the home energy and amount of payment made through this program.

(3) A LIHEAP recipient shall be treated the same as a household not receiving benefits.

(4) The household on whose behalf benefits are paid shall not be discriminated against, either in the costs of goods supplied or the services provided.

(5) A landlord shall not increase the rent of a recipient household due to receipt of a LIHEAP payment.

Section 12. Annual Plan. A copy of the state's annual Low Income Home Energy Assistance Program state plan prepared in accordance with 42 U.S.C. 8624(c) and 45 C.F.R. Part 96, Subpart H, sections 96.83 to 96.87 may be obtained by a request in writing made to the Commissioner of the Department for Community Based Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621.

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 10, 2021

FILED WITH LRC: July 1, 2021 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 27, 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 September 20, 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 September 30, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons: Laura Begin and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the eligibility and benefits criteria for the Low Income Home Energy Assistance Program (LIHEAP) in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the eligibility and benefits criteria for LIHEAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 194A.050, which authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to qualify for federal funds and to cooperate with other state and federal agencies. The cabinet has the responsibility under 42 U.S.C. 8621 to implement the LIHEAP program.

(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 eligibility and benefits criteria for the implementation and operation of LIHEAP.

(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 changes the existing administrative regulation by increasing program cooling component benefits due to a federal funding award increase in Low Income Home Energy Assistance Program (LIHEAP) block grant funds. The emergency version of this amendment is necessary in order to immediately utilize federal Coronavirus Aid, Relief, Economic Security (CARES) Act funding and American Rescue Plan Act funding as the Acts authorize states to adjust LIHEAP services furnished during fiscal years 2020 and 2021, including services furnished with the state's regular LIHEAP appropriations during those years. The increase in services available that assist in paying for heating and cooling are especially needed for households that may be experiencing economic hardships due to the COVID-19 pandemic. This amendment is deemed to be an emergency pursuant to KRS 13A.190(1)(a)1. and 2., as these services will protect human health, safety, and welfare through providing assistance in paying for summer cooling and federal funding will be lost if not used as soon as possible. The amendment also deletes the requirement that air conditioning units provided through the program be window units only.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary in order to utilize federal funding awarded specific to this program that must be used this fiscal year.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by maintaining standards for program eligibility, benefit provisions, and compliance.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows for greater utilization of LIHEAP in Kentucky, but maintains all program requirements consistent with federal and state law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The cabinet holds a master agreement with Community Action Kentucky (CAK), which subcontracts with twenty-two community action agencies and one local government to provide LIHEAP benefits throughout Kentucky's 120 counties. In FFY 2020, Kentucky served over 314,000 households through LIHEAP heating and cooling subsidy and crisis components.

(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 are required. Applicants who meet the program eligibility requirements contained in this administrative regulation may receive additional assistance relating to summer utility cooling.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in



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question (3): Costs associated with providing LIHEAP services will be absorbed within the sub-award of the federal LIHEAP block grant. Implementing this amendment will be paid by additional federal LIHEAP funds awarded to Kentucky.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants who meet the program eligibility requirements contained in this administrative regulation may receive additional assistance relating to summer utility cooling.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The U.S. Department of Health and Human Services allocates LIHEAP funding annually to states. No general funds are used in the implementation of this administrative regulation as LIHEAP is funded 100% by federal funds. American Rescue Plan Act funding in the amount of \$61.5 million dollars was awarded to Kentucky for this program.

(b) On a continuing basis: The cabinet will ensure that the programs and state administrative activities funded under the LIHEAP block grant are within federal appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation is 100% federally funded. No general funds are used in administering LIHEAP. The source of these funds is the LIHEAP block grant, CARES Act funding, and American Rescue Plan.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary to implement this administrative regulation. The cabinet will implement and enforce this administrative regulation in subsequent years within federal appropriations for LIHEAP.

(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 establish or increase fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation will be applied in a like manner statewide.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 8621

2. State compliance standards. KRS 45.357, 194A.010, KRS 194A.050(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 8621

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment does not impose stricter requirements than those required by the federal mandate. However, the current administrative regulation in place imposes additional responsibilities and requirements than those required by federal mandate. This administrative regulation imposes a stricter requirement than the federal mandate because additional reporting requirements are necessary to comply with state law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Additional reporting requirements are necessary in order to comply with KRS 45.357. The imposition of the additional requirements and responsibilities is necessary to ensure compliance with applicable 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 will be impacted by this administrative regulation. The cabinet holds a master agreement with Community Action Kentucky (CAK), which subcontracts with twenty-two community action agencies and one local government to provide

LIHEAP benefits throughout Kentucky's 120 counties.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 45.357, 194A.010, 194A.050(1), 194A.060, 194A.070, 45 C.F.R. Part 96 Subpart H, 42 U.S.C. 8621-8627, 42 U.S.C. 9902(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? This administrative regulation will not generate revenue for the state or local government during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for the state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? The cabinet will utilize the administrative funds available under the LIHEAP block grant to administer these programs in the first year. Costs will be within available appropriations.

(d) How much will it cost to administer this program for subsequent years? The cabinet will utilize the administrative funds under the LIHEAP Block Grant to administer these programs in subsequent years. Costs will be within available appropriations.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Child Care (Amendment)

#### 922 KAR 2:160. Child Care Assistance Program.

RELATES TO: KRS 194A.060, [199.892,] 199.894(1), (5), 199.896, 199.898(1), (2), 199.8982, 199.899, [199.8994,] 214.036, 314.011(5), 337.275, 600.020, 605.120(5), 620.020(10), [2046 Ky. Acts ch. 149, Part 1, G.9(7),] 7 C.F.R. Part 1463, 20 C.F.R. Parts 676-678, 34 C.F.R. Part 361, Part 463, 45 C.F.R. Part 98, 205.10(a)(6), 205.50(a)(1)(i), 400.66(d), 7 U.S.C. 2012, 25 U.S.C. 1261, 1401, 5501, 29 U.S.C. 723(a)(5), 34 U.S.C. 20102(c), 38 U.S.C. 1815, 42 U.S.C. 601-619, 1395w-141, 1771-1793, 2000d, 3001, 4950-5085, 8621, 9857-9858q, 9902(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.892, 199.8994

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary [Secretary] of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.892 enables the Cabinet for Health and Family Services to promulgate administrative regulations to qualify to receive federal funds under provisions of the federal Social Security Act, 42 U.S.C. 9857-9858q, and to provide for effective regulation of child care centers. KRS 199.8994 requires the cabinet to administer all child care funds to the extent allowable under federal law or regulation and in a manner that is in the best interest of the clients to be served. This administrative regulation establishes requirements that enable the Cabinet for Health and Family Services to qualify for federal funds under the Child Care and Development Fund, and establishes procedures for the implementation of the Child Care Assistance Program to the extent that funding is available.

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Section 1. Definitions. (1) "Applicant" means a child's natural or adoptive parent or an individual caring for a child in loco parentis who is applying for CCAP.

(2) "Cabinet" is defined by KRS 199.894(1).

(3) "Change in a circumstance" means a change that may affect eligibility or benefit amounts, such as:

- (a) Beginning or ending employment;
- (b) Change in an employer or obtaining additional employment;
- (c) Increase or decrease in the number of work hours;
- (d) Increase or decrease in the rate of pay;
- (e) Increase or decrease in family members;
- (f) Change in self-employment activity;
- (g) Change in scheduled hours care is needed;
- (h) Beginning or ending an educational activity;
- (i) Change in child care provider;
- (j) Change in address or residence;
- (k) Change in marital status;
- (l) Beginning or ending receipt of unearned income; or
- (m) Enrollment in a certified trade school or an accredited college or university.

(4) "Child care" means the provision of care for a child for a portion of a day on a regular basis, designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development, and supervision.

(5) "Child Care and Development Fund" or "CCDF" is defined by 45 C.F.R. 98.2.

(6) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families, who meet the eligibility requirements of this administrative regulation, with the financial resources to find and afford quality child care.

(7) "Child care certificate" is defined by 45 C.F.R. 98.2.

(8) "Child protective services" is defined by 922 KAR 1:330, Section 1(5).

(9) "Child with a special need" means a child who has multiple or severe functional needs requiring ongoing specialized care.

(10) "Employment" means public or private, permanent or temporary work for an average of twenty (20) hours per week for compensation or as an unpaid job requirement.

(11) "Family" means an applicant or parent, a child, and another responsible adult if present, residing in the same home.

(12) "Family child-care home" is defined by KRS 199.894(5).

(13) "Full day" means child care that is provided for five (5) or more hours per day.

(14) "Good academic standing" means a student is meeting the trade school, college, or university's requirements for attendance and satisfactory progress towards the completion of coursework.

(15) "Health professional" means a person actively licensed as a:

- (a) Physician;
- (b) Physician assistant;
- (c) Advanced practice registered nurse;
- (d) Qualified mental health professional as defined by KRS 600.020(52); or
- (e) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(16) "Homeless" means an individual or a family lacking a fixed, regular, and adequate nighttime residence, including a child experiencing homelessness as defined by 45 C.F.R. 98.2.

(17) "In loco parentis" means a person acting in place of a parent, including:

- (a) A legal guardian;
- (b) An individual related by blood, marriage, or adoption to the child; or
- (c) A nonrelative pursuing legal custody of the child within one (1) year of application.

(18) "Infant" means a child who is less than one (1) year old.

(19) "Kentucky Transitional Assistance Program" or "K[-]TAP" means Kentucky's Temporary Assistance for Needy Families or "TANF" money payment program established in 921 KAR Chapter 2.

(20) "Parent" is defined by 45 C.F.R. 98.2.

(21) "Part day" means child care that is provided for less than five (5) hours per day.

(22) "Preschool child" means a child who has reached the third birthday up to, but not including, the sixth birthday.

(23) "Preventive services" is defined by KRS 620.020(12)[620.020(10)].

(24) "Provider" means the entity providing child care services, such as:

- (a) A member of a limited liability corporation (LLC);
- (b) The head of an organization;
- (c) An owner of a corporation;
- (d) A member of a partnership;
- (e) An owner of a business;
- (f) An individual provider; or
- (g) A stockholder of a stock-holding company.

(25) "Qualified alien" or "qualified immigrant" means a child who meets the requirements of 921 KAR 2:006, Section 1(14).

(26) "Registered provider" means a child care provider who meets the requirements of 922 KAR 2:180.

(27) "Related" means having one (1) of the following relationships:

- (a) Child;
- (b) Stepchild;
- (c) Grandchild;
- (d) Great-grandchild;
- (e) Niece;
- (f) Nephew;
- (g) Sibling;
- (h) Child in legal custody; or
- (i) Child living in loco parentis.

(28) "Responsible adult" means a person other than the applicant who is in the child's household and who is:

- (a) The natural parent, adoptive parent, or stepparent; or
- (b) The spouse of an individual caring for a child in loco parentis.

(29) "School-age child" means a child who has reached the sixth birthday.

(30) "State median income" or "SMI" means the estimated median income of households in the state.

(31) "Supplemental Nutrition Assistance Program" or "SNAP" means the program, formerly known as the Food Stamp Program:

- (a) Defined by 7 U.S.C. 2012; and
- (b) Governed by 921 KAR Chapter 3.

(32) "Teen parent" means a head of household under the age of twenty (20) and attending high school or obtaining a GED.

(33) "Toddler" means a child who has reached the first birthday up to, but not including, the third birthday.

Section 2. Application Rights and Requirements. (1) An individual may apply or reapply for CCAP through the cabinet or its designee.

(2)(a) Unless an applicant is approved according to the criteria in Section 5 or 6 of this administrative regulation, an application shall have been made on the date:

1. The following is received at the cabinet or its designee's office:

- a. A signed DCC-90, Subsidized Child Care Assistance Application Summary; or
- b. Submission in accordance with 921 KAR 2:040, Section 1(6); or

2. The agency is contacted, if the person:

- a. Has a physical or mental disability; and
- b. Needs special accommodation due to the impairment.

(b) An applicant may designate an authorized representative who presents identification to make application.

(c) An applicant may be:

1. Assisted by another individual of choice in the application process; and

2. Accompanied by the individual in a contact with the agency.

(d) In accordance with the procedures established [described] in 920 KAR 1:070, interpreter services shall be provided for persons who are:

1. Deaf; or

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2. Hard of hearing.

(e) Interpreter services shall be provided for a non-English speaking individual in accordance with Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d.

(3) The cabinet or its designee shall not discriminate against an applicant based on age, race, color, sex, disability, religious creed, national origin, or political beliefs.

(4) For the month child care payment is intended to cover, a family shall meet the technical and financial eligibility criteria, according to its particular circumstances, as described in Sections 3, 4, 5, 6, 7, and 8 of this administrative regulation.

(a) An applicant or recipient shall be the primary source of information and shall:

1. Furnish verification of:

- a. Income;
- b. Technical eligibility; and
- c. Employment; and

2. Give written consent to the cabinet or its designee necessary to verify information pertinent to the eligibility determination.

(b) Upon receiving written notice of a request for information or a scheduled appointment to present required documentation, failure of an applicant or recipient to respond shall be considered a failure to present adequate proof of eligibility.

(c) A homeless household shall have a minimum of ~~an extended period to verify information not to exceed~~ three (3) months to verify information in accordance with 42 U.S.C. 9858c(c)(3)(B)(i).

(5) The cabinet or its designee shall:

(a) Render a decision on each application; and

(b) Within thirty (30) calendar days of receipt of the application submitted in accordance with subsection (2) of this section, send notice to the applicant in accordance with Section 12(4) of this administrative regulation.

(6) Each decision regarding eligibility for assistance shall be supported by documentation recorded in the applicant or recipient's case record.

(7) A family shall not receive:

- (a) Assistance until approval of the application for benefits; or
- (b) Benefits prior to application.

Section 3. Technical Eligibility. (1) A child shall be eligible for child care assistance, if the child:

(a) Is a:

1. Resident of Kentucky; and
2. U.S. citizen, qualified immigrant, or qualified alien;

(b) Is under age:

1. Thirteen (13) at the time of application or recertification; or
2. Nineteen (19) at the time of application or recertification and

is:

a. Physically or mentally incapable of caring for themselves ~~himself~~, as demonstrated by a written document provided by a health professional;

b. Under court supervision; or

c. Identified as a priority by federal statute, regulation, or funding source; and

(c) Has a current immunization certificate showing that the child is immunized, unless:

1. There is an exception pursuant to KRS 214.036; or

2. The child is attending a:

- a. Licensed child-care center;
- b. Certified child-care home;
- c. Public school;
- d. Head Start; or

e. Other entity that requires the immunization record.

(2) If a child served by the CCAP is not immunized, child care assistance benefits shall be available or continue for a period of thirty (30) calendar days following the notification of the needed immunization while the family takes necessary action to comply with the immunization requirement.

(3) A family shall not be eligible for a CCAP benefit if care is provided by:

(a) A parent or stepparent;

(b) A legal guardian;

(c) A member of the K[-]TAP or SNAP case in which the child in need of child care assistance is included;

(d) A person living in the same residence as the child in need of care;

(e) A provider not:

1. Licensed according to 922 KAR 2:090, Child-care center licensure;

2. Certified according to 922 KAR 2:100, Certification of family child-care homes; or

3. Registered according to 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

(f) A Head Start program unless the child care is provided before, after, or in between the Head Start program's operating hours as wrap-around child care; or

(g) Another child care provider if the family operates the child care business in the home.

(4) If the restrictions specified in subsection (3) of this section do not apply to the provider related to the child, the provider related to the child may be eligible for payment from CCAP if the requirements of 922 KAR 2:180 are met.

Section 4. Requirements for Low Income Working Family Eligibility Determination. (1) A child shall be eligible to receive CCAP if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:

(a) An applicant who has employment an average twenty (20) hours per week;

(b) An applicant and a responsible adult who have employment an average of forty (40) hours per week combined, if the individual with the least employment has an average of at least five (5) hours of employment per week;

(c) An applicant and a responsible adult if either the applicant or the responsible adult has employment an average of twenty (20) hours per week, and the other is physically or mentally unable to provide adequate care or supervision as documented by a written statement from a health professional;

(d) A relative or fictive kin caregiver pursuant to 922 KAR 1:565 ~~[the conditions of a program established by KRS 605.120(5),]~~ who meets:

1. All requirements in this section; and

2. Income eligibility standards established in Section 8 of this administrative regulation;

(e) A teen parent attending high school or pursuing a general equivalency degree (GED), including a period of recess or temporary break up to ~~[not to exceed]~~ three (3) months; or

(f) An applicant who meets the eligibility requirements specified in Section 7 of this administrative regulation.

(2) A child shall be eligible to receive CCAP for a minimum of ~~[up to]~~ three (3) months or in accordance with Section 9 of this administrative regulation if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:

(a) An applicant who is homeless;

(b) An applicant who is ~~is~~:

~~1. Is~~ engaged in job search; ~~and~~

~~2. Submits a completed DCC-90P, CCAP Job Search Documentation, within the three (3) months of job search verifying a minimum of ten (10) contacts with prospective employers;]~~

(c) A recipient after the loss of employment, a reduction in the required number of employment hours, or cessation of attendance at a job training or educational program in accordance with 42 U.S.C. 9858c(c)(2)(N)(iii), to allow for job search or resumption of work or attendance at job training or educational program; or

(d) A recipient on maternity leave or other medical leave from employment as verified by a health professional, unless a temporary disability as verified by a health professional necessitates longer than three (3) months of CCAP eligibility.

(3) Compliance with subsection (1) of this section for an applicant or a responsible adult who is self-employed shall be determined by dividing income calculated in accordance with Section 8(6)(d) of this administrative regulation by an hourly pay

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rate of no less than minimum wage established in accordance with KRS 337.275.

Section 5. Requirements for Protection and Permanency Eligibility Determination.

(1) A child shall be eligible to receive CCAP if the child:

(a) Resides with an applicant who:

1. Receives child protective or preventive services; or
2. Needs to receive child protective or preventive services based upon an assessment conducted by child protective services staff pursuant to 922 KAR 1:330; and

(b) Meets the requirements listed in Section 3 of this administrative regulation.

(2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a separate application, as an integral part of a protective or preventive services plan in accordance with 922 KAR 1:430.

(3)(a) Based on the assessment in accordance with 922 KAR 1:330, the cabinet may waive the family copayment required by Section 11 of this administrative regulation for a child who participates in CCAP as a result of child protective services authorization.

(b) If the cabinet waives the family copayment in accordance with paragraph (a) of this subsection, the cabinet shall document the reason for the waiver in the child's protective services case plan.

Section 6. State-Funded Workforce Training Child Care Eligibility Determination. A child shall be eligible for CCAP if the child:

(1) Resides with an applicant who is participating in the:

(a) Kentucky Works Program established [~~described~~] in 921 KAR 2:370; or

(b) Supplemental Nutrition Assistance Program Employment and Training Program (SNAP E&T) pursuant to 921 KAR 3:042; and

(2) Meets the requirements listed in Section 3 of this administrative regulation.

Section 7. Education and Job Training Child Care Eligibility Determination. (1) ~~To [Effective June 28, 2019, to]~~ the extent funds are available, a child shall be eligible for CCAP if the child:

(a) Resides with an applicant who:

1. Is enrolled in:

a.(i) A certified trade school or an accredited college or university;

(ii) A full-time program that leads to a general educational development (GED); or

(iii) A program that leads to a degree or certification; and

b. Accordance with subsection (2) of this section;

2. Is in good academic standing with the trade school, college, or university in which the applicant is enrolled;

3. Provides verification of enrollment and good academic standing from the trade school, college, or university in which the applicant is enrolled;

4. Meets income eligibility criteria of Section 8 of this administrative regulation; and

5. Has not received CCAP for more than sixty (60) months due to enrollment in a certified trade school or an accredited college or university; and

(b) Meets the requirements established in Section 3 of this administrative regulation.

(2) While an applicant is enrolled in a certified trade school or an accredited college or university:

(a) The applicant's coursework shall be completed in-person or online; and

(b) The applicant shall be classified as a full-time student as defined by the trade school, college, or university.

(3) An applicant who does not complete a term at a trade school, college, or university shall be responsible for the cost of child care tuition for the term.

Section 8. Income Eligibility. (1) A child shall be eligible for

CCAP if the family's income is less than or equal to:

(a) 160 percent of the federal poverty guidelines [~~level~~] as adjusted annually by the U.S. Department of Health and Human Services through calendar year 2021 [~~2018~~] at initial application; or

(b) 200 percent of the federal poverty guidelines [~~level~~] as adjusted annually by the U.S. Department of Health and Human Services through calendar year 2021 [~~2018~~] at recertification or recalculation.

(2) Except for a child who is eligible as specified in Section 5 of this administrative regulation, gross income received or anticipated to be received by the applicant and responsible adult shall be considered when the cabinet or its designee determines the family's eligibility for the CCAP.

(3) A child who is eligible for CCAP as specified in Section 5 of this administrative regulation shall be eligible without regard to the family's income.

(4) Excluded income shall be:

(a) K[-]TAP child only payments, including back payment;

(b) A payment received from the kinship care program [~~Kinship Care Program~~], pursuant to 922 KAR 1:130, including back payment;

(c) Educational grant, loan, scholarship, and work study income;

(d) The value of a:

1. Kentucky Works supportive services payment pursuant to 921 KAR 2:017; or

2. SNAP E&T transportation payment pursuant to 921 KAR 3:042;

(e) The value of United States Department of Agriculture program benefits including:

1. Donated food;

2. Supplemental food assistance received pursuant to 42 U.S.C. 1771;

3. Special food service program for a child pursuant to 42 U.S.C. 1775;

4. Nutrition program for the elderly pursuant to 42 U.S.C. 3001; and

5. The monthly allotment under SNAP;

(f) Payment made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;

(g) In-kind income;

(h) Reimbursement for transportation in performance of an employment duty, if identifiable;

(i) Nonemergency medical transportation payment;

(j) Highway relocation assistance;

(k) Urban renewal assistance;

(l) Federal disaster assistance and state disaster grant;

(m) Home produce utilized for household consumption;

(n) Housing subsidy received from federal, state, or local governments;

(o) Receipt distributed to a member of certain Indian tribes by the federal government pursuant to 25 U.S.C. 1261, 1401, and 5501;

(p) Funds distributed per capita to or held in trust for a member of an Indian tribe by the federal government pursuant to 25 U.S.C. 1261, 1401, and 5501;

(q) Payment for supporting services or reimbursement of out-of-pocket expense made to an individual volunteering as:

1. Senior health aide; or

2. Member of the:

a. Service Corps of Retired Executives; or

b. Active Corps of Executives;

(r) Payment made to an individual from a program pursuant to 42 U.S.C. 4950 to 5085 if less than the minimum wage under state or federal law, whichever is greater, including:

1. Volunteers in Service to America (VISTA);

2. Foster Grandparents;

3. Retired and Senior Volunteer Program; or

4. Senior Companion;

(s) Payment from the cabinet for:

1. Child foster care; or

2. Adult foster care;

(t) Energy assistance payment made under:

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1. The Low Income Home Energy Assistance Program pursuant to 42 U.S.C. 8621; or
  2. Other energy assistance payment made to an energy provider or provided in-kind;
    - (u) The principal of a verified loan;
    - (v) Up to \$12,000 to Aleuts and \$20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for a hardship experienced during World War II;
    - (w) The advance payment or refund of earned income tax credit;
    - (x) Payment made from the Agent Orange Settlement Fund;
    - (y) Payment made from the Radiation Exposure Compensation Trust Fund;
    - (z) Up to \$2,000 per year of income received by individual Indians denied from a lease or other use of individually-owned trust or restricted lands;
      - (aa) Payment made to an individual because of the individual's status as a victim of Nazi persecution;
      - (bb) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census;
      - (cc) A payment received from the National Tobacco Growers Settlement Trust;
      - (dd) A Tobacco Loss Assistance Program payment pursuant to 7 C.F.R. 1463;
      - (ee) A payment received from a crime victim compensation program according to the Antiterrorism and Effective Death Penalty Act of 1996 pursuant to 34 U.S.C. 20102(c);
      - (ff) A payment made, pursuant to 38 U.S.C. 1815 by the Veteran's Administration, to children of female Vietnam veterans;
      - (gg) A discount or subsidy provided to Medicare beneficiaries pursuant to 42 U.S.C. 1395w-141;
      - (hh) Any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement Programs pursuant to 45 C.F.R. 400.66(d);
      - (ii) Reimbursement payment for a vocational rehabilitation individual participating in Preparing Adults for Competitive Employment pursuant to 29 U.S.C. 723(a)(5);
      - (jj) Income or earnings from a program funded under the Workforce Innovation and Opportunity Act pursuant to 20 C.F.R. Parts 676-678 or 34 C.F.R. Part 361 or 463;
      - (kk) Waiver reimbursement in accordance with 907 KAR 1:170, 907 KAR 1:835, or 907 KAR 7:015 to a parent for the care of a child in the home; or
      - (ll) Supplemental Security Income (SSI) for a child.
- (5) Deductions from gross income shall be:
- (a) Actual, legally obligated child support payment made by the applicant or responsible adult to a party not living in the family's residence; and
  - (b) Operating costs to determine adjusted gross income from self-employment.
- (6) Best estimate.
- (a) Gross income shall be computed by using a best estimate of income that may exist in the benefit month.
  - (b) The following method shall be used to calculate a best estimate of earned income other than earned self-employment:
    1. Cents shall:
      - a. Not be rounded to the nearest dollar before adding or multiplying hourly or daily earnings; and
      - b. Be rounded to the nearest dollar before adding or multiplying weekly, biweekly, semi-monthly, monthly, quarterly, or annual earnings;
    2. Unless it does not represent the ongoing situation, income from all pay periods in the preceding two (2) calendar months shall be used;
    3. A monthly amount shall be determined by adding gross income from each pay period, dividing by the total number of pay periods considered, and converting the pay period figure to a monthly figure by multiplying a:
      - a. Weekly amount by four and one-third (4 1/3);
      - b. Biweekly amount by two and one-sixth (2 1/6); or
      - c. Semimonthly amount by two (2); and
    4. If income has recently begun and the applicant or recipient

has not received a calendar month of earned income, the anticipated monthly income shall be computed by:

- a. Multiplying the:
    - (i) Hourly rate by the estimated number of hours to be worked in a pay period; or
    - (ii) Daily rate by the estimated number of days to be worked in the pay period;
  - b. Converting the resulting pay period figure to a monthly amount pursuant to subparagraph 3.c. of this paragraph; and
  - c. Rounding to the nearest dollar.
- (c) For a case with unearned income, other than unearned self-employment income, a monthly amount shall be determined by:
1. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis; and
  2. Averaging the amount of unstable unearned income received in the three (3) prior calendar months, unless it does not represent the ongoing situation.
- (d) For a case with self-employment income, a monthly amount shall be determined as follows:
1. If the self-employment enterprise has been in operation for at least a year, the income shall be prorated by dividing the income from the last calendar year by twelve (12);
  2. If the self-employment enterprise has been in operation for less than a year, the income shall be prorated by dividing by the number of months the business has been in existence; and
  3. Profit shall be determined by:
    - a. Rounding the total gross income to the nearest dollar;
    - b. Rounding the total amount of allowable expenses to the nearest dollar;
    - c. Dividing total gross income and total amount of allowable expenses separately by twelve (12) or the appropriate number of months, and rounding the quotients to the nearest dollar; and
    - d. Subtracting the rounded monthly allowable expense quotient from the rounded monthly gross income quotient.
  - (e) If the cabinet or its designee becomes aware of a change in circumstance, the best estimate shall be recalculated.

Section 9. Continuing Eligibility. (1) Continued eligibility under the CCAP shall be recertified at least every twelve (12) months.

(2) Eligibility shall be reviewed at each twelve (12) month recertification for a child who is placed with a relative or fictive kin caregiver. A child who is placed with a relative or fictive kin caregiver shall remain eligible pursuant to Section 5 of this administrative regulation for as long as the cabinet determines that child care is necessary in order to prevent child maltreatment or entry into the foster care system.

(3) Eligibility shall be reviewed and recalculated if necessary due to a known or reported change in circumstance.

(4) Unless a nonrelative is approved as fictive kin pursuant to 922 KAR 1:140 or 922 KAR 1:565 and Section 5 of this administrative regulation, a nonrelative who is acting in loco parentis for a child shall be required to show proof of efforts to seek permanent custody of the child or adopt the child within one (1) year of initial application as a condition of continued eligibility for CCAP.

(5) In accordance with 42 U.S.C. 9858c(c)(2)(N), if a family's income does not exceed eighty-five (85) percent of Kentucky's SMI, the family shall remain eligible for CCAP until recertification in accordance with this section.

Section 10. Payment Rates and Policy. (1)(a) To the extent funds are available, the cabinet shall make payments as listed in the DCC-300, Kentucky Child Care Maximum Payment Rate Chart[, effective December 1, 2018].

(b) The rates in the DCC-300 shall represent the maximum payment rates on a per day, per child, per child care provider basis.

(c) The maximum payment rates shall include the following categories:

1. Full day;
2. Part day;
3. Licensed Type I;
4. Licensed Type II;

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- 5. Certified;
- 6. Registered;
- 7. Infant/Toddler;
- 8. Preschool child; and
- 9. School-age child.

(2) To the extent funds are available, a licensed or certified provider shall receive:

(a) Two (2) dollars per day beyond the maximum rate if the provider is accredited by the:

- 1. National Association for the Education for Young Children;
- 2. National Early Childhood Program Accreditation;
- 3. National Association for Family Child Care;
- 4. Council on Accreditation; or
- 5. Other accrediting body approved by the Early Childhood Advisory Council or the cabinet; or

(b) One (1) dollar per day beyond the maximum rate for nontraditional care for providing child care assistance based on the parent's schedule between:

- 1. 7 p.m. to 5 a.m. daily; or
- 2. Friday, 7 p.m. through Monday, 5 a.m.

(3) To the extent funds are available, a licensed, certified, or registered provider shall receive a special care rate of one (1) additional dollar per day beyond the maximum rate for care of a child:

- (a) With a special need; or
- (b) Who is age thirteen (13), but under age nineteen (19) at application or recertification, and is:

1. Physically or mentally incapable of caring for himself as determined by a health professional; or

2. Under court supervision.

(4) The cabinet or its designee shall determine the maximum

daily reimbursement rate not to exceed the amount charged to the general public.

(5) A child care provider registered according to 922 KAR 2:180 shall not be paid for more than:

(a) Three (3) children receiving CCAP per day; or

(b) Six (6) children receiving CCAP per day, if those children are:

- 1. A part of a sibling group; and
- 2. Related to the provider.

(6) A family meeting the requirements of Section 4 or 6 of this administrative regulation shall be eligible for payment to cover child care needs due to full-time or part-time enrollment in an educational program.

(7) To the extent funds are available, required enrollment fees shall be paid no more than three (3) times in a twelve (12) month period for a family meeting the requirements in Section 5 or 6 of this administrative regulation.

Section 11. Family Copayment. (1) Unless a family copayment has been waived in accordance with Section 5(3) of this administrative regulation, a family of a child served by the CCAP shall be responsible for a copayment in accordance with the family copayment table in subsection (3) of this section.

(2) If a court orders a parent of a CCAP-eligible child to pay a portion of the child's child care expenses, the court-ordered payment shall be in lieu of the family copayment required by subsection (3) of this section.

(3)(a) The cabinet or its designee shall determine a copayment that a family shall pay to the provider for the cost of child care, based on the following table:

| Income Range Monthly |          | Family Size 2 Family Co-Pay With 1 Child | Family Size 3 Family Co-Pay |                | Family Size 4 Family Co-Pay |                | Family Size 5 or More Family Co-Pay |                |
|----------------------|----------|--|-----------------------------|----------------|-----------------------------|----------------|-------------------------------------|----------------|
|                      |          |  | With 1 Child                | With 2 or more | With 1 Child                | With 2 or more | With 1 Child                        | With 2 or more |
| 0                    | 899      | \$0                                      | \$0                         | \$0            | \$0                         | \$0            | \$0                                 | \$0            |
| 900                  | 999      | \$2                                      | \$2                         | \$3            | \$2                         | \$2            | \$2                                 | \$2            |
| 1,000                | 1,099    | \$3                                      | \$3                         | \$3            | \$2                         | \$3            | \$2                                 | \$3            |
| 1,100                | 1,199    | \$4                                      | \$4                         | \$4            | \$3                         | \$3            | \$2                                 | \$3            |
| 1,200                | 1,299    | \$4                                      | \$4                         | \$5            | \$4                         | \$4            | \$3                                 | \$3            |
| 1,300                | 1,399    | \$5                                      | \$5                         | \$5            | \$5                         | \$5            | \$3                                 | \$4            |
| 1,400                | 1,499    | \$6                                      | \$5                         | \$6            | \$5                         | \$6            | \$4                                 | \$4            |
| 1,500                | 1,599    | \$7                                      | \$6                         | \$6            | \$6                         | \$6            | \$5                                 | \$5            |
| 1,600                | 1,699    | \$8                                      | \$6                         | \$7            | \$6                         | \$7            | \$6                                 | \$6            |
| 1,700                | 1,799    | \$9                                      | \$7                         | \$8            | \$7                         | \$8            | \$6                                 | \$7            |
| 1,800                | 1,899    | \$10                                     | \$8                         | \$9            | \$7                         | \$8            | \$7                                 | \$8            |
| 1,900                | 1,999    | \$10                                     | \$9                         | \$10           | \$8                         | \$9            | \$8                                 | \$9            |
| 2,000                | 2,099    | \$11                                     | \$10                        | \$11           | \$8                         | \$9            | \$8                                 | \$9            |
| 2,100                | 2,199.99 | \$12                                     | \$10                        | \$11           | \$9                         | \$10           | \$9                                 | \$10           |
| 2,200                | 2,299.99 | \$12                                     | \$11                        | \$12           | \$10                        | \$11           | \$9                                 | \$10           |
| 2,300                | 2,399.99 | \$12                                     | \$12                        | \$13           | \$11                        | \$12           | \$9                                 | \$10           |
| 2,400                | 2,499.99 | \$12                                     | \$12                        | \$13           | \$12                        | \$13           | \$10                                | \$11           |
| 2,500                | 2,599.99 | \$12                                     | \$13                        | \$14           | \$12                        | \$13           | \$10                                | \$11           |
| 2,600                | 2,699.99 | \$12                                     | \$13                        | \$14           | \$13                        | \$14           | \$12                                | \$13           |
| 2,700                | 2,799.99 | \$12                                     | \$13                        | \$14           | \$13                        | \$14           | \$13                                | \$14           |
| 2,800                | 2,899.99 | \$12                                     | \$13                        | \$14           | \$14                        | \$15           | \$14                                | \$15           |
| 2,900                | 2,999.99 | \$12                                     | \$13                        | \$14           | \$14                        | \$15           | \$16                                | \$17           |
| 3,000                | 3,099.99 | \$12                                     | \$13                        | \$14           | \$15                        | \$16           | \$18                                | \$19           |
| 3,100                | 3,199.99 | \$12                                     | \$13                        | \$14           | \$15                        | \$16           | \$20                                | \$21           |
| 3,200                | 3,299.99 | \$12                                     | \$13                        | \$14           | \$15                        | \$16           | \$20                                | \$21           |
| 3,300                | 3,399.99 | \$12                                     | \$13                        | \$14           | \$15                        | \$16           | \$22                                | \$23           |
| 3,400                | 3,499.99 | \$12                                     | \$13                        | \$14           | \$15                        | \$16           | \$22                                | \$23           |
| 3,500                | 3,599.99 | \$12                                     | \$13                        | \$14           | \$15                        | \$16           | \$24                                | \$25           |
| 3,600                | 3,699.99 | \$12                                     | \$13                        | \$14           | \$15                        | \$16           | \$25                                | \$25           |

(b) The maximum copayment for an eligible family with more than five (5) members shall be twenty-five (25) dollars.

(c) In accordance with 45 C.F.R. 98.21, a copayment for an eligible family shall:

- 1. Be determined at initial application or recertification; and
- 2. Not increase during the twelve (12) month eligibility period.

Section 12. Family Rights and Responsibilities. (1) The family

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of a child served by the CCAP shall have rights pursuant to KRS 199.898(1) and (2).

(2) Unless an alternative program such as Head Start, state preschool, or state kindergarten is available and accessible during the time child care is needed, an applicant for a child who receives or has been approved to receive CCAP benefits shall:

(a) Be offered choice of child care assistance subject to the availability of state and federal funds; and

(b) Receive a DCC-94, Child Care Service Agreement and Certificate.

(3) Upon enrollment or reenrollment with a provider, an applicant approved in accordance with Section 4 of this administrative regulation shall sign and return the:

(a) DCC-94; or

(b) DCC-90.

(4) Notification of action. (a) A DCC-94C, Provider Notification Letter, shall provide notice to a provider of a child's discontinuation from CCAP or disenrollment with a provider.

(b) A DCC-94.1, CHILD CARE Approval/Change Notice, shall provide notice of:

1. A change in the certification period of child;

2. Approval of an application; or

3. Continued eligibility.

(c) A DCC-105, Child Care Denial/Discontinuance Notice, shall provide notice of:

1. Denial of an application;

2. Discontinuance of a CCAP benefit;

3. Reason for adverse action;

4. Citation from an applicable state administrative regulation;

and

5. Information regarding the opportunity to request an administrative hearing in accordance with Section 18 of this administrative regulation.

(d) The language on the form shall differ according to the purpose of the notice described in paragraphs (a) through (c) of this subsection.

(5) An applicant for a child served by CCAP shall advise the cabinet or its designee of a change in a circumstance within ten (10) calendar days of the day the change is known.

(6) Failure to report a change in a circumstance may result in a:

(a) Decrease or discontinuance of CCAP benefits based on the type of change; or

(b) Claim in accordance with 922 KAR 2:020.

(7) An applicant for a child served by CCAP who fails to cooperate with a cabinet quality control or case review shall be:

(a) Discontinued from CCAP benefits; and

(b) Unable to participate in CCAP until the applicant meets the requirements of the quality control or case review.

(8) An applicant for a child served by CCAP shall report to the cabinet or its designee a provider whom the applicant suspects is not fulfilling requirements in accordance with Section 14(1)(c) of this administrative regulation.

Section 13. Cabinet Requirements. (1) The DCC-94 shall:

(a) Be used for child care assistance provided by a licensed, certified, or registered provider; and

(b) Not be considered a contract, employment, or grant to the child care provider, but shall be considered assistance to the applicant pursuant to 45 C.F.R. 98.30(c)(6).

(2) The cabinet or its designee shall provide consumer information regarding conditions for termination of the DCC-94 pursuant to KRS 199.8994(6)(b).

(3) The cabinet or its designee shall assure that a provider of child care assistance funded under the CCDF and other local, state, or federal funds shall comply with the applicable regulatory requirements pursuant to:

(a) 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties;

(b) 922 KAR 2:090, Child-care center licensure;

(c) 922 KAR 2:100, Certification of family child-care homes;

(d) 922 KAR 2:120, Child-care center health and safety standards;

(e) 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

(f) 922 KAR 2:190, Civil penalties;

(g) 922 KAR 2:270, Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes, upon its adoption; and

(h) 922 KAR 2:280, Background checks for child care staff members, reporting requirements, and appeals.

(4) The cabinet or its designee shall complete a home inspection of a registered child care provider in CCAP in accordance with 42 U.S.C. 9858c(c)(2)(K)(i)(IV) and 922 KAR 2:180.

(5) If CCAP benefits are reduced or discontinued due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to each family receiving child care assistance.

(6) If the daily maximum payment rate is reduced due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to licensed, certified, or registered providers.

(7) The cabinet shall send a notice of adverse action at least ten (10) calendar days in advance of taking adverse action.

(8) In accordance with 45 C.F.R. 98.46, the cabinet shall prioritize child care assistance benefits as determined by the available funds as follows:

(a) Child protective or preventive services authorization;

(b) A child with a special need;

(c) A child experiencing homelessness as defined by 45 C.F.R. 98.2;

(d) A child in the custody of the cabinet;

(e) K[-]TAP recipients participating in the Kentucky Works Program established in 921 KAR 2:370;

(f) Teen parents attending high school or pursuing a general equivalency degree (GED);

(g) A K[-]TAP recipient attempting to transition off assistance through employment;

(h) A parent whose K[-]TAP case has been discontinued during the previous twelve (12) months and who needs child care assistance in order to accept or retain employment;

(i) A low income working parent; or

(j) A parent in education or training programs leading to self-sufficiency.

Section 14. Provider Requirements. (1) A licensed child-care center, certified family child-care home, or registered child care provider that serves a child who participates in the CCAP shall:

(a) Sign and give to the parent for submission to the cabinet or its designee, upon a child's enrollment or reenrollment with the provider and prior to receiving payment from the CCAP, the DCC-94;

(b) Report all absences on the DCC-97, Provider Billing Form, submitted to the cabinet or its designee;

(c)1. Maintain the DCC-94E, Child Care Daily Attendance Record, in which the attendance is:

a. Recorded legibly each time the child arrives and each time the child departs the provider's care; and

b. Signed legibly with first and last name by the parent or applicant for the child served by CCAP; and

2. Submit the DCC-94E upon request of the cabinet or its designee;

(d) Comply with the applicable regulatory requirements pursuant to:

1. 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties;

2. 922 KAR 2:090, Child-care center licensure;

3. 922 KAR 2:100, Certification of family child-care homes;

4. 922 KAR 2:120, Child-care center health and safety standards;

5. 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

6. 922 KAR 2:190, Civil penalties;

7. 922 KAR 2:270, Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes~~[, upon its adoption]~~;

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and

8. 922 KAR 2:280, Background checks for child care staff members, reporting requirements, and appeals; [and]

(e) Complete the cabinet approved training on billing and the DCC-94E prior to receiving an initial payment from CCAP; and

(f) Complete, retain on file, and provide to the CCAP billing section documentation demonstrating completion of cabinet approved training on billing once during each year of operation or upon change of the staff member submitting billing information.

(2) A licensed or certified child care provider shall complete and submit the DCC-94B, Licensed or Certified Provider Agreement Form, prior to receiving payment from CCAP.

(3) A licensed child care provider shall maintain written documents with attendance records stating the reason for any absence of a child receiving CCAP in excess of five (5) absences per month per child.

(4)(a) If CCAP records indicate that a certified family child-care home or a licensed child-care center is operating over capacity, as specified in 922 KAR 2:100 or 922 KAR 2:120 respectively, by having two (2) or more shifts, the cabinet shall request an operating plan from the provider.

(b) An operating plan in accordance with paragraph (a) of this subsection shall specify:

1. Each employee of each shift;
2. The work hours for each employee of each shift;
3. The management for each shift;
4. The work hours for each management employee of each shift; and
5. The children enrolled for each shift.

(c) The cabinet shall approve a provider for overcapacity if:

1. The operating plan meets all requirements of:
  - a. For a licensed child-care center, 922 KAR 2:090 and 922 KAR 2:120; or

- b. For a certified family child-care home, 922 KAR 2:100; and

2. The provider has had less than two (2) health, safety, or welfare deficiencies or violations within the previous twenty-four (24) month period, even if deficiencies were corrected.

(5) A registered child care provider in CCAP shall comply with an inspection in accordance with 42 U.S.C. 9858c(c)(2)(K)(i)(IV) and 922 KAR 2:180 conducted by the cabinet or its designee.

(6) A provider shall be ineligible for CCAP if the provider:

(a) Was discontinued or disqualified from participation in a governmental assistance program due to fraud or abuse of the program;

(b) Has had a previous ownership interest in a child-care provider, which had a prior certification, license, registration, or permit to operate denied, suspended, revoked, or voluntarily relinquished as a result of an investigation or pending adverse action; or

(c) Is a parent, spouse, sibling, or child of a previous provider described in paragraphs (a) and (b) of this subsection, and the previous provider will be involved in the new provider's operations in any capacity.

Section 15. Other Services. To the extent funds are available, a child whose family's income is over the income limits for the CCAP described in Section 8 of this administrative regulation may be eligible for:

- (1) Child care payments;
- (2) Enrollment fees;
- (3) Activity or day trip fees;
- (4) Material fees;
- (5) Transportation fees; or
- (6) Other items relating to child care services with prior approval of the cabinet.

Section 16. An improper payment, claim, or penalty in CCAP shall be handled in accordance with 922 KAR 2:020.

Section 17. Criteria for Nonpayment. (1) Payment under the CCAP shall:

(a) Not be made to a licensed provider for more than five (5) absences per child during a month if the provider fails to verify in

writing, and maintain attendance records verifying, that the additional absences were related to:

1. A death in the family;

2. An illness of the:

- a. Child; or

- b. Applicant; or

3. A disaster verified by utility provider, local, state, or federal government;

(b) Not be made to a certified provider for more than five (5) absences per child during a month;

(c) Not be made to a registered provider for any absences;

(d) Be denied in accordance with KRS 199.8994(6);

(e) Cease if a family or provider defaults on a payment in accordance with Section 11 of this administrative regulation or 922 KAR 2:020;

(f) Not be made if a family no longer meets the technical or financial eligibility requirements under the CCAP;

(g) Not be made to a provider for payment requests ninety (90) days after the date of service;

(h) Not be made to a licensed or certified provider for more than ten (10) holidays per calendar year;

(i) Cease if a provider denies:

1. A parent of a child in care, the cabinet, the cabinet's designee, or a representative of an agency with regulatory authority:

- a. Entry into the provider's premises during operating hours; or

- b. Access to a child in care; or

2. The cabinet, the cabinet's designee, or a representative of an agency with regulatory authority access to the provider's records relevant to a:

- a. Cabinet review, including CCAP quality control or case review; or

- b. Review by another agency with regulatory authority;

(j) Not be made to a provider if the provider's DCC-94E in accordance with Section 14(1)(c) of this administrative regulation does not support billing for a child reported as served for the same period of time on the DCC-97;

(k) Not be made if a licensed or certified provider cares for a child served by CCAP at a location not specified on the DCC-94; or

(l) Not be made to a provider for a child in care over the capacity of the provider, as governed by 922 KAR 2:100 or 922 KAR 2:120, unless an operating plan is approved in accordance with Section 14(4) of this administrative regulation.

(2) Subject to the availability of state or federal funds, the cabinet may suspend approval of initial application for benefits under the CCAP following the priorities established in Section 13(8) of this administrative regulation.

Section 18. Administrative Hearings. (1) A CCAP applicant or recipient may request an administrative hearing regarding eligibility determination, recalculation, or recertification in accordance with 921 KAR 2:055.

(2) An administrative hearing pertaining to a matter not specified in subsection (1) of this section may be requested in accordance with:

- (a) 922 KAR 2:260; or

- (b) 922 KAR 2:020.

Section 19. Records. Records of CCAP shall be maintained and disclosed in accordance with:

- (1) KRS 194A.060;

- (2) 45 C.F.R. 98.90(e); and

- (3) 45 C.F.R. 205.50(a)(1)(i).

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "DCC-90, Subsidized Child Care Assistance Application Summary", 7/2019;

- (b) ["DCC-90P, CCAP Job Search Documentation", 10/17;

- (e)] "DCC-94, Child Care Service Agreement and Certificate", 07/21[10/17];

- (c)[(e)] "DCC-94.1, CHILD CARE Approval/Change Notice", 10/17;



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(d)[(e)] "DCC-94B, Licensed or Certified Provider Agreement Form", 04/17;

(e)[(f)] "DCC-94C, Provider Notification Letter", 10/17;

(f)[(g)] "DCC-94E, Child Care Daily Attendance Record", 7/13;

(g)[(h)] "DCC-97, Provider Billing Form", 04/13;

(h)[(i)] "DCC-105, Child Care Denial/Discontinuance Notice", 10/17; and

(i)[(j)] "DCC-300, Kentucky Child Care Maximum Payment Rate Chart", 07/21 [42/48].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dcbss/Pages/default.aspx>.

MARTA MIRANDA-STRAUB, Commissioner  
ERIC C. FRIEDLANDER, Secretary

APPROVE BY AGENCY: June 10, 2021

FILED WITH LRC: July 1, 2021 at 7:51 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 27, 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 September 20, 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 September 30, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, CHFSregs@ky.gov.

### 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 enables the cabinet to qualify for federal funds under the Child Care and Development Fund (CCDF) and establishes procedures for the implementation of the Child Care Assistance Program (CCAP) to the extent that funding is available.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to qualify for federal funds under CCDF and for the proper administration of CCAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorized statutes by allowing the cabinet to qualify for federal funds and establishing procedures for the implementation of CCAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the CCAP in a manner that is consistent with federal and state requirements, including available funding, and the interests of the clients to be served, child care providers, and taxpayers.

(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 incorporates the appropriated General Fund moneys in the amount of \$12,000,000 in fiscal year 2021-2022 to the Department for Community Based Services to provide a \$2 per child increase in the Child Care Assistance Program provider reimbursement rate for full-day care. This amendment is consistent with House Bill 405 (2021 Regular Session, Acts Chapter 176) and is reflected in the incorporated material - the DCC-300, Kentucky Child Care Maximum Payment Rate Chart. The amendment also requires CCAP-participating child care providers to complete annual training on billing and makes other necessary updates and technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to obligate additional funds from the General Fund appropriation to the Department for Community Based Services to provide a \$2 per child increase in the Child Care Assistance Program provider reimbursement rate for full-day care. The purpose of this appropriation was included in House Bill 405 (2021 Regular Session, Acts Chapter 176).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by aligning policy with more efficient operations, promoting parents' efforts to achieve self-sufficiency and the provision of quality child care, enhancing program integrity, and preserving the health and welfare of vulnerable children. This amendment specifically conforms with an appropriations bill passed in the 2021 Regular Session.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its refinement of CCAP in accordance with federal and state laws and the interests of households and children served.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of May 2021, there were 12,750 families and 23,346 children enrolled in CCAP, and over 1,600 child care providers participating in CCAP.

(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: Participating providers will need to complete the cabinet approved training on billing and the DCC-94E annually or upon a change in their billing staff. This will allow providers to receive a refresher on how to submit billing and become aware of any updates, allowing for a smoother reimbursement process.

(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): Regulated entities will benefit from increased provider reimbursement rates.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The amendment to this administrative regulation will be implemented within available federal and state appropriations for CCAP. An additional \$12 million in General Funds has been appropriated to implement this increase in provider reimbursement rates.

(b) On a continuing basis: The administrative regulation will be implemented within available federal and state appropriations for CCAP. The administrative body will continually monitor its costs to make any adjustments necessary to maintain CCAP and related services within available funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding to be used for implementation and

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enforcement of this administrative regulation are the federal Child Care and Development Fund Block Grant, state match, state maintenance of effort funds, and state General Funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The administrative regulation requires no increase in fees or funding

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? The Child Care Assistance Program is implemented in a like manner statewide. However, provider payment rates are tiered to recognize the higher operating costs of certain geographical, more populated areas. The provider payment rates were originally established based on the classification of cities. The rates are further supported by the analysis of the market rate survey results specified in KRS 199.899.

The amendment to this administrative regulation will be implemented within available federal and state appropriations for CCAP. In total, the projected impact of this specific amendment is approximately \$12 million annually.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):  
Expenditures (+/-):  
Other Explanation:

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

2. State compliance standards. KRS 194A.050(1), 199.892, 199.8994

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services will be impacted by this administrative regulation. Any local government or school district operating a child care program that receives CCAP 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, 199.892, 199.8994, 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 additional 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 additional revenue.

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation will be implemented with appropriated General Fund moneys in the amount of \$12 million. In SFY 2019, \$21,491,449.45 was used from General Funds to provide CCAP.

(d) How much will it cost to administer this program for subsequent years?

NEW ADMINISTRATIVE REGULATIONS

Public comment periods 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](#).

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET**  
**Education Professional Standards Board**  
**(New Administrative Regulation)**

**16 KAR 2:220. Emeritus Certificate.**

RELATES TO: KRS 161.020, 161.028, 161.030  
STATUTORY AUTHORITY: KRS 161.020, 161.028, 161.030  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board (EPSB) to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030(10) creates an emeritus certificate and authorizes the EPSB to promulgate administrative regulations setting forth the requirements for that certificate. This administrative regulation establishes the requirements for the emeritus certificate.

Section 1. Issuance. (1) A candidate shall be eligible for issuance of the emeritus certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and submission of the following:

(a) Documentation from a state department of education or state agency indicating that the applicant is a retired teacher;

(b) Twenty-five (25) dollars paid through electronic payment on the EPSB's Web site; and

(c) Proof of:

1. A Kentucky teaching or administrative certificate that was valid at the time of the applicant's retirement; or

2. An out-of-state teaching or administrative certificate that was valid at the time of the applicant's retirement and aligns with the requirements for issuance of a corresponding Kentucky certificate as outlined in 16 KAR Chapter 2 or 3.

(2) The emeritus certificate shall note the areas of certification that the applicant held at retirement.

(3) Applicants for the emeritus certificate shall not be subject to the recency requirements in 16 KAR 4:080.

Section 2. Validity. (1) The emeritus certificate shall be issued for a ten-year (10) period.

(2) The certificate shall be valid for substitute teaching and employment in the noted certification area as allowed by KRS 161.605 and the administrative regulations of the Kentucky Teachers' Retirement System.

Section 3. Renewal. (1) A candidate shall be eligible for one renewal of the emeritus certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and submission of the following: Twenty-five (25) dollars paid through electronic payment on the EPSB's Web site; and

(b) If the emeritus certificate notes administrative certification, documentation of:

1. Qualifying employment; or

2. Forty-two (42) hours of approved training selected from programs approved for the Kentucky Effective Instructional Leadership Training Program; or

(c) If the emeritus certificate notes teacher certification, documentation of:

1. Qualifying employment; or

2. Sixty-four (64) hours of professional development that meets the requirements of KRS 156.095.

(2) Qualifying employment shall be thirty (30) days of employment per academic year for a minimum of two (2) academic years at:

(a) A public school or a regionally or nationally accredited nonpublic school in a certified position;

(b) The Kentucky Department of Education, or other state or federal educational agency with oversight for elementary and

secondary education; or

(c) A regionally or nationally accredited institution of higher education in the area of educator preparation or the academic subject area for which the educator holds certification.

(3) The renewal requirements shall be completed by September 1 of the year of expiration of the certificate.

LISA RUDZINSKI, Board Chair

APPROVED BY AGENCY: June 24, 2021

FILED WITH LRC: June 25, 2021 at 11:01 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 23, 2021, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Todd Allen, Interim General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email [regcomments@education.ky.gov](mailto:regcomments@education.ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for the emeritus certificate.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the standards for the emeritus certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public-school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030(10) requires the EPSB to set the requirements for the emeritus certificate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the requirements for application, issuance and renewal of the emeritus certificate.

(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:

(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: 173 Kentucky school districts and retired educators seeking emeritus certification.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Retired educators seeking emeritus certification will have to apply with the Education Professional Standards Board and provide the required documentation and fee. School districts will not have to take any action to comply.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The applicant for the emeritus certificate will have to pay a fee of twenty-five (\$25) dollars. Certification fees are typically set in 16 KAR 4:040, and the cost of a five-year professional certificate is eighty-five (\$85) dollars. However, in recognition of the fact that these educators are retired, the Education Professional Standards Board is charging a reduced fee of twenty-five (\$25) dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Retired educators will be issued an emeritus certificate. This could result in more retired educators maintaining certification to substitute or accept employment in the public schools as allowed by the Kentucky Teachers' Retirement System.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The initial cost to implement this regulation will be the creation of the new certificate and certificate code in the system, training for staff on the standards and requirements for this new certificate, and the time and resources for processing the applications and issuing the emeritus certificate. This is a new certificate, and it is unknown how many applications will be received; however, it is expected that this will be offset by the certification fees collected.

(b) On a continuing basis: The continuing cost to implement this regulation will be the staff time and resources for processing applications. This is a new certificate, and it is unknown how many applications will be received; however, it is expected that this will be offset by the certification fees collected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Certification Fees collected pursuant to this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Though certification fees are typically established by 16 KAR 4:040, in recognition of the applicants' status as retired educators this administrative regulation establishes a reduced fee for the emeritus certificate of twenty-five (\$25) dollars.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board and public-school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, KRS 161.028, KRS 161.030.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Each applicant for the emeritus certificate will have to pay a twenty-five (\$25) dollar fee for issuance. This is a new certificate, so it is unknown how many

applications will be received. Certification fees are a part of the Education Professional Standards Board's restricted funds, that in accordance with KRS 161.028 (1)(q) can be used towards the costs of issuance, reissuance, and renewal of certificates, and the costs associated with disciplinary action against a certificate holder.

(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? Each applicant for the emeritus certificate will have to pay a twenty-five (\$25) dollar fee for issuance. Certification fees are a part of the Education Professional Standards Board's restricted funds, that in accordance with KRS 161.028 (1)(q) can be used towards the costs of issuance, reissuance, and renewal of certificates, and the costs associated with disciplinary action against a certificate holder. This is a new certificate and it is unknown how many applications will be received. Each certificate will be valid for ten-years, so applicants will not reapply annually.

(c) How much will it cost to administer this program for the first year? For the first year, cost will be the creation of the new certificate and certificate code in the system, training for staff on the standards and requirements for this new certificate, and the time and resources for processing the applications and issuing the emeritus certificate. As this is a new certificate, we are unable to determine the number of applications that will be received. It is expected that the increased restricted fund from the certification fees collected for these applications will offset the costs.

(d) How much will it cost to administer this program for subsequent years? For subsequent years, the cost will be the staff time and resources for processing the applications and issuing the emeritus certificates. This will vary depending on the number of applications and certificates, and as this is a new certificate, we are unable to determine that number. However, it is expected that the increased restricted funds from the certification fees collected for these applications will offset the costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: At this time, it is unknown how many retired educators will seek an emeritus certificate. Some retired educators do not wish to maintain certification upon retirement. Currently, if an educator wishes to keep their certificate current after retirement they can apply for renewal of the full certificate, which carries an eighty-five (\$85) dollar fee or they can apply for a five-year substitute certificate for fifteen (\$15) dollars. The emeritus certificate will have the same rights as the full certificate, for a ten-year period for a reduced fee of twenty-five (\$25) dollars. The certification fees collected for these applications will offset the costs of issuance.

#### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Education Professional Standards Board (New Administrative Regulation)

#### 16 KAR 2:230. Exception certificate.

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.020, 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board (EPSB) to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030(10) creates an exception certificate and authorizes the EPSB to promulgate administrative regulations setting forth the requirements for that certificate. This administrative regulation establishes the requirements for the exception certificate.

Section 1. (1) A candidate shall be eligible for issuance of the one-time exception certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and submission of the following documentation:

(a) Rank I or Rank II status obtained prior to the expiration of

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the applicant's certificate; and

(b) Three (3) years of verified classroom teaching experience at a regionally- or nationally- accredited nonpublic school.

(2) The exception certificate shall reissue any expired certification that the applicant previously held, other than a certificate that expired for failure to complete the preparation program.

(3) Reissued teaching certificates shall be subject to the renewal requirements established in 16 KAR 4:060.

(4) Reissued administrative certificates shall be subject to the renewal requirements established in 16 KAR Chapter 3.

LISA RUDZINSKI, Board Chair

APPROVED BY AGENCY: June 24, 2021

FILED WITH LRC: June 25, 2021 at 11:01 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this proposed administrative regulation shall be held on September 23, 2021, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

**CONTACT PERSON:** Todd Allen, Interim General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for the one-time exception certificate.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the standards for the application and issuance for the one-time exception certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public-school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030(10) requires the EPSB to set the requirements for the one-time exception certificate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the requirements for application and issuance of the one-time exception certificate.

(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:

(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: 173 Kentucky school districts and Rank I/II educators with an expired certificate who were unable to meet

the requirements for renewal or reissuance.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for the one-time exception certificate will have to complete an application and provide the required documentation. School districts will not have to take any action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no fee established by the Education Professional Standards Board in this regulation. 16 KAR 4:040 sets the certification fees and applicants will have to pay the established fee that corresponds to the certificate. There is no cost for school districts.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will be issued a one-time exception certificate that reissues their previously expired certificates. School districts will have access to a larger pool of certified candidates.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The initial cost to implement this regulation will be the creation of the new certificate and certificate code in the system, training for staff on the standards and requirements for this new certificate, and the time and resources for processing the applications and issuing the exception certificate. This is a new certificate, and it is unknown how many applications will be received; however, it is expected that this will be offset by the certification fees collected.

(b) On a continuing basis: The continuing cost to implement this regulation will be the staff time and resources for processing applications. This is a new certificate, and it is unknown how many applications will be received; however, applicants will only be entitled to one issuance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Certification fees collected pursuant to 16 KAR 4:040.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Certification fees are established by 16 KAR 4:040. No additional fees are established by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board and public-school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, KRS 161.028, KRS 161.030.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Each applicant for the certificate will have to pay the certification fee established in 16 KAR 4:040. This is a new certificate, so it is unknown how many applications will be received. Certification fees are a part of the Education Professional Standards Board's

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restricted funds, that in accordance with KRS 161.028 (1)(q) can be used towards the costs of issuance, reissuance, and renewal of certificates, and the costs associated with disciplinary action against a certificate holder.

(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? Each applicant for the certificate will have to pay the certification fee established in 16 KAR 4:040. This is a new certificate, so it is unknown how many applications will be received. Certification fees are a part of the Education Professional Standards Board's restricted funds, that in accordance with KRS 161.028 (1)(q) can be used towards the costs of issuance, reissuance, and renewal of certificates, and the costs associated with disciplinary action against a certificate holder.

(c) How much will it cost to administer this program for the first year? For the first year, cost will be the creation of the new certificate and certificate code in the system, training for staff on the standards and requirements for this new certificate, and the time and resources for processing the applications and issuing the one-time exception certificate. As this is a new certificate, we are unable to determine the number of applications that will be received. It is expected that the increased restricted fund from the certification fees collected for these applications will offset the costs.

(d) How much will it cost to administer this program for subsequent years? For subsequent years, the cost will be the staff time and resources for processing the applications and issuing the one-time exception certificates. This will vary depending on the number of applications and certificates, and as this is a new certificate, we are unable to determine that number. However, it is expected that the increased restricted funds from the certification fees collected for these applications will offset the costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: At this time, it is unknown how many educators will seek a one-time exception certificate. Applicants will be required to pay the certification fee established in 16 KAR 4:040. The certification fees collected for these applications will offset the costs of issuance.

### STATE BOARD OF ELECTIONS (New Administrative Regulation)

#### 31 KAR 4:195. Consolidation of precincts and precinct election officers.

RELATES TO: KRS 117.066

STATUTORY AUTHORITY: KRS 117.015(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117.066(3) requires the State Board of Elections to promulgate administrative regulations to provide for a form on which a county board of elections may petition the State Board of Elections to allow for the consolidation of precincts and the consolidation of precinct election officers at any voting location where voters of more than one (1) precinct vote. This administrative regulation establishes that form.

Section 1. A county board of elections shall petition the State Board of Elections to allow the consolidation of precincts and the consolidation of precinct election officers at any voting location where voters of more than one (1) precinct vote, by filing with the State Board of Elections, the "Petition to Consolidate Precincts and Precinct Election Officers" Form SBE 74 no later than ninety (90) days before a primary or general election, or ten (10) days after a proclamation is issued under KRS 118.710 or 118.720, or a writ of election is issued under KRS 118.730. The State Board of

Elections shall reserve the right to request, at any time, from any county, a resubmission of any petition to consolidate precincts and precinct election officers.

Section 2. Incorporated by Reference. (1) Petition to Consolidate Precincts and Precinct Election Officers, Form SBE 74, 06/2021, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JARED DEARING, Executive Director

APPROVED BY AGENCY: June 23, 2021

FILED WITH LRC: June 23, 2021 at 10:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this new administrative regulation shall be held on September 21, 2021, at 10:00 a.m. ET, at the Office of the State Board of Elections. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Taylor Brown, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the form used by county board of elections to petition the State Board of Elections to allow the consolidation of precincts and the consolidation of precinct officers at any voting location where voters of more than one (1) precinct vote, as required by KRS 117.066(3).

(b) The necessity of this administrative regulation: This administrative regulation is necessary given that Kentucky Acts Chapter 197 requires the State Board to promulgate new administrative regulations under KRS 117.066

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the mandates of KRS 117.066(3), as amended by Kentucky Acts Chapter 197.

(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:

(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: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all county boards of election that wish to consolidate precincts and precinct election officers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this

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administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. To comply with this administrative regulation, a county board of elections will need to complete and submit a form to the State Board of Elections.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will cost only the amount necessary to print a standard form and transmit it to the State Board through conventional means.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit county boards of election by standardizing the procedure by which precincts and precinct election officers are consolidated.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The cost of the implementation of this administrative regulation for the State Board of Elections will be minimal as it will require only the creation of the new Form SBE 74.

(b) On a continuing basis: The only continuing cost will be the price associated with printing any copies of the Form SBE 74 that are necessary.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections' administrative budget will be used in the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Implementation of this administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not used in this administrative regulation, as a desired result of the promulgation of this administrative regulation is uniform procedures for the administration of elections throughout all of the counties in the Commonwealth.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? At the state level, the State Board of Elections will be impacted by this administrative regulation. At the local level, all local boards of elections 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. KRS117.066(3), as amended by Kentucky Acts Chapter 197, requires and authorizes the actions 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.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is not expected or intended that this administrative regulation will generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is not expected or intended that this administrative regulation will generate any revenue.

(c) How much will it cost to administer this program for the first

year? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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:

### STATE BOARD OF ELECTIONS (New Administrative Regulation)

#### 31 KAR 4:200. Chain of custody for records during an election contest.

RELATES TO: KRS 120.205, 120.215

STATUTORY AUTHORITY: KRS 117.015(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 120.205 and KRS 120.215 require the State Board of Elections to promulgate administrative regulations to provide for a form on which documents any individuals transporting all voting equipment, ballots, boxes, precinct rosters, and other voting records related to an election contest involving an election of a Governor and Lieutenant Governor or a member of the General Assembly. This administrative regulation establishes that form.

Section 1. In the event that a board is established under KRS 120.205 or KRS 120.215 to try a contested election of a Governor and Lieutenant Governor or a member of the General Assembly, the possession of all voting equipment, ballots, boxes, precinct rosters, and any other voting records sent for by the board shall not transfer unless documented in writing on Form SBE 75, "Election Contest Chain-of-Custody."

Section 2. Incorporated by Reference. (1) Election Contest Chain-of-Custody, Form SBE 75, 06/2021, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JARED DEARING, Executive Director

APPROVED BY AGENCY: June 23, 2021

FILED WITH LRC: June 23, 2021 at 10:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this new administrative regulation shall be held on September 21, 2021, at 10:00 a.m. ET, at the Office of the State Board of Elections. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Taylor Brown, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

## VOLUME 48, NUMBER 2– AUGUST 1, 2021

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the form which documents any individuals transporting all voting equipment, ballots, boxes, precinct rosters, and other voting records related to an election contest involving an election of a Governor and Lieutenant Governor or a member of the General Assembly, as required by KRS 120.205 and KRS 120.215.

(b) The necessity of this administrative regulation: This administrative regulation is necessary given that Kentucky Acts Chapter 197 requires the State Board to promulgate new administrative regulations under KRS 120.205 and KRS 120.215.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the mandates of KRS 120.205 and KRS 120.215, as amended by Kentucky Acts Chapter 197.

(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:

(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: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect those involved in the administration of an election contest involving an election of a Governor and Lieutenant Governor or a member of the General Assembly.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. To comply with this administrative regulation, those transporting election materials will need to document themselves on a standardized form anytime the materials are transferred.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will cost only the amount necessary to print a standardized form through conventional means.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit those involved in administering an election contest by providing the complete history of the movement of any related election materials.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The cost of the implementation of this administrative regulation for the State Board of Elections will be minimal as it will require only the creation of the new Form SBE 75.

(b) On a continuing basis: The only continuing cost will be the price associated with printing any copies of the Form SBE 75 that are necessary.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections' administrative budget will be used in the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Implementation of this administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not used in this administrative regulation, as a desired result of the promulgation of this administrative regulation is uniform procedures for the administration of elections throughout all of the counties in the Commonwealth.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The State Board of Elections and the General Assembly will be impacted by this administrative regulation, as well as any law enforcement agency requested to transport the election materials required for the contest.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 120.205 and KRS 120.215, as amended by Kentucky Acts Chapter 197, require and authorize the actions 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.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is not expected or intended that this administrative regulation will generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is not expected or intended that this administrative regulation will generate any revenue.

(c) How much will it cost to administer this program for the first year? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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:

### STATE BOARD OF ELECTIONS (New Administrative Regulation)

#### 31 KAR 5:025. Ballot Standards and Election Security.

RELATES TO: KRS 117.001, 117.085, 117.086, 117.087, 117.145, 117.225, 117.228

STATUTORY AUTHORITY: KRS 117.015(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. Several Kentucky Revised Statutes require the State Board of Elections to promulgate administrative regulations that provide for measures that establish standards for the ballots used during elections, as well as, measures that ensure that votes cast during an election are done so in a free, fair, and secure manner. This administrative regulation provides for those measures.



## VOLUME 48, NUMBER 2– AUGUST 1, 2021

Section 1. In addition to the requirements for printed ballots outlined in KRS 117.145, ballots caused to be printed by the county clerk of each county shall meet quality and size standards specific to the voting systems certified by both the State Board of Elections and the United States Election Assistance Commission.

Section 2. The outer envelope of all mail-in absentee ballots shall bear a barcode or other label that is unique to the individual voter and capable of being read by an electronic optical scanner. The unique barcode or label for each mail-in absentee ballot outer envelope shall be issued by the State Board of Elections.

Section 3. Upon the time of certification of each candidate and each question to be voted upon, all printed paper ballots shall be secured by the county clerk of each county, under lock and key, in an area under the direct control of the county clerk and approved by the county board of elections. The possession of all printed ballots shall be accounted for on SBE Form 76, "Ballot Accountability Statement." Upon the need for paper ballots to be printed at a county clerk's office, an accounting of the printed ballots shall be made on either the SBE Form 76, "Ballot Accountability Statement" or by the printing equipment. Upon the transfer of ballots from the area under the direct control of the county clerk to a polling location, the transfer shall be noted on the SBE Form 76, "Ballot Accountability Statement." Beginning with the casting of ballots during the period described in KRS 117.085(2), each voted ballot shall remain in a locked and sealed receptacle, until the conclusion of the period described in KRS 117.295(1). At the conclusion of each day of voting, an accounting of the number of all voted, unvoted, and spoiled ballots shall be recorded on the SBE Form 76, "Ballot Accountability Statement." All ballots and election materials not secured in an area under the direct control of the county clerk after the close of polls shall be secured on location by the county sheriff, in coordination with the county board of elections, from the time described in KRS 117.085(2) until the conclusion of voting on the day of an election. As mail-in absentee ballots are received by county clerks, they shall have their unique barcode or label scanned. Upon each mail-in absentee ballot being processed, the unique barcode or label shall be scanned again. If a mail-in absentee ballot is found to be without the need for a signature cure, or a mail-in absentee ballot has been returned along with a completed SBE Form 77, "Missing or Discrepant Mail-in Absentee Signature," the ballot shall be recorded into an optical scanner, to be deposited in a locked and sealed receptacle for the period described in KRS 117.295(1). Any completed SBE Form 76, "Ballot Accountability Statement" shall be turned over to the Commonwealth's Attorney along with any other materials required under KRS 117.365.

Section 4. Any voter who is disabled may request a mail-in absentee ballot via an online accessible ballot portal which shall conform to web accessible design standards as set forth by the W3C Web Accessibility Initiative.

Section 5. Upon receipt of a valid mail-in ballot request, through the online request portal or other valid request method, the request of the voter shall be noted in the Voter Registration System, and reflected in the electronic pollbooks used by precinct election officers. Should a voter noted to have requested a mail-in absentee ballot appear at a polling location in order to vote in-person, the precinct election officer shall communicate with the county clerk, who shall make a determination as to whether the requested mail-in absentee ballot has been completed and returned as a cast ballot by the voter. If the mail-in absentee ballot is found to have been completed and returned as a cast ballot, the voter shall not be permitted to cast an in-person vote. If the mail-in absentee ballot is found not to have been completed and returned as a cast ballot and the ballot has been returned to the county clerk no later than seven (7) days prior to the date of the election as required by KRS 117.085(11), the county clerk shall immediately cancel the issued ballot in the Voter Registration System and allow the voter to cast an in-person ballot after the voter completes Form SBE 32, "Oath of Voter," copies of which shall be forwarded to the Commonwealth's Attorney.

Section 6. A voter, or an individual identified by KRS 117.0861(1), may deliver a mail-in absentee ballot to the office of the county clerk in the county where the voter is registered, or to a secure drop-off location if one is maintained by the county clerk in the county where the voter is registered, rather than mailing the ballot via the United States Postal Service. Any county choosing to use a receptacle for ballot drop-off other than a drop-box provided by the State Board of Elections, must formally seek the State Board of Elections' approval of the receptacle before any ballot shall be allowed to be deposited inside. Any county choosing to utilize a drop-off receptacle, including those provided by the State Board of Elections, shall inform the State Board of Elections of the number of receptacles being used, the type of each receptacle being used, and the location of each drop-off location. Any receptacle located outside a County Clerk's Office shall be placed in a well-lit, easily accessible location, be bolted down, and be under video surveillance at all times. Any drop-box located inside, shall be under direct supervision of the staff of the county clerk at all times that it is accessible to the public. All drop-boxes used for the receipt of ballots shall be clearly marked as for use by voters in the election, so as to differentiate the drop-box from any other that may be in use in the area. Any other non-elections related drop-box in use by a county clerk for any other official business shall clearly indicate that the other drop-box is not for the return of election material. Each county clerk utilizing one or more ballot drop-off receptacle shall empty each receptacle at least once each business day of the county clerk's office, and secure the absentee ballots therein in a manner consistent with KRS 117.086(7); however, county clerks shall empty receptacles more frequently than daily, as needed, so as to reasonably accommodate the volume of voter-delivered absentee ballots.

Section 7. After the receipt of a mail-in absentee ballot by the county clerk and the examination of the signatures located on the outer envelope and the detachable flap, as well as, the voter's signature of record, if a signature match cannot be made, the county board of elections, central counting board, or the county clerk shall make a reasonable effort to contact the voter, which shall, at minimum, include the mailing of Form SBE 77, "Missing or Discrepant Mail-in Absentee Signature," to provide notice to the voter that they may cure their signature before the closing of the polls on the day of the election. Upon the county board of elections, central counting board, or the county clerk noting the need for a signature cure, the ballot shall be noted in the Voter Registration System, which shall prompt the facilitation of the printing of the SBE 77. The State Board of Elections shall facilitate the printing of the SBE 77 on behalf of the counties with a state-approved vendor, the cost of which shall be borne by the county required to contact the voter.

Section 8. A voter unable to provide proof of identification as required under KRS 117.225, and as defined under KRS 117.001, shall meet the requirements of KRS 117.228(1)(c) by executing SBE Form 71, "Voter Affirmation Form." A voter personally known to an election officer may cast a ballot in accordance with KRS 117.228(4) upon the election officer executing SBE Form 72, "Election Officer Affirmation Form." Both the SBE 71 and SBE 72 shall be forwarded to the Commonwealth's Attorney following the election.

Section 9. Incorporated by Reference. (1) The following material is incorporated by reference:

- (a) "Oath of Voter," SBE Form 32, 06/2021;
  - (b) "Ballot Accountability Statement," Form SBE 76, 06/2021;
  - (c) "Missing or Discrepant Mail-in Absentee Signature," Form SBE 77, 06/2021;
  - (d) "Voter Affirmation Form," Form SBE 71, 06/2021;
  - (e) "Election Officer Affirmation Form" Form 72, 06/2021;
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JARED DEARING, Executive Director

## VOLUME 48, NUMBER 2– AUGUST 1, 2021

APPROVED BY AGENCY: June 23, 2021

FILED WITH LRC: June 23, 2021 at 10:20 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this new administrative regulation shall be held on September 21, 2021, at 10:00 a.m. ET, at the Office of the State Board of Elections. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Taylor Brown, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for the ballots used during elections, as well as, measures that ensure that votes cast during an election are done so in a free, fair, and secure manner.

(b) The necessity of this administrative regulation: This administrative regulation is necessary given that Kentucky Acts Chapter 197 requires the State Board to promulgate new administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the mandates of several of the Kentucky Revised Statutes amended by Kentucky Acts Chapter 197.

(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:

(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: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect voters of the Commonwealth, county clerks, and the State Board of Elections.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. To comply with this administrative regulation, voters may need to complete a form or follow absentee ballot delivery instructions, while county clerks and the State Board of Elections will need to take steps to ensure the security of their elections.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will have minimal costs.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): Compliance with this new administrative regulation will benefit all in ensuring that all elections conducted in the Commonwealth are done so in a free, fair, and secure manner.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The cost of the implementation of this administrative regulation for the State Board of Elections will be minimal as it will require only the creation of the new Forms incorporated by reference.

(b) On a continuing basis: The only continuing cost will be the price associated with printing any copies of the SBE Forms that are necessary.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections' administrative budget will be used in the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Implementation of this administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? Explain why or why not. Tiering is not used in this administrative regulation, as a desired result of the promulgation of this administrative regulation is uniform procedures for the administration of elections throughout all of the counties in the Commonwealth.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The State Board of Elections and the Commonwealth's county clerks 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 117.001, 117.015, 117.085, 117.086, 117.087, 117.145, 117.225, 117.228, as amended by Kentucky Acts Chapter 197, require and authorize the actions 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.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is not expected or intended that this administrative regulation will generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is not expected or intended that this administrative regulation will generate any revenue.

(c) How much will it cost to administer this program for the first year? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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:

## VOLUME 48, NUMBER 2– AUGUST 1, 2021

**DEPARTMENT OF LAW**  
**Civil Division**  
**Office of Civil and Environmental Law**  
**Open Records and Meetings Division**  
**(New Administrative Regulation)**

### 40 KAR 1:040. Standardized Open Records Request Form.

RELATES TO: KRS 61.876(4)

STATUTORY AUTHORITY: KRS 61.876(4)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to comply with KRS 61.876(4), which requires the Attorney General to promulgate by regulation a standardized form that may be used to request to inspect public records under the Kentucky Open Records Act.

Section 1. Incorporation by Reference. (1) "Standardized Open Records Request Form", OAG-1, June 2021, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. The material incorporated by reference is also available on the Attorney General's Web site at [https://ag.ky.gov/Documents/2021\\_Standardized\\_Open\\_Records\\_Request\\_Form\\_V3.pdf](https://ag.ky.gov/Documents/2021_Standardized_Open_Records_Request_Form_V3.pdf). 40 KAR 1:040.

DANIEL CAMERON, Attorney General

APPROVED BY AGENCY: June 23, 2021

FILED WITH LRC: June 28, 2021 at 11:07 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 a.m. on September 22, 2021 at Capital Complex East, Conference Room A, 1024 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Marc Manley, Division Director, Open Records and Meetings Division, Office of Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5478, email [Marc.Manley@ky.gov](mailto:Marc.Manley@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Marc Manley

(1) Provide a brief summary of:

(a) What this administrative regulation does: Pursuant to House Bill 312 § 3(4), this administrative regulation creates and incorporates by reference a standardized form that may be used to request public records from a public agency under the Kentucky Open Records Act.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because, under House Bill 312 § 3(4), the General Assembly has required the Attorney General to promulgate reference a standardized form that may be used to request public records from a public agency under the Kentucky Open Records Act.

(c) How this administrative regulation conforms to the content of the authorizing statutes: House Bill 312 § 3(4) requires the Attorney General to promulgate this administrative regulation.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation will assist public agencies across the Commonwealth because every public agency must accept a request to inspect public records that is submitted on this form. In addition, under House Bill 312 § 3(2), each public agency must display the form in a prominent location accessible to the public, including on its Website. This administrative regulation will ensure that each public agency can meet that statutory requirement.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Every "public agency," as the term is defined in KRS 61.870(1), is affected by this administrative regulation. Specifically, each public agency must accept a request to inspect public records that is submitted using the standardized form that is incorporated by reference by this administrative regulation.

(4) Provide an analysis of how the entities identified in the previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Although no regulated entity must take any specific actions to comply with this administrative regulation, House Bill 312, effective June 29, 2021, requires that each public agency subject to the Act "shall accept" any request submitted using the standardized form that is incorporated by reference.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: It is neither intended nor anticipated that any public agency will incur any cost as a result of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: A public agency can be assured that any request to inspect records that is submitted on this form is a request that meets the basic requirements of the Open Records Act.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: Not applicable.

(a) Initially: Not applicable.

(b) On a continuing basis: Not applicable.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees or additional funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? Because House Bill 312 requires that the Attorney General develop one standardized form that the public may use to submit open records requests, no tiering is required.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All public agencies subject to the Kentucky Open Records Act 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 61.876(4), as amended by House Bill 312, requires and authorizes the action taken by the administrative regulation.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? Not applicable.

(d) How much will it cost to administer this program for subsequent years? Not applicable.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Not applicable.

Expenditures (+/-): Not applicable.

Other Explanation: Not applicable.

**BOARDS AND COMMISSIONS**  
**Board of Durable Medical Equipment Suppliers**  
**(New Administrative Regulation)**

**201 KAR 47:030. Complaint and disciplinary process.**

RELATES TO: KRS 309.406, 309.412, 309.414, 309.416, 309.418, 309.420

STATUTORY AUTHORITY: KRS 309.406, 309.418

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.406(1)(d) authorize the board to promulgate administrative regulations governing home medical equipment and service providers. KRS 309.406(1)(d) authorizes the board to investigate complaints or violations of the home medical equipment laws and the administrative regulations. This administrative regulation details the process by which the board investigates complaints and violations.

Section 1. Definitions. (1) "Board" is defined by KRS 309.402.

(2) "Charge" means a specific allegation contained in a document issued by the board or hearing panel alleging a violation of a specified provision of KRS 309.400 through 309.422 or 201 KAR Chapter 47.

(3) "Complaint" means a written complaint alleging a violation of KRS 309.400 through 309.422 and 201 KAR Chapter 47.

(4) "Complainant" means a person who files a complaint pursuant to this administrative regulation.

(5) "Complaint Committee" means the committee appointed pursuant to Section 2 of this administrative regulation.

(6) "Formal complaint" means a formal administrative pleading or notice of administrative hearing authorized by the board that sets forth charges against a licensee or applicant and commences a formal disciplinary proceeding in accordance with KRS Chapter 13B.

(7) "Initiating complaint" means an allegation alleging misconduct by a licensee or applicant or alleging that an unlicensed person is engaging in unlicensed practice or using a title without holding a license.

(8) "Order" means the whole or a part of a final disposition of a hearing.

(9) "Respondent" means the individual or entity against whom an initiating or a formal complaint has been made.

Section 2. Initiating Complaint. (1) An initiating complaint may be initiated by the board, an individual, an organization, an entity, or a governmental agency. A certified copy of a court record for a misdemeanor or felony conviction shall be considered a valid initiating complaint.

(2) Initiating complaints shall:

(a) Be in writing;

(b) Clearly identify the individual or entity against whom the initiating complaint is being made;

(c) Contain the date;

(d) Identify the individual or entity making the initiating complaint; and

(e) Contain a clear and concise statement of the facts giving rise to the initiating complaint.

(3) An initiating complaint may be submitted to the Board in any manner.

(4) Upon receipt of an initiating complaint, a copy of the initiating complaint shall be mailed to the respondent along with a request for a response to the complaint within twenty (20) days of the date on which the initiating complaint was received, unless an extension is granted by the board.

(5) Upon receipt of the written response of the respondent, a copy of the response shall be sent to the complainant. The complainant shall have seven (7) days from receipt to submit a written reply to the response to the board unless an extension is granted by the board.

(6) Complaint Committee.

(a) The complaint committee shall consist of two (2) board members appointed by the chair of the board to:

1. Review initiating complaints, responses, replies, investigative reports, and any other relevant material;

2. Participate in informal proceedings to resolve formal complaints; and

3. Make recommendations for disposition of initiating complaints and formal complaints to the full board.

(b) The complaint committee may be assisted by the board staff and counsel to the board.

Section 3. Initial Review. (1) At the next regularly scheduled meeting of the board or as soon thereafter as practicable, the board, upon recommendation of the complaint committee, shall determine the proper disposition of the complaint.

(2) If the Board determines before formal investigation that the facts alleged in the initiating complaint do not constitute a prima facie violation of KRS 309.400 through 309.422 or 201 KAR Chapter 47, the board shall dismiss the complaint and notify the complainant and respondent that no further action shall be taken.

(3) If the Board determines that more investigation is warranted, the board shall appoint an agent or representative of the board to investigate the initiating complaint.

(4) If the Board determines that there is a prima facie violation of KRS 309.400 through 309.422 or 201 KAR Chapter 47, the board shall issue a formal complaint against the respondent.

(5) In the case of a prima facie violation of KRS 309.422 and the respondent is not a licensee, the board may take the following actions:

(a) Issue a cease and desist;

(b) File an injunction; and

(c) Seek criminal prosecution pursuant to KRS 309.422.

Section 4. Final Review. (1) Upon the completion of the investigation, the person or persons making that investigation shall submit a written report to the board containing a succinct statement of the facts disclosed by the investigation.

(2) Based on consideration of the complaint, response, reply, the investigative report, if any, and any other relevant evidence, the board shall determine if there has been a prima facie violation of KRS 309.400 through 309.422.

(3) If the Board determines that the facts alleged in the initiating complaint do not constitute a violation of KRS 309.400

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through 309.422 or 201 KAR Chapter 47, the board shall dismiss the complaint and notify the complainant and the respondent that no further action shall be taken.

(4) If the Board determines that there is a violation of KRS 309.400 through 309.422 or 201 KAR Chapter 47, the board shall issue a formal complaint against the respondent.

(5) In the case of a violation of KRS 309.422 and the respondent is not a licensee, the board may take the following actions:

- (i) Issue a cease and desist;
- (ii) File an injunction; and
- (iii) Seek criminal prosecution pursuant to KRS 309.422.

Section 5. Settlement by Informal Proceedings. (1) The board, at any time during this process, may enter into informal proceedings with the respondent for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the chair and the respondent.

(3) The board may employ mediation as a method of resolving the matter informally.

(4) The board may, at any time during this process, issue a letter of admonishment to the respondent as a means of resolving the complaint. Within thirty (30) day of the date of the letter, the respondent shall have the right to file a written response to the letter and have it attached to the letter of admonishment and placed in the file. The respondent shall also, within thirty (30) days of the date of the letter, have the right to appeal the letter of admonishment and be granted a full hearing on the complaint. If this appeal is requested, the board shall immediately file a formal complaint in regard to this matter and set a date for hearing.

Section 6. Formal Complaint. (1) If the board votes to file a formal complaint, a notice of administrative hearing shall be filed as required by KRS 13B.050.

(2) Within twenty (20) days of service of the notice of administrative hearing, the respondent shall file with the board a written response to the specific allegations set forth in the notice of administrative hearing.

(3) Allegations not properly responded to shall be deemed admitted.

(4) The board may, if there is good cause, permit the late filing of a response.

Section 7. Composition of the Hearing Panel. Disciplinary actions shall be heard by:

- (1) The full board or a quorum of the board;
- (2) A hearing panel consisting of at least one (1) board member appointed by the board; or
- (3) The hearing officer alone in accordance with KRS 13B.030(1).

Section 8. Notification. Upon final resolution of a complaint submitted pursuant to this process, the board shall notify the complainant and the respondent of the outcome of the action in writing.

CAROLYN R. BASFORD, President and Chairperson

APPROVED BY AGENCY: July 14, 2021

FILED WITH LRC: July 15, 2021 at 11:02 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 1:00 PM EST on September 28, 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:

Topic: DME REGULATIONS PUBLIC HEARING

Time: Sep 28, 2021 01:00 PM Eastern Time (US and Canada)

Join from PC, Mac, Linux, iOS or Android:  
<https://us02web.zoom.us/j/82542024981?pwd=Z2cwZVpxYkhSRE>

VKeC9qR1F1NWw4QT09

Password: 420731

Or Telephone:

Dial:

USA 713 353 0212

USA 8888227517 (US Toll Free)

Conference code: 497796

Find local AT&T Numbers:  
<https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=7133530212&accessCode=497796>

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)

162.255.36.11 (US East)

115.114.131.7 (India Mumbai)

115.114.115.7 (India Hyderabad)

213.19.144.110 (Amsterdam Netherlands)

213.244.140.110 (Germany)

103.122.166.55 (Australia Sydney)

103.122.167.55 (Australia Melbourne)

149.137.40.110 (Singapore)

64.211.144.160 (Brazil)

149.137.68.253 (Mexico)

69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)

207.226.132.110 (Japan Tokyo)

149.137.24.110 (Japan Osaka)

Meeting ID: 825 4202 4981

Password: 420731

SIP: 82542024981@zoomcrc.com

Password: 420731

Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date (September 21), the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM EST on September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: August L. Pozgay, Attorney for the Board of Durable Medical Equipment Suppliers, 500 Mero Street, 2 SC 32, Frankfort, Kentucky 40601, phone +1 (502) 782-0714, fax +1 (502) 564-4818, email [august.pozgay@ky.gov](mailto: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 309.406(1)(a) authorizes the Kentucky Board of Durable Medical Equipment Suppliers (the Board) to promulgate administrative regulations consistent with KRS Chapter 309, relating to manufacturers and wholesale distributors of home medical equipment and home medical equipment and services providers in this state. KRS 309.406(1)(d) authorizes the Board to investigate complaints and violations of the home medical equipment laws and the administrative regulations promulgated by the board. KRS 309.406(2) authorizes the Board to seek recoupment of the cost of its investigations and prosecutions. KRS 309.418(2) authorizes the Board to refuse to issue or renew a license, suspend, temporarily suspend, revoke, fine, place on probation, reprimand, reasonably restrict, or take any combination of these actions against any licensees for reasons set forth by the statute. KRS 309.422 establishes the penalty for unlicensed practice. This administrative regulation establishes the process by which the Board investigates

complaints and violations, including the opportunity for the investigated party to respond to allegations, and the opportunity for a complainant to reply to the investigated party's response. The regulation also sets forth the appeal process to appeal a Board action taken following the Board's investigation.

(b) The necessity of this administrative regulation: This administrative regulation is permitted by KRS 309.406(1)(a), (1)(d), and (2), and by KRS 309.418. It is necessary to establish a complaint process to ensure effective Board oversight and clarify the Board's obligations and a licensee's rights and responsibilities in accordance with KRS Chapter 13B.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 309.406(1)(a) authorizes the Board to promulgate regulations to regulate and control matters set forth in KRS 309.400 to 309.422. KRS 309.406(1)(a), (1)(d), and (2), KRS 309.418, and KRS 309.422 authorize the board to take administrative action regarding complaints and investigations and sets forth the range of penalties the Board may impose. This administrative regulation establishes the process by which the Board investigates complaints and violations as authorized by statute.

(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 309.400 through 309.422 by establishing a complaint and investigation process so that licensees and the public understand and may avail themselves of the Board process, and ensures that the Board has a clear process to address complaints as they arise.

(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 regulation and is not an amendment.

(b) The necessity of the amendment to this administrative regulation: This is a new regulation and is not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation and is not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This is a new regulation and is not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the Board, 814 licensees of the Board, as well as an unknown number of members of the public and public businesses and organizations that may seek to file complaints. In calendar year 2020, the Board received 0 complaints. The Board is an independent state agency and state and local governments are unlikely to be affected by this regulation.

(4) Provide an analysis of how the entities identified in the previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: No action is required of the regulated entities to comply with this regulation. In the event a regulated entity seeks to respond to a complaint or appeal a Board action, the regulation will guide the entity to the applicable timeframe and process.

(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 other than the de minimis cost of an entity's correspondence with the board.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation establishes an informal and formal complaint process, as well as appeal process, so that entities may avail themselves of their rights and fulfill their responsibilities regarding Board investigations.

(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 Board 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? 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 Durable Medical Equipment Suppliers (the "Board").

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS Chapter 309.400 to 309.422.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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.

Revenues (+/-): Neutral  
Expenditures (+/-): Neutral  
Other Explanation: None

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (New Administrative Regulation)

#### 902 KAR 010:190. Splash pads operated by local governments.

RELATES TO: KRS 13A.010, Chapter 13B, 211.015, 211.180  
STATUTORY AUTHORITY: KRS 194A.050(1), 211.205

NECESSITY, FUNCTION AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.205 requires the cabinet to promulgate an administrative regulation to set the standards for the operation and maintenance of splash pads operated by local governments. This administrative regulation establishes the procedures for splash pads.

Section 1. Definitions. (1) "Accessible" means, if applied to a fixture, connection, appliance or equipment, having access to it, but may require the removal of an access panel, door or similar obstruction.

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(2) "Agitation" means the mechanical or manual movement to dislodge the filter aid and dirt from the filter element.

(3) "Air gap" means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water or waste to a tank, plumbing fixture, receptor or other device, and the flood level rim of the receptacle.

(4) "Alkalinity" or "total alkalinity" means the amount of carbonates or bicarbonate present in water solution as expressed in parts per million (ppm).

(5) "Approved" means that which is acceptable to the cabinet.

(6) "Backwash" means the flow of water through the filter element or media in the reverse direction sufficient to dislodge the accumulated dirt and filter aid and remove them from the filter tank.

(7) "Backwash cycle" means the time required to backwash the filter system thoroughly.

(8) "Backwash rate" means the rate of application of water through a filter during the backwash cycle expressed in gallons per minute per square foot of effective filter area.

(9) "Cabinet" is defined by KRS 211.015(1)(a).

(10) "Cartridge filter" means a filter that utilizes a porous cartridge as its filter media.

(11) "Diatomaceous earth (DE) filter" means a filter that utilizes a thin layer of diatomaceous earth as its filter media that must be periodically replaced.

(12) "Disinfectant" means an approved chemical compound designed for the destruction of pathogenic organisms in bathing facilities and includes chlorine and bromine.

(13) "Equalizer line" means the connection from the skimmer housing to the holding tank below the weir box, which is sized to satisfy pump demand and prevent air lock or loss of prime, and contains a float valve assembly and pop-up valve.

(14) "Facility operator" means a person or employee of that person who is responsible for the proper operation and maintenance of the facility.

(15) "Filter" means a device that separates solid particles from water by recirculating it through a porous substance.

(16) "Filter aid" means an enhancement to the efficiency of the filter media.

(17) "Filter cycle" means the operating time between cleaning or replacing the filter media or backwash cycles.

(18) "Filter element" means a device within a filter tank designed to entrap solids and conduct water to a manifold, collection header, pipe, or similar conduit.

(19) "Filtration rate" means the rate of water flow through a filter while in operation.

(20) "Float valve assembly" means a mechanism designed to disengage the skimmer in order to prevent air from entering the pump if the water level drops below the skimmer level.

(21) "Flow meter" means a device that measures the flow of water through piping.

(22) "Head loss" means the total pressure drop between the inlet and the outlet of a component.

(23) "Holding tank" means a storage vessel to retain water for a spray pad recirculation system.

(24) "Inlet" means a fitting or fixture through which filtered water returns to a pool or spa.

(25) "Local government" is defined by KRS 13A.010(11).

(26) "Main outlet" means an outlet fitting at the horizontal bottom of a pool through which water passes to a recirculating pump or surge tank. It is often referred to as a "main drain."

(27) "Perlite filter" means a filter that utilizes a thin layer of perlite as its filter media deposited on a septum that must be periodically replaced.

(28) "Pop-up valve" means a mechanism located under the float valve assembly that opens to allow water to reach the pump when the float valve is activated.

(29) "Precoat" means the process of depositing a layer of diatomaceous earth or perlite on the filter element at the start of a filter cycle.

(30) "Readily accessible" means direct access without the necessity of removing any panel, door, or similar obstruction.

(31) "Septum" means that part of the filter element consisting

of cloth, or closely woven fabric or other porous material on which the filter cake is deposited.

(32) "Skimmer" means a device designed to continuously remove surface film and water and return it through the filter.

(33) "Splash pad" is defined by Ky Acts Ch. 152.

(34) "Strainer" means a device used to remove hair, lint, leaves, or other coarse material on the suction side of a pump.

(35) "Suction piping" means the portion of the circulation piping located between the facility structure and the inlet side of a pump.

(36) "Superchlorinate" means the addition to facility water of an amount of chlorine sufficient to produce a free available chlorine that is at least equal to ten (10) times the amount of combined chlorine plus the required minimum level of free available chlorine in order to oxidize the ammonia and nitrogenous materials which may be dissolved in the facility water.

(37) "Surge tank" means a storage vessel within the recirculation system used to retain the water displaced by bathers.

(38) "Total discharge head" means the amount of water that a pump will raise water above its center line.

(39) "Total dynamic head" means the arithmetical difference between the total discharge head and total suction head (a vacuum reading is considered as a negative pressure). This value is used to develop the published performance curve.

(40) "Total residual chlorine" means the arithmetical sum of free available chlorine and combined chlorine, and is composed of the following components:

(a) Free available chlorine, which is the amount of chlorine available to inactivate microorganisms and that has not reacted with ammonia, nitrogenous material, and other contaminants in swimming pool water; and

(b) Combined chlorine (also called "chloramine"), which is the amount of chlorine that has reacted and combined with ammonia and other nitrogenous material to form chloro-ammonia compounds.

(41) "Total suction head" means the amount of water that a pump will lift by suction.

(42) "Turnover rate" means the time in hours or minutes, required for the circulation system to filter and recirculate a volume of water equal to the facility volume.

(43) "Weir box" means an overflow system placed at normal operating water surface level to remove surface debris.

Section 2. Submission of Plans and Specifications for Approval. (1) A local government shall not construct, alter, or reconstruct a splash pad until approval of detailed plans and specifications, with supporting design data as required in this administrative regulation, is granted in writing by the state or local agency having jurisdiction.

(2) The original plans and five (5) copies shall be submitted to the local health department with payment pursuant to 902 KAR 10:121.

(3) The front page of the plans submitted for review and approval shall contain the:

- (a) Location by city and county;
- (b) Name and contact information for the facility operator;
- (c) Name of the installer; and
- (d) Name of the engineer or architect.

(4) Plans submitted by an engineer or architect shall bear that individual's official seal.

(5) Plans and specifications for splash pads constructed by a local government shall be prepared by an engineer or architect registered in the State of Kentucky.

(6) The plans shall be:

- (a) Drawn to scale;
- (b) Accompanied by proper specifications to permit a comprehensive review of the plans including the piping and hydraulic details; and
- (c) Include:

1. A site plan of the general area with a plan and sectional view of the facility complex with all necessary dimensions;

2. A piping diagram showing all appurtenances including treatment facilities in sufficient detail, as well as pertinent elevation data, to permit a hydraulic analysis of the system;

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3. The specifications on all treatment equipment, including performance ranges of pumps, disinfecting equipment, chemical feeders, filters, strainers, lights, skimmers, suction outlets or return inlets, safety equipment, and other related equipment; and

4. Drawing of equipment room showing placement of equipment, as applicable.

(7) One (1) set of approved plans shall be kept at the job site and available for inspection.

(8) Upon completion of the construction of the recirculation piping system, and prior to such piping being covered and air pressure tested at ten (10) pounds per square inch of pressure for fifteen (15) minutes, the facility operator or builder shall contact the cabinet for inspection.

(9) Upon completion of construction, a notarized statement certifying the splash pad was constructed in accordance with the approved plans and this administrative regulation shall be submitted to the cabinet.

(10) The splash pad shall not be used before receiving a final inspection and written approval from the cabinet.

(11) Unless construction is begun within one (1) year from the date of approval, the approval shall expire. Extension of approval may be considered upon written request to the cabinet.

(12) No change in location, construction, design, materials, or equipment shall be made to approved plans or the splash pad without the written approval of the cabinet.

**Section 3. Water Supplies.** (1) Potable water from an approved municipal water system or water district shall be supplied to all splash pad features. If these supplies are not available, a potable water supply meeting the approval of the Energy and Environment Cabinet shall be provided.

(2) The water supply shall be capable of providing sufficient quantities of water under pressure to all splash pad fixtures and equipment at the facility.

**Section 4. Sewage and Wastewater Disposal.** (1) Sewage or wastewater generated from the operation of a splash pad shall discharge to a public sanitary sewer.

(2) If a public sanitary sewer is not available, sewage or wastewater shall be discharged to a system which complies with 902 KAR 10:085.

(3) Outdoor deck or surface area drainage water may be discharged directly to storm sewers, natural drainage areas, or to the ground surface without additional treatment. Such drainage shall not result in nuisance conditions that create an offensive odor, a stagnant wet area, or an environment for the breeding of insects.

(4) Filter backwash shall be discharged to public sanitary sewers, or if unavailable to a system approved by the cabinet.

**Section 5. Refuse Disposal.** (1) All refuse at a splash pad shall be disposed of in a manner approved by the Energy and Environment Cabinet.

(2) An adequate number of refuse containers, with tight fitting lids shall be provided at readily accessible locations at all splash pads.

**Section 6. Facility Design and Construction.** All splash pads and attendant structures, as applicable, shall meet the design, materials, fixture, and construction requirements of the State Building Code.

**Section 7. Facility Water Treatment Systems.** (1)(a) A recirculation system, consisting of a holding tank, pumps, piping, filters, water conditioning, disinfection equipment, skimmers, and other accessory equipment shall be provided to clarify, chemically balance, and disinfect the water for all recirculating splash pads;

(b) All system components, including piping, shall bear the National Sanitation Foundation potable water (NSF-pw) mark; and

(c) Pumps greater than seven and five-tenths (7.5) horse power that are not required to meet NSF testing standards shall be considered on a case-by-case basis.

(2) Holding tanks.

(a) Holding tanks shall be sized at a minimum of five times the manufacturer's requirement for each feature at maximum flow plus the volume of water contained within the recirculation system piping and the drain pipe from the splash pad back to the holding tank.

(b) Holding tanks shall be equipped with an inspection hatch meeting Occupational Safety and Health Administration requirements.

(c) Holding tanks shall be kept locked and inaccessible to the public.

(3) Pumping equipment.

(a) The recirculation pump and motor shall deliver the flow necessary to obtain a thirty (30) minute turnover rate.

(b) The pump shall be of sufficient capacity to provide a minimum backwash rate of fifteen (15) gallons per square foot of filter area per minute in sand filter systems.

(c) The pump or pumps shall supply the required recirculation rate of flow to obtain the turnover rate required at a total dynamic head of at least:

1. Fifty (50) feet for all vacuum filters;
2. Seventy (70) feet for pressure sand or cartridge filters; or
3. Eighty (80) feet for pressure diatomaceous earth filters and perlite filters.

(d) If the pump is located at an elevation higher than the facility water line, it shall be self-priming.

(e) If vacuum filters are used, a vacuum limit control shall be provided on the pump suction line. The vacuum limit switch shall be set for a maximum vacuum of eighteen (18) inches of mercury.

(f) A compound vacuum-pressure gauge or vacuum gauge shall be installed on the suction side of the pump.

(g) A pressure gauge shall be installed on the pump discharge line adjacent to the pump.

(h) The manufacturer's pump curve shall be laminated and posted above the recirculation system pump.

(i) Valves shall be installed to allow the flow to be shut off during cleaning, switching baskets, or inspection of hair and lint strainers.

(j) A hair or lint strainer with openings no more than one-eighth (1/8) inch is required except for pumps that are used with vacuum filter systems.

(4) Water heaters shall be installed at all indoor splash pads, and shall comply with the following:

(a) A water heater piping system shall be equipped with a bypass. A valve shall be provided at the bypass and on the influent and effluent heater piping. The influent and effluent heater piping shall be metallic and installed in accordance with heater manufacturer's recommendations;

(b) A heating coil, pipe, or steam hose shall not be installed in any swimming and bathing facility;

(c) At least one (1) break proof thermometer shall be:

1. Provided in the piping to check the temperature of the water returning from the facility and the temperature of the blended water returning to the facility;

2. Located in a conspicuous location; and

3. Securely mounted to prevent tampering;

(d) Heaters for indoor splash pads shall be capable of maintaining an overall water temperature between seventy-six (76) degrees Fahrenheit and eighty-four (84) degrees Fahrenheit;

(e) An automatic temperature limiting device with thermostatic control that prevents the introduction of water in excess of 100 degrees Fahrenheit to all splash pad features shall be provided, and be accessible only to the facility operator;

(f) A pressure relief valve shall be provided and shall be piped to within six (6) inches of the floor;

(g) Venting of gas or other fuel burning water heaters shall be provided in accordance with the State Building Code;

(h) Combustion and ventilation air shall be provided for fuel burning water heaters in accordance with manufacturer recommendations or the State Building Code;

(i) Heaters for indoor spray pads shall be sized on a basis of 150 British Thermal Units per hour input per square foot of pool water surface area; and

(j) All heaters shall be NSF or UL listed.



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- (5) A flow meter, if provided, shall be:
- Located so that the rate of recirculation may be easily read;
  - Installed on a straight length of pipe at a distance of at least ten (10) pipe diameters downstream, and five (5) pipe diameters upstream from any valve, elbow, or other source of turbulence except for those specifically designed without distance requirements; and
  - Installed on each recirculation system, spray pad feature, waterslide, any other type of spray feature, and on multiple filtration units.
- (6) Vacuum cleaning system shall be:
- Provided on all recirculating splash pad holding tanks; and
  - Capable of reaching all parts of the bottom of the holding tank.
- (7) Piping, skimmer, and overflow system.
- Piping shall comply with the material specifications listed in the Kentucky State Plumbing Code for potable water.
  - All piping, valves, and fittings shall be color coded, suitably labeled, or marked to denote its purpose within the facility water treatment system.
  - The piping shall be designed to carry the required quantities of water at velocities not exceeding five (5) feet per second in suction piping, and ten (10) feet per second in pressure piping.
  - Gravity piping shall be sized so that the head loss in piping, fittings, and valves does not exceed the difference in water levels between the facility and the maximum operating level in the holding tank.
  - The following waste lines shall be provided with six (6) inch air gaps at their points of discharge to the waste pump or sewer:
    - Main outlet bypass or other connections to waste;
    - Holding tank drain and overflow lines; and
    - Pump discharge to waste lines.
- (8) Inlets.
- Each inlet shall be directionally adjustable.
  - The velocity of flow through any inlet orifice shall be in the range of five (5) to twenty (20) feet per second, except in facilities equipped with skimmers, which shall be in the range of ten (10) to twenty (20) feet per second.
  - Inlets shall be located and directed to produce uniform circulation of water to facilitate the maintenance of a uniform disinfectant residual throughout the entire holding tank without the existence of dead spots.
  - Inlets shall be placed completely around the holding tank with each serving a linear distance of not more than fifteen (15) feet on center. The pipe serving the inlets shall form a loop completely around the holding tank.
  - A minimum of two (2) inlets is required on all holding tanks regardless of size.
- (9) Outlets.
- Main suction piping shall be sized for removal of the water through it at a rate of at least 100 percent of the design recirculation flow rate at velocities specified in subsection (7)(c) of this section. It shall function as a part of the recirculation system. The piping system shall be valved to permit adjustment of flow through it.
  - At least one (1) skimmer shall be provided for all holding tanks with a minimum of two (2) skimmers provided, except for holding tanks with a water surface area of 144 square feet or less where a minimum of one (1) skimmer shall be required.
  - Skimmers shall be located to minimize interference with each other.
  - The rate of flow per skimmer shall not be less than thirty (30) gallons per minute, and all skimmers shall be capable of handling at least eighty (80) percent of required flow rate.
  - Surface skimmer piping shall have a separate valve in the equipment room to permit adjustment of flow.
  - Skimmers equipped with an equalizer line shall be sized at least one and one-half (1 1/2) inches in diameter, located at least one (1) foot below the lowest overflow level of the skimmer, and provided with a self-closing valve and cover.
  - A basket that can be removed without the use of tools and through which all overflow water must pass.
  - All recirculated splash pads shall be equipped for the

- addition of make-up water from a potable water source that discharges through:
- An air gap of at least six (6) inches; and
  - Piping with vacuum breaker, antisiphon, or other protection as specified by the State Plumbing Code.
- (11) Filtration.
- Filters shall comply with the following:
    - Pressure filters shall have:
      - Pressure gauges;
      - An observable free fall or a sight glass installed on the backwash discharge line; and
      - A manual air-relief valve at the high point;
    - The filter backwash disposal facility shall have sufficient capacity to prevent flooding during the backwash cycle;
    - All filters shall be designed so that they can be completely drained. Filters shall be drained through a six (6) inch air gap to a pump or sanitary sewer; and
    - Filter media shall be listed as NSF approved.
  - Each facility shall have separate filtration and treatment systems.
    - Filter equipment and treatment systems shall operate continuously twenty-four (24) hours per day except if the facility is closed for repairs or at the end of the swimming season.
    - Rapid sand or gravity sand filters shall be designed for a filter rate not to exceed three (3) gallons per minute per square foot of bed area at time of maximum head loss with sufficient area to meet the design rate of flow required by the prescribed turnover.
    - At least eighteen (18) inches of freeboard shall be provided between the upper surface of the filter media and the lowest portion of the pipes or drains that serve as overflows during backwashing.
    - High rate sand filters. The design filtration rate shall be a minimum of five (5) gallons per minute per square foot of filter area. The maximum design filtration rate shall be the lesser of fifteen (15) gallons per minute per square foot of filter area or seventy-five (75) percent of the NSF listed filtration rate. The backwash rate shall be fifteen (15) gallons per minute per square foot of filter area.
    - Diatomaceous earth filters.
      - The design filtration rate shall not exceed one and one-half (1 1/2) gallons per minute per square foot of filter area on diatomaceous earth filters, except that the rate of filtration may be increased to two (2) gallons per minute per square foot of filter area if continuous feeding of diatomaceous earth is employed;
      - A precoat pot shall be provided on the pump suction line for pressure diatomaceous earth systems. All diatomaceous earth filter systems shall have piping arranged to allow recycling of the filter effluent during precoat;
      - If equipment is provided for the continuous feeding of diatomaceous earth to the filter influent, the equipment shall have a capacity to feed at least one and one-half (1 1/2) ounces of this material per square foot of filter area per day;
      - Overflow piping on vacuum diatomaceous earth filters shall be provided on the filter tank to discharge overflow water;
      - All filters shall be equipped for cleaning by one (1) or more of the following methods:
        - Backwashing;
        - Air-pump assist backwashing;
        - Spray wash;
        - Water pressure to wash vacuum filter; or
        - Agitation; and
      - Perlite may be used in filters listed by NSF for perlite, but it may not be substituted for diatomaceous earth without NSF listing.
    - Vacuum sand filters.
      - The design filtration rate shall be seventy-five (75) percent of that listed by NSF or fifteen (15) gallons per minute whichever is lesser. The backwash rate shall be at fifteen (15) gallons per minute per square foot of filter area; and
      - Overflow piping shall be provided in order to drain overflow water.
    - Cartridge filters.
      - Cartridge filters shall only be used on indoor splash pads;
      - The design filtration rate shall not exceed fifteen hundredths

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(0.15) gallons per minute per square foot of filter surface area; and  
3. A clean duplicate set of cartridges shall be maintained at the facility.

(12) Disinfectant and chemical feeders.

(a) The minimum chemical feed equipment required at any facility shall include a unit for feed of a disinfectant and a unit for feed of a chemical for pH control, except as stated in paragraph (d) of this subsection.

(b) Equipment capacity.

1. Equipment for supplying chlorine or compounds of chlorine shall be of sufficient capacity to feed the chlorine at a rate of:

a. Eight (8) ppm or two and seven-tenths (2.7) pounds per day chlorine for each 10,000 gallons of holding tank volume for outdoor facilities; or

b. Three (3) ppm or one (1) pound per day for chlorine for each 10,000 gallons of holding tank volume for indoor facilities based on the flow rate specified in subsection (3)(c) of this section.

2. The equipment for supplying chlorine shall not be controlled by an automatic day-date clock.

3. The injection point for chlorine shall be placed on the discharge side of the pump and downstream of the flow meter unless the chlorine injection point is located within the surge tank.

4. Pot feeders for supplying bromochlorodimethylhydantoin sticks shall contain at least five tenths (0.5) a pound of bromochlorodimethylhydantoin per thousand gallons of facility capacity, or fraction thereof. The feeder shall have a method of feed rate adjustment.

5. Supplemental NSF listed ultraviolet (UV) light disinfection systems shall be provided on all splash pads with a recirculating water system. UV systems should be installed on a bypass line and shall be equipped with a flow indicator.

(c) If positive displacement pumps (hypochlorinators) are used to inject the disinfectant solution into the recirculation line, they shall be of variable flow type and shall be of sufficient capacity to feed the amount of disinfectant required by paragraph (b)1 of this subsection. If calcium hypochlorite is used, the concentration of calcium hypochlorite in the solution shall not exceed five (5) percent. The solution container shall have a minimum capacity equal to the volume of solution required per day at the feed rate required in paragraph (b)1 of this subsection.

(d) pH control feeders. All facilities shall install a chemical feeder of positive displacement type for the purpose of applying chemicals to maintain pH of facility water within the range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). A solution tank of adequate capacity shall be provided.

(13)(a) Testing equipment shall be provided at all recirculating splash pads, maintained with fresh reagents, and consist of a DPD (Diethyl-P-Phenylene-Diamine) colorimetric test kit used to determine free disinfectant residual, combined disinfectant residual, total alkalinity, and pH of the facility water. Test kits using orthotolidine reagents are not acceptable;

(b) Chlorine standards shall range from one-tenth (0.1) to five (5.0) ppm;

(c) pH standards shall range from six and eight-tenths (6.8) to eight and four-tenths (8.4);

(d) Both tests shall be accurate to within two-tenths (0.2) units; and

(e) Facilities using cyanurates for stabilization shall have a test kit to measure the cyanuric acid concentration. The cyanuric acid test kit shall permit readings up to 100 ppm.

Section 8. Operational Water Quality Standards. (1) Disinfectant residuals for holding tanks:

(a) Chlorine residual shall be maintained between one (1.0) and five (5.0) ppm as free available chlorine.

(b) Bromine residual shall be maintained between two (2.0) and six (6.0) ppm as free available disinfectant.

(c) Holding tanks stabilized with cyanuric acid shall meet the following criteria:

1. Be an outdoor facility;

2. Maintain one (1.0) to five (5.0) ppm free available chlorine residual; and

3. Cyanuric acid concentration not to exceed fifty (50) ppm.

(d) If the presence of chloramines is determined, superchlorination is required, and the chloramine level shall not exceed two-tenths (0.2) ppm.

(2) The pH of the facility water shall be maintained in a range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). For corrosive water supplies, the alkalinity level shall be suitably adjusted to allow maintenance of the pH level.

(3) Turbidity. Facility water shall have sufficient clarity at all times so that the bottom of the holding tank is clearly visible by an observer on the deck.

(4) Total alkalinity. The alkalinity of the facility water shall not be less than fifty (50) nor more than 180 ppm, as determined by suitable test kits.

(5) The air temperature at an indoor facility shall be higher than the water temperature.

(6) The facility operator shall perform tests for each of the above water quality characteristics before opening and during all hours of operation based on the frequency schedule listed below, and record all test results on a daily operational log sheet:

(a) Disinfectant residual, temperature, and pH shall be checked at least three (3) times daily with a greater frequency if usage or climatic conditions warrant.

(b) Turbidity shall be checked daily, or more often as needed.

(c) Alkalinity, cyanuric acid (if used) shall be checked weekly, or more often as needed.

Section 9. General Facility Operation and Maintenance. (1) Operator. A facility operator shall be responsible for the operation and maintenance of all splash pads. The operator shall be available at all times when the facility is open for use.

(2) Facility and facility area.

(a) All facilities shall be maintained free from sediment and debris, and be maintained in good repair;

(b) Decks shall be kept clean. Indoor decks shall be disinfected at least weekly. All areas of the facility shall be kept in good repair, clean, and sanitary; and

(c) Management of each facility shall adopt rules for controlling of food, drink, and smoking in the facility and surrounding areas.

(3) Automatic surface skimmers shall be clean and free of leaves or other debris. The strainer baskets for skimmers shall be cleaned daily. The flow through each skimmer shall be adjusted as often as necessary to maintain a vigorous skimming action. The facility water shall be maintained at an elevation so that effective surface skimming is accomplished. The flow returning from the facility shall be balanced or valved so that the majority of flow is returned through the skimmer system.

(4) Inlet fittings. Inlets shall be checked frequently to insure that the rate of flow through each inlet is correct so that a uniform distribution pattern is established.

(5) Bather preparation facilities, if provided, shall meet the following:

(a) The floors of dressing rooms, shower stalls, and other interior rooms shall be cleaned and disinfected daily;

(b) Toilet rooms and fixtures shall be kept clean, free of dirt and debris, and in good repair;

(c) Floors shall be maintained in a nonslip condition;

(d) Soap dispensers shall be filled and operable; and  
(e) Adequate supplies of toilet tissue, disposable hand drying towels, or suitable hand drying devices shall be maintained.

(6) Street attire. Shoes of any kind, including water shoes, shall not be worn on the facility decks or wet areas of the bather preparation facilities, except for those persons engaged in official duties.

(7) Electrical systems. Repairs to any electrical system shall be made by an electrician. All repairs shall be in accordance with the National Electrical Code and shall be approved by a certified electrical inspector.

(8) Operation of mechanical equipment.

(a) Manufacturers' instructions for operation and maintenance of mechanical and electrical equipment, as well as pump performance curves, shall be kept available at the facility;

(b) Pumps, filters, disinfectant feeders, pH controls, flow indicators, gauges, and all related components of the facility water

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recirculation system shall be kept in continuous operation twenty-four (24) hours a day; and

(c) Recirculation pumps. The pump shall not be throttled on the suction side (except the bottom drain line valve) during normal operation, and shall be kept in good repair and condition. The flow control valve on the discharge side shall be adjusted as necessary to maintain the design flow rate.

(9) Filtration.

(a) Sand filters.

1. The filter air release valve shall be opened as necessary, to remove air which collects in the filter, and following each backwash; and

2. The filter shall be backwashed if the design flow rate can no longer be achieved, or as specified by the filter manufacturer, whichever occurs first.

(b) Diatomaceous earth filters.

1. The dosage of diatomaceous earth precoat shall be at least one and one-half (1 1/2) ounces per square foot of element surface area. Pressure diatomaceous earth filters shall be backwashed if the design flow rate can no longer be achieved or as specified by the filter manufacturer, whichever occurs first. If the recirculation pump stops or is shut off, the filter shall be thoroughly backwashed and the elements shall be precoated before placing the pump back into operation. Vacuum diatomaceous earth filters shall be washed if the design flow rate can no longer be achieved or as specified by the filter manufacturer, whichever occurs first;

2. Following the precoating operation, the initial filter effluent shall be either recirculated through the filter until the filter effluent is clear, or the initial filter effluent shall be discharged to waste until properly clarified water is produced; and

3. If continuous diatomaceous earth feed is required (filter loading rate exceeds one and five-tenths (1.5) gallons per minute per square foot of filter surface area), it shall be applied at a rate of one-half (1/2) to one and one-half (1 1/2) ounces per square foot of surface area per day, or as needed to extend filter cycles.

(10) Hair and lint strainers. Hair and lint strainers shall be cleaned to prevent clogging of the suction line and cavitation. The pump shall be stopped before the strainer is opened. In all cases, the hair strainer basket shall be cleaned during the time the filter is being backwashed.

(11) Flow meters. Flow meters, if used, shall be maintained in an accurate operating condition and readily accessible. The glass and the connecting tubes shall be kept clean.

(12) Vacuum and pressure gauges. The lines leading to the gauges shall be bled occasionally to prevent blockage.

(13) Positive displacement feeders.

(a) Positive displacement feeders shall be periodically inspected and serviced;

(b) To minimize sludge accumulation in the unit, the lowest practicable concentration of solution shall be used. If liquid chlorine solution is used, the dilution with water is not critical to the operation of the unit; and

(c) Sludge accumulations shall be cleaned periodically from the unit.

(14) Chlorinated cyanurates. The use of chlorinated cyanurates is prohibited.

(15) pH adjustment.

(a) Soda ash or caustic soda may be used to raise the facility water pH;

(b) Caustic soda shall only be used in accordance with the manufacturer's instructions. If caustic soda is intended for use, the cabinet shall be notified in writing. Protective equipment and clothing, including rubber gloves and goggles, shall be available for the handling and use of this chemical;

(c) Sodium bisulfate or muriatic acid may be used to lower water pH;

(d) Hydrochloric (muriatic) acid may only be used with proper supervision and care. Protective equipment and clothing, including rubber gloves and goggles, shall be available for handling this chemical; and

(e) The cabinet shall be consulted in the event of unusual pH problems including corrosion or scaling or wide fluctuations in pH.

(16) Algae control.

(a) The development of algae shall be eliminated by superchlorinating. The facility shall not be open for use during this treatment. If superchlorination fails to eliminate the algae, the cabinet shall be consulted for further advice.

(b) Treated algae which cling to the bottom and sides of the facility shall be brushed loose, and removed by the suction cleaner and filtration system.

(17) Miscellaneous chemicals.

(a) Chemicals other than approved disinfectants shall be used only with the advice and under the supervision of the cabinet;

(b) Chemicals shall be kept covered and stored in the original container, away from flammables and heat, in a clean, dry, and well-ventilated place that prevents unauthorized access to the chemicals;

(c) The chemicals used in controlling the quality of water shall be used only in accordance with the manufacturer's instructions; and

(d) If polyphosphates are used for sequestering iron, the concentration of polyphosphates shall not exceed ten (10) ppm.

(18) Equipment rooms.

(a) Equipment necessary for splash pad operation shall be housed in a lighted, ventilated room that affords protection from the weather, prevents unauthorized access, has ceilings of at least seven (7) feet in height, and is of sufficient size for operation and inspection;

(b) The equipment room floor shall slope toward drains and shall have a nonslip finish;

(c) A hose bib with a vacuum breaker shall be installed in the equipment room;

(d) Suitable space, if not provided in the equipment room, shall be provided for storage of chemicals, tools, equipment, supplies, and records where they can be acquired by the facility operator without leaving the premises. The storage space shall be dry and protected from unauthorized access; and

(e) The equipment room and all other storage areas shall be maintained in a clean, uncluttered condition, and shall not be used for storage of materials not essential to operation and maintenance of the facility.

Section 10. Facility Records. (1) The operator of each facility shall keep a daily record of information regarding operation including disinfectant residuals, pH, maintenance procedures, and recirculation, together with other data as may be required on form DFS-352, Swimming Pool Log Sheet, incorporated by reference in 902 KAR 10:120. This data shall be kept on file by the operator and submitted to the cabinet as requested. Proper operating records, which include the following shall be kept showing daily or weekly results as applicable:

(a) Disinfectant residuals;

(b) pH readings, total alkalinity, cyanuric acid level (if applicable); and

(c) Equipment malfunctions.

(2) If two (2) or more facilities are operated on the same site, separate records shall be maintained for each facility.

(3) All injuries requiring hospitalization shall be immediately reported to the local health department and the Department for Public Health.

Section 11. Spectator and User Administrative Regulations. (1) Rules governing the use of the splash pad and instructions to users shall be displayed on placards at the entrance to the splash pad and enforced by the facility operator.

(2) Admission to the splash pad shall be refused to a person:

(a) Having any contagious disease, infectious conditions such as colds, fever, ringworm, foot infections, skin lesions, carbuncles, boils, inflamed eyes, ear discharges, or any other condition that has the appearance of being infectious;

(b) Having excessive sunburn, abrasions that have not healed, corn plasters, bunion pads, adhesive tape, rubber bandages, or other bandages of any kind; and

(c) Under the influence of alcohol, illegal substances, or exhibiting erratic behavior.

(3) No food, drink, gum, tobacco, or vapor producing product,

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will be allowed.

(4) Personal conduct shall assure that the safety of self and others is not jeopardized.

(5) No running and no boisterous or rough play is permitted.

(6) Spitting, spouting of water, blowing the nose, or otherwise introducing contaminants into the splash pad water is not permitted.

(7) Glass, soap, or other material that creates hazardous conditions or interferes with efficient operation of the splash pad shall not be permitted in the facility or on the deck.

(8) All apparel worn shall be clean.

(9) Animals shall be excluded from the splash pad and deck area.

Section 12. Facility Inspection. (1) Seasonal facilities.

(a) All operators of seasonal splash pads, prior to opening to the public, shall certify to the cabinet, in writing, that the splash pad is in compliance with the requirements of this administrative regulation except in instances where the cabinet has made an inspection prior to its opening.

1. For seasonal splash pads, the cabinet shall make at least two (2) full inspections during the operating season.

2. The cabinet, at its discretion, may require one (1) of the full inspections to be performed prior to opening.

(b) The facility operator shall be responsible for notifying the cabinet of the proposed opening date.

(2) Continuous operation indoor splash pads shall receive a full inspection by the cabinet at least once each six (6) months.

(3) New splash pads shall receive final construction approval inspections by the cabinet and other affected state and local regulatory agencies prior to placing the splash pad in operation. It shall be the facility operator's responsibility to notify the cabinet and other involved agencies of construction completion and call for inspection.

(4) Splash pads shall be inspected at a minimum of once each thirty (30) day period by the cabinet on a monitoring basis. The monitoring inspection shall consist of:

(a) Disinfectant residual testing (free available residual) and combined disinfectant in ppm;

(b) pH testing;

(c) Total alkalinity testing;

(d) Cyanuric acid testing (if cyanuric acid stabilizers are used);

(e) Turbidity assessment;

(f) Temperature testing (if heated water facility);

(g) Review of operator's daily log;

(h) Visual scanning for algae or debris in the holding tank; and

(i) Other checks as necessary.

(5) The cabinet may make as many additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(6) If an agent of the cabinet makes an inspection of a splash pad, the findings shall be recorded on the DFS-349, Public Swimming and Bathing Facilities Inspection, incorporated by reference in 902 KAR 10:120, and a copy provided to the facility operator. The inspection report shall:

(a) Set forth any violation observed;

(b) Establish a specific and reasonable period of time for the correction of the violation observed; and

(c) State that failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in closure of the facility.

Section 13. Water Sampling and Testing. (1) A water sample may be collected from the splash pad if inspection or monitoring indicates water quality standards are not being maintained, or there is a suspected water borne disease outbreak, and shall be submitted to the Division of Laboratory Services in an approved container and by approved sampling procedures for analysis.

(2) Samples shall be collected and analyzed for any of the following or other contaminants:

(a) Total coliform;

(b) E. coli; and

(c) Pseudomonad organisms.

(3) If a sample is positive test for a contaminant, the test shall be repeated within one (1) to seven (7) days.

(4) For a facility, no more than two (2) consecutive samples shall be positive for:

(a) More than two (2) coliform organisms per 100 milliliter (mL);

(b) Pseudomonas organisms; or

(c) E. coli.

(5) Additional samples may be requested to ensure compliance with this administrative regulation.

Section 14. Bacteriological Quality of Facility Water. No more than two (2) consecutive samples shall:

(1) Contain more than 200 bacteria per mL;

(2) Show a positive test (confirmed test) for coliform organisms in any of the five (5) ten (10) milliliter portions of a sample or more than two (2.0) coliform organism per 100 mL when the membrane filter test is used;

(3) Show a positive test (confirmed test) for pseudomonas organisms; or

(4) Show a positive test for fecal coliform organisms.

Section 15. Conditions requiring Closure of a Splash Pad and Enforcement Provisions. (1) The cabinet shall order the immediate closure of a splash pad and prohibit any person from using the splash pad by written notice to the facility operator if:

(a) There is an immediate danger to health or safety;

(b) The water does not conform to the bacteriological standards contained in this administrative regulation;

(c) Turbidity levels do not meet the requirements of this administrative regulation;

(d) The disinfectant residual is outside the range prescribed in this administrative regulation;

(e) The pH is outside the range prescribed by this administrative regulation;

(f) The cyanuric acid level exceeds fifty (50) ppm;

(g) The facility operator is not available;

(h) There has been a fecal accident in the splash pad;

(i) In any instance where the facility operator, an employee, or representative of the operator interferes with duly authorized agents of the cabinet, bearing proper identification, in the performance of their duties;

(j) If recirculation systems, filtration systems, or disinfectant systems are not in operation (with exceptions for maintenance, and seasonal shut down); or

(k) If serious or repeated violations of any of the requirements of the administrative regulations are found.

(2) The notice shall state the reasons prompting the closing of the splash pad and a copy of the notice shall be posted conspicuously at the splash pad by the operator.

(3) Any owner or operator affected by an order is entitled, upon written request on form DFS-212, Request for a Conference, incorporated by reference in 902 KAR 1:400, to a conference in accordance with 902 KAR 1:400.

(4) If the conditions rendering closure are abated or further analyses prove to not render closure, the cabinet may authorize reopening the facility.

(5) In all other instances of a violation of the provisions of this administrative regulation, or 902 KAR 10:121 for the nonpayment of fees, the cabinet shall issue a written notice specifying the violation in question and afford a reasonable opportunity to correct same. If the facility operator fails to comply with any written notice issued under the provisions of this administrative regulation or 902 KAR 10:121, the facility operator and local government shall be notified in writing that the splash pad shall be closed at the end of ten (10) days following service of such notice, unless a written request for a conference pursuant to 902 KAR 1:400 is filed with the cabinet, by the local government, within the ten (10) day period.

(6) All administrative hearings shall be conducted in accordance with KRS Chapter 13B.

(7) A local government whose splash pad has been closed may, at any time make application for a reinspection on form DFS-215, Application for Reinstatement, incorporated by reference in

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902 KAR 45:005, for the purpose of reopening the splash pad. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his or her opinion the conditions causing closure of the facility have been corrected, the cabinet shall make a reinspection. If the splash pad is found to be in compliance with the requirements of this administrative regulation, it shall be reopened.

(8) For serious or repeated violations of any of the requirements of this administrative regulation or for interference with the agents of the cabinet in the performance of their duties, the splash pad may be permanently closed after an opportunity for a conference has been provided in accordance with 902 KAR 1:400. Prior to the action, the cabinet shall notify the facility operator and local government, in writing, stating the reasons for which the splash pad is subject to closure and advising that it shall be permanently closed at the end of ten (10) days following service of the notice unless a request for a conference is filed with the cabinet by the owner or operator within the ten (10) day period.

Section 16. Effect on Local Administrative Regulations. Compliance with this administrative regulation does not relieve a local government from compliance with any other state or local laws, dealing with splash pad operation and maintenance matters, or zoning requirements that may also be applicable.

STEVEN J. STACK, MD, MBA, Commissioner  
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 23, 2021

FILED WITH LRC: July 13, 2021 at 12:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 27, 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 September 20, 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 September 30, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the operation and maintenance procedures of splash pads operated by a local government.

(b) The necessity of this administrative regulation: Ky Acts Ch. 152 from the 2021 legislative session establishes a new part of KRS Chapter 211 and requires the cabinet to promulgate an administrative regulation to distinguish the difference between splash pads and swimming pools.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the operation and maintenance standards for splash pads.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure local governments who operate splash pads are aware of the operation and maintenance procedures.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts all local governments constructing or remodeling a splash pad.

(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: Local governments who seek to operate a splash pad will need to be aware of the application process, the water supply, and equipment requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The total costs to local governments is not known. According to Splash Pad USA, the costs associated with building a splash pad ranges from \$65,000 to \$500,000. "The average cost per month to run a splash pad system for about 6-8 hours a day ranges between \$20-\$40 per month, depending on electric rates in your area." <https://www.splashpadsusa.com/splash-pad-cost/>

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Splash pads are less expensive to maintain than traditional swimming pools so local governments will have the benefit of less costs. It is important that a splash pad be designed and constructed in such a way to protect those using the splash pad from any issues with water quality, including any bacteriological or water borne disease outbreak.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The enforcement of this administrative regulation will not add any initial costs to the agency.

(b) On a continuing basis: The enforcement of this administrative regulation will not add any ongoing costs to the agency.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for this administrative regulation will be a mix of state general fund dollars and fees collected under 902 KAR 10:121.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: An increase in funding is not necessary to implement the provisions of this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. There are no fee established by this administrative regulation.

(9) TIERING: Is tiering applied? Tier is not applied. The requirements of this administrative regulation will impact all local governments 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

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be impacted by this administrative regulation? This administrative regulation will impact the Division of Public Health, Protection and Safety in the Department for Public Health, all local governments who seek to operate a splash pad, and all local health departments who inspect the splash pads.

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 211.205.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year? The costs associated with this administrative regulation will be absorbed by the existing program costs associated with plan review and inspection of swimming and bathing facilities.

(d) How much will it cost to administer this program for subsequent years? The costs associated with this administrative regulation will be absorbed by the existing program costs associated with plan review and inspection of swimming and bathing facilities.

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:

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### ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of July 8, 2021

#### Call to Order and Roll Call

The July meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, July 8, 2021 at 3 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 June 2021 meeting were approved.

#### Present were:

**Members:** Senator Stephen West, Co-Chair; Representative David Hale, Co-Chair; Senators Julie Raque Adams, Alice Forgy Kerr, and David Yates; Representatives Randy Bridges, Deanna Frazier, and Mary Lou Marzian.

**LRC Staff:** Sarah Amburgey, Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Carrie Nichols, and Christy Young.

**Guests:** Eden Davis and Larry Hadley, Board of Pharmacy; Leah Boggs, Board of Examiners of Psychology; Dr. C. Shawn Oak and Kevin R. Winstead, Board of Marriage and Family Therapists; Karyn Hascal and Kevin R. Winstead, Board of Alcohol and Drug Counselors; Dave Dreves, Steven Fields, Chris Garland, and Rich Storm, Department for Fish and Wildlife Resources; Carlos R. Cassidy and Trevor L. Earl, Motor Vehicle Commission; Todd Allen, Department of Education; Erin Bravo and Buddy Hoskinson, Office of Unemployment Insurance; Erin Bravo, B. Dale Hamblin, Robin Maples, Chuck Stribling, and Robert Walker, Department of Workers' Claims; Waqas Ahmed, Marc A. Guilfoil, Chad Thompson, and Jennifer Wolsing, Kentucky Horse Racing Commission; Jonathan Scott, Department of Medicaid Services; Laura Begin, Rachael Ratliff, Dr. Sarah Vanover, Department for Community Based Services; Julie Brooks and Wes Duke, Department for Public Protection.

#### The Administrative Regulation Review Subcommittee met on Thursday, July 8, 2021, and submits this report:

##### The subcommittee determined that the following effective emergency administrative regulation was deficient pursuant to KRS 13A.030(2)(a):

CABINET FOR HEALTH AND FAMILY. SERVICES: Department for Public Health: Division of Epidemiology: Communicable Diseases

902 KAR 2:212E. Covering the face in response to a declared national or state public health emergency. Julie Brooks, regulation coordinator, and Wes Duke, general counsel, represented the division.

In response to questions by Co-Chair Hale, Ms. Brooks stated that this emergency administrative regulation was filed June 16, 2021. Mr. Duke stated that the governor's coronavirus (COVID-19) pandemic orders were lifted June 11, 2021. A health care setting was described in Centers for Disease Control guidelines, and the department had directed the public to that document for a definition of a "health care setting." Mr. Duke stated that he was unsure of the specific definition for "long-term care setting." A nursing home would be included in the definition; however, Mr. Duke was unsure if an assisted living facility would also be included. The division would follow up to the subcommittee with that information. Examples of health care settings included facilities such as hospitals, medical clinics, and pharmacies that were within a medical setting such as a hospital or clinical setting. Retail pharmacies that were not in a clinical setting were not included. This division had advised that retail pharmacies might set their own requirements for face coverings, but the division did not require face coverings in those settings. Ms. Brooks and Mr. Duke stated that this emergency administrative regulation did not establish exemptions. Businesses and other establishments had the ability to mandate their own face covering policies that would be more stringent than this emergency administrative regulation, which established minimum requirements. Ms. Brooks stated that this emergency administrative regulation did not incorporate the Centers for Disease Control guidelines because those guidelines changed frequently, even daily, which was not a situation conducive to incorporation.

Co-Chair Hale stated that this emergency administrative regulation seemed confusing and unnecessary.

In response to questions by Representative Frazier, Mr. Duke stated that the division removed the enforcement provisions from this emergency administrative regulation that had been included in previous versions of emergency administrative regulations related to this subject matter. The goal of this emergency administrative regulation was to protect vulnerable populations in accordance with

Centers for Disease Control guidance. This emergency administrative regulation did not include fines or penalties for violations.

In response to questions by Representative Bridges, Mr. Duke stated that the division's intention was to focus on certain, vulnerable populations, such as those who were immunocompromised or the elderly with underlying health conditions. The Centers for Disease Control guidance was clear and targeted. The coronavirus (COVID-19) pandemic featured continually changing circumstances and new information, making dynamic standards necessary. The division sought to establish clear and narrowly targeted provisions. The Centers for Disease Control clearly stated that face coverings protected vulnerable populations.

In response to questions by Senator Raque Adams, Mr. Duke stated that House Joint Resolution 77 from the 2021 Regular Session of the General Assembly, which mandated that Kentucky adhere to the Centers for Disease Control standards, was involved in ongoing litigation; therefore, those provisions were in question. The division believed that face coverings were the most effective way to protect vulnerable populations. The division had a small number of reports of health care settings that were noncompliant. Most health care facilities and long-term care facilities were cooperating.

Senator Raque Adams stated that the lack of specificity in this emergency administrative regulation was a concern, especially related to a possibly subjective response to noncompliance.

Representative Bridges stated that this emergency administrative regulation was too vague.

Representative Bridges made a motion, seconded by Representative Frazier, 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 and one (1) vote against deficiency, this emergency administrative regulation was found deficient.

#### Administrative Regulations Reviewed by this Subcommittee:

BOARDS AND COMMISSIONS: Board of Pharmacy  
201 KAR 2:061. Procedures followed by the Kentucky Board of Pharmacy in the investigation and hearing of complaints. 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 NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 5, 7, 9, and 10

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to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

### Board of Examiners of Psychology

201 KAR 26:115. Definition of psychological testing. Leah Boggs, general counsel, represented the board.

In response to a question by Representative Marzian, Ms. Boggs stated that some amendments in this package were the result of recent legislative changes, while other revisions were general updates or updates pursuant to sunset provisions for administrative regulations.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

### 201 KAR 26:121. Scope of practice and dual licensure.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the formatting and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

### 201 KAR 26:125. Health service provider designation.

### 201 KAR 26:130. Grievances and administrative complaints.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 6, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

### 201 KAR 26:155. Licensed psychologist: application procedures and temporary license.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 2 to: (a) reference 201 KAR 26:230; (b) clarify provisions; and (c) delete unnecessary provisions. Without objection, and with agreement of the agency, the amendments were approved.

### 201 KAR 26:171. Requirements for clinical supervision.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 7, 8, and 11 through 13 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 6 to clarify the reporting period requirements for temporarily licensed psychologists. Without objection, and with agreement of the agency, the amendments were approved.

### 201 KAR 26:180. Requirements for granting licensure as a psychologist by reciprocity.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 3 to: (a) reference 201 KAR 26:230; and (b) make clarifications as to the type of exam required for reciprocity. Without objection, and with agreement of the agency, the amendments were approved.

### 201 KAR 26:185. Requirements for granting licensure as a psychologist to an applicant licensed in another state.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 3 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Sections 2 and 3 to: (a) reference 201 KAR 26:230; (b) clarify the type of exam required for licensure; and (c) delete unnecessary provisions. Without objection, and with agreement of the agency, the amendments were approved.

### 201 KAR 26:190. Requirements for supervised professional experience.

A motion was made and seconded to approve the following

amendments: to amend Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

### 201 KAR 26:200. Education requirements.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

### 201 KAR 26:230. Examination and applications.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Sections 1, 3, and 4 to: (a) make clarifications pertaining to the required licensure examinations; and (b) delete unnecessary provisions. Without objection, and with agreement of the agency, the amendments were approved.

### 201 KAR 26:250. Employment of a psychological associate, a temporarily licensed psychological associate, or a temporarily licensed psychologist.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

### 201 KAR 26:280. Licensed psychological associate: application procedures and temporary license.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

### 201 KAR 26:290. Licensed psychological practitioner: application procedures.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 2 to: (a) reference 201 KAR 26:230; and (b) delete unnecessary provisions. Without objection, and with agreement of the agency, the amendments were approved.

### 201 KAR 26:310. Telehealth and telepsychology.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3 and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

### Board of Licensure of Marriage and Family Therapists

201 KAR 32:030. Fees. Dr. C. Oak, chair, and Kevin Winstead, acting commissioner, represented the board.

In response to questions by Co-Chair Hale, Mr. Winstead stated that the board was changing the fee structure and the number of programs included in the application process. Dr. Oak stated that the higher of the two (2) fees was for a two (2) year licensure period in order to streamline the process and encourage more providers to become licensed.

In response to a question by Representative Frazier, Dr. Oak stated that the \$300 fee was for the two (2) year license and the \$100 fee was for courses.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 3, 5, and 8 for consistency with 201 KAR 32:06; (2) to amend Section 9 for clarity; and (3) to



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amend Section 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 32:035. Supervision of marriage and family therapy associates.

A motion was made and seconded to approve the following amendment: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

201 KAR 32:060. Continuing education requirements.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 through 4, 6, and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Alcohol and Drug Counselors

201 KAR 35:010. Definitions for 201 KAR Chapter 035. Karyn Hascal, board member, and Kevin Winstead, acting commissioner, represented the board.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 35:020. Fees.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 4, 5, 7, and 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 35:025. Examinations.

201 KAR 35:040. Continuing education requirements.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 35:050. Curriculum of study.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 35:055. Temporary registration or certification.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 35:070. Supervision experience.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 6, 8 through 11, and 13 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 35:075. Substitution for work experience for an applicant for certification as an alcohol and drug counselor.

A motion was made and seconded to approve the following amendment: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements

of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

201 KAR 35:080. Voluntary inactive and retired status.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 3 through 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Fish

301 KAR 1:400. Assessing fish kill damages. David Dreves, acting fisheries director; Steve Fields, counsel; Chris Garland, wildlife division director; and Rich Storm, commissioner, represented the department.

Co-Chair Hale welcomed Mr. Storm's guests, his daughters, Avery and Phoebe Storm.

In response to questions by Co-Chair Hale, Mr. Dreves stated that the American Fisheries Society published a manual to calculate fish kill damages. In accordance with these standards, samples and investigations were conducted to determine the extent of a fish kill. The manual established a replacement value. Responsible entities often pushed back on paying the full replacement value and settlements were usually developed as part of negotiations.

Game

301 KAR 2:228. Sandhill crane hunting requirements.

TRANSPORTATION CABINET: Motor Vehicle Commission

605 KAR 1:215E. Licensing Fees. Carlos Cassady, executive director, and Trevor Earl, counsel, represented the commission.

In response to a question by Co-Chair Hale, Mr. Cassady stated that the 2021 General Assembly passed legislation that required this administrative regulation in order to replace fees that had been directly established by statute. Mr. Earl stated that House Bill 249 from the 2021 General Assembly became effective with insufficient time in which to complete the administrative regulation process; therefore, this administrative regulation was filed on an emergency basis.

EDUCATION AND WORKPLACE DEVELOPMENT CABINET: Board of Education: Department of Education: Office of Chief State School Officer

701 KAR 5:081. Repeal of 701 KAR 5:080. Todd Allen, general counsel, represented the department.

School Administration and Finance

702 KAR 3:060. Procedure for payment of employees.

In response to a question by Co-Chair Hale, Mr. Allen stated that the annual national board certification salary supplement was a \$2,000 award to teachers who were nationally board certified. School districts could apply for reimbursement for those supplements; however, that program had not been fully funded. The difference between the state funding and the supplement had been required to be paid by the local board of education. Changes to this administrative regulation, which were the result of legislative changes, required the local board of education to provide the amount funded by the state. The local board of education then had the option, rather than the mandate, to provide the difference.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

LABOR CABINET: Office of Unemployment Insurance: Unemployment Insurance

787 KAR 1:360E. Overpayment waivers. Erin Bravo, deputy general counsel, and Buddy Hoskinson, executive director, represented the office.

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In response to a question by Co-Chair Hale, Mr. Hoskinson stated that, if someone received an overpayment of unemployment insurance between January 27, 2020 and December 1, 2020, the recipient could submit a waiver request. So far, the office had sent out under 14,000 waiver requests. The waiver requests in total could amount to approximately \$17 million.

Co-Chair Hale stated that he appreciated the cabinet's efforts to resolve issues related to unemployment insurance.

Department of Workplace Standards: Division of Occupational Safety and Health Compliance: Division of Occupational Safety and Health Education and Training

803 KAR 2:181E. Recordkeeping and reporting occupational injuries and illnesses. Erin Bravo, deputy general counsel; Robin Maples, occupational safety and health standards specialist; and Chuck Stribling, occupational safety and health federal – state coordinator, represented the department.

803 KAR 2:182E. Repeal of 803 KAR 002:180.

Department of Workers' Claims: Workers' Claims

803 KAR 25:015. Issuance of citations and procedure in workers' compensation enforcement hearings. Dale Hamblin, Jr., assistant general counsel, and Robert Walker, interim commissioner, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to: (a) clarify the term "business day"; and (b) alphabetize definitions; and (2) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 through 4 and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Horse Racing Commission: General

810 KAR 2:001. Definitions for 810 KAR Chapter 002. Waqas Ahmed, pari-mutuel wagering director; Marc Guilfoil, executive director; and Jennifer Wolsing, general counsel, represented the commission.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Licensing

810 KAR 3:001. Definitions for 810 KAR Chapter 003.

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 and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Flat and Steeplechase Racing

810 KAR 4:001. Definitions for 810 KAR Chapter 004.

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 and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Standardbred Racing

810 KAR 5:001. Definitions for 810 KAR Chapter 005.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Pari-Mutuel Wagering

810 KAR 6:001. Definitions for 810 KAR Chapter 006.

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 and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 6:010. Exotic wagering.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 6:020. Calculation of payouts and distribution of pools.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4, and 14 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 6:030. Pari-Mutuel wagering.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 through 6, 9, 10, 13, and 15 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 3(7)(d) to include drivers. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services: Medicaid Services

907 KAR 1:038. Hearing Program coverage provisions and requirements. Jonathan Scott, regulatory and legislative advisor, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 2 to specify that the fee schedule shall: (1) comply with existing rate methodologies used by the department as established by state and federal law; and (2) be populated by using the relevant portions of the Medicaid Physician Fee schedule as established in 907 KAR 3:010. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Child Welfare

922 KAR 1:490. Background checks for foster and adoptive parents and relative and fictive kin caregivers. Laura Begin, regulation coordinator; Rachael Ratliff, social services director; and Dr. Sarah Vanover, director, Division of Child Care, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 3 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 18 and the material incorporated by reference to make conforming amendments. Without objection, and with agreement of the agency, the amendments were approved.

Day Care

922 KAR 2:300. Emergency child care approval.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 4 and 7 to specify language; and (2) to amend Sections 4 through 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Adult Services

922 KAR 5:020. Batterer intervention provider certification standards.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 3 and 8 to comply with the

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drafting requirements of KRS Chapter 13A; (2) to amend the Application for Batterer Intervention Provider Certification form to: (a) require that application be made to the cabinet's contracted agency, rather than the cabinet itself; (b) include a required affirmation page; and (c) make a correction to the Clinical Supervision Agreement for Associate Providers; and (3) to amend Section 15 and the Application for Batterer Intervention Provider Certification form to update the edition date. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred or removed from the July 8, 2021, subcommittee agenda:

### BOARDS AND COMMISSIONS: Board of Medical Licensure

201 KAR 9:270. Professional standards for prescribing, dispensing, or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

201 KAR 9:290. Interpretation and Application of KRS 311.901(1) and KRS 311.903(4).

### Board of Licensure for Professional Art Therapists

201 KAR 34:070. Inactive status.

### KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Board of Emergency Medical Services

202 KAR 7:201. Emergency Medical Responders.

202 KAR 7:301. Emergency Medical Technician.

202 KAR 7:330. Advanced Emergency Medical Technician.

### Board of Emergency Medical Services

202 KAR 7:401. Paramedics.

202 KAR 7:540. Emergency Medical Services data collection, management, and compliance.

202 KAR 7:601. Training, education, and continuing education.

### TRANSPORTATION CABINET: Department of Vehicle Regulation: Administration

601 KAR 2:233. Kentucky Ignition Interlock Program; participants and device providers.

### EDUCATION AND WORKPLACE DEVELOPMENT CABINET:

### Board of Education: Department of Education: Office of Chief State School Officer

701 KAR 5:100. School-based decision making guidelines.

### LABOR CABINET: Department of Workers' Claims

803 KAR 25:021. Individual self-insurers.

### Workers' Claims

803 KAR 25:091. Workers' compensation hospital fee schedule.

803 KAR 25:170. Filing of claims information with the Office of Workers' Claims.

803 KAR 25:175. Filing of insurance coverage and notice of policy change or termination.

803 KAR 25:185. Procedure for E-mail notification of cancellation or removal of location of specific workers' compensation coverage.

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.

### CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services: Payments and Services

907 KAR 3:005. Coverage of physicians' services.

907 KAR 3:010. Reimbursement for physicians' services.

907 KAR 3:060. Ambulance provider assessment program.

### Department for Behavioral Health, Developmental and Intellectual Disabilities: Substance Abuse

908 KAR 1:390. Voluntary Employer Substance Use Program (VESUP).

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 TRANSPORTATION**  
**Meeting of July 6, 2021**

The Interim Joint Committee on Transportation met on July 6, 2021 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on March 8, 2021, pursuant to KRS 13A.290(6):

601 KAR 001:113  
601 KAR 023:030

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

**INTERIM JOINT COMMITTEE ON HEALTH, WELFARE, AND FAMILY SERVICES**  
**Meeting of July 21, 2021**

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 6, 2021 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

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 July 21, 2021, having been referred to the Committee on May 5, 2021 and July 7, 2021, pursuant to KRS 13A.290(6):

May 5, 2021  
921 KAR 003:035

July 7, 2021  
201 KAR 002:040  
201 KAR 002:171  
201 KAR 002:205  
201 KAR 002:390  
201 KAR 020:506  
201 KAR 035:010 E  
201 KAR 035:020 E  
201 KAR 035:025 E  
201 KAR 035:040 E  
201 KAR 035:050 E

201 KAR 035:055 E  
201 KAR 035:070 E  
201 KAR 035:075 E  
201 KAR 035:080 E  
900 KAR 010:111  
900 KAR 010:115  
900 KAR 010:120  
900 KAR 010:125  
900 KAR 010:130  
902 KAR 004:150  
921 KAR 003:035

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 21, 2021 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

902 KAR 45:190. Hemp-derived cannabinoid products and labeling requirements.

Section 2(1)  
After "seeking to manufacture", delete the following:  
, market, sell, or distribute

Section 3(2)(h)  
Delete all of paragraph (h) except the semicolon and "and"  
Renumber paragraph (i) as paragraph (h).

**ERRATA NOTICE**

There was a typo in the "Other Committee Reports" section of July's *Administrative Register of Kentucky*. The last paragraph on page 247 should have read as follows:

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the **June 16, 2021** 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 48<sup>th</sup> year of the *Administrative Register of Kentucky*, from July 2021 through June 2022.

## **Locator Index - Effective Dates**

**B - 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 “47 Ky.R.” or “48 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**

**B - 11**

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**

**B - 18**

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this *Register* year.

## **Technical Amendment Index**

**B - 19**

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**

**B - 20**

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](#).

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| 016 KAR 002:220E  | 48 Ky.R. 253  | 6-25-2021  |
| 016 KAR 002:230E  | 48 Ky.R. 255  | 6-25-2021  |
| 031 KAR 004:195E  | 48 Ky.R. 256  | 6-23-2021  |
| 031 KAR 004:200E  | 48 Ky.R. 258  | 6-23-2021  |
| 031 KAR 005:025E  | 48 Ky.R. 259  | 6-23-2021  |
| 040 KAR 001:040E  | 48 Ky.R. 262  | 6-28-2021  |
| 101 KAR 002:095E  | 47 Ky.R. 172  | 1-29-2021  |
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| 200 KAR 002:006E  | 47 Ky.R. 1730 | 1-29-2021  |
| 200 KAR 003:020E  | 48 Ky.R. 263  | 7-1-2021   |
| 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 015:030E  | 48 Ky.R. 268  | 6-30-2021  |
| 201 KAR 015:040E  | 48 Ky.R. 270  | 6-30-2021  |
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| 201 KAR 015:110E  | 48 Ky.R. 276  | 6-30-2021  |
| 201 KAR 015:125E  | 48 Ky.R. 279  | 6-30-2021  |
| 201 KAR 035:010E  | 47 Ky.R. 1872 | 3-5-2021   |
| Am Comments       | 2536          | 5-13-2021  |
| As Amended        | 48 Ky.R. 15   |            |
| 201 KAR 035:020E  | 47 Ky.R. 1874 | 3-5-2021   |
| Am Comments       | 2538          | 5-13-2021  |
| As Amended        | 48 Ky.R. 16   |            |
| 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  |
| Replaced          | 1748          | 7-6-2021   |

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| 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  |
| Withdrawn           |               | 6-11-2021  |
| As Amended          | 48 Ky.R. 18   |            |
| 902 KAR 002:212E    | 48 Ky.R. 281  | 6-16-2021  |
| 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 |
| Replaced            | 1980          | 6-16-2021  |
| 902 KAR 020:440E    | 47 Ky.R. 908  | 10-13-2020 |
| Replaced            | 1989          | 6-16-2021  |
| 902 KAR 030:210E    | 47 Ky.R. 1926 | 3-5-2021   |
| 907 KAR 015:070E    | 47 Ky.R. 915  | 10-13-2020 |
| Replaced            | 1996          | 6-16-2021  |
| 907 KAR 015:080E    | 47 Ky.R. 922  | 10-13-2020 |
| Replaced            | 2001          | 6-16-2021  |
| 907 KAR 023:020E    | 48 Ky.R. 283  | 6-29-2021  |
| 921 KAR 001:400E    | 48 Ky.R. 286  | 6-29-2021  |
| 921 KAR 002:0115E   | 48 Ky.R. 289  | 7-1-2021   |
| 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  |
| 921 KAR 004:116E    | 48 Ky.R. 295  | 7-1-2021   |
| 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 002:160E    | 48 Ky.R. 299  | 7-1-2021   |
| 922 KAR 002:415E    | 47 Ky.R. 1928 | 3-15-2021  |
| As Amended          | 2523          | 4-13-2021  |

**ORDINARY ADMINISTRATIVE REGULATIONS**

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| 013 KAR 001:020 |               |  |
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| 013 KAR 004:010 |               |  |
| Amended         | 47 Ky.R. 1805 |  |
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| 016 KAR 002:180 |               |  |
| Amended         | 48 Ky.R. 444  |  |
| 016 KAR 002:220 | 48 Ky.R. 703  |  |
| 016 KAR 002:230 | 48 Ky.R. 704  |  |
| 016 KAR 003:060 |               |  |
| Amended         | 47 Ky.R. 2614 |  |
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| 016 KAR 004:050          |                          |                       | 201 KAR 002:171          | 47 Ky.R. 2179            |                       |
| Amended                  | 48 Ky.R. 447             |                       | As Amended               | 48 Ky.R. 23              | 7-21-2021             |
| 016 KAR 005:010          |                          |                       | 201 KAR 002:205          |                          |                       |
| Amended                  | 48 Ky.R. 449             |                       | Amended                  | 47 Ky.R. 2031            |                       |
| 016 KAR 005:020          |                          |                       | As Amended               | 48 Ky.R. 23              | 7-21-2021             |
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| 016 KAR 006:010          |                          |                       | Amended                  | 48 Ky.R. 100             |                       |
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| 016 KAR 009:090          |                          |                       | Amended                  | 48 Ky.R. 101             |                       |
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| 031 KAR 003:010          |                          |                       | Amended                  | 47 Ky.R. 1422            |                       |
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| 031 KAR 004:195          | 48 Ky.R. 706             |                       | As Amended               | 2577                     | 6-16-2021             |
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| 031 KAR 005:025          | 48 Ky.R. 708             |                       | Amended                  | 47 Ky.R. 2032            |                       |
| 040 KAR 001:040          | 48 Ky.R. 711             |                       | As Amended               | 48 Ky.R. 24              |                       |
| 101 KAR 002:095          |                          |                       | 201 KAR 002:420          | 48 Ky.R. 217             | 7-21-2021             |
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| 103 KAR 008:080          |                          |                       | 201 KAR 009:270          |                          |                       |
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| 103 KAR 016:270          |                          |                       | 201 KAR 009:290          | 47 Ky.R. 2495            |                       |
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| 103 KAR 016:320          |                          |                       | Amended                  | 48 Ky.R. 517             |                       |
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| 103 KAR 016:352          |                          |                       | Amended                  | 48 Ky.R. 519             |                       |
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| 103 KAR 018:020          |                          |                       | Amended                  | 48 Ky.R. 521             |                       |
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| 103 KAR 018:090          |                          |                       | Amended                  | 48 Ky.R. 524             |                       |
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| 103 KAR 026:100          |                          |                       | Amended                  | 48 Ky.R. 527             |                       |
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| 103 KAR 027:050          |                          |                       | As Amended               | 2578                     | 6-16-2021             |
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| 103 KAR 027:150          |                          |                       | Amended                  | 48 Ky.R. 533             |                       |
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| 103 KAR 027:230          |                          |                       | Amended                  | 48 Ky.R. 537             |                       |
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| 103 KAR 030:091          |                          |                       | Amended                  | 47 Ky.R. 1823            |                       |
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| Amended                  | 48 Ky.R. 504             |                       | 201 KAR 020:471          | 48 Ky.R. 218             |                       |
| 103 KAR 030:190          |                          |                       | 201 KAR 020:472          | 48 Ky.R. 220             |                       |
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| 200 KAR 017:100          | 48 Ky.R. 215             |                       | Amended                  | 48 Ky.R. 105             |                       |
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| Amended                  | 47 Ky.R. 2042            |                       | Amended                  | 47 Ky.R. 2082            |                       |
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| 201 KAR 026:155          |                          |                       | As Amended               | 340                      |                       |
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| Amended                  | 47 Ky.R. 2048            |                       | 201 KAR 035:070          |                          |                       |
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| 201 KAR 026:180          |                          |                       | Am Comments              | 48 Ky.R. 76              |                       |
| Amended                  | 47 Ky.R. 2052            |                       | As Amended               | 342                      |                       |
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| 201 KAR 026:185          |                          |                       | Amended                  | 47 Ky.R. 2091            |                       |
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| 201 KAR 026:190          |                          |                       | 201 KAR 035:080          |                          |                       |
| Amended                  | 47 Ky.R. 2056            |                       | Amended                  | 47 Ky.R. 2092            |                       |
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| 201 KAR 026:280          |                          |                       | Amended                  | 47 Ky.R. 2428            |                       |
| Amended                  | 47 Ky.R. 2065            |                       | Am Comments              | 48 Ky.R. 390             |                       |
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| 201 KAR 026:290          |                          |                       | Amended                  | 47 Ky.R. 2433            |                       |
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| 201 KAR 026:301(r)       | 47 Ky.R. 2180            |                       | Amended                  | 47 Ky.R. 2439            |                       |
| Withdrawn                |                          | 6-22-2021             | Am Comments              | 48 Ky.R. 400             |                       |
| 201 KAR 026:310          |                          |                       | 202 KAR 007:401          |                          |                       |
| Amended                  | 47 Ky.R. 2069            |                       | Amended                  | 47 Ky.R. 2445            |                       |
| As Amended               | 328                      |                       | Am Comments              | 48 Ky.R. 406             |                       |
| 201 KAR 030:040          |                          |                       | 202 KAR 007:540          |                          |                       |
| Amended                  | 47 Ky.R. 1425            |                       | Amended                  | 47 Ky.R. 2453            |                       |
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| 201 KAR 032:030          |                          |                       | Am Comments              | 48 Ky.R. 416             |                       |
| Amended                  | 47 Ky.R. 1611            |                       | 301 KAR 001:012          |                          |                       |
| Am Comments              | 2608                     |                       | Amended                  | 48 Ky.R. 112             |                       |
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| 301 KAR 001:125<br>Amended     | 48 Ky.R. 125             |                       | 501 KAR 006:070<br>Amended    | 47 Ky.R. 1620            |                       |
| 301 KAR 001:140<br>Amended     | 48 Ky.R. 128             |                       | As Amended                    | 2368                     |                       |
| 301 KAR 001:152<br>Amended     | 48 Ky.R. 130             |                       | 501 KAR 006:080<br>Amended    | 47 Ky.R. 1255            |                       |
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| 301 KAR 001:400<br>Amended     | 47 Ky.R. 2468            |                       | 601 KAR 001:113<br>Amended    | 47 Ky.R. 1256            |                       |
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| 301 KAR 002:084<br>Amended     | 48 Ky.R. 139             |                       | Am Comments                   | 48 Ky.R. 429             |                       |
| 301 KAR 002:111<br>Amended     | 48 Ky.R. 140             |                       | 601 KAR 023:030<br>As Amended | 47 Ky.R. 1324            |                       |
| 301 KAR 002:132<br>Amended     | 47 Ky.R. 2632            |                       | 605 KAR 001:030<br>Amended    | 1957                     | 7-6-2021              |
| 301 KAR 002:221<br>Amended     | 47 Ky.R. 1253            |                       | 605 KAR 001:035               | 47 Ky.R. 2643            |                       |
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| 301 KAR 002:230<br>Amended     | 48 Ky.R. 142             |                       | 701 KAR 005:100<br>Amended    | 47 Ky.R. 2766            |                       |
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| 302 KAR 079:011<br>Am Comments | 47 Ky.R., 1314           |                       | 703 KAR 005:070<br>Amended    | 48 Ky.R. 233             |                       |
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| 302 KAR 079:012<br>Am Comments | 47 Ky.R. 1321            |                       | Amended                       | 47 Ky.R. 2478            |                       |
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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

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| (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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| 150.620     | 301 KAR 001:012  | 171.520     | 725 KAR 001:025  |
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| 150.625     | 301 KAR 001:012  | 171.600     | 725 KAR 001:020  |
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| 150.640     | 301 KAR 001:012  | 173.725     | 725 KAR 002:015  |
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|                 | 921 KAR 001:390  |             | 922 KAR 002:160E |
|                 | 921 KAR 001:400E |             | 922 KAR 002:160  |
|                 | 921 KAR 001:400  | 29 C.F.R.   | 806 KAR 017:260  |
| 405.440         | 921 KAR 001:400E |             | 902 KAR 010:120  |
|                 | 921 KAR 001:400  | 34 C.F.R.   | 922 KAR 002:160E |
| 405.991         | 921 KAR 001:400E |             | 922 KAR 002:160  |
|                 | 921 KAR 001:400  | 40 C.F.R.   | 902 KAR 048:010  |
| 406.011         | 921 KAR 001:390  |             | 902 KAR 048:040  |
| 406.021         | 921 KAR 001:390  | 42 C.F.R.   | 907 KAR 023:020E |
|                 | 921 KAR 001:400E |             | 907 KAR 023:020  |
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|                 | 921 KAR 001:400E |             | 921 KAR 001:390  |
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| 406.035         | 921 KAR 001:020  |             | 921 KAR 001:400  |
| 406.180         | 921 KAR 001:390  |             | 921 KAR 003:026E |
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| 416.120         | 921 KAR 002:015E |             | 921 KAR 003:027  |
|                 | 921 KAR 002:015  |             | 921 KAR 004:116E |
| 416.212         | 921 KAR 002:015E |             | 921 KAR 004:116  |
|                 | 921 KAR 002:015  |             | 922 KAR 002:160E |
| 416.2030        | 921 KAR 002:015E |             | 922 KAR 002:160  |
|                 | 921 KAR 002:015  | 7 U.S.C.    | 921 KAR 003:026E |
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|                 | 921 KAR 002:015  |             | 922 KAR 002:160  |
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| 434.757         | 301 KAR 001:018  | 20 U.S.C.   | 016 KAR 005:010  |
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| 441.250         | 806 KAR 017:370  |             | 806 KAR 011:020  |
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| 441.510         | 501 KAR 002:060  | 34 U.S.C.   | 922 KAR 002:160E |
| 447.500-447.520 | 907 KAR 023:020E |             | 922 KAR 002:160  |
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| 454.220         | 921 KAR 001:400E |             | 922 KAR 002:160  |
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|                 | 501 KAR 002:070  |             | 921 KAR 001:400E |
| 533.010         | 501 KAR 002:070  |             | 921 KAR 001:400  |
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|             | 803 KAR 001:063  | 31 U.S.C.       | 902 KAR 030:010E |
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|             |                  | EO 2020-253     | 800 KAR 001:010  |

## CERTIFICATION LETTER SUMMARIES

The certification process is established in KRS 13A.3104. If the certification letter states the regulation shall be amended, the administrative body shall file an amendment to the regulation within 18 months of the date the certification letter was filed. If the certification letter states that the regulation shall remain in effect without amendment, the last effective date of the regulation is changed to the date the regulations compiler received the letter.

\* KRS 13A.010(6) - "Effective" 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 |
| 201 KAR 008:016   | 06-01-2021        | To be amended, filing deadline 12-1-22    |
| 201 KAR 008:571   | 06-01-2021        | To be amended, filing deadline 12-1-2022  |
| 201 KAR 014:040   | 06-03-2021        | Remain in Effect As Is                    |
| 201 KAR 014:050   | 06-03-2021        | Remain in Effect As Is                    |
| 201 KAR 014:060   | 06-03-2021        | Remain in Effect As Is                    |
| 201 KAR 014:065   | 06-03-2021        | Remain in Effect As Is                    |
| 201 KAR 014:085   | 06-03-2021        | Remain in Effect As Is                    |
| 201 KAR 014:115   | 06-03-2021        | Remain in Effect As Is                    |
| 201 KAR 020:450   | 07-15-2021        | Remain in Effect As Is                    |
| 900 KAR 006:070   | 07-06-2021        | Remain in Effect As Is                    |
| 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                    |
| 902 KAR 055:045   | 07-06-2021        | Remain in Effect As Is                    |
| 902 KAR 055:090   | 07-06-2021        | Remain in Effect As Is                    |
| 910 KAR 001:180   | 07-23-2021        | To be amended, filing deadline 01-23-2023 |

## TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments made during the 48<sup>th</sup> year of the *Administrative Register of Kentucky*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published to show the technical corrections in the *Register*. NOTE: Technical amendments may be available online for a short period of time before finalized versions of the technically amended regulations are available. To view regulations on the Legislative Research Commission Web site go to <https://apps.legislature.ky.gov/law/kar/titles.htm>.

‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).

† - A nonsubstantive change was made by the Compiler pursuant to KRS 13A.040(9).

| <b>Regulation<br/>Number</b> | <b>Date<br/>Corrected</b> | <b>Regulation<br/>Number</b> | <b>Date<br/>Corrected</b> |
|------------------------------|---------------------------|------------------------------|---------------------------|
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